

GOVERNMENT CODE
TITLE 12. SECURITIES ACT
CHAPTER 4008. PRIVATE RIGHTS OF ACTION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4008.001. UNENFORCEABILITY OF ILLEGAL CONTRACTS. A person may not base a suit on a contract if the person:

(1) made or engaged in the performance of the contract in violation of this title or a rule, order, or requirement under this title; or

(2) acquired any purported right under the contract with knowledge of the facts by reason of which the contract's making or performance was in violation of this title or a rule, order, or requirement under this title.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.002. CERTAIN WAIVERS VOID. A condition, stipulation, or provision is void if it binds a buyer or seller of a security or a purchaser of services rendered by an investment adviser or investment adviser representative to waive compliance with this title or a rule, order, or requirement under this title.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.003. ACTION FOR COLLECTION OF COMMISSION OR COMPENSATION. (a) This section does not apply to a person or company that rendered services in connection with a transaction that is exempt under Subchapter [A](#), Chapter [4005](#), or under a rule adopted by the board under Section [4005.024](#) if the person or company was not required to be registered by the terms of the exemption.

(b) A person or company may not bring or maintain any action in a court of this state for collection of a commission or compensation for services rendered in the sale or purchase of securities unless the person or company alleges and proves that:

(1) the person or company was:

(A) registered under this title; or

(B) exempt from registration under rules adopted under Section 4004.001; and

(2) the securities sold were registered under this title at the time the alleged cause of action arose.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.004. STAY OF RECOGNITION OR ENFORCEMENT OF FOREIGN-COUNTRY JUDGMENT. (a) Before a court's recognition or enforcement of a foreign-country judgment under Chapter 36A, Civil Practice and Remedies Code, or otherwise, a party against whom recognition or enforcement of the foreign-country judgment is sought is entitled to de novo review by a court in this state to determine whether a party, or the party's successors, assigns, agents, or representatives seeking recognition or enforcement of the foreign-country judgment have violated this title or Chapter 17, Business & Commerce Code.

(b) A party seeking de novo review under this section must file with the court a verified pleading asserting a violation of this title or Chapter 17, Business & Commerce Code, not later than the 30th day after the date of service of the notice of filing of the foreign-country judgment with the court for recognition or enforcement.

(c) A pleading filed in accordance with Subsection (b) operates as a stay of the commencement or continuation of a proceeding to recognize or enforce the foreign-country judgment until the court completes its de novo review under this section and renders a final judgment.

(d) A finding by a court of a violation of this title or Chapter 17, Business & Commerce Code, is a sufficient ground for nonrecognition of a foreign-country judgment.

(e) This section applies to a foreign-country judgment involving a contract or agreement for a sale, offer for sale, or sell as defined by this title, or investment, that imposes an obligation of indemnification or liquidated damages on a resident of this state.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.005. SURVIVABILITY OF ACTION. A cause of action under this title survives the death of a person who might have been a plaintiff or defendant.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.006. SAVING OF EXISTING RIGHTS AND REMEDIES. The rights and remedies provided by this title are in addition to any other rights, including exemplary damages, or remedies that exist. Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER B. CIVIL LIABILITY FOR ISSUANCE, SALE, OR PURCHASE OF SECURITIES

Sec. 4008.051. OFFEROR OR SELLER LIABILITY: REGISTRATION AND RELATED VIOLATIONS.

Text of subsection as amended by Acts 2021, 87th Leg., R.S., Ch. 41 (S.B. [1280](#)), Sec. 1, eff. January 1, 2022.

(a) A person who offers or sells a security in violation of the following is liable to a person who buys the security from the offeror or seller:

(1) Section [4003.001\(a\)](#), [4004.051](#), [4004.052](#), [4004.101\(a\)](#), [4004.102\(a\)](#), or [4007.103](#);

(2) Subchapter [G](#), Chapter [4003](#), other than Section [4003.304](#), or a requirement of the commissioner under Subchapter [G](#), Chapter [4003](#), other than Section [4003.304](#); or

(3) an order under Section [4007.101](#) or [4007.104](#).

(b) The buyer of the security may sue for:

(1) rescission; or

(2) damages if the buyer no longer owns the security.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01,

eff. January 1, 2022.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 41 (S.B. 1280), Sec. 1, eff. January 1, 2022.

Sec. 4008.052. OFFEROR OR SELLER LIABILITY: UNTRUTH OR OMISSION. (a) Except as provided by Subsection (c), a person who offers or sells a security and from whom another person buys the security is liable to the buyer of the security, regardless of whether the security or transaction is exempt under Chapter 4005, if the person offers or sells the security by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

(b) The buyer may sue for:

(1) rescission; or

(2) damages if the buyer no longer owns the security.

(c) Except as provided by Subsection (d), a person offering or selling a security is not liable under Subsection (a) if the person sustains the burden of proof that either:

(1) the buyer knew of the untruth or omission; or

(2) the offeror or seller did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

(d) The issuer of the security, other than a government issuer identified in Section 4005.017, is not entitled to the defense in Subsection (c)(2) regarding an untruth or omission:

(1) in a prospectus required in connection with an application or registration statement under Subchapter A, B, or C, Chapter 4003; or

(2) in a writing prepared and delivered by the issuer in the sale of the security.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.053. BUYER LIABILITY. (a) Except as provided by Subsection (c), a person who offers to buy or buys a security and to

whom another person sells the security is liable to the seller, regardless of whether the security or transaction is exempt under Chapter 4005, if the person offers to buy or buys the security by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

(b) The seller may sue for:

(1) rescission; or

(2) damages if the buyer no longer owns the security.

(c) A person who offers to buy or buys a security is not liable under Subsection (a) if the offeror or buyer sustains the burden of proof that either:

(1) the seller knew of the untruth or omission; or

(2) the offeror or buyer did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.054. NONSELLING ISSUER LIABILITY. (a) This section applies only to an issuer that registers under Subchapter A, B, or C, Chapter 4003, or under Section 6, Securities Act of 1933 (15 U.S.C. Section 77f), the issuer's outstanding securities for offer and sale by or for the owner of the securities.

(b) Except as provided by Subsection (d), the issuer is liable to a person buying the registered security if the prospectus required in connection with the registration contains, as of its effective date, an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

(c) The buyer of the registered security may sue for:

(1) rescission; or

(2) damages if the buyer no longer owns the security.

(d) The issuer is not liable under Subsection (b) if the issuer sustains the burden of proof that the buyer knew of the

untruth or omission.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.055. CONTROLLING PERSON OR AIDER LIABILITY.

(a) Except as provided by Subsection (b), a person who directly or indirectly controls a seller, buyer, or issuer of a security is liable under Section [4008.051](#), [4008.052](#), [4008.053](#), or [4008.054](#) jointly and severally with the seller, buyer, or issuer and to the same extent as the seller, buyer, or issuer.

(b) The controlling person is not liable under Subsection (a) if the controlling person sustains the burden of proof that the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

(c) A person who directly or indirectly with intent to deceive or defraud or with reckless disregard for the truth or the law materially aids a seller, buyer, or issuer of a security is liable under Section [4008.051](#), [4008.052](#), [4008.053](#), or [4008.054](#) jointly and severally with the seller, buyer, or issuer and to the same extent as the seller, buyer, or issuer.

(d) There is contribution under this section as in cases of contract among the several persons who are liable.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.056. RESCISSION. (a) On rescission under this subchapter, a buyer of a security shall, on tender of the security or a security of the same class and series, recover the consideration the buyer paid for the security plus interest on the consideration at the legal rate from the date the buyer made the payment, less the amount of any income the buyer received on the security.

(b) On rescission under this subchapter, a seller of a security shall recover the security or a security of the same class and series, on tender of the consideration the seller received for the security plus interest on the consideration at the legal rate

from the date the seller received the payment, less the amount of any income the buyer received on the security.

(c) For a buyer suing under Section [4008.054](#), the consideration the buyer paid for the security is deemed to be the lesser of:

- (1) the price the buyer paid; or
- (2) the price at which the security was offered to the public.

(d) A tender specified in this section may be made at any time before a judgment is entered.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.057. DAMAGES. (a) In damages under this subchapter, a buyer of a security shall recover the consideration the buyer paid for the security plus interest on the consideration at the legal rate from the date the buyer made the payment, less the greater of:

- (1) the value of the security at the time the buyer disposed of the security plus the amount of any income the buyer received on the security; or

- (2) the actual consideration received for the security at the time the buyer disposed of the security plus the amount of any income the buyer received on the security.

(b) In damages under this subchapter, a seller of a security shall recover the value of the security at the time of sale plus the amount of any income the buyer received on the security, less the consideration paid to the seller for the security plus interest on the consideration at the legal rate from the date of payment to the seller.

(c) For a buyer suing under Section [4008.054](#), the consideration the buyer paid for the security is deemed to be the lesser of:

- (1) the price the buyer paid; or
- (2) the price at which the security was offered to the public.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01,

eff. January 1, 2022.

Sec. 4008.058. REQUIREMENTS OF RESCISSION OFFER TO BUYERS.

(a) A rescission offer is sufficient for purposes of Section 4008.062(a) or (b) only if the offer meets the requirements of this section.

(b) The offer must include financial and other information material to the offeree's decision whether to accept the offer. The offer may not contain an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

(c) The offeror shall:

(1) deposit funds in escrow in a state or national bank doing business in this state, or in another bank approved by the commissioner; or

(2) receive an unqualified commitment from a bank described by Subdivision (1) to provide funds sufficient to pay the amount offered.

(d) The amount of the offer to a buyer who still owns the security must be the amount, excluding costs and attorney's fees, the buyer would recover on rescission under Section 4008.056(a).

(e) The amount of the offer to a buyer who no longer owns the security must be the amount, excluding costs and attorney's fees, the buyer would recover in damages under Section 4008.057(a).

(f) The offer must state:

(1) the amount of the offer, as determined under Subsection (d) or (e), which must be given:

(A) to the extent practicable, in terms of a specified number of dollars and a specified rate of interest for a period starting at a specified date; and

(B) to the extent necessary, in terms of specified elements, such as the value of the security when the offeree disposed of the security, that are known to the offeree but not to the offeror, subject to the provision of reasonable evidence by the offeree;

(2) the name and address of the bank at which the

amount of the offer will be paid;

(3) that the offeree will receive the amount of the offer within a specified number of days that is not more than 30 days after the date the bank receives, in form reasonably acceptable to the offeror and in compliance with the instructions in the offer:

(A) the security, if the offeree still owns the security, or evidence of the fact and date of disposition if the offeree no longer owns the security; and

(B) evidence, if necessary, of elements described by Subdivision (1)(B);

(4) in a conspicuous manner that the offeree may not sue on the offeree's purchase under this subchapter unless:

(A) the offeree accepts the offer but does not receive the amount of the offer, in which case the offeree may sue within the time allowed by Section [4008.062](#)(a)(1), (b)(1), or (b)(2), as applicable; or

(B) the offeree rejects the offer in writing within 30 days of the date the offeree receives the offer and expressly reserves in the rejection the right to sue, in which case the offeree may sue not later than one year after the date of the rejection;

(5) in reasonable detail, the nature of the violation of this title that occurred or may have occurred; and

(6) any other information the offeror wants to include.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.059. REQUIREMENTS OF RESCISSION OFFER TO SELLERS.

(a) A rescission offer is sufficient for purposes of Section [4008.062](#)(c) only if the offer meets the requirements of this section.

(b) The offer must include financial and other information material to the offeree's decision whether to accept the offer. The offer may not contain an untrue statement of a material fact or an omission to state a material fact necessary in order to

make the statements made, in light of the circumstances under which they are made, not misleading.

(c) The offeror shall deposit the securities in escrow in a state or national bank doing business in this state, or in another bank approved by the commissioner.

(d) The terms of the offer must be the same, excluding costs and attorney's fees, as the seller would recover on rescission under Section [4008.056\(b\)](#).

(e) The offer must state:

(1) the terms of the offer, as determined under Subsection (d), which must be given:

(A) to the extent practicable, in terms of a specified number and kind of securities and a specified rate of interest for a period starting at a specified date; and

(B) to the extent necessary, in terms of specified elements that are known to the offeree but not to the offeror, subject to the provision of reasonable evidence by the offeree;

(2) the name and address of the bank at which the terms of the offer will be carried out;

(3) that the offeree will receive the securities within a specified number of days that is not more than 30 days after the date the bank receives, in form reasonably acceptable to the offeror and in compliance with the instructions in the offer:

(A) the amount required by the terms of the offer; and

(B) evidence, if necessary, of elements described by Subdivision (1)(B);

(4) in a conspicuous manner that the offeree may not sue on the offeree's sale under this subchapter unless:

(A) the offeree accepts the offer but does not receive the securities, in which case the offeree may sue within the time allowed by Section [4008.062\(c\)\(1\)](#) or (2), as applicable; or

(B) the offeree rejects the offer in writing within 30 days of the date the offeree receives the offer and expressly reserves in the rejection the right to sue, in which case the offeree may sue not later than one year after the date of the

rejection;

(5) in reasonable detail, the nature of the violation of this title that occurred or may have occurred; and

(6) any other information the offeror wants to include.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.060. COSTS; ATTORNEY'S FEES. (a) On rescission or as a part of damages under this subchapter, a buyer or a seller of a security shall also recover costs.

(b) On rescission or as a part of damages under this subchapter, a buyer or a seller of a security may also recover reasonable attorney's fees if the court finds that the recovery is equitable under the circumstances.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.061. LIMITATION OF LIABILITY IN SMALL BUSINESS ISSUANCES. (a) In this section, "small business issuer" means an issuer that, at the time of an offer to which this section applies:

(1) has annual gross revenues in an amount that does not exceed \$25 million; and

(2) does not have a class of equity securities registered, or required to be registered, with the Securities and Exchange Commission under Section 12, Securities Exchange Act of 1934 (15 U.S.C. Section 781).

(b) This section applies only to:

(1) an offer of securities in an aggregate amount that does not exceed \$5 million made by a small business issuer or by the seller of securities of a small business issuer; and

(2) a person who has been engaged to provide services relating to an offer of securities described by Subdivision (1), including an attorney, an accountant, a consultant, or the firm of the attorney, accountant, or consultant.

(c) In an action or series of actions under this subchapter relating to an offer of securities to which this section applies,

the maximum amount that may be recovered against a person to whom this section applies is three times the fee paid by the small business issuer or other seller to the person for the services related to the offer of securities, unless the trier of fact finds the person engaged in intentional wrongdoing in providing the services.

(d) A small business issuer making an offer of securities shall:

(1) provide to the prospective buyer a written disclosure of the limitation of liability created by this section; and

(2) receive a signed acknowledgment that the disclosure was provided.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.062. STATUTE OF LIMITATIONS. (a) A person may not sue under Section [4008.051](#) or [4008.055](#) to the extent that section relates to Section [4008.051](#):

(1) more than three years after the date of the sale;

(2) if the person received a rescission offer meeting the requirements of Section [4008.058](#) before suit, unless the person:

(A) rejected the offer in writing within 30 days of the date the person received the offer; and

(B) expressly reserved in the rejection the right to sue; or

(3) more than one year after the date the person so rejected a rescission offer meeting the requirements of Section [4008.058](#).

(b) A person may not sue under Section [4008.052](#), [4008.054](#), or [4008.055](#) to the extent that section relates to Section [4008.052](#) or [4008.054](#):

(1) more than three years after the date of discovery of the untruth or omission, or after the date discovery should have been made by the exercise of reasonable diligence;

(2) more than five years after the date of the sale;

(3) if the person received a rescission offer meeting the requirements of Section 4008.058 before suit, unless the person:

(A) rejected the offer in writing within 30 days of the date the person received the offer; and

(B) expressly reserved in the rejection the right to sue; or

(4) more than one year after the date the person so rejected a rescission offer meeting the requirements of Section 4008.058.

(c) A person may not sue under Section 4008.053 or 4008.055 to the extent that section relates to Section 4008.053:

(1) more than three years after the date of discovery of the untruth or omission, or after the date discovery should have been made by the exercise of reasonable diligence;

(2) more than five years after the date of the purchase;

(3) if the person received a rescission offer meeting the requirements of Section 4008.059 before suit, unless the person:

(A) rejected the offer in writing within 30 days of the date the person received the offer; and

(B) expressly reserved in the rejection the right to sue; or

(4) more than one year after the date the person so rejected a rescission offer meeting the requirements of Section 4008.059.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER C. CIVIL LIABILITY OF INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

Sec. 4008.101. INVESTMENT ADVISER OR INVESTMENT ADVISER REPRESENTATIVE LIABILITY. (a) An investment adviser or investment adviser representative who renders services as an investment adviser in violation of Section 4004.052 or 4004.102(a)

or an order under Section [4007.102](#) or [4007.104](#) is liable to the purchaser, who may sue for damages in the amount of any consideration paid for the services.

(b) Except as provided by Subsection (c), an investment adviser or investment adviser representative who commits fraud or engages in a fraudulent practice in rendering services as an investment adviser is liable to the purchaser, who may sue for damages.

(c) An investment adviser or investment adviser representative who in rendering services as an investment adviser makes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statement made, in light of the circumstances under which the statement is made, not misleading is not liable under Subsection (b) if the adviser or representative proves:

(1) the purchaser knew of the truth or omission; or

(2) the adviser or representative did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.102. CONTROLLING PERSON OR AIDER LIABILITY.

(a) Except as provided by Subsection (b), a person who directly or indirectly controls an investment adviser is jointly and severally liable with the investment adviser under this subchapter and to the same extent as the investment adviser.

(b) The controlling person is not liable under Subsection (a) if the controlling person sustains the burden of proof that the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which liability is alleged to exist.

(c) A person who directly or indirectly with intent to deceive or defraud or with reckless disregard for the truth or the law materially aids an investment adviser in conduct for which a cause of action is authorized by this subchapter is jointly and severally liable with the investment adviser in an action to

recover damages under this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.103. DAMAGES. In damages under Section 4008.101(b), the purchaser is entitled to recover:

(1) the amount of any consideration paid for the services, less the amount of any income the purchaser received from acting on the services;

(2) any loss incurred by the purchaser in acting on the services provided by the investment adviser or investment adviser representative;

(3) interest at the legal rate for judgments accruing from the date the purchaser paid the consideration; and

(4) to the extent the court considers equitable, court costs and reasonable attorney's fees.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.104. STATUTE OF LIMITATIONS. (a) A person may not sue under Section 4008.101(a) more than three years after the date the violation occurs.

(b) A person may not sue under Section 4008.101(b) more than:

(1) five years after the date the violation occurs; or

(2) three years after the date the person knew or should have known, by the exercise of reasonable diligence, of the occurrence of the violation.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.105. REMEDY NOT EXCLUSIVE. A remedy provided by this subchapter is not exclusive of any other applicable remedy provided by law.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.