

BILL ANALYSIS

Senate Research Center
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S.B. 1280
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Business & Commerce
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1280 (the "Proposed Bill") is a part of the State Bar of Texas legislative package for the 2021 Texas Legislature. The Proposed Bill has been approved by the council of the business law section and is believed to be non-controversial. The bill would amend Section 4008.051(a)(1) of the newly recodified Texas Securities Act (TSA) to eliminate the cross-references in the list of non-fraud private causes of action that incorrectly reference several TSA provisions that impose no duties on private actors and thus cannot be violated by private actors.

The Texas Legislative Council (TLC) drafted the TSA recodification, which passed last session as H.B. 4171 and was signed into law by Governor Abbott. H.B. 4171's effective date is January 1, 2022. The delayed effective date was intended to allow time for study of the recodification provisions in order to identify problems or errors that need to be corrected before the provisions become law.

Although the TSA recodification was purportedly a non-substantive recodification, TLC mistakenly created six new purported non-fraud private civil causes of action by cross referencing six provisions of the TSA that impose no duties on private actors whatsoever. It is feared that confusion might result and the possibility exists that the existing language might create new phantom causes of action that the legislature did not intend.

Each reference to a statutory section, chapter, or title is to a section, chapter, or title of the TSA, unless otherwise stated.

As proposed, S.B. 1280 amends current law relating to certain provisions of The Securities Act for which a person offering or selling a security may be held liable to a person buying the security.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 4008.051(a), Government Code, as follows:

(a) Provides that 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) (relating to prohibiting a dealer or agent from selling or offering for sale any securities issued after September 6, 1955, unless the commissioner has issued a permit qualifying securities for sale for those securities to the issuer of the securities or a registered dealer), 4004.051 (Registration of Dealers Required), 4004.052 (Registration of Investment Advisers Required), 4004.101(a) (relating to prohibiting an agent, on behalf of a registered dealer, sell, from offering for sale, or making a sale of any securities in this state unless the agent is registered as an agent for that particular registered dealer), 4004.102(a) (relating to prohibiting a person from acting or rendering services as an

investment adviser representative for an investment adviser unless the person is registered or submits a notice filing as an investment adviser representative for that particular investment adviser), or 4007.103 (Cease Publication Order);

(2) and (3) makes no changes to these subdivisions.

Deletes existing text providing that 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: Section 4003.002 (Permit Application to Qualify Securities for Sale), 4003.003 (Statement of Financial Condition and Income Statement), or 4003.004 (Exceptions to Certification Requirement for Financial Statements); Subchapter B (Registration by Notification), Chapter 4003, other than Section 4003.054(b)(1) (relating to the requirement that a registration statement filed for certain securities by notification be reviewed by the securities commissioner), Subchapter C (Registration by Coordination), Chapter 4003, other than Section 4003.103(b) (relating to the requirement that a registration statement filed for certain securities by coordination be reviewed by the securities commissioner), or Section 4004.001 (Rules for Exemption from Registration). Makes nonsubstantive changes;

SECTION 2. Effective date: January 1, 2022.