REVISOR'S REPORT

A NONSUBSTANTIVE REVISION
OF THE SECURITIES ACT

Submitted to the 86th Legislature
as part of the
Texas Legislative Council's
Statutory Revision Program

Austin, Texas
2019
The Texas Legislative Council is required by Section 323.007, Government Code, to carry out a complete nonsubstantive revision of the Texas statutes. The process involves reclassifying and rearranging the statutes in a more logical order, eliminating repealed, invalid, duplicative, and other ineffective provisions while employing a format and numbering system that will accommodate future expansion of the law, and improving the draftsmanship of the statutes as practicable. The revision is intended to further the legislature's stated purpose of making the statutes "more accessible, understandable, and usable" without altering the sense, meaning, or effect of the law.

Under the classification scheme adopted by the Texas Legislative Council, the statutes will eventually consist of 27 codes, each governing a different subject matter. To date, the council has produced and the legislature has enacted the Agriculture Code, Alcoholic Beverage Code, Business & Commerce Code, Civil Practice and Remedies Code, Education Code, Election Code (a substantive revision), Estates Code, Finance Code, Government Code, Health and Safety Code, Human Resources Code, Insurance Code, Labor Code, Local Government Code, Natural Resources Code, Occupations Code, Parks and Wildlife Code, Property Code, Special District Local Laws Code, Tax Code (Title 1 of which was a substantive revision), Transportation Code, Utilities Code, and Water Code. The council's staff assisted the state bar in the Business Organizations Code, Penal Code, and Family Code projects, which were substantive revisions, and revised miscellaneous criminal procedure provisions as Title 2 of the Code of Criminal Procedure. The council's staff also assisted the Sunset Advisory Commission with a substantive revision of law related to the state's health and human services agencies. In addition, as part of its continuing statutory revision program, the council is revising other laws, including various portions of the Code of Criminal Procedure.

The revised Securities Act that is the subject of this revision is placed in a new Title 12, Government Code. Title 12 is entitled "Securities Act" and revises the provisions of The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), which established the State Securities Board and contains provisions regulating securities and persons who sell, offer to sell, or deal in securities. Title 12 is further organized into chapters, subchapters, and sections. Sections are numbered decimally, with the number to the left of the decimal point the same as the number of the chapter in which the section is contained.

This revisor's report reflects the enactment of Chapter 491 (H.B. 4171), Acts of the 86th Legislature, Regular Session, 2019, the Texas Legislative Council staff's revision of The Securities Act. The revisor's report states the Revised Law, which is the text of the new law, and then provides the Source Law, which is the text of the former law from which the new law was derived. If further explanation of either the revised law or the source law is required, a Revisor's Note is included after the source law. All substance of
the source law is revised in the revised law or the reason for its omission is explained in a revisor's note.

Note that this revision does not take effect until January 1, 2022, to provide all affected persons a complete legislative cycle to review the revision more closely.

Because of the extensive reorganization of many statutes, and even provisions within a statute, a reader may find it helpful to read the entire source law for a given chapter of the revised law and to refer to the disposition table, which shows where the former statutes, as revised, are placed in Title 12, Government Code. The disposition table is printed as Appendix C to the revisor's report.

The revision required conforming amendments to several statutes. These amendments, also enacted into law by Chapter 491 (H.B. 4171), Acts of the 86th Legislature, Regular Session, 2019, are printed in Appendix A to the revisor's report. Appendix A also includes a section listing the laws repealed effective January 1, 2022, and a section stating the legislature's intent that Title 12, Government Code, be a nonsubstantive revision.

In reviewing this revisor's report, the reader should keep in mind that:

(1) Except as otherwise provided, Chapter 311, Government Code (Code Construction Act), applies to Title 12, Government Code. Chapter 311 establishes certain principles of statutory construction applicable to the revised law and also provides some definitions. The chapter is printed as Appendix B to this report.

(2) The proposed title is written in modern American English. Where possible, the revised law uses the present tense, favors the use of the active voice over the passive voice, and prefers the singular over the plural.

(3) This enactment is a nonsubstantive revision. The Texas Legislative Council staff's authority does not include improving the substance of the source law. The sole purpose of the revision is to compile all the relevant law, arrange it in a logical fashion, and rewrite it without altering its sense, meaning, or legal effect. If a particular source law statute is ambiguous and the ambiguity cannot be resolved without a potential substantive effect, the ambiguity is preserved.

The revision of The Securities Act is under the direction of John Mistrot, Legislative Counsel, of the Texas Legislative Council's legal division staff. Questions may be directed to Mr. Mistrot at P.O. Box 12128, Capitol Station, Austin, Texas 78711-2128, or by telephone at (512) 463-1151.
TITLE 12. SECURITIES ACT

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TITLE 12. SECURITIES ACT

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TITLE 12. SECURITIES ACT
CHAPTER 4001. GENERAL PROVISIONS
SUBCHAPTER A. SHORT TITLE; PURPOSES; CONSTRUCTION

Revised Law
Sec. 4001.001. SHORT TITLE. This title may be cited as The
Securities Act. (V.A.C.S. Art. 581-1.)

Source Law
Art. 581-1. This Act shall be known and may be
cited as "The Securities Act."

Revisor's Note
Article 581-1, Vernon's Texas Civil Statutes,
provides a short title for "[t]his Act," which is The
Securities Act (Article 581-1 et seq., Vernon's Texas
Civil Statutes). The provisions of The Securities Act
are revised as this title. The revised law throughout
this chapter therefore substitutes references to "this
title" for references to "this Act."

Revised Law
Sec. 4001.002. PURPOSES; CONSTRUCTION. (a) The general
purposes of this title are to:

(1) protect investors and, consistent with that
purpose, encourage capital formation, job formation, and free and
(2) maximize coordination with federal and other states' laws and administration, particularly with respect to procedure, reports, forms, and exemptions; and

(3) minimize regulatory burdens on issuers and other persons subject to this title, especially small businesses.

(b) This title may be construed and implemented to effectuate the title's general purposes. (V.A.C.S. Art. 581-10-1.)

Source Law
Art. 581-10-1. A. This Act may be construed and implemented to effectuate its general purpose to maximize coordination with federal and other states' law and administration, particularly with respect to:
(1) procedure, reports, and forms; and
(2) exemptions.

B. This Act may be construed and implemented to effectuate its general purposes to protect investors and consistent with that purpose, to encourage capital formation, job formation, and free and competitive securities markets and to minimize regulatory burdens on issuers and persons subject to this Act, especially small businesses.

Revised Law
Sec. 4001.003. SEVERABILITY. The provisions of this title are severable. If any provision of this title is declared void or unconstitutional, the remaining provisions of this title would have been enacted notwithstanding such judicial determination of the invalidity of the provision, and the remaining provisions shall remain in effect. (V.A.C.S. Art. 581-38.)

Source Law
Art. 581-38. The provisions of this Act are severable, and in the event that any provision thereof should be declared void or unconstitutional, it is hereby declared that the remaining provisions would have been enacted notwithstanding such judicial determination of the invalidity of any particular provision or provisions in any respect, and said sections shall remain in full force and effect.

Revisor's Note
Article 581-38, Vernon's Texas Civil Statutes, refers to remaining provisions of The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) remaining "in full force and effect" following the
invalidity of any particular provision of the act.
The revised law omits the reference to "full force"
because "full force" is included within the meaning of
"effect."

SUBCHAPTER B. DEFINITIONS

Revised Law
Sec. 4001.051. APPLICABILITY OF DEFINITIONS; CONSTRUCTION
OF CERTAIN CONJUNCTIONS. (a) The definition for a term provided by
this chapter applies in this title unless the context in which the
term is used indicates a different meaning.
(b) The term "and" may be construed to mean "or," and the
term "or" may be construed to mean "and." (V.A.C.S. Art. 581-4
(part); Art. 581-4, Subsec. J (part).)

Source Law
Art. 581-4. The following terms shall, unless
the context otherwise indicates, have the following
respective meanings:
J. "and" may be read "or" and "or" may be
read "and."

Revised Law
Sec. 4001.052. AGENT. (a) Except as provided by Subsection
(b), "agent" includes a person or company employed, appointed, or
authorized by a dealer to sell, offer for sale or delivery, solicit
subscriptions to or orders for, or deal in any other manner in,
securities in this state directly or through a subagent.
(b) If a corporation or partnership is registered as a
dealer under this title, an officer of the corporation or partner of
the partnership is not deemed an agent solely because of the
officer's or partner's status as an officer or partner of that
entity. (V.A.C.S. Art. 581-4, Subsec. D.)

Source Law
D. The term "agent" shall include every person
or company employed or appointed or authorized by a
dealer to sell, offer for sale or delivery, or solicit
subscriptions to or orders for, or deal in any other
manner, in securities within this state, whether by
direct act or through subagents; provided, that the
officers of a corporation or partners of a partnership
shall not be deemed agents solely because of their
status as officers or partners, where such corporation
or partnership is registered as a dealer hereunder.

Revisor's Note
Subsection D, Article 581-4, Vernon's Texas Civil
Statutes, which is a provision of The Securities Act
(Article 581-1 et seq., Vernon's Texas Civil
Statutes), refers to a corporation or partnership
registered as a dealer "hereunder," meaning under that
act. The revised law substitutes a reference to "under
this title" for the reference to "hereunder" for the
reason stated in the revisor's note to Section 4001.001
of this chapter.

Revised Law
Sec. 4001.053. BOARD. "Board" means the State Securities
Board. (New.)

Revisor's Note
The revised law adds a definition of "board" for
the convenience of the reader and to avoid the
frequent, unnecessary repetition of the substance of
the definition.

Revised Law
Sec. 4001.054. BROKER. "Broker" means "dealer" as defined
in this title. (V.A.C.S. Art. 581-4, Subsec. H.)

Source Law
H. "Broker" shall mean dealer as herein defined.

Revisor's Note
Subsection H, Article 581-4, Vernon's Texas Civil
Statutes, which is a provision of The Securities Act
(Article 581-1 et seq., Vernon's Texas Civil
Statutes), refers to a dealer "as herein defined,"
meaning under that act. The revised law substitutes a
reference to "in this title" for the reference to
"herein" for the reason stated in the revisor's note to
Section 4001.001 of this chapter.
Sec. 4001.055. COMMISSIONER. "Commissioner" means the securities commissioner. (New.)

Revisor's Note
The revised law adds a definition of "commissioner" for the convenience of the reader and to avoid the frequent, unnecessary repetition of the substance of the definition.

Sec. 4001.056. DEALER. (a) "Dealer" includes:

(1) a person or company, other than an agent, who for all or part of the person's or company's time engages in this state, directly or through an agent, in selling, offering for sale or delivery, soliciting subscriptions to or orders for, undertaking to dispose of, or inviting offers for any security; and

(2) a person or company who deals in any other manner in any security in this state.

(b) Except as provided by Subsection (c), an issuer, other than a registered dealer, who directly or through any person or company, other than a registered dealer, offers for sale, sells, or makes sales of the issuer's own securities is deemed a dealer and shall comply with this title.

(c) An issuer is not deemed a dealer under Subsection (b) if:

(1) the issuer sells or offers for sale securities to a registered dealer or only by or through a registered dealer acting as fiscal agent for the issuer; or

(2) the transaction is exempt as provided by Subchapter A, Chapter 4005.

(d) Except as expressly provided otherwise in this title, a person or company engaged in the sale of, offer for sale of, solicitation of, subscription to, dealing in, or delivery of a security made in a transaction or under a condition specified in Subchapter A, Chapter 4005, is not deemed a dealer within the
meaning of this title. (V.A.C.S. Art. 581-4, Subsec. C; Art. 581-5 (part).)

Source Law

[Art. 581-4]  
C. The term "dealer" shall include every person or company other than an agent, who engages in this state, either for all or part of his or its time, directly or through an agent, in selling, offering for sale or delivery or soliciting subscriptions to or orders for, or undertaking to dispose of, or to invite offers for any security or securities and every person or company who deals in any other manner in any security or securities within this state. Any issuer other than a registered dealer of a security or securities, who, directly or through any person or company, other than a registered dealer, offers for sale, sells or makes sales of its own security or securities shall be deemed a dealer and shall be required to comply with the provisions hereof; provided, however, this section or provision shall not apply to such issuer when such security or securities are offered for sale or sold either to a registered dealer or only by or through a registered dealer acting as fiscal agent for the issuer; and provided further, this section or provision shall not apply to such issuer if the transaction is within the exemptions contained in the provisions of Section 5 of this Act.

Art. 581-5. Except as hereinafter in this Act specifically provided, [the provisions of this Act shall not apply to the sale of any security when made in any of the following transactions and under any of the following conditions, and] the company or person engaged therein shall not be deemed a dealer within the meaning of this Act; that is to say, the provisions of this Act shall not apply to any sale, offer for sale, solicitation, subscription, dealing in or delivery of any security under any of the following transactions or conditions:

Revisor's Note

(1) Subsection C, Article 581-4, Vernon's Texas Civil Statutes, refers to a registered dealer "of a security or securities." The revised law omits the quoted language as unnecessary because "registered dealer" is defined by Subsection M, Article 581-4, Vernon's Texas Civil Statutes, revised in this chapter as Section 4001.065, as a dealer registered under Article 581-15, Vernon's Texas Civil Statutes, revised in this title as Sections 4004.054-4004.056. The dealers who are required to obtain a registration certificate issued under Section 4004.054 are dealers
of securities. See Article 581-12, Vernon's Texas
Civil Statutes, revised in relevant part as Section
4004.051 of this title.

(2) Subsection C, Article 581-4, Vernon's Texas
Civil Statutes, which is a provision of The Securities
Act (Article 581-1 et seq., Vernon's Texas Civil
Statutes), requires certain issuers of securities to
comply with the provisions "hereof," meaning of that
act. The revised law substitutes a reference to "this
title" for the reference to "hereof" for the reason
stated in the revisor's note to Section 4001.001 of
this chapter.

(3) Article 581-5, Vernon's Texas Civil
Statutes, states that the provisions of "this Act,"
meaning The Securities Act (Article 581-1 et seq.,
Vernon's Texas Civil Statutes), revised as this title,
do not apply to "the sale of any security when made in
any of the following transactions and under any of the
following conditions" specified in Article 581-5. The
provisions of Article 581-5 are revised as Subchapter
A, Chapter 4005, of this title. For clarity, the
revised law substitutes a reference to "Subchapter A,
Chapter 4005" for "Article 581-5."

(4) Article 581-5, Vernon's Texas Civil
Statutes, states "that is to say, the provisions of
this Act shall not apply to" in relation to the sale of
a security. The revised law omits "that is to say" as
unnecessary and redundant.

Revised Law
Sec. 4001.057. FEDERAL COVERED INVESTMENT ADVISER.
"Federal covered investment adviser" means an investment adviser
who is registered under the Investment Advisers Act of 1940 (15
U.S.C. Section 80b-1 et seq.). (V.A.C.S. Art. 581-4, Subsec. O.)
O. "Federal covered investment adviser" means an investment adviser who is registered under the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.), as amended.

Reviser's Note


The revised law omits "as amended" because, under Section 311.027, Government Code (Code Construction Act), applicable to the revised law, a reference to a statute applies to all reenactments, revisions, or amendments of that statute, unless expressly provided otherwise.

Revised Law

Sec. 4001.058. FRAUD; FRAUDULENT PRACTICE. (a) "Fraud" and "fraudulent practice" include:

1. a misrepresentation of a relevant fact made in any manner;
2. a promise, representation, or predication as to the future not made honestly and in good faith;
3. an intentional failure to disclose a material fact;
4. a direct or indirect gain, through the sale of a security, of an underwriting or promotion fee or profit, or of a selling or managing commission or profit, that is so gross or exorbitant as to be unconscionable; and
5. a scheme, device, or other artifice to obtain a profit, fee, or commission described by Subdivision (4).

(b) Nothing in this section limits the full meaning of "fraud," "fraudulent," or "fraudulent practice" as applied or accepted in courts. (V.A.C.S. Art. 581-4, Subsec. F.)

Source Law

F. The terms "fraud" or "fraudulent practice" shall include any misrepresentations, in any manner,
of a relevant fact; any promise or representation or predication as to the future not made honestly and in good faith, or an intentional failure to disclose a material fact; the gaining, directly or indirectly, through the sale of any security, of an underwriting or promotion fee or profit, selling or managing commission or profit, so gross or exorbitant as to be unconscionable; any scheme, device or other artifice to obtain such profit, fee or commission; provided, that nothing herein shall limit or diminish the full meaning of the terms "fraud," "fraudulent," and "fraudulent practice" as applied or accepted in courts of law or equity.

Revisor's Note

(1) Subsection F, Article 581-4, Vernon's Texas Civil Statutes, provides that the description of fraud and fraudulent practice "herein," meaning Subsection F, does not limit the meaning of "fraud," "fraudulent," or "fraudulent practice," as applied or accepted in court. The provisions of Subsection F are revised as this section. For that reason, the revised law substitutes "in this section" for "herein."

(2) Subsection F, Article 581-4, Vernon's Texas Civil Statutes, provides that the description in that subsection of the acts included as "fraud" or a "fraudulent practice" does not "limit or diminish" the meaning of "fraud," "fraudulent," or "fraudulent practice." The revised law omits the reference to "diminish" because, in context, "diminish" is included within the meaning of "limit."

(3) Subsection F, Article 581-4, Vernon's Texas Civil Statutes, refers to the meaning of terms "as applied or accepted in courts of law or equity." Throughout this chapter, the revised law omits "of law or equity" as unnecessary because the phrase is included within the meaning of "courts."

Revised Law

Sec. 4001.059. INVESTMENT ADVISER. "Investment adviser" includes a person who, for compensation, engages in the business of advising another, either directly or through publications or
writings, with respect to the value of securities or to the
advisability of investing in, purchasing, or selling securities or
a person who, for compensation and as part of a regular business,
issues or adopts analyses or a report concerning securities, as may
be further defined by board rule. The term does not include:

(1) a bank or a bank holding company, as defined by the
Bank Holding Company Act of 1956 (12 U.S.C. Section 1841 et seq.),
that is not an investment company;

(2) a lawyer, accountant, engineer, teacher, or
geologist whose performance of the services is solely incidental to
the practice of the person's profession;

(3) a dealer or agent who receives no special
compensation for those services and whose performance of those
services is solely incidental to transacting business as a dealer
or agent;

(4) the publisher of a bona fide newspaper, news
magazine, or business or financial publication of general and
regular circulation; or

(5) a person whose advice, analyses, or report does
not concern a security other than a security that is:
(A) a direct obligation of or an obligation the
principal or interest of which is guaranteed by the United States
government; or

(B) issued or guaranteed by a corporation in
which the United States has a direct or indirect interest and
designated by the United States Secretary of the Treasury under
Section 78c(a)(12)), as an exempt security for purposes of that
Act. (V.A.C.S. Art. 581-4, Subsec. N.)

Source Law

N. "Investment adviser" includes a person who,
for compensation, engages in the business of advising
another, either directly or through publications or
writings, with respect to the value of securities or to
the advisability of investing in, purchasing, or
selling securities or a person who, for compensation
and as part of a regular business, issues or adopts
analyses or a report concerning securities, as may be further defined by board rule. The term does not include:

(1) a bank or a bank holding company, as defined by the Bank Holding Company Act of 1956 (12 U.S.C. Section 1841 et seq.), as amended, that is not an investment company;
(2) a lawyer, accountant, engineer, teacher, or geologist whose performance of the services is solely incidental to the practice of the person's profession;
(3) a dealer or agent who receives no special compensation for those services and whose performance of those services is solely incidental to transacting business as a dealer or agent;
(4) the publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation; or
(5) a person whose advice, analyses, or report does not concern a security other than a security that is:
   (A) a direct obligation of or an obligation the principal or interest of which is guaranteed by the United States government; or
   (B) issued or guaranteed by a corporation in which the United States has a direct or indirect interest and designated by the United States Secretary of the Treasury under Section 3(a)(12), Securities Exchange Act of 1934 (15 U.S.C. Section 78c(a)(12)), as amended, as an exempt security for purposes of that Act.

Revisor's Note

Revised Law
Sec. 4001.060. INVESTMENT ADVISER REPRESENTATIVE. (a) Except as provided by Subsection (b), "investment adviser representative" includes a person or company who, for compensation, is employed, appointed, or authorized by an investment adviser to solicit clients for the investment adviser or who provides investment advice, directly or through subagents, as defined by board rule, to an investment adviser's clients on behalf of the
investment adviser.

(b) "Investment adviser representative" does not include a partner of a partnership or officer of a corporation or other entity that is registered as an investment adviser under this title solely because of the person's status as a partner or officer of that entity. (V.A.C.S. Art. 581-4, Subsec. P.)

Source Law

"Investment adviser representative" or "representative of an investment adviser" includes each person or company who, for compensation, is employed, appointed, or authorized by an investment adviser to solicit clients for the investment adviser or who, on behalf of an investment adviser, provides investment advice, directly or through subagents, as defined by Board rule, to the investment adviser's clients. The term does not include a partner of a partnership or an officer of a corporation or other entity that is registered as an investment adviser under this Act solely because of the person's status as an officer or partner of that entity.

Revisor's Note

Subsection P, Article 581-4, Vernon's Texas Civil Statutes, which is a provision of The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), describes a person or company included or excluded as an "investment adviser representative" or "representative of an investment adviser" for purposes of the act. The revised law omits the references to "representative of an investment adviser" as unnecessary because that term is not used elsewhere in the act, which is revised as this title.

Revised Law

Sec. 4001.061. ISSUER. "Issuer" means and includes a person or company who has issued, proposes to issue, or issues any security. (V.A.C.S. Art. 581-4, Subsec. G.)

Source Law

"Issuer" shall mean and include every company or person who proposes to issue, has issued, or shall hereafter issue any security.

Revisor's Note

Subsection G, Article 581-4, Vernon's Texas Civil
Statutes, refers to a person or company who "shall hereafter issue" a security. The revised law omits "shall hereafter" because under Section 311.022, Government Code (Code Construction Act), applicable to the revised law, statutes are presumed to operate prospectively unless expressly made retrospective.

Revised Law
Sec. 4001.062. MORTGAGE. "Mortgage" includes a deed of trust to secure a debt. (V.A.C.S. Art. 581-4, Subsec. I.)

Source Law
I. "Mortgage" shall be deemed to include a deed of trust to secure a debt.

Revised Law
Sec. 4001.063. NO PAR VALUE; PAR VALUE. (a) "No par value" as applied to shares of stock or other securities means the securities are without a given or specified par value. (b) For purposes of classifying or computing the par value of shares of stock or other securities of no par value, the amount for which the securities are sold or offered for sale to the public is used as a basis. (V.A.C.S. Art. 581-4, Subsec. K.)

Source Law
K. "No par value" or "non-par" as applied to shares of stock or other securities shall mean that such shares of stock or other securities are without a given or specified par value. Whenever any classification or computation in this Act mentioned is based upon "par value" as applied to shares of stock or other securities of no par value, the amount for which such securities are sold or offered for sale to the public shall be used as a basis of such classification or computation.

Revisor's Note
Subsection K, Article 581-4, Vernon's Texas Civil Statutes, which is a provision of The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), defines "no par value" and "non-par" as applied to shares of stock or other securities. The revised law omits "non-par" as a defined term because that term is not used elsewhere in the act, which is
revised as this title.

Revised Law

Sec. 4001.064. PERSON; COMPANY. (a) The terms "person" and "company" include:

(1) any of the following formed under the laws of this or another state, country, sovereignty, or political subdivision of a state, country, or sovereignty, and regardless of whether incorporated or unincorporated:

(A) a corporation;

(B) a person;

(C) a company, including a joint stock company;

(D) a partnership, including a limited partnership;

(E) an association;

(F) a firm;

(G) a syndicate; or

(H) a trust; and

(2) a government or a political subdivision or agency of a government.

(b) As used in Subsection (a), "trust":

(1) is deemed to include a common law trust; and

(2) does not include a trust created or appointed under or by virtue of a last will and testament or by a court.

(c) The definition of "person" assigned by Section 311.005 does not apply to any provision in this title. (V.A.C.S. Art. 581-4, Subsec. B; New.)

Source Law

B. The terms "person" and "company" shall include a corporation, person, joint stock company, partnership, limited partnership, association, company, firm, syndicate, trust, incorporated or unincorporated, heretofore or hereafter formed under the laws of this or any other state, country, sovereignty or political subdivision thereof, and shall include a government, or a political subdivision or agency thereof. As used herein, the term "trust" shall be deemed to include a common law trust, but shall not include a trust created or appointed under or by virtue of a last will and testament or by a court of law or equity.
Revisor's Note

(1) Subsection B, Article 581-4, Vernon's Texas Civil Statutes, refers to an entity "heretofore or hereafter" formed. The language does not exclude any entity based on the time of the entity's formation, and therefore does not impose an effective limitation on the time during which the entity may be formed. The revised law omits the reference because it does not add to the clear meaning of the law.

(2) Section 311.005(2), Government Code (Code Construction Act), defines "person" to include a "corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity." In the absence of an express provision to the contrary, Section 311.005(2) would apply to the revised law in this title as provided by Section 1.002, Government Code. To ensure that no substantive change is made by revision of the definition of "person" in this title, the revised law adds a provision stating that the definition in Section 311.005, Government Code, does not apply to any provision in Title 12.

Revised Law

Sec. 4001.065. REGISTERED DEALER. "Registered dealer" means a dealer the commissioner has registered under Sections 4004.054 and 4004.055, or Section 4004.056. (V.A.C.S. Art. 581-4, Subsec. M.)

Source Law

M. "Registered dealer" shall mean a dealer as hereinabove defined who has been duly registered by the Commissioner as in Section 15 of this Act provided.

Revisor's Note

Subsection M, Article 581-4, Vernon's Texas Civil Statutes, refers to a dealer who has been "duly" registered by the securities commissioner under
Article 581-15, Vernon's Texas Civil Statutes. The revised law omits "duly" as unnecessary because a dealer who has not properly registered is not considered to be registered. The revised law also substitutes a reference to Sections 4004.054, 4004.055, and 4004.056 of this title because Article 581-15 is revised as those sections.

Revised Law
Sec. 4001.066. REGISTERED INVESTMENT ADVISER. "Registered investment adviser" means an investment adviser to whom the commissioner has issued a registration certificate under Sections 4004.054 and 4004.055, or Section 4004.056. (V.A.C.S. Art. 581-4, Subsec. Q.)

Source Law
Q. "Registered investment adviser" means an investment adviser who has been issued a registration certificate by the Commissioner under Section 15 of this Act.

Revisor's Note
Subsection Q, Article 581-4, Vernon's Texas Civil Statutes, refers to an investment adviser to whom a registration certificate is issued under Article 581-15, Vernon's Texas Civil Statutes. The revised law substitutes references to Sections 4004.054, 4004.055, and 4004.056 of this title because Article 581-15 is revised as those sections.

Revised Law
Sec. 4001.067. SALE; OFFER FOR SALE; SELL. (a) "Sale," "offer for sale," and "sell" include every disposition or attempted disposition of a security for value.
(b) "Sale" means and includes:
(1) a contract or agreement in which a security is sold, traded, or exchanged for money, property, or another thing of value; or
(2) a transfer of or agreement to transfer a security,
in trust or otherwise.

(c) "Sale" or "offer for sale" includes a subscription, an option for sale, a solicitation of sale, a solicitation of an offer to buy, an attempt to sell, or an offer to sell, directly or by an agent, by a circular, letter, or advertisement or otherwise, including the deposit in any manner in the United States mail within this state of a circular, letter, or other advertising matter.

(d) "Sell" means any act by which a sale is made.

(e) A security given or delivered with or as a bonus on account of a purchase of securities or other thing of value is conclusively presumed to:

1. constitute a part of the subject of the purchase;
2. have been sold for value.

(f) The sale of a security under conditions that entitle the purchaser or subsequent holder to exchange the security for another security or to purchase another security is not deemed a sale or offer for sale of the other security.

(g) This section does not limit the meaning of the terms "sale," "offer for sale," or "sell" as used by or accepted in courts. (V.A.C.S. Art. 581-4, Subsec. E (part).)

Source Law

E. The terms "sale" or "offer for sale" or "sell" shall include every disposition, or attempt to dispose of a security for value. The term "sale" means and includes contracts and agreements whereby securities are sold, traded or exchanged for money, property or other things of value, or any transfer or agreement to transfer, in trust or otherwise. Any security given or delivered with or as a bonus on account of any purchase of securities or other thing of value, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value. The term "sell" means any act by which a sale is made, and the term "sale" or "offer for sale" shall include a subscription, an option for sale, a solicitation of sale, a solicitation of an offer to buy, an attempt to sell, or an offer to sell, directly or by an agent, by a circular, letter, or advertisement or otherwise, including the deposit in a United States Post Office or mail box or in any manner in the United States mails within this State of a letter, circular or other advertising matter. Nothing herein shall limit or diminish the full meaning of the terms "sale," "sell" or "offer for sale" as used by or accepted in
courts of law or equity. The sale of a security under
conditions which entitle the purchaser or subsequent
holder to exchange the same for, or to purchase some
other security, shall not be deemed a sale or offer for
sale of such other security; but . . . .

Revisor's Note
Subsection E, Article 581-4, Vernon's Texas Civil
Statutes, which is a provision of The Securities Act
(Article 581-1 et seq., Vernon's Texas Civil
Statutes), states that "[n]othing herein shall limit
or diminish the full meaning of the terms 'sale,' 'sell'
or 'offer for sale' as used by or accepted in courts of
law or equity." The revised law substitutes a
reference to "[t]his section" for the reference to
"herein" because the only provisions of The Securities
Act that could be interpreted as limiting the meanings
of the terms are in Subsection E, Article 581-4, which
is revised as this section. In addition, the revised
law omits the reference to "diminish" for the reason
stated in Revisor's Note (2) to Section 4001.058 of
this chapter.

Revised Law
Sec. 4001.068. SECURITY. (a) The term "security":
(1) includes:
(A) a limited partner interest in a limited
partnership;
(B) a share;
(C) a stock;
(D) a treasury stock;
(E) a stock certificate under a voting trust
agreement;
(F) a collateral trust certificate;
(G) an equipment trust certificate;
(H) a preorganization certificate or receipt;
(I) a subscription or reorganization
certificate;
(J) a note, bond, debenture, mortgage certificate, or other evidence of indebtedness;

(K) any form of commercial paper;

(L) a certificate in or under a profit sharing or participation agreement;

(M) a certificate or instrument representing an interest in or under an oil, gas, or mining lease, fee, or title;

(N) a certificate or instrument representing or secured by an interest in any of the capital, property, assets, profits, or earnings of a company;

(O) an investment contract; and

(P) any other instrument commonly known as a security, regardless of whether the instrument is similar to another instrument listed in this subsection; and

(2) applies regardless of whether the security is evidenced by a written instrument.

(b) "Security" does not include an insurance policy, endowment policy, annuity contract, or optional annuity contract, or any contract or agreement in relation to and in consequence of any such policy or contract, issued by an insurance company subject to the supervision or control of the Texas Department of Insurance when the form of such policy or contract has been filed with the department as required by law. (V.A.C.S. Art. 581-4, Subsec. A.)

Source Law

A. The term "security" or "securities" shall include any limited partner interest in a limited partnership, share, stock, treasury stock, stock certificate under a voting trust agreement, collateral trust certificate, equipment trust certificate, preorganization certificate or receipt, subscription or reorganization certificate, note, bond, debenture, mortgage certificate or other evidence of indebtedness, any form of commercial paper, certificate in or under a profit sharing or participation agreement, certificate or any instrument representing any interest in or under an oil, gas or mining lease, fee or title, or any certificate or instrument representing or secured by an interest in any or all of the capital, property, assets, profits or earnings of any company, investment contract, or any other instrument commonly known as a security, whether similar to those herein referred to or not. The term applies regardless of whether the
"security" or "securities" are evidenced by a written instrument. Provided, however, that this definition shall not apply to any insurance policy, annuity contract, optional annuity contract, or any contract or agreement in relation to and in consequence of any such policy or contract, issued by an insurance company subject to the supervision or control of the Texas Department of Insurance when the form of such policy or contract has been duly filed with the Department as now or hereafter required by law.

Revisor's Note
(1) Subsection A, Article 581-4, Vernon's Texas Civil Statutes, defines "security" and "securities." The revised law omits "securities" as a separately defined term because Section 311.012(b), Government Code (Code Construction Act), applicable to the revised law, provides that a reference to the singular includes the plural and vice versa. Throughout this chapter, references in which both the singular and plural forms of the word are used are revised using only one form of the term.

(2) Subsection A, Article 581-4, Vernon's Texas Civil Statutes, refers to an instrument representing or secured by an interest in "any or all" of the capital, property, assets, profits, or earnings of a company. The revised law omits the reference to "all" of the listed items because, in context, "all" is included within the meaning of "any."

(3) Subsection A, Article 581-4, Vernon's Texas Civil Statutes, specifies certain items that are included in the meaning of "security," and further provides that the term includes any other instrument commonly known as a security, whether similar to the items referred to "herein," meaning in Subsection A, the relevant portion of which is revised as Subsection (a) of this section. The revised law substitutes a reference to Subsection (a) of this section for clarity.
(4) Subsection A, Article 581-4, Vernon's Texas Civil Statutes, refers to an insurance policy or contract the form of which is "duly" filed with the Texas Department of Insurance. The revised law omits "duly" for the reason stated in the revisor's note to Section 4001.065 of this chapter.

(5) Subsection A, Article 581-4, Vernon's Texas Civil Statutes, refers to certain policies and contracts, the forms for which are filed with the Texas Department of Insurance as "now or hereafter required by law." The revised law omits the reference to "now or hereafter" because, regardless of the quoted phrase, the law that will apply to the filing of the form of a policy or contract with the Texas Department of Insurance is the law in effect at the time the policy or contract is filed.

Revisor's Note
(End of Subchapter)

Subsections J and L, Article 581-4, Vernon's Texas Civil Statutes, include various provisions relating to the construction of certain words in The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes). Those provisions are omitted as unnecessary because they duplicate provisions of Sections 311.005 and 311.012, Government Code (Code Construction Act), applicable to the revised law. The omitted law reads:

J. If the sense requires it, words in the present tense include the future tense, in the masculine gender include the feminine and neuter gender, in the singular number include the plural number, and in the plural number include the singular number; . . . .

L. The term "include" when used in a definition contained in this Act shall not be deemed to exclude other things or persons otherwise within the meaning of the term defined.
SUBCHAPTER C. GENERAL ADMINISTRATIVE PROVISIONS

Revised Law
Sec. 4001.101. SUFFICIENCY OF NOTICE. In this title unless otherwise specified, a notice required by this title is sufficient if sent by registered or certified mail addressed to a person at:

(1) the address designated in any filing the person submitted to the commissioner; or

(2) the person's last known address. (V.A.C.S. Art. 581-26 (part).)

Source Law
Art. 581-26. Any notice required by this Act shall be sufficient if sent by registered or certified mail unless otherwise specified in this Act, addressed to a person at the address designated in any filings submitted by the person to the Commissioner or the person's last known address.

Revised Law
Sec. 4001.102. CONSENT FOR SERVICE OF PROCESS. (a) This section applies only to an issuer, dealer, or investment adviser that is:

(1) organized under the laws of any other state, territory, or government; or

(2) domiciled in any other state.

(b) Unless a board rule specifies otherwise, an issuer, dealer, or investment adviser subject to this section must include in an application filed with or notice filing submitted to the commissioner a provision that appoints the commissioner as the attorney of the issuer, dealer, or investment adviser who may be served with process in any action or proceeding against the issuer, dealer, or investment adviser that arises out of any transaction subject to this title.

(c) The provision required by Subsection (b) must be executed by an authorized agent of the issuer, dealer, or investment adviser filing the application or submitting the notice filing.

(d) Service of process on the commissioner in accordance
with a provision executed under this section has the same effect as
if the issuer, dealer, or investment adviser was created or formed
under the laws of this state and served with process in this state.

(e) If the commissioner is served with process in accordance
with a provision executed under this section, the commissioner
shall forward the process by United States mail to the last known
address of the issuer, dealer, or investment adviser. (V.A.C.S.
Art. 581-8.)

Source Law

Art. 581-8. Unless the Board by rule otherwise
specifies, any application filed or notice filing
submitted by an issuer, or by a dealer or investment
adviser who is organized under the laws of any other
state, territory, or government, or domiciled in any
other state than Texas, shall contain a provision that
appoints the Commissioner the issuer's, dealer's, or
investment adviser's true and lawful attorney upon
whom all process may be served in any action or
proceedings against such issuer, dealer, or investment
adviser arising out of any transaction subject to this
Act with the same effect as if such issuer, dealer, or
investment adviser were organized or created under the
laws of this state and had been lawfully served with
process therein. The provision shall be duly executed
by an authorized agent of the issuer, dealer, or
investment adviser. Whenever the Commissioner shall
have been served with any process as is herein
provided, it shall be the duty of the Commissioner to
forward same by United States mail to the last known
address of such issuer, dealer, or investment adviser.

Revisor's Note

(1) Article 581-8, Vernon's Texas Civil
Statutes, refers to a "true and lawful attorney" for
service of process. The revised law omits the
references to "true" and "lawful" as unnecessary
because those terms do not add to the clear meaning of
the law.

(2) Article 581-8, Vernon's Texas Civil
Statutes, refers to an issuer, dealer, or investment
adviser "organized" under the laws of this state. The
revised law substitutes "formed" for "organized"
because "formed" conforms with the terminology of the
Business Organizations Code, which took effect January
1, 2006, and uses the term "certificate of formation"
to describe the document required to be filed with the
duty of state to form most domestic entities in
this state on or after January 1, 2006.

(3) Article 581-8, Vernon's Texas Civil
Statutes, requires a provision of certain documents
designating an agent for service of process be "duly"
executed by an authorized agent. The revised law omits
"duly" as unnecessary because a designation of an
agent for service of process in a provision of
documents that has not been properly executed is not
considered to be executed.

SUBCHAPTER D. OTHER GENERAL PROVISIONS

Revised Law
Sec. 4001.151. PROSECUTION UNDER CERTAIN OTHER LAW.
Nothing in Chapter 269 (S.B. 294), Acts of the 55th Legislature,
Regular Session, 1957 (Article 581-1 et seq., Vernon's Texas Civil
Statutes), limits the liability of a person or company, or of its
officers or agents, imposed by law as of August 22, 1957, so as to
prevent the prosecution of the person or company, or of its officers
or agents, for violating another statute. (V.A.C.S. Art. 581-31.)

Source Law
Art. 581-31. Nothing herein contained shall
limit or diminish the liability of any person or
company, or of its officers or agents, now imposed by
law to prevent the prosecution of any person or
company, or of its officers or agents, for the
violation of the provisions of any other statute.

Revisor's Note
(1) Article 581-31, Vernon's Texas Civil
Statutes, states that "[n]othing herein contained,"
meaning contained in Chapter 269 (S.B. 294), Acts of
the 55th Legislature, Regular Session, 1957, which is
the act through which Article 581-31 was enacted,
limits the liability "now imposed by law" of certain
persons in a manner that would prevent prosecution of
those persons under another statute. To avoid making a
Substantive change by altering the priority of the applicability of Article 581-31 and other statutes that were enacted after Article 581-31, the revised law substitutes a reference to the act of the legislature that enacted Article 581-31 for "herein" and substitutes a reference to the effective date of that act for "now."

(2) Article 581-31, Vernon's Texas Civil Statutes, provides that nothing contained in the Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) shall "limit or diminish" certain liability. The revised law omits the reference to "diminish" for the reason stated in Revisor's Note (2) to Section 4001.058 of this chapter.

Revised Law

Sec. 4001.152. GOOD FAITH. (a) A provision of this title that imposes liability or a penalty does not apply to an act or omission made in good faith in conformity with a board rule.

(b) This section applies regardless of whether the rule is subsequently amended, rescinded, or determined by judicial or other authority to be invalid for any reason. (V.A.C.S. Art. 581-28-1, Subsec. E.)

Source Law

E. No provision of this Act imposing any liability or penalty applies to any act done or omitted in good faith in conformity with any rule or regulation of the board, notwithstanding that the rule or regulation may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

Revisor's Note

Subsection E, Article 581-28-1, Vernon's Texas Civil Statutes, refers to a "rule or regulation" of the State Securities Board. The revised law substitutes "rule" for "rule or regulation" because in context the terms are synonymous and under Section 311.005(5), Government Code (Code Construction Act), applicable to
the revised law, a rule is defined to include a regulation.

Revised Law

Sec. 4001.153. BURDEN OF PROOF ON EXEMPTION. (a) A complaint, information or indictment, or a writ or proceeding brought under this title is not required to negate an exemption under this title.

(b) A party claiming an exemption under this title has the burden of proof on the exemption. (V.A.C.S. Art. 581-37.)

Source Law

Art. 581-37. It shall not be necessary to negative any of the exemptions in this Act in any complaint, information or indictment, or any writ or proceeding laid or brought under this Act; and the burden of proof of any such exemption shall be upon the party claiming the same.

Revised Law

Sec. 4001.154. CERTIFIED COPIES OF CERTAIN DOCUMENTS OR INSTRUMENTS AS EVIDENCE. (a) Except as provided by Subsection (b), a copy of a paper, document, or instrument filed in the office of the commissioner and certified by the commissioner must be admitted in evidence in a court and elsewhere in this state in any case in which the original would be admitted in evidence.

(b) In any proceeding in a court, the court may, on cause shown, require the production of the original paper, document, or instrument.

(c) In a prosecution, suit, or other action or proceeding in a court of this state that arises under this title, a certificate showing compliance or noncompliance with a provision of this title by a dealer, agent, investment adviser, or investment adviser representative constitutes prima facie evidence of the person's compliance or noncompliance with that provision if the certificate:

(1) is under the state seal; and

(2) is signed by the commissioner.

(d) A certificate described by Subsection (c) is admissible in evidence in an action to enforce this title. (V.A.C.S. Art.
Copies of all papers, instruments, or documents filed in the office of the Commissioner, certified by the Commissioner, shall be admitted to be read in evidence in all courts of law and elsewhere in this state in all cases where the original would be admitted in evidence; provided, that in any proceeding in the court having jurisdiction, the court may, on cause shown, require the production of the originals.

In any prosecution, action, suit or proceeding before any of the several courts of this state based upon or arising out of or under the provisions of this Act, a certificate under the state seal, duly signed by the Commissioner, showing compliance or non-compliance with the provisions of this Act respecting compliance or non-compliance with the provisions of this Act by any dealer, agent, investment adviser, or investment adviser representative, shall constitute prima facie evidence of such compliance or of such non-compliance with the provisions of this Act, as the case may be, and shall be admissible in evidence in any action at law or in equity to enforce the provisions of this Act.

Revisor's Note

(1) Article 581-30, Vernon's Texas Civil Statutes, provides that copies of certain certified documents shall be admitted into evidence in all "courts of law." The revised law substitutes "courts" for "courts of law" to conform to Texas law, which grants courts both law and equity jurisdiction and does not provide for separate "courts of law" and "courts of equity."

(2) Article 581-30, Vernon's Texas Civil Statutes, refers to a proceeding in a court "having jurisdiction." The revised law omits the quoted language because the general laws of civil jurisdiction determine which courts have jurisdiction over a matter and it is not necessary to identify a court in which a proceeding takes place by specifying that it has jurisdiction.

(3) Article 581-30, Vernon's Texas Civil Statutes, refers to an action or proceeding "based upon or arising out of or under" the provisions of The
Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), which is revised as this title. The revised law omits "based upon" and "arising out of" because the terms are included within the meaning of "arising under."

(4) Article 581-30, Vernon's Texas Civil Statutes, refers to a certificate "duly" signed by the securities commissioner. The revised law omits "duly" as unnecessary because it does not add to the clear meaning of the law.

(5) Article 581-30, Vernon's Texas Civil Statutes, refers to a certificate showing compliance or noncompliance with the provisions of The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) "respecting compliance or non-compliance with the provisions" of that act by certain persons. The revised law omits the quoted language as unnecessary because it is redundant of language included elsewhere in the source law and revised in this section.

(6) Article 581-30, Vernon's Texas Civil Statutes, provides that certain evidence of compliance or noncompliance is admissible in "any action at law or in equity" to enforce the provisions of The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes). The revised law omits the reference to "at law or in equity" as unnecessary because an action can only be brought at law or in equity.

Revised Law
Sec. 4001.155. PROOF OF CERTAIN RECORDS. All records of the former securities divisions of the offices of the secretary of state and the former Board of Insurance Commissioners for which custody was assumed by the commissioner under Chapter 269, Acts of the 55th Legislature, Regular Session, 1957, shall be proven under
the commissioner's certificate. (V.A.C.S. Art. 581-30 (part).)

Source Law

Art. 581-30. . . . [The Commissioner shall assume custody of all records of the Securities Divisions within the offices of the Secretary of State and of the Board of Insurance Commissioners, and] henceforth these prior records shall be proven under certificate of the Commissioner. . . .

Revisor's Note

Article 581-30, Vernon's Texas Civil Statutes, requires the securities commissioner to "assume custody of all records of the Securities Divisions with the offices of the Secretary of State and of the Board of Insurance Commissioners" and provides that from that time those "records shall be proven under certificate of the Commissioner." In 1957, Chapter 269, Acts of the 55th Legislature, Regular Session, enacted The Securities Act, which created the State Securities Board, with the securities commissioner as its administrative head, and transferred all regulatory authority over securities and persons selling securities from the securities divisions of the offices of the secretary of state and the Board of Insurance Commissioners to the State Securities Board. During that same legislative session, the Board of Insurance Commissioners was abolished by Chapter 499, Acts of the 55th Legislature, Regular Session, 1957, and the powers and duties of that board were transferred to the State Board of Insurance. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the State Board of Insurance and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Because the Board of Insurance Commissioners and the securities divisions of the offices of that board and the secretary of state no longer exist, the revised law
adds "former" to the references to those state
governmental bodies. In addition, the revised law
omits the portion of Article 581-30 that requires the
securities commissioner to assume custody of the
records of the securities divisions of the offices of
the secretary of state and the Board of Insurance
Commissioners as executed. The omitted law reads:

Art. 581-30. . . . The Commissioner
shall assume custody of all records of the
Securities Divisions within the offices of
the Secretary of State and of the Board of
Insurance Commissioners, and . . . .

Revisor's Note
(End of Chapter)

Article 581-39, Vernon's Texas Civil Statutes,
repeals certain acts in effect at the time of the
enactment of The Securities Act (Article 581-1 et
seq., Vernon's Texas Civil Statutes), preserves the
validity of certain permits and licenses in effect
under those acts on the effective date of the repeal,
which was 90 days after May 23, 1957, and provides that
any prosecution, civil or criminal cause of action,
administrative action, or legal or other proceeding
brought under those acts is not affected by their
repeal. The revised law omits the portion of Article
581-39 providing for the repeal of the acts as
executed. The revised law omits the remainder of the
provision because Section 311.031(a), Government Code
(Code Construction Act), provides that the
reenactment, revision, amendment, or repeal of a
statute does not affect matters occurring before or
pending on the reenactment, revision, amendment, or
repeal of the statute. The omitted law reads:

being currently known as the Securities Act
of Texas and the Insurance Securities Act of
Texas, as embraced in Senate Bill No. 149,
Chapter 67, and House Bill No. 39, Chapter
384, Acts of the 54th Legislature, 1955, and
codified as Articles 579 and 580 of Vernon's Civil Statutes of Texas, be and the same are hereby repealed; provided, however, that all permits, orders, and licenses issued by the Secretary of State or Board of Insurance Commissioners pursuant to said laws prior to the effective date of this Act shall be valid during the period for which they were issued unless sooner revoked by the Commissioner for any cause for which the Commissioner is authorized by this Act to revoke hereunder; provided further, that all prosecutions and legal or other proceedings begun, and any violation of law whether prosecution or administrative action is commenced or not, and any cause of action of civil or criminal nature existing under the provisions of that law now in effect, shall continue in effect and remain in full force and effect until terminated as under the terms of the law now in force, notwithstanding the passage of this Act.

CHAPTER 4002. STATE SECURITIES BOARD AND SECURITIES COMMISSIONER

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Sec. 4002.201. CONSUMER INTEREST INFORMATION

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Sec. 4002.203. DOCUMENTS AND OTHER INFORMATION FILED WITH COMMISSIONER; PUBLIC RECORDS

CHAPTER 4002. STATE SECURITIES BOARD AND SECURITIES COMMISSIONER

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 4002.001. APPLICABILITY OF OTHER LAW. The board and commissioner are subject to Chapters 551, 2001, and 2002. (V.A.C.S. Art. 581-2, Subsec. N.)

Source Law

Sec. 4002.002. SUNSET PROVISION. The State Securities Board is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this title expires September 1, 2019. (V.A.C.S. Art. 581-2, Subsec. O.)

Source Law

O. The State Securities Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this Act expires September 1, 2019.

Revisor's Note
Subsection O, Article 581-2, Vernon's Texas Civil Statutes, provides for the expiration of "this Act," which is The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes). The provisions of The Securities Act are revised as this title. The revised law throughout this chapter therefore substitutes references to "this title" for references to "this Act."

SUBCHAPTER B. STATE SECURITIES BOARD

Revised Law
Sec. 4002.051. APPOINTMENT OF BOARD. (a) The State Securities Board consists of five citizens of this state appointed by the governor with the advice and consent of the senate. (b) Members of the board must be members of the general public. (c) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee. (d) A member of the board is eligible for reappointment. (V.A.C.S. Art. 581-2, Subsecs. A (part), B (part).)

Source Law
Art. 581-2. A. The State Securities Board shall consist of five citizens of the state appointed by the governor with the advice and consent of the senate. (V.A.C.S. Art. 581-2, Subsec. A.)
consent of the Senate. . . . Members shall be eligible for reappointment. Appointments to the Board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

B. Board members must be members of the general public. . . .

Revisor's Note

Subsection A, Article 581-2, Vernon's Texas Civil Statutes, refers to the creation of the State Securities Board. The revised law omits that reference because it is executed law. The omitted law reads:

Art. 581-2. A. [The State Securities Board] is hereby created. . . .

Revised Law

Sec. 4002.052. MEMBERSHIP ELIGIBILITY. A person is not eligible for appointment to the board if the person or the person's spouse:

(1) is registered as a dealer, agent, investment adviser, or investment adviser representative;

(2) has an active notice filing under this title to engage in business in this state as an investment adviser or investment adviser representative;

(3) is employed by or participates in the management of a business entity engaged in business as a securities dealer or investment adviser; or

(4) has, other than as a consumer, a financial interest in a business entity engaged in business as a securities dealer or investment adviser. (V.A.C.S. Art. 581-2, Subsec. B (part).)

Source Law

B. . . . A person is not eligible for appointment as a member if the person or the person's spouse:

(1) is registered as a dealer, agent, investment adviser, or investment adviser representative;

(2) has an active notice filing under this Act to engage in business in this state as an investment adviser or investment adviser representative;

(3) is employed by or participates in the
management of a business entity engaged in business as
a securities dealer or investment adviser; or
(4) has, other than as a consumer, a
financial interest in a business entity engaged in
business as a securities dealer or investment adviser.

Revised Law
Sec. 4002.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a)
In this section, "Texas trade association" means a cooperative and
voluntarily joined association of business or professional
competitors in this state designed to assist its members and its
industry or profession in dealing with mutual business or
professional problems and in promoting their common interest.

(b) A person may not be a member of the board or an employee
of the board employed in a "bona fide executive, administrative, or
professional capacity," as that phrase is used for purposes of
establishing an exemption to the overtime provisions of the federal
Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.),
if:
(1) the person is an officer, employee, or paid
consultant of a Texas trade association in a field regulated by the
board; or
(2) the person's spouse is an officer, manager, or paid
consultant of a Texas trade association in a field regulated by the
board.

(c) A person may not be a member of the board or act as the
general counsel to the board if the person is required to register
as a lobbyist under Chapter 305 because of the person's activities
for compensation on behalf of a profession related to the operation
of the board. (V.A.C.S. Art. 581-2-1.)

Source Law
Art. 581-2-1. A. In this section, "Texas trade
association" means a cooperative and voluntarily
joined association of business or professional
competitors in this state designed to assist its
members and its industry or profession in dealing with
mutual business or professional problems and in
promoting their common interest.
B. A person may not be a member of the Board and
may not be a Board employee employed in a "bona fide
executive, administrative, or professional capacity,"
as that phrase is used for purposes of establishing an
exemption to the overtime provisions of the federal
Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in a field regulated by the Board; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in a field regulated by the Board.

C. A person may not be a member of the Board or act as the general counsel to the Board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the Board.

Revisor's Note

Subsection B, Article 581-2-1, Vernon's Texas Civil Statutes, refers to the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) "and its subsequent amendments." The revised law omits the quoted language because under Section 311.027, Government Code (Code Construction Act), applicable to the revised law, unless expressly provided otherwise, a reference to a statute or rule applies to all reenactments, revisions, or amendments of the statute or rule.

Revised Law

Sec. 4002.054. TERMS; VACANCY. (a) Members of the board serve staggered six-year terms, with as near as possible to one-third of the members' terms expiring January 20 of each odd-numbered year.

(b) The governor shall fill a vacancy on the board for the unexpired term. (V.A.C.S. Art. 581-2, Subsec. A (part).)

Source Law

Art. 581-2. A. ... Members of the Board serve for staggered terms of six years, with as near as possible to one-third of the members' terms expiring January 20 of each odd-numbered year. Vacancies shall be filled by the Governor for the unexpired term. ...

Revised Law

Sec. 4002.055. PRESIDING OFFICER. The governor shall designate a member of the board as the board's presiding officer to serve in that capacity at the will of the governor. (V.A.C.S. Art. 581-2, Subsec. D (part).)
D. The Governor shall designate a member of the Board as the presiding officer of the Board to serve in that capacity at the will of the Governor.

Revised Law

Sec. 4002.056. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Section 4002.051;

(2) does not maintain during service on the board the qualifications required by Section 4002.051;

(3) is ineligible for membership under Section 4002.052 or 4002.053;

(4) cannot, because of illness or disability, discharge the member’s duties for a substantial part of the member’s term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the commissioner has knowledge that a potential ground for removal exists, the commissioner shall notify the board’s presiding officer of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the commissioner shall notify the board’s next highest ranking officer, who shall then notify the governor and the attorney general that a potential ground for removal exists. (V.A.C.S. Art. 581-2, Subsecs. E, F.)
(1) does not have at the time of taking
office the qualifications required by Subsection A or
B of this section for appointment to the Board;
(2) does not maintain during service on
the Board the qualifications required by Subsection A
or B of this section for appointment to the Board;
(3) is ineligible for membership under
Subsection B of this section or Subsection B or C of
Section 2-1 of this Act;
(4) cannot, because of illness or
disability, discharge the member's duties for a
substantial part of the member's term; or
(5) is absent from more than half of the
regularly scheduled Board meetings that the member is
eligible to attend during a calendar year without an
excuse approved by a majority vote of the Board.

F. The validity of an action of the Board is not
affected by the fact that it is taken when a ground for
removal of a Board member exists. If the Commissioner
has knowledge that a potential ground for removal
exists, the Commissioner shall notify the presiding
officer of the Board of the potential ground. The
presiding officer shall then notify the Governor and
the attorney general that a potential ground for
removal exists. If the potential ground for removal
involves the presiding officer, the Commissioner shall
notify the next highest ranking officer of the Board,
who shall then notify the Governor and the attorney
general that a potential ground for removal exists.

Revised Law
Sec. 4002.057. PER DIEM. A member of the board is entitled
to a per diem as set by legislative appropriation for each day the
member engages in the business of the board. (V.A.C.S. Art. 581-2,
Subsec. D (part).)

Source Law
D. Each member of the Board is entitled to per
diem as set by legislative appropriation for each day
that the member engages in the business of the Board.

Revised Law
Sec. 4002.058. BOARD MEMBER TRAINING. (a) A person who is
appointed to and qualifies for office as a member of the board may
not vote, deliberate, or be counted as a member in attendance at a
meeting of the board until the person completes a training program
that complies with this section.
(b) The training program must provide the person with
information regarding:
(1) the legislation that created the board;
(2) the programs operated by the board;
(3) the role and functions of the board;
the rules of the board, with an emphasis on the
rules that relate to disciplinary and investigatory authority;
the current budget for the board;
the results of the most recent formal audit of the
board;
the requirements of:
(A) the open meetings law, Chapter 551;
(B) the public information law, Chapter 552;
(C) the administrative procedure law, Chapter
2001; and
(D) other laws relating to public officials,
including conflict-of-interest laws; and
any applicable ethics policies adopted by the
board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to
reimbursement, as provided by the General Appropriations Act, for
travel expenses incurred in attending the training program
regardless of whether the attendance at the program occurs before
or after the person qualifies for office. (V.A.C.S. Art. 581-2-3.)

Source Law
Art. 581-2-3. A. A person who is appointed to
and qualifies for office as a member of the Board may
not vote, deliberate, or be counted as a member in
attendance at a meeting of the Board until the person
completes a training program that complies with this
section.
B. The training program must provide the person
with information regarding:
(1) the legislation that created the
Board;
(2) the programs operated by the Board;
(3) the role and functions of the Board;
(4) the rules of the Board with an emphasis
on the rules that relate to disciplinary and
investigatory authority;
(5) the current budget for the Board;
(6) the results of the most recent formal
audit of the Board;
(7) the requirements of:
(A) the open meetings law, Chapter
551, Government Code;
(B) the public information law,
Chapter 552, Government Code;
(C) the administrative procedure
law, Chapter 2001, Government Code; and
(D) other laws relating to public
officials, including conflict-of-interest laws; and
(B) any applicable ethics policies adopted by the Board or the Texas Ethics Commission.
C. A person appointed to the Board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Revisor's Note
(End of Subchapter)

Subsection D, Article 581-2, Vernon's Texas Civil Statutes, provides that a majority of the State Securities Board constitutes a quorum for the transaction of business. The revised law omits that provision because it duplicates Section 311.013(b), Government Code (Code Construction Act), applicable to the revised law, which provides that a quorum of a public body is a majority of the number of members fixed by statute. The revised law also omits "for the transaction of any business" because "quorum" means the number of persons or votes necessary for a body to act. The omitted law reads:

D. . . . A majority of the members shall constitute a quorum for the transaction of any business.

SUBCHAPTER C. SECURITIES COMMISSIONER AND EMPLOYEES OF BOARD

Revised Law
Sec. 4002.101. SECURITIES COMMISSIONER. The board shall appoint a securities commissioner who serves at the pleasure of the board and who, under the board's supervision, shall administer this title. (V.A.C.S. Art. 581-2, Subsec. G (part).)

Source Law
G. The Board shall appoint a Securities Commissioner who serves at the pleasure of the Board and who shall, under the supervision of the Board, administer the provisions of this Act. . . .

Revised Law
Sec. 4002.102. DEPUTY SECURITIES COMMISSIONER; SECURITIES COMMISSIONER APPOINTEES. (a) The commissioner, with the consent of the board, may designate a deputy securities commissioner who shall perform all of the duties of the commissioner required by law
to be performed by the commissioner when the commissioner is absent
or unable to act for any reason.

(b) The commissioner shall appoint other persons as
necessary to carry out the powers and duties of the commissioner
under this title and under other laws granting jurisdiction to or
applicable to the board or the commissioner.

(c) The commissioner may delegate to a person appointed
under Subsection (b) powers and duties of the commissioner as the
commissioner considers necessary. (V.A.C.S. Art. 581-2, Subsec.
H.)

**Source Law**

H. The Commissioner, with the consent of the
Board, may designate a Deputy Securities Commissioner
who shall perform all the duties required by law to be
performed by the Securities Commissioner when the said
Commissioner is absent or unable to act for any reason.
The Commissioner shall appoint other persons as
necessary to carry out the powers and duties of the
Commissioner under this Act and other laws granting
jurisdiction or applicable to the Board or the
Commissioner. The Commissioner may delegate to the
other persons appointed under this subsection powers
and duties of the Commissioner as the Commissioner
considers necessary.

**Revised Law**

Sec. 4002.103. DIVISION OF RESPONSIBILITIES. The board
shall develop and implement policies that clearly separate the
policy-making responsibilities of the board and the management
responsibilities of the commissioner and board employees.
(V.A.C.S. Art. 581-2-4.)

**Source Law**

Art. 581-2-4. The Board shall develop and
implement policies that clearly separate the
policymaking responsibilities of the Board and the
management responsibilities of the Commissioner and
employees of the Board.

**Revised Law**

Sec. 4002.104. STANDARDS OF CONDUCT INFORMATION. The
commissioner or the commissioner's designee shall provide to
members of the board and to board employees, as often as necessary,
information regarding the requirements for office or employment
under this title, including information regarding a person's
responsibilities under applicable laws relating to standards of conduct for state officers or employees. (V.A.C.S. Art. 581-2-2.)

Source Law

Art. 581-2-2. The Commissioner or the Commissioner's designee shall provide to members of the Board and to Board employees, as often as necessary, information regarding the requirements for office or employment under this Act, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Revised Law

Sec. 4002.105. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS. (a) The commissioner or the commissioner's designee shall develop an intra-agency career ladder program. The program must require intra-agency posting of each nonentry level position at least 10 days before the date of any public posting.

(b) The commissioner or the commissioner's designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for board employees must be based on the system established under this subsection. (V.A.C.S. Art. 581-2, Subsec. K.)

Source Law

K. The Commissioner or his designee shall develop an intraagency career ladder program, one part of which shall be the intraagency posting of all nonentry level positions for at least ten (10) days before any public posting. The Commissioner or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for Board employees must be based on the system established under this section.

Revised Law

Sec. 4002.106. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The commissioner or the commissioner's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating
to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the board to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the board's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must be:

(1) updated annually;
(2) reviewed by the Texas Workforce Commission civil rights division for compliance with Subsection (b)(1); and
(3) filed with the governor's office. (V.A.C.S. Art. 581-2-7.)

Source Law

Art. 581-2-7. A. The Commissioner or the Commissioner's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

B. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the Board to avoid the unlawful employment practices described by Chapter 21, Labor Code; and
(2) an analysis of the extent to which the composition of the Board's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

C. The policy statement must:

(1) be updated annually;
(2) be reviewed by the state Commission on Human Rights for compliance with Subsection B(1) of this section; and
(3) be filed with the governor's office.

Revisor's Note

Subsection C, Article 581-2-7, Vernon's Texas Civil Statutes, refers to the "state Commission on Human Rights." The revised law substitutes a reference to the "Texas Workforce Commission civil rights division" because Chapter 302, Acts of the 78th Legislature, Regular Session, 2003, abolished the
Commission on Human Rights and transferred its powers and duties to the Texas Workforce Commission civil rights division.

Revised Law

Sec. 4002.107. WRITTEN EMPLOYEE COMPLAINT PROCEDURE. (a)

The commissioner or the commissioner's designee shall maintain a file on each written complaint filed with the commissioner or board concerning an employee or former employee. The file must include the information listed in Section 4007.051 for files maintained under that section for complaints against persons registered under this title.

(b) The commissioner or the commissioner's designee shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the board's policies and procedures relating to complaint investigation and resolution.

(c) The commissioner or the commissioner's designee, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation. (V.A.C.S. Art. 581-2-6, Subsecs. A (part), B, C; New.)

Source Law

Art. 581-2-6. A. The Commissioner or the Commissioner's designee shall maintain a file on each written complaint filed with the Commissioner or Board concerning an employee, former employee, or . . . . The file must include:

[(1) the name of the person who filed the complaint;]
[(2) the date the complaint is received by the Commissioner or Board;]
[(3) the subject matter of the complaint;]
[(4) the name of each person contacted in relation to the complaint;]
[(5) a summary of the results of the review or investigation of the complaint; and]
[(6) an explanation of the reason the file was closed, if the Commissioner closed the file without taking action other than to investigate the complaint.]

B. The Commissioner or the Commissioner's designee shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the Board's policies and procedures relating to complaint investigation and resolution.
C. The Commissioner or the Commissioner’s designee, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Revisor’s Note
Subsection A, Article 581-2-6, Vernon's Texas Civil Statutes, lists information that must be contained in a complaint file maintained by the securities commissioner for complaints against employees or former employees. For clarity and to avoid the unnecessary repetition of the substance of the provision, the revised law in this section adds a cross-reference to Section 4007.051 of this title for the listed information because that information is also revised in that section for complaints against persons registered under this title.

SUBCHAPTER D. POWERS AND DUTIES OF BOARD AND COMMISSIONER

Revised Law
Sec. 4002.151. RULES. (a) Subject to Subsection (b), the board may adopt rules as necessary to implement this title, including rules:
   (1) governing registration statements, applications, notices, and reports; and
   (2) defining terms, regardless of whether used in this title, provided that the definitions are not inconsistent with the purposes fairly intended by the policy and provisions of this title.
   (b) The board may not adopt a rule unless, after notice and opportunity for comment, the board finds that the action is:
       (1) necessary or appropriate in the public interest or for the protection of investors; and
       (2) consistent with the purposes fairly intended by the policy and provisions of this title.
   (c) For the purpose of adopting rules, the board may
classify securities, persons, and matters within the board's jurisdiction and prescribe different requirements for different classes.

(d) The board, in the board's discretion, may waive a requirement of a rule in a situation in which, in the board's opinion, the requirement is not necessary in the public interest or for the protection of investors. (V.A.C.S. Art. 581-28-1, Subsecs. B, C.)

Source Law

B. The board may, from time to time, in accordance with the provisions of this Section 28-1, make or adopt such rules and regulations as may be necessary to carry out and implement the provisions of this Act, including rules and regulations governing registration statements, applications, notices, and reports, and defining any terms, whether or not used in this Act, insofar as the definitions are not inconsistent with the purposes fairly intended by the policy and provisions of this Act. For the purpose of adoption of rules and regulations, the board may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes. The board may, in its discretion, waive any requirement of any rule or regulation in situations where, in its opinion, such requirement is not necessary in the public interest or for the protection of investors.

C. No rule or regulation may be made or adopted unless the board finds, after notice and opportunity for comment in accordance with the provisions of this Section 28-1, that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this Act.

Revisor's Note

(1) Subsection A, Article 581-28-1, Vernon's Texas Civil Statutes, defines "rule and regulation" for purposes of that article. Article 581-28-1 was added by Chapter 78, Acts of the 64th Legislature, Regular Session, 1975. During the same legislative session, the legislature enacted the Administrative Procedure and Texas Register Act (Chapters 2001 and 2002, Government Code), effective January 1, 1976, in part to make rulemaking practices and procedures uniform across state agencies. The original enactment
of the Administrative Procedure and Texas Register Act
included a definition of "rule" (Section 3 of former
Article 6252-13a, Vernon's Texas Civil Statutes) that
was substantially similar to the definition of "rule
and regulation" in Subsection A, Article 581-28-1.
See Chapter 61, Acts of the 64th Legislature, Regular
Session, 1975. In 1993, the relevant part of Article
6252-13a, Vernon's Texas Civil Statutes, was codified
as Chapter 2001, Government Code. Because the
definition of "rule" in Section 2001.003, Government
Code, is substantially similar to the definition of
"rule and regulation" in Subsection A, Article
581-28-1, the revised law omits that definition. The
omitted law reads:

Art. 581-28-1. A. For purposes of
this Section 28-1, the term "rule and
regulation" shall mean any statement by the
board of general and future applicability
that implements, interprets, or prescribes
law or policy or describes the
organization, procedure, or practice
requirements of the board. The term
includes the amendment or repeal of a prior
rule or regulation, but does not include
statements concerning only the internal
management of the board not affecting
private rights or procedures or forms or
orders adopted or made by the board or the
commissioner pursuant to other provisions
of this Act.

(2) Subsection B, Article 581-28-1, Vernon's
Texas Civil Statutes, refers to the State Securities
Board's authority to make or adopt rules and
regulations "from time to time." The revised law omits
the quoted language because the power to take an action
includes the power to act "from time to time."

(3) Subsection B, Article 581-28-1, Vernon's
Texas Civil Statutes, refers to the State Securities
Board's authority to make or adopt rules and
regulations "in accordance with the provisions of this
Section 28-1." The revised law omits the quoted
language as unnecessary because it is presumed that any rules or regulations adopted by the board are adopted in accordance with Article 581-28-1, Vernon's Texas Civil Statutes, the relevant parts of which are revised in this section and Sections 4002.152 and 4002.153 of this chapter.

(4) Subsection B, Article 581-28-1, Vernon's Texas Civil Statutes, provides that the board may "make or adopt" rules and regulations. Throughout this chapter, the revised law substitutes "adopt" for "make or adopt" because in context the terms are synonymous, and the latter is more commonly used.

(5) Subsection B, Article 581-28-1, Vernon's Texas Civil Statutes, refers to "rules and regulations." Throughout this chapter, the revised law substitutes "rule" for "rule and regulation" and "rule or regulation" because in context the terms are synonymous, and under Section 311.005(5), Government Code (Code Construction Act), applicable to the revised law, a rule is defined to include a regulation.

(6) Subsection B, Article 581-28-1, Vernon's Texas Civil Statutes, refers to rules necessary to "carry out and implement" the provisions of The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), which is revised as this title. The revised law omits "carry out" because that term is included within the meaning of "implement."

(7) Subsection C, Article 581-28-1, Vernon's Texas Civil Statutes, refers to the State Securities Board making certain findings after notice and opportunity for comment "in accordance with the provisions of this Section 28-1." The revised law omits the quoted language because, aside from this reference, Article 581-28-1 does not include any other
provisions relating to notice or comment requirements
with respect to rulemaking. Chapter 2001, Government
Code, however, provides procedures for rulemaking,
including notice and comment requirements, that are
applicable to all state agencies, including the State
Securities Board.

Revised Law
Sec. 4002.152. RULES REGARDING COMPETITIVE BIDDING OR
ADVERTISING. (a) The board may not adopt rules restricting
competitive bidding or advertising by a person registered under
this title except to prohibit false, misleading, or deceptive
practices by the person.

(b) The board may not include in the board's rules to
prohibit false, misleading, or deceptive practices by a person
regulated by the board a rule that:

(1) restricts the person's use of any advertising
   medium;

(2) restricts the person's personal appearance or use
   of the person's voice in an advertisement;

(3) relates to the size or duration of an
   advertisement by the person; or

(4) restricts the person's advertisement under a trade
   name.

(c) This section does not affect limitations on advertising
in Section 4005.012, 4005.013, or 4005.021 or in rules adopted by
the board under Section 4005.024. (V.A.C.S. Art. 581-28-1, Subsec.
F.)

Source Law
F. The Board may not adopt rules restricting
competitive bidding or advertising by a person
registered under this Act except to prohibit false,
 misleading, or deceptive practices by the person. The
Board may not include in its rules to prohibit false,
 misleading, or deceptive practices by a person
regulated by the Board a rule that restricts the
person's use of any medium for advertising, restricts
the person's personal appearance or use of his voice in
an advertisement, relates to the size or duration of an
advertisement by the person, or restricts the person's
advertisement under a trade name. However, this section does not affect limitations on advertising contained in Subsections I or Q of Section 5 of this Act or in rules adopted by the Board under Subsection T of Section 5 of this Act.

**Revisor's Note**

(1) Subsection F, Article 581-28-1, Vernon's Texas Civil Statutes, refers to limitations on advertising contained in Subsection I or Q, Article 581-5, Vernon's Texas Civil Statutes. The revised law substitutes a reference to Sections 4005.012, 4005.013, and 4005.021 of this title because Subsection I is revised as Sections 4005.012 and 4005.013 and Subsection Q is revised as Section 4005.021.

(2) Subsection F, Article 581-28-1, Vernon's Texas Civil Statutes, refers to rules adopted by the State Securities Board under Subsection T, Article 581-5, Vernon's Texas Civil Statutes. The revised law substitutes a reference to Section 4005.024 of this title because Subsection T is revised as that section.

**Revised Law**

Sec. 4002.153. BOARD DELEGATION OF RULEMAKING AUTHORITY.  
(a) The board by rule may delegate to the commissioner or the deputy securities commissioner the authority granted to the board under Section 4002.151 or 4002.152 to adopt rules or to waive the requirements of rules as the board considers appropriate.

(b) Any rule adopted by the commissioner or the deputy securities commissioner based on the authority delegated under this section must be adopted in accordance with Sections 4002.151 and 4002.152. (V.A.C.S. Art. 581-28-1, Subsec. D.)

**Source Law**

D. The board may, by rule or regulation adopted in accordance with this Section 28-1, delegate to the commissioner or the deputy commissioner such of the authority granted to the board under this Section 28-1 to hold hearings for adoption of rules and regulations and to make or adopt rules and regulations, or to waive the requirements thereof, as it may, from time to time, deem appropriate. All rules and regulations made or
adopted by the commissioner or the deputy commissioner
pursuant to such delegated authority shall be made or
adopted in accordance with this Section 28-1.

Revisor's Note
(1) Subsection D, Article 581-28-1, Vernon's Texas Civil Statutes, refers to rules adopted by the State Securities Board "in accordance with this Section 28-1." The revised law omits the quoted language as unnecessary because it is presumed that any rules adopted by the board are adopted in accordance with Article 581-28-1, Vernon's Texas Civil Statutes, revised in relevant part in Sections 4002.151 and 4002.152 of this chapter.

(2) Subsection D, Article 581-28-1, Vernon's Texas Civil Statutes, provides that the State Securities Board may delegate to the securities commissioner or the deputy securities commissioner the board's authority under that article to "hold hearings for adoption of rules and regulations." The board's authority to hold hearings in connection with proposed rules and regulations was found in Subsection H, Article 581-28-1, Vernon's Texas Civil Statutes. In 1983, however, Chapter 465, Acts of the 68th Legislature, Regular Session, repealed Subsection H, Article 581-28-1, in addition to other provisions of that article. Because the State Securities Board no longer possesses the authority to hold hearings for the adoption of rules and regulations, the revised law omits the quoted language as unnecessary.

(3) Subsection D, Article 581-28-1, Vernon's Texas Civil Statutes, refers to the State Securities Board's authority to waive the requirements of rules "from time to time." The revised law omits the quoted language for the reason stated in Revisor's Note (2) to Section 4002.151 of this chapter.
Sec. 4002.154. COMMISSIONER DISCRETION REGARDING RULES. In applying the standards of this title, the commissioner may waive or relax any restriction or requirement in a board rule that, in the commissioner's opinion, is unnecessary for the protection of investors in a particular case. (V.A.C.S. Art. 581-10, Subsec. D.)

Source Law

D. Commissioner's Discretion. In applying the standards of this Act, the Commissioner may waive or relax any restriction or requirement in the Board's rules that, in his opinion, is unnecessary for the protection of investors in a particular case.

Sec. 4002.155. DEPOSIT OF RECEIPTS TO GENERAL REVENUE FUND. The commissioner or board shall deposit money received from assessments or charges under this title to the credit of the general revenue fund. (V.A.C.S. Art. 581-36 (part).)

Source Law

Art. 581-36. Upon and after the effective date of this Act all moneys received from ... assessments, or charges under this Act shall be paid by the Commissioner or Board into the General Revenue Fund. . . .

Revisor's Note

Article 581-36, Vernon's Texas Civil Statutes, requires the securities commissioner or State Securities Board to deposit certain money received under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) to the general revenue fund "[u]pon and after the effective date of this Act."
The revised law omits the quoted language as unnecessary because Section 311.022, Government Code (Code Construction Act), applicable to the revised law, provides a presumption that all statutes have prospective application unless expressly provided otherwise.
POWERS. The board may exercise any power or perform any act the
commissioner is authorized to exercise or perform under this title.
(V.A.C.S. Art. 581-2, Subsec. G (part).)

Source Law
G. . . . the Board, or a majority thereof, may
exercise any power or perform any act authorized to the
Securities Commissioner by the provisions of this Act.

Revisor's Note
Subsection G, Article 581-2, Vernon's Texas Civil
Statutes, provides that the State Securities Board or
"a majority thereof" may exercise any power or perform
any act that the securities commissioner is authorized
to exercise or perform under The Securities Act (Art.
581-1 et seq., Vernon's Texas Civil Statutes). The
revised law omits the quoted language because it
duplicates Section 311.013(a), Government Code (Code
Construction Act), applicable to the revised law,
which provides that a grant of authority to a public
body confers the authority on a majority of the public
body.

Revised Law
Sec. 4002.157. LIST OF SECURITIES OFFERED. At any time, the
commissioner may, in the exercise of reasonable discretion under
this title, require a dealer to file with the commissioner a partial
or complete list of securities that the dealer:
(1) is offering or advertising for sale in this state
at the time of the request; or
(2) has offered or advertised for sale in this state
during the six-month period preceding the date of the request.
(V.A.C.S. Art. 581-23, Subsec. D.)

Source Law
D. The commissioner may, in the exercise of
reasonable discretion hereunder, at any time, require
a dealer to file with the commissioner a list of
securities which he has offered for sale or has
advertised for sale within this State during the
preceding six months, or which he is at the time
offering for sale or advertising, or any portion
thereof.

Revisor's Note

(1) Article 581-23, Vernon's Texas Civil Statutes, which is a provision of The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), states that the provisions of that article, including Subsection D, control over any other contradictory provision of that act. The revised law omits that provision as unnecessary with respect to Subsection D, Article 581-23, because there is no provision in The Securities Act that is contrary to Subsection D. The omitted law reads:

Art. 581-23. Anything in this Act to the contrary notwithstanding, . . . .

(2) Subsection D, Article 581-23, Vernon's Texas Civil Statutes, refers to the exercise of reasonable discretion "hereunder," meaning under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes). The revised law substitutes a reference to "under this title" for the reference to "hereunder" for the reason stated in the revisor's note to Section 4002.002 of this chapter.

Revised Law

Sec. 4002.158. RECORD OF PROCEEDINGS. A complete record shall be kept of all proceedings held before the commissioner on any hearing or investigation. (V.A.C.S. Art. 581-26 (part).)

Source Law

Art. 581-26. . . . A full and complete record shall be kept of all proceedings had before the Commissioner on any hearing or investigation.

Revisor's Note

Article 581-26, Vernon's Texas Civil Statutes, requires the keeping of a "full and complete" record of certain proceedings. The revised law omits the reference to "full" as included within the meaning of "complete."
Revised Law

Sec. 4002.159. RECORD OF CERTAIN FILINGS AND ORDERS. (a) The commissioner shall maintain a record of:

(1) the names and addresses of all registered dealers, registered agents, registered investment advisers, registered investment adviser representatives, and persons who have submitted a notice filing under this title; and

(2) all orders of the commissioner denying, suspending, or revoking a registration.

(b) A record maintained under Subsection (a) must be open for public inspection.

(c) This section does not apply to information made confidential by Section 4002.161, 4007.052, or 4007.056 or other law. (V.A.C.S. Art. 581-11 (part).)

Source Law

Art. 581-11. . . . The Commissioner shall maintain a record, which shall be open for public inspection, upon which shall be entered the names and addresses of all registered dealers, registered agents, registered investment advisers, registered investment adviser representatives, and persons who have submitted a notice filing under this Act, and all orders of the Commissioner denying, suspending or revoking registration. This section does not affect information considered confidential by Section 13-1 or 28 of this Act or other law.

Revisor's Note

Article 581-11, Vernon's Texas Civil Statutes, provides that the provisions of that article do not apply to information made confidential by Article 581-13-1 or 581-28, Vernon's Texas Civil Statutes. The revised law substitutes a reference to Section 4002.161 of this chapter and references to Sections 4007.052 and 4007.056 of this title because the relevant portion of Article 581-13-1 is revised as Section 4007.052 and the relevant portions of Article 581-28 are revised as Sections 4002.161 and 4007.056.

Revised Law

Sec. 4002.160. COMMISSIONER'S ACCESS TO RECORDS AND REPORTS
OF OTHER STATE AGENCIES. (a) During an investigation for the purpose of enforcing this title or in connection with the application of a person or company for registration or for a permit qualifying securities for sale, the commissioner or deputy securities commissioner shall have free access to all records of, all reports of, and all reports made to an agency or department of this state.

(b) If the commissioner or deputy securities commissioner discloses any information made confidential by law, the affected person or company has a right of action on the official bond of the commissioner or deputy securities commissioner for the person's or company's injuries in a suit brought in the name of the state at the relation of the person or company.

(c) This section may not be interpreted to prohibit or limit the publication of rulings or decisions of the commissioner.

(V.A.C.S. Art. 581-28, Subsec. A (part).)

Source Law

A. . . . Nothing in this section shall be interpreted to prohibit or limit the publication of rulings or decisions of the Commissioner . . . .

In the course of an investigation looking to the enforcement of this Act, or in connection with the application of a person or company for registration or to qualify securities, the Commissioner or Deputy Commissioner shall have free access to all records and reports of and to any department or agency of the state government. In the event, however, that the Commissioner or Deputy Commissioner should give out any information which the law makes confidential, the affected corporation, firm or person shall have a right of action on the official bond of the Commissioner or Deputy for the corporation's, firm's, or person's injuries, in a suit brought in the name of the state at the relation of the injured party . . . .

Revisor's Note

(1) Subsection A, Article 581-28, Vernon's Texas Civil Statutes, provides that "[n]othing in this section" may be interpreted to limit the publication of rulings or decisions of the securities commissioner. The reference to "in this section" refers to Article 581-28, Vernon's Texas Civil Statutes, the relevant parts of which are revised in
this section, Section 4002.161 of this chapter, and
other sections of Chapter 4007 of this title. For that
reason, the substance of Subsection A, Article 581-28,
that is referred to in this revisor's note is revised
separately in this section and in each of those other
provisions of this title in which the relevant parts of
Article 581-28 are revised.

(2) Subsection A, Article 581-28, Vernon's Texas
Civil Statutes, refers to an application "to qualify
securities." The only reference to an application to
qualify securities in The Securities Act (V.A.C.S.
Article 581-1 et seq.), revised as this title, is found
in Subsection A, Article 581-10, Vernon's Texas Civil
Statutes, revised as Section 4003.006 of this title,
which refers to an "application for qualifying
securities under Section 7A," meaning Subsection A,
Article 581-7, Vernon's Texas Civil Statutes. The
revised law substitutes an application "for a permit
qualifying securities for sale" for an application "to
qualify securities" for the reason stated in the
revisor's note to Section 4003.006.

(3) Subsection A, Article 581-28, Vernon's Texas
Civil Statutes, refers to a "corporation, firm or
person" and contains other similar references. The
revised law omits as unnecessary the references to
"corporation" and "firm" because Subsection B, Article
581-4, Vernon's Texas Civil Statutes, revised as
Section 4001.064 of this title, defines both "person"
and "company" to include a "corporation" or "firm."

Revised Law
Sec. 4002.161. CONFIDENTIALITY OF CERTAIN INFORMATION. (a)
To the extent not otherwise provided by this title, any
intra-agency or interagency notes, memoranda, reports, or other
communications consisting of advice, analyses, opinions, or
recommendations are confidential.

(b) Except as provided by Subsection (c) or Section 4007.056(b) or (c), the commissioner may not disclose a document or other information made confidential by Subsection (a) unless the disclosure is made to the public under court order for good cause shown.

(c) The commissioner, at the commissioner's discretion, may disclose confidential information in the commissioner's possession to:

(1) a governmental or regulatory authority or any association of governmental or regulatory authorities approved by board rule; or

(2) any receiver appointed under Section 4007.151.

(d) Disclosure of information under Subsection (c) does not violate any other provision of this title or Chapter 552.

(e) This section may not be interpreted to prohibit or limit the publication of rulings or decisions of the commissioner.

(V.A.C.S. Art. 581-28, Subsecs. A (part), B; New.)

Source Law

A. . . . [provided, however, that . . . all internal notes, memoranda, reports, or communications made in connection with an investigation shall be treated as confidential by the Commissioner and shall not be disclosed to the public except under order of court for good cause shown.] Nothing in this section shall be interpreted to prohibit or limit the publication of rulings or decisions of the Commissioner [nor shall this limitation apply if disclosure is made, in the discretion of the Commissioner, as part of an administrative proceeding or a civil or criminal action to enforce this Act.]

. . . [The Commissioner may, at the Commissioner's discretion, disclose any confidential information in the Commissioner's possession to any governmental or regulatory authority or association of governmental or regulatory authorities approved by Board rule or to any receiver appointed under Section 25-1 of this Act. The disclosure does not violate any other provision of this Act or Chapter 552, Government Code.]

B. Confidentiality of Certain Registration-Related and Other Materials. To the extent not already provided for by this Act, any intraagency or interagency notes, memoranda, reports, or other communications consisting of advice, analyses, opinions, or recommendations shall be treated as confidential by the Commissioner and shall not be disclosed to the public, except under order of
court, for good cause shown. The Commissioner may, at the Commissioner's discretion, disclose any confidential information in the Commissioner's possession to any governmental or regulatory authority or association of governmental or regulatory authorities approved by Board rule or to any receiver appointed under Section 25-1 of this Act. The disclosure does not violate any other provision of this Act or Chapter 552, Government Code.

Revisor's Note

(1) Subsections A and B, Article 581-28, Vernon's Texas Civil Statutes, contain provisions that authorize the securities commissioner to disclose to certain persons, without a court order, information made confidential by that article. Those provisions are revised in this section and Sections 4007.056(b) and (c) of this title. For clarity and the convenience of the reader, the revised law includes in this section cross-references to Sections 4007.056(b) and (c).

(2) Subsection B, Article 581-28, Vernon's Texas Civil Statutes, refers to a receiver appointed under Article 581-25-1, Vernon's Texas Civil Statutes. The revised law substitutes a reference to Section 4007.151 of this title because Article 581-25-1 is revised as that section.

Revised Law

Sec. 4002.162. BOARD ACCESS TO OFFICES AND RECORDS. Each member of the board shall have access to all of the offices and records under the commissioner's supervision. (V.A.C.S. Art. 581-2, Subsec. G (part).)

Source Law

G. [The Board shall appoint a Securities Commissioner . . . who shall, under the supervision of the Board, administer the provisions of this Act.] Each member of the Board shall have access to all offices and records under his supervision, and . . . .

Revised Law

Sec. 4002.163. ANNUAL REPORT. On or before January 1 of each year, the board, with the advice of the commissioner, shall report to the governor and the presiding officer of each house of
the legislature about the administration of this title and plans
and needs for future securities regulation. The report must
include a detailed accounting of all funds received and disbursed
by the board during the preceding year. (V.A.C.S. Art. 581-2,
Subsec. J.)

Source Law

J. On or before January 1 of each year, the
Board, with the advice of the Commissioner, shall
report to the Governor and the presiding officer of
each house of the Legislature as to its administration
of this Act, as well as plans and needs for future
securities regulation. The report must include a
detailed accounting of all funds received and
disbursed by the Board during the preceding year.

Revisor's Note
(End of Subchapter)

Subsection M, Article 581-2, Vernon's Texas Civil
Statutes, provides that the financial transactions of
the State Securities Board are subject to audit by the
state auditor in accordance with Chapter 321,
Government Code. The revised law omits that provision
as unnecessary. Section 321.013, Government Code,
requires the state auditor to conduct audits of all
departments as specified in the audit plan as defined
in Section 321.001 of that code. The omitted law
reads:

M. The financial transactions of the
Board are subject to audit by the state
auditor in accordance with Chapter 321,
Government Code.

SUBCHAPTER E. CONSUMER INTEREST AND OTHER PUBLIC INTEREST
INFORMATION

Revised Law
Sec. 4002.201. CONSUMER INTEREST INFORMATION. (a) The
board shall prepare information of consumer interest describing:

(1) the regulatory functions of the board and commissioner; and

(2) the procedures by which consumer complaints are
filed with and resolved by the board or commissioner.
(b) The board shall make the information available to the public and appropriate state agencies. (V.A.C.S. Art. 581-2, Subsec. L (part).)

Source Law
L. The Board shall prepare information of consumer interest describing the regulatory functions of the Board and Commissioner and describing the Board's and Commissioner's procedures by which consumer complaints are filed with and resolved by the Board or Commissioner. The Board shall make the information available to the general public and appropriate state agencies.

Revised Law
Sec. 4002.202. PUBLIC PARTICIPATION. The board by rule shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction. (V.A.C.S. Art. 581-2-5.)

Source Law
Art. 581-2-5. The Board by rule shall develop and implement policies that provide the public with a reasonable opportunity to appear before the Board and to speak on any issue under the jurisdiction of the Board.

Revised Law
Sec. 4002.203. DOCUMENTS AND OTHER INFORMATION FILED WITH COMMISSIONER; PUBLIC RECORDS. (a) All information, papers, documents, instruments, and affidavits required by this title to be filed with the commissioner are public records.

(b) All information, papers, documents, instruments, and affidavits required by this title to be filed with the commissioner must be open to inspection and examination by a purchaser or prospective purchaser of securities, or by the agent or representative of a purchaser or prospective purchaser of securities. The commissioner shall:

(1) provide to a purchaser or prospective purchaser of securities, or an agent or representative of those persons, any information required to be filed with the commissioner under this title; and

(2) on request by a person described by Subdivision
(1), provide a certified copy of any paper, document, instrument, or affidavit filed with the commissioner under this title.

(c) This section does not apply to information made confidential by Section 4002.161, 4007.052, or 4007.056 or other law. (V.A.C.S. Art. 581-11 (part).)

Source Law

Art. 581-11. All information, papers, documents, instruments and affidavits required by this Act to be filed with the Commissioner shall be deemed public records of this state, and shall be open to the inspection and examination of any purchaser or prospective purchaser of said securities or the agent or representative of such purchaser or prospective purchaser; and the Commissioner shall give out to any such purchaser or prospective purchaser or his agent or representative any information required to be filed with him under the provisions of this section, or any other part of this Act, and shall furnish any such purchaser, prospective purchaser, or his agent or representative requesting it, certified copies of any and all papers, documents, instruments and affidavits filed with him under the provisions of this section or of any part of this Act. . . . This section does not affect information considered confidential by Section 13-1 or 28 of this Act or other law.

Revisor's Note

(1) Article 581-11, Vernon's Texas Civil Statutes, refers to certified copies of "any and all" papers and other documents filed with the commissioner. The revised law omits the reference to "all" because, in context, "all" is included within the meaning of "any."

(2) Article 581-11, Vernon's Texas Civil Statutes, provides that the provisions of that article do not apply to information made confidential under Article 581-13-1 or 581-28, Vernon's Texas Civil Statutes. The revised law substitutes a reference to Section 4002.161 of this chapter and references to Sections 4007.052 and 4007.056 of this title for the reasons stated in the revisor's note to Section 4002.159 of this chapter.
CHAPTER 4003. SECURITIES

SUBCHAPTER A. PERMIT QUALIFYING SECURITIES FOR SALE

Sec. 4003.001. PERMIT REQUIRED; EXCEPTIONS

Sec. 4003.002. PERMIT APPLICATION TO QUALIFY SECURITIES FOR SALE

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Sec. 4003.303. PROSPECTUS REQUIRED FOR CERTAIN OFFERS

Sec. 4003.304. INVESTOR EDUCATION

Sec. 4003.001. PERMIT REQUIRED; EXCEPTIONS. (a) A dealer or agent may not sell or offer 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.

(b) This section does not apply to:

(1) securities that have been registered by notification under Subchapter B or by coordination under Subchapter
C; or

(2) transactions or securities that are exempt under
Chapter 4005. (V.A.C.S. Art. 581-7, Subsec. A, Subdiv. (1) (part);
Art. 581-10, Subsec. B (part).)

Source Law

(1) No dealer or agent shall sell or offer for sale any
securities issued after September 6, 1955, except
those which shall have been registered by Notification
under subsection B or by Coordination under subsection
C of this Section 7 and except those which come within
the classes enumerated in Section 5 or Section 6 of
this Act, until the issuer of such securities or a
dealer registered under the provisions of this Act
shall have been granted a permit by the Commissioner;
and . . . .

[Art. 581-10]
B . . . . No permit instrument need be issued if
securities are registered under Sections 7B or C of
this Act, but . . . .

Revisor's Note

(1) Subsection A, Article 581-7, Vernon's Texas
Civil Statutes, prohibits a dealer or agent from
selling or offering for sale certain securities until
the securities commissioner has issued a "permit" for
those securities to the issuer of the securities or a
registered dealer. The revised law throughout this
subchapter substitutes "permit qualifying securities
for sale" for "permit" and other similar references
for clarity and consistency of terminology. It is
clear from the portion of Subsection A, Article 581-7,
revised as this section and from other provisions of
The Securities Act that the referenced permit
authorizes the permit holder to offer for sale and sell
securities. See, for example, the portion of
Subsection B, Article 581-10, Vernon's Texas Civil
Statutes, revised as Section 4003.005 of this chapter,
which refers to "permits to sell securities."
Furthermore, Subsection A, Article 581-10, revised as
Section 4003.006 of this chapter, refers to an
"application for qualifying securities" under Subsection A, Article 581-7, which is an application for a permit, and the portion of Subsection B, Article 581-10, revised as Section 4003.007 of this chapter, describes the form of a "permit qualifying securities." Read together, the portions of The Securities Act referencing a permit provide that the permit both qualifies certain securities to be sold and authorizes the permit holder to offer for sale and sell the securities. The permit is therefore a "permit qualifying securities for sale."

(2) Subsection A, Article 581-7, Vernon's Texas Civil Statutes, provides an exception to the prohibition against dealers or agents from selling or offering for sale certain securities without a permit qualifying securities for sale for "those which come within the classes enumerated in Section 5 or Section 6 of this Act," meaning Article 581-5 or 581-6 of The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), revised as this title. Article 581-5, revised in relevant part as Subchapter A, Chapter 4005, of this title, exempts certain transactions from the provisions of that act, and Article 581-6, revised in relevant part as Subchapter B, Chapter 4005, of this title, exempts certain securities from the provisions of that act. For clarity and the convenience of the reader, the revised law refers to "transactions or securities that are exempt under Chapter 4005."

(3) Subsection A, Article 581-7, Vernon's Texas Civil Statutes, refers to a "dealer registered under the provisions of this Act," meaning The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), revised as this title. Throughout this
chapter, the revised law substitutes "registered dealer" for the quoted language because Subsection M, Article 581-4, Vernon's Texas Civil Statutes, revised as Section 4001.065 of this title, defines "registered dealer" for the purposes of the law revised in this title as a "dealer . . . who has been duly registered by the Commissioner as in Section 15 of this Act."

Revised Law

Sec. 4003.002. PERMIT APPLICATION TO QUALIFY SECURITIES FOR SALE. (a) The commissioner may not issue a permit qualifying securities for sale required by Section 4003.001 until the issuer of the securities or a registered dealer files with the commissioner an application for the permit in the form of a statement containing the following information:

1. the name, residence, and post office address of each of the company's officers and directors;
2. the location of the company's principal office and each branch office in this state;
3. a copy of the company's certificate of formation or articles of incorporation or partnership or association and any amendments to those documents;
4. if the company is a corporation, a copy of:
   (A) all minutes of any proceedings of the company's directors, stockholders, or members relating to or affecting the issuance of the securities; and
   (B) the company's bylaws and any amendments to the bylaws;
5. if the company is a trustee, a copy of all instruments by which the trust is created and in which the trust is accepted, acknowledged, or declared;
6. a statement showing:
   (A) the amount of capital stock and, if there is no capital stock, the amount of capital of the issuer that is contemplated to be employed;
the number of shares into which the stock is
divided or, if not divided into shares, what division is to be made
or is contemplated;
the par value of each share or, if there are
shares with no par value, the price at which the security is
proposed to be sold; and
the promotional fees or commissions to be
paid for the sale of the securities, including:
all compensation of every nature
allowed to be paid to the promoters or allowed for the sale of the
securities;
how the compensation is to be paid,
whether in cash, securities, service or otherwise, or partly of
either or both;
the amount of cash to be paid or
securities to be issued, given, transferred, or sold to promoters
for promotion or organization services and expenses; and
the amount of promotion or
organization services and expenses that the issuer will assume or
pay in any way;
a copy of:
certificates of the stock and all other
securities to be sold or offered for sale, together with
application blanks for the stock and securities;
any contract the company proposes to make
concerning the securities; and
any prospectus or advertisement or other
description of security prepared by or for the company for
distribution or publication; and
the statement of financial condition and income
statement described by Section 4003.003.
The statement in an application under this section must
be:
verified under oath by an executive officer or
partner of the issuer or registered dealer filing the application;

and

(2) attested by the secretary or partner of the issuer

or registered dealer filing the application. (V.A.C.S. Art. 581-7,
Subsec. A, Subdiv. (1) (part).)

Source Law

(1) ... no such permit shall be granted

by the Commissioner until the issuer of such

securities or a dealer registered under the provisions

of this Act shall have filed with the Commissioner a

sworn statement verified under the oath of an

executive officer or partner of the issuer, or of such

registered dealer, and attested by the secretary or

partner thereof, setting forth the following

information:

a. The names, residences and post

office addresses of the officers and directors of the

company;

b. The location of its principal

office and of all branch offices in this State, if any;

c. A copy of its articles of

incorporation or partnership or association, as the

case may be, and of any amendments thereto, if any; if

a corporation, a copy of all minutes of any proceedings

of its directors, stockholders or members relating to

or affecting the issue of said security; if a

corporation, a copy of its bylaws and of any amendments

thereto; if a trustee, a copy of all instruments by

which the trust is created and in which it is accepted,

acknowledged or declared;

d. A statement showing the amount of

capital stock, if any, and if no capital stock, the

amount of capital of the issuer that is contemplated to

be employed; the number of shares into which such

stock is divided, or if not divided into shares of

stock, what division is to be made or is contemplated;

the par value of each share, or if no par stock, the

price at which such security is proposed to be sold;

the promotional fees or commissions to be paid for the

sale of same, including any and all compensations of

every nature that are in any way to be allowed the

promoters or allowed for the sale of same; and how

such compensation is to be paid, whether in cash,

securities, service or otherwise, or partly of either

or both; also, the amount with cash to be paid, or

securities to be issued, given, transferred or sold to

promoters for promotion or organization services and

expenses, and the amount of promotion or organization

services and expenses which will be assumed or in any

way paid by the issuer;

e. Copies of certificates of the

stock and all other securities to be sold, or offered

for sale, together with application blanks therefor;

a copy of any contract it proposes to make concerning

such security; a copy of any prospectus or

advertisement or other description of security

prepared by or for it for distribution or publication;

f. 1. A detailed statement ...

[showing all the assets and all the liabilities of the

issuer] ... Such application shall also include a

detailed income statement, .......
Revisor's Note

(1) Subdivision (1), Subsection A, Article 581-7, Vernon's Texas Civil Statutes, prohibits the securities commissioner from issuing a permit qualifying securities for sale under that subsection until a "sworn statement verified under oath" that contains certain information is filed with the commissioner. The revised law omits "sworn" as duplicative of "verified under oath."

(2) Subdivision (1), Subsection A, Article 581-7, Vernon's Texas Civil Statutes, prohibits the securities commissioner from issuing a permit qualifying securities for sale under that subsection until a "statement" that contains certain information is filed with the commissioner. Subparagraph 1, Paragraph f, Subdivision (1), Subsection A, Article 581-7, and Subsection A, Article 581-10, Vernon's Texas Civil Statutes, revised respectively as Sections 4003.003 and 4003.006 of this chapter, refer to this filing with the commissioner as an "application."
Throughout this chapter, in the context of a permit qualifying securities for sale issued under Subsection A, Article 581-7, the revised law substitutes "application . . . in the form of a statement" for "statement" for clarity and consistency with terminology used in this chapter.

(3) Paragraph c, Subdivision (1), Subsection A, Article 581-7, Vernon's Texas Civil Statutes, refers to a copy of a company's "articles of incorporation or partnership or association." The revised law adds a reference to "certificate of formation" to conform to the terminology of the Business Organizations Code, which took effect January 1, 2006, and refers to the term "certificate of formation" to describe the
document required to be filed with the secretary of
state to form a domestic filing entity, including a
corporation, an association, and certain
partnerships, on or after January 1, 2006.

(4) Paragraph d, Subdivision (1), Subsection A,
Article 581-7, Vernon's Texas Civil Statutes, refers
to "no par stock." The revised law substitutes "shares
with no par value" for "no par stock" because the terms
are synonymous and "no par value" is the defined term
under Subsection K, Article 581-4, Vernon's Texas
Civil Statutes, revised as Section 4001.063 of this
title.

(5) Paragraph d, Subdivision (1), Subsection A,
Article 581-7, Vernon's Texas Civil Statutes, requires
an issuer of securities or a registered dealer to
submit to the securities commissioner a statement
detailing "any and all compensations" of every nature
that will be paid or otherwise allowed to a promoter
for the sale of securities. The revised law omits the
reference to "any" because, in context, "any" is
included within the meaning of "all."

(6) Paragraph f, Subdivision (1), Subsection A,
Article 581-7, Vernon's Texas Civil Statutes, requires
an issuer of securities or a registered dealer to
submit to the securities commissioner a detailed
statement showing the financial condition of the
issuer. Under generally accepted accounting
principles (GAAP) adopted by the United States
Securities Exchange Commission and generally accepted
auditing standards (GAAS), such a statement is
referred to as a "statement of financial condition."
For consistency with those standards and principles
and for the convenience of the reader, the revised law
adds the term "statement of financial condition" to
refer to that statement. The revised law also adds a reference to Section 4003.003 of this chapter because the relevant provisions of law governing the content of the statement are revised as that section.

Revised Law

Sec. 4003.003. STATEMENT OF FINANCIAL CONDITION AND INCOME STATEMENT. (a) In this section, "current liabilities" means all liabilities that will mature and become due not later than the first anniversary of the date the application listing the liabilities is filed under this subchapter.

(b) A statement of financial condition required in the application under this subchapter must:

(1) be detailed;
(2) be prepared in accordance with generally accepted auditing standards and procedures and generally accepted accounting principles;
(3) reflect the financial condition of the issuer of the securities to be qualified for sale on a date not earlier than the 90th day before the date the issuer or registered dealer files the application;
(4) show all of the issuer's liabilities by listing all current liabilities and, separately from current liabilities, all other liabilities, including contingent liabilities, showing the amount of those liabilities that are secured by mortgage or otherwise, the issuer's assets that are subject to the mortgage, and the dates of maturity of the mortgage indebtedness;
(5) list all of the issuer's assets in detail and show how the value of the assets was determined;
(6) show whether the value of the assets represents:

(A) the assets' actual cost in money;
(B) the assets' present market value; or
(C) some other value of the assets;
(7) show the present actual value of the assets; and
(8) state whether the value listed in the statement is
greater or less than the assets':

(A) actual cost value in money; and

(B) present market value.

(c) The statement under Subsection (b) must show the amount for which any real property listed as an asset is rendered for state and county taxation or assessed for taxation.

(d) The statement under Subsection (b) must describe any assets consisting of anything other than cash or real property in detail to give the commissioner the fullest possible information. The commissioner may require the filing of additional information as the commissioner considers necessary to determine whether the true value of those assets is reflected in the statement.

(e) A statement under Subsection (b) that lists assets subject to a repurchase agreement or similar agreement under the terms of which the absolute ownership of or title to the assets is qualified or limited must fully state:

(1) the terms of the agreement; and

(2) the amount and character of the assets subject to the agreement.

(f) Subject to Subsection (g), the income statement required in an application under this subchapter must:

(1) be detailed;

(2) be prepared in accordance with generally accepted auditing standards and procedures and generally accepted accounting principles; and

(3) cover the lesser of:

(A) the preceding three years of the issuer's operations; or

(B) the period the issuer has been operating.

(g) If the issuer has not been operating but is taking over a concern of any kind that was previously operating, the income statement required in an application under this subchapter must:

(1) show the operations of the concern taken over for the three years preceding the taking over of the concern; and
clearly reflect the amount of net income or net loss incurred during each year shown. (V.A.C.S. Art. 581-7, Subsec. A, Subdiv. (1) (part), Subsec. D (part).)

**Source Law**

[Subsec. A]

(1) ... no such permit shall be granted ... [until the issuer of such securities or a dealer ... shall have filed ...] a sworn statement ... setting forth the following information:

f. 1. A detailed statement prepared in accordance with generally accepted auditing standards and procedures and generally accepted accounting principles, showing all the assets and all the liabilities of the issuer, said statement to reflect the financial condition of the issuer on a day not more than ninety (90) days prior to the date such statement is filed. Such statement shall list all assets in detail and shall show how the value of such assets was determined, that is, whether the value set forth in said statement represents the actual cost in money of such assets, or whether such value represents their present market value, or some other value than the actual cost in money, and shall show the present actual value of said assets; also, whether the value set forth in the statement is greater or less than the actual cost value in money and greater or less than the present market value of such assets. If any of the assets consist of real estate, then said statement shall show the amount for which said real estate is rendered for State and county taxes, or assessed for taxes. If any such assets listed shall consist of anything other than cash and real estate, same shall be set out in detail so as to give the Commissioner the fullest possible information concerning same, and the Commissioner shall have the power to require the filing of such additional information as the Commissioner may deem necessary to determine whether or not the true value of said assets are reflected in the statement filed. Should any of the assets listed in said statement be subject to any repurchase agreement, or any other agreement of like character, by the terms of which the absolute ownership of, or title to said assets is qualified or limited in any way, then the terms and conditions of said agreement by which the absolute ownership of, or title to said assets is qualified or limited, as well as the amount and character of the assets subject thereto shall be fully stated. Said statement shall list all current liabilities, that is, all liabilities which will mature and become due within one year from the date of such application, and shall list separately from such current liabilities, all other liabilities, contingent or otherwise, showing the amount of those which are secured by mortgage or otherwise, the assets of the issuer which are subject to such mortgage, and the dates of maturity of any such mortgage indebtedness. Such application shall also include a detailed income statement, prepared in accordance with generally accepted auditing standards and procedures and generally accepted accounting principles, which shall cover the last three (3) years' operations of the issuer, if such issuer has been in operation for three
(3) years, but if not, said income statement shall cover the time that said issuer has been operating. If said issuer has not been operating, but is taking over a concern of any kind which has been previously operating, an income statement showing the operations of the concern thus taken over for a period of the last three (3) years next preceding the taking over of said concern shall be included in said statement; said income statement shall clearly reflect the amount of net income or net loss incurred during each of the years shown.

D. . . . [the financial statements required in Subsections A . . . of this Section 7,] which must be as of a date not more than 90 days prior to the date of filing, . . . .

Revisor's Note

(1) Subparagraph 1, Paragraph f, Subdivision (1), Subsection A, Article 581-7, Vernon's Texas Civil Statutes, requires that a detailed statement under that subparagraph reflect the "financial condition" of the issuer of securities on a certain date before "the date such statement is filed." The revised law adds a reference to "statement of financial condition" in reference to the detailed statement for the reason stated in Revisor's Note (6) to Section 4003.002 of this chapter. Additionally, the revised law adds a reference to the date "the issuer or registered dealer" files the statement, which is contained in an application for a permit qualifying securities for sale, for clarity and because Subsection A, Article 581-7, Vernon's Texas Civil Statutes, revised in relevant part as Section 4003.001 of this chapter, requires the issuer of the securities or a registered dealer to obtain the permit.

(2) Subparagraph 1, Paragraph f, Subdivision (1), Subsection A, Article 581-7, Vernon's Texas Civil Statutes, refers to "real estate." The revised law substitutes "real property" for "real estate" because the terms are synonymous and "real property" is more commonly used in the Property Code.

(3) Subparagraph 1, Paragraph f, Subdivision
(1), Subsection A, Article 581-7, Vernon's Texas Civil Statutes, refers to "terms and conditions" of certain agreements concerning assets. The revised law omits the reference to "conditions" because, in context, "conditions" is included within the meaning of "terms."

(4) Subparagraph 1, Paragraph f, Subdivision (1), Subsection A, Article 581-7, Vernon's Texas Civil Statutes, refers to all liabilities that will mature and become due within one year from the date of "such application" and provides that "[s]uch application" shall also include a detailed income statement. It is clear from the context that the application referenced is an application filed under Subsection A, Article 581-7, Vernon's Texas Civil Statutes, revised as this subchapter, and the revised law is drafted accordingly.

Revised Law
Sec. 4003.004. EXCEPTIONS TO CERTIFICATION REQUIREMENT FOR FINANCIAL STATEMENTS. (a) Financial statements filed as required by this subchapter are not required to be certified by an independent certified public accountant or independent public accountant if:

(1) the fiscal year of the issuer of the securities to be qualified for sale ended on a date earlier than the 90th day before the date of the filing; and

(2) financial statements in addition to those required by this subchapter are filed that:

(A) contain the information required by Section 4003.003; and

(B) are certified by an independent certified public accountant or independent public accountant as of the end of the issuer's preceding fiscal year.

(b) Instead of being audited and certified, the financial
statements described by Section 4003.003 of a small business issuer, as defined by board rule, that meets all other requirements the board by rule or order prescribes, conditionally or unconditionally, may be reviewed by an independent certified public accountant in accordance with the Statements on Standards for Accounting and Review Services promulgated by the American Institute of Certified Public Accountants. (V.A.C.S. Art. 581-7, Subsec. A, Subdiv. (1) (part), Subsec. D (part).)

Source Law

[Subsec. A] (1) . . .

f. . . .

2. The financial statements required in subparagraph (1) of this paragraph for a small business issuer, as defined by Board rule, may be reviewed by an independent certified public accountant in accordance with the Statements on Standards for Accounting and Review Services promulgated by the American Institute of Certified Public Accountants in lieu of being audited and certified, provided that the small business issuer otherwise meets all of the requirements that the Board by rule, regulation, or order may prescribe, conditionally or unconditionally.

D. Termination Of Fiscal Year; Certification Of Statements. If the fiscal year of the issuer terminated on a date more than 90 days prior to the date of the filing, then the financial statements required in Subsections A and . . . of this Section 7, . . . need not be certified by an independent certified public or independent public accountant if there are filed in addition thereto financial statements containing the information required by the applicable subdivision which are certified by an independent certified public or independent public accountant as of the end of the preceding fiscal year of the issuer.

Revisor's Note

(1) Subparagraph 2, Paragraph f, Subdivision (1), Subsection A, Article 581-7, Vernon's Texas Civil Statutes, refers to requirements that the State Securities Board may prescribe by "rule, regulation, or order." The revised law omits "regulation" because under Section 311.005(5), Government Code (Code Construction Act), applicable to the revised law, a rule is defined to include a regulation.

(2) Subsection D, Article 581-7, Vernon's Texas
Civil Statutes, provides that the financial statements required in Subsection A of that article do not need to be certified under certain circumstances if certified financial statements for the preceding fiscal year that contain the information required by the "applicable subdivision" are filed in addition to the required financial statements. The applicable provision of Subsection A pertaining to the requirements for financial statements under that subsection is Paragraph f, Subdivision (1), revised in relevant part as Section 4003.003 of this chapter, and the revised law is drafted accordingly.

Revised Law

Sec. 4003.005. PERMIT FEE. The commissioner shall charge the fees provided by Chapter 4006 for the issuance of a permit qualifying securities for sale. (V.A.C.S. Art. 581-10, Subsec. B (part.).)

Source Law

B. . . . The Commissioner shall charge such fees for the issuance of permits to sell securities as are hereinafter provided. . . .

Revisor's Note

Subsection B, Article 581-10, Vernon's Texas Civil Statutes, requires the securities commissioner to charge fees for the issuance of a permit qualifying securities for sale as are "hereinafter provided," meaning provided in The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), revised as this title. The relevant provision of The Securities Act pertaining to fees established in connection with the issuance of permits qualifying securities for sale under that act is Article 581-35, Vernon's Texas Civil Statutes, which is revised in various provisions of Chapter 4006 of this title, and the revised law is drafted accordingly.
Sec. 4003.006. EXAMINATION OF AND DETERMINATION ON PERMIT APPLICATION. (a) On the filing of an application for a permit qualifying securities for sale under this subchapter, the commissioner shall examine the application and the papers and documents filed with the application.

(b) After the examination, the commissioner shall:

(1) issue a permit to the applicant authorizing the applicant to issue and dispose of the securities if the commissioner determines that:

(A) the applicant's proposed plan of business appears to be fair, just, and equitable;

(B) any consideration paid or to be paid by promoters for the securities is fair, just, and equitable if that consideration is less than the proposed offering price to the public; and

(C) the securities the applicant proposes to issue and the methods to be used by the applicant in issuing and disposing of the securities will not work a fraud upon the purchaser of the securities; or

(2) deny the application for a permit and notify the applicant in writing of the commissioner's decision if the commissioner determines that the applicant's proposed plan of business appears to be unfair, unjust, or inequitable. (V.A.C.S. Art. 581-10, Subsec. A.)

Art. 581-10. A. Commissioner to Examine Application; Grant or Deny. Upon the filing of an application for qualifying securities under Section 7A, it shall be the duty of the Commissioner to examine the same and the papers and documents filed therewith. If he finds that the proposed plan of business of the applicant appears to be fair, just and equitable, and also that any consideration paid, or to be paid, for such securities by promoters is fair, just and equitable when such consideration for such securities is less than the proposed offering price to the public, and that the securities which it proposes to issue and the methods to be used by it in issuing and disposing of the same are not such as will work a fraud upon the purchaser thereof, the Commissioner shall issue to the
applicant a permit authorizing it to issue and dispose of such securities. Should the Commissioner find that the proposed plan of business of the applicant appears to be unfair, unjust or inequitable, he shall deny the application for a permit and notify the applicant in writing of his decision.

Revisor's Note

Subsection A, Article 581-10, Vernon's Texas Civil Statutes, refers to an "application for qualifying securities under Section 7A," meaning Subsection A, Article 581-7, Vernon's Texas Civil Statutes. The only application referred to in Subsection A of that article is an application for a permit which, for the reasons stated in Revisor's Note (1) to Section 4003.001 of this chapter, is a permit qualifying securities for sale. The revised law substitutes "application for a permit qualifying securities for sale" for "application for qualifying securities" for clarity and consistency with the terminology used in this subchapter.

Revised Law

Sec. 4003.007. FORM AND CONTENTS OF PERMIT. A permit qualifying securities for sale must:

(1) be in the form the commissioner prescribes; and
(2) state in bold type that the issuance of the permit is permissive only and does not constitute a recommendation or endorsement of the securities permitted to be issued. (V.A.C.S. Art. 581-10, Subsec. B (part).)

Source Law

B. Permit, Form and Contents; Term and Renewals.
Every permit qualifying securities shall be in such form as the Commissioner may prescribe, and shall recite in bold type that the issuance thereof is permissive only, and does not constitute a recommendation or endorsement of the securities permitted to be issued. . . .

Revised Law

Sec. 4003.008. TERM OF PERMIT. A permit qualifying securities for sale that is issued under this subchapter is valid for one year. (V.A.C.S. Art. 581-10, Subsec. B (part).)
Source Law

B. . . . Such permit shall be for a period of one
(1) year; provided, however, that . . . .

Revised Law

Sec. 4003.009. RENEWAL OF PERMIT. (a) An issuer or
registered dealer may file a renewal application with the
commissioner if the securities authorized to be sold under a permit
qualifying securities for sale that is issued under this subchapter
are not sold before the permit expires.

(b) The renewal application must:

(1) state:

(A) the total number of shares sold in this
state;

(B) the total number of shares sold outside this
state; and

(C) the total number of shares outstanding;

(2) contain a detailed balance sheet;

(3) contain an operating statement; and

(4) provide any other information the commissioner may
require.

(c) The commissioner shall examine a renewal application
and issue a renewal permit or deny the application using the
standards stated in Section 4003.006 applicable to an original
application.

(d) If issued, a renewal permit:

(1) is valid for one year; and

(2) must be in the form the commissioner prescribes.

(V.A.C.S. Art. 581-10, Subsec. B (part).)

Source Law

B. . . . if the securities authorized to be sold
are not sold within the term provided by the permit, a
renewal application may be filed with the
Commissioner. Such renewal application shall recite
the total number of shares sold in Texas, the total
number of shares sold elsewhere, total number of
shares outstanding, and shall contain a detailed
balance sheet, an operating statement, and such other
information as the Commissioner may require. The
Commissioner shall examine applications for renewal by
the same standards as stated in subsection A of this section for original applications and upon that basis issue or deny renewal permits; such permits, if issued, shall be for a period of one (1) year and be in such form as the Commissioner may prescribe. . . .

Revisor's Note

Subsection B, Article 581-10, Vernon's Texas Civil Statutes, provides that a permit renewal application may be filed with the securities commissioner if the securities authorized to be sold under a previously issued permit qualifying securities for sale are not sold before the permit expires. The revised law adds a reference to "an issuer or registered dealer" as the persons authorized to file a permit renewal application for clarity and because under Subsection A, Article 581-7, Vernon's Texas Civil Statutes, revised in relevant part as Section 4003.002 of this chapter, only the issuer of the securities or a registered dealer may apply for the original permit.

Revised Law

Sec. 4003.010. USE OF PERMIT FOR CERTAIN PURPOSES PROHIBITED. A dealer, issuer, or agent may not use a permit qualifying securities for sale in connection with a sale or effort to sell a security. (V.A.C.S. Art. 581-10, Subsec. C.)

Source Law

C. Use of Permit to Aid Sale of Securities Prohibited. It shall be unlawful for any dealer, issuer, or agent to use a permit authorizing the issuance of securities in connection with any sale or effort to sell any security.

SUBCHAPTER B. REGISTRATION BY NOTIFICATION

Revised Law

Sec. 4003.051. ELIGIBILITY FOR REGISTRATION BY NOTIFICATION. (a) Securities may be registered by notification under this subchapter if the securities are issued by an issuer that:

(1) has been in continuous operation for at least
three years; and

(2) has shown, during at least the three years preceding the date of registration under this subchapter, average annual net earnings after deducting all prior charges, including income taxes but not including charges on securities to be retired out of the proceeds of sale, as follows:

(A) for interest-bearing securities, not less than one and one-half times the annual interest charges on those securities and on all other outstanding interest-bearing securities of equal rank;

(B) for securities with a specified dividend rate, not less than one and one-half times the annual dividend requirements on those securities and on all other outstanding securities of equal rank; and

(C) for securities with no specified dividend rate, not less than five percent on all outstanding securities of equal rank, together with the amount of those securities then offered for sale, based on the maximum price at which the securities are to be offered for sale.

(b) For purposes of calculating average annual net earnings under Subsection (a)(2)(C), an issuer's ownership of more than 50 percent of the outstanding voting stock of a corporation:

(1) is construed as the issuer's proportionate ownership of that corporation; and

(2) permits the inclusion of that corporation's earnings applicable to the payment of dividends on the stock owned in the earnings of the issuer of the securities being registered by notification. (V.A.C.S. Art. 581-7, Subsec. B, Subdiv. (1).)

Source Law

B. Registration by Notification. (1)

Securities may be registered by notification under this subsection B if they are issued by an issuer which has been in continuous operation for not less than three (3) years and which has shown, during the period of not less than three (3) years next prior to the date of registration under this section, average annual net earnings after deducting all prior charges including income taxes except charges upon securities to be
retired out of the proceeds of sale, as follows:

a. In the case of interest-bearing securities, not less than one and one-half times the annual interest charges on such securities and on all other outstanding interest-bearing securities of equal rank;

b. In the case of securities having a specified dividend rate, not less than one and one-half times the annual dividend requirements on such securities and on all outstanding securities of equal rank;

c. In the case of securities wherein no dividend rate is specified, not less than five percent (5%) on all outstanding securities of equal rank, together with the amount of such securities then offered for sale, based upon the maximum price at which such securities are to be offered for sale. The ownership by an issuer of more than fifty percent (50%) of the outstanding voting stock of a corporation shall be construed as the proportionate ownership of such corporation and shall permit the inclusion of the earnings of such corporation applicable to the payment of dividends upon the stock so owned in the earnings of the issuer of the securities being registered by notification.

Revisor's Note

Subdivision (1), Subsection B, Article 581-7, Vernon's Texas Civil Statutes, refers to the date of registration "under this section," meaning Article 581-7, Vernon's Texas Civil Statutes. It is clear from the context of Subdivision (1) that the reference to the date of registration under "this section" refers to the date of registration of securities by notification under Subsection B, Article 581-7, revised as this subchapter, and not to the date of registration of securities under another provision of Article 581-7, and the revised law is drafted accordingly.

Revised Law

Sec. 4003.052. REGISTRATION STATEMENT REQUIRED. (a) To register securities by notification that are entitled to that registration, an issuer of the securities or a registered dealer must file with the commissioner a registration statement that complies with this section.

(b) A registration statement filed under this section must:

(1) be in the form the commissioner prescribes;
be signed by the applicant filing the statement; and

contain the following information:

(A) the name and business address of the main office of the issuer of the securities to be registered and the address of the issuer's principal office, if any, in this state;

(B) the title of the securities to be registered and the total amount of securities to be offered;

(C) the price at which the securities are to be offered for sale to the public, the amount of securities to be offered in this state, and the amount of the registration fee, computed as provided by Chapter 4006;

(D) a brief statement of the facts showing that the securities are entitled to be registered by notification;

(E) the name and business address of the applicant filing the statement;

(F) subject to Subsection (c) and except as provided by Section 4003.053, financial statements that include, for at least the three years preceding the date of registration:

(i) a certified income statement;

(ii) a certified balance sheet; and

(iii) a certified statement of stockholders' equity;

(G) a copy of any prospectus describing the securities; and

(H) a filing of a consent to service of process conforming to the requirements of Section 4001.102, if the issuer:

(i) is registering the securities; and

(ii) is not a resident of this state or incorporated or formed under the laws of this state.

(c) The financial statements described by Subsection (b)(3)(F) must reflect the financial condition of the issuer of the securities to be registered on a date not earlier than the 90th day before the date the issuer or registered dealer files the
registration statement.

(d) Filing a registration statement that complies with this section constitutes the registration of the securities by notification, subject to Section 4003.055. (V.A.C.S. Art. 581-7, Subsec. B, Subdiv. (2) (part), Subsec. D (part).)

Source Law

(Subsec. B)

(2) Securities entitled to registration by notification shall be registered by the filing with the Commissioner by the issuer or by a registered dealer of a registration statement as required by paragraph a of this subdivision, and . . . :

a. A registration statement in a form prescribed by the Commissioner signed by the applicant filing such statement and containing the following information:

1. Name and business address of main office of issuer and address of issuer's principal office, if any, in this state;
2. Title of securities being registered and total amount of securities to be offered;
3. Price at which securities are to be offered for sale to the public, amount of securities to be offered in this state, and amount of registration fee, computed as hereinafter provided;
4. A brief statement of the facts which show that the securities are entitled to be registered by notification;
5. Name and business address of the applicant filing the statement;
6. Financial statements to include a certified income statement, a certified balance sheet, and a certified statement of stockholders' equity, each to be for a period of not less than three (3) years prior to the date of registration. These financial statements shall reflect the financial condition of the issuer as of a date not more than ninety (90) days prior to the date of such filing with the Commissioner;
7. A copy of the prospectus, if any, describing such securities;
8. Filing of a consent to service of process conforming to the requirements of Section 8 of this Act, if the issuer is registering the securities and is not a resident of this state or is not incorporated under the laws of this state.

b. Such filing with the Commissioner shall constitute the registration of securities by notification and [such registration shall become effective five (5) days after receipt of the registration statement and all accompanying papers by the Commissioner; provided that the Commissioner may . . . waive or reduce the five (5) days waiting period]

D. . . . [the financial statements required in Subsections . . . B of this Section 7,] which must be as of a date not more than 90 days prior to the date of filing, . . . .
Revisor's Note

(1) Subparagraph 3, Paragraph a, Subdivision (2), Subsection B, Article 581-7, Vernon's Texas Civil Statutes, refers to the amount of the registration fee, computed "as hereinafter provided," meaning provided in The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), revised as this title. The revised law substitutes "as provided by Chapter 4006" for the quoted language because the relevant provision of The Securities Act pertaining to the computation of fees in connection with the registration of securities under that act is Article 581-35, Vernon's Texas Civil Statutes, which is revised in various provisions of Chapter 4006 of this title.

(2) Subparagraph 6, Paragraph a, Subdivision (2), Subsection B, Article 581-7, Vernon's Texas Civil Statutes, requires financial statements contained in a registration statement to include a certified income statement, balance sheet, and statement of stockholders' equity. However, Subsection D, Article 581-7, Vernon's Texas Civil Statutes, revised in relevant part as Section 4003.053 of this chapter, specifies that certain financial statements are not required to be certified. For clarity and the convenience of the reader, the revised law adds a reference to the exception provided by Section 4003.053 of this chapter.

(3) Subparagraph 8, Paragraph a, Subdivision (2), Subsection B, Article 581-7, Vernon's Texas Civil Statutes, refers to an issuer of securities that is not "incorporated" under the laws of this state. Throughout this chapter, the revised law adds a reference to "formed" to conform to the terminology of
the Business Organizations Code, which took effect January 1, 2006, and refers to the term "certificate of formation" to describe the document required to be filed with the secretary of state to form a domestic filing entity, including a corporation, an association, and certain partnerships, on or after January 1, 2006.

(4) Paragraph b, Subdivision (2), Subsection B, Article 581-7, Vernon's Texas Civil Statutes, provides that the filing of a registration statement under Paragraph a of that subdivision constitutes the registration of securities by notification. For the convenience of the reader, the revised law adds "subject to Section 4003.055" because a subsequent provision of Paragraph b, revised in relevant part as Section 4003.055 of this chapter, states when that registration takes effect.

Revised Law

Sec. 4003.053. EXCEPTION TO CERTIFICATION REQUIREMENT FOR FINANCIAL STATEMENTS. Financial statements filed as required by this subchapter are not required to be certified by an independent certified public accountant or independent public accountant if:

(1) the fiscal year of the issuer of the securities to be registered ended on a date earlier than the 90th day before the date of the filing; and

(2) financial statements in addition to those required by this subchapter are filed that:

(A) contain the information required by Section 4003.052; and

(B) are certified by an independent certified public accountant or independent public accountant as of the end of the issuer's preceding fiscal year. (V.A.C.S. Art. 581-7, Subsec. D (part).)
D. . . . If the fiscal year of the issuer terminated on a date more than 90 days prior to the date of the filing, then the financial statements required in Subsections . . . B of this Section 7, . . . need not be certified by an independent certified public or independent public accountant if there are filed in addition thereto financial statements containing the information required by the applicable subdivision which are certified by an independent certified public or independent public accountant as of the end of the preceding fiscal year of the issuer.

Revisor's Note
Subsection D, Article 581-7, Vernon's Texas Civil Statutes, provides that the financial statements required in Subsection B of that article do not need to be certified under certain circumstances if certified financial statements for the preceding fiscal year that contain the information required by the "applicable subdivision" are filed in addition to the required financial statements. The applicable provision of Subsection B pertaining to the requirements for financial statements under that subsection is Paragraph a, Subdivision (2), revised as Section 4003.052 of this chapter, and the revised law is drafted accordingly.

Revised Law
Sec. 4003.054. REGISTRATION PROCEDURES. (a) The commissioner shall complete the procedures specified by this section to register securities entitled to registration by notification.

(b) The commissioner shall:
(1) examine the registration statement filed under Section 4003.052 and the accompanying papers to determine their sufficiency under the requirements of this subchapter; and
(2) record the registration by notification of the securities described on receipt of:
(A) the registration statement;
any prospectus;

payment of the filing fee and registration fee; and

a consent to service of process, if required.

(V.A.C.S. Art. 581-7, Subsec. B, Subdiv. (2) (part); Art. 581-10, Subsec. B (part).)

Source Law

[Art. 581-7, Subsec. B]

(2) Securities entitled to registration by notification shall be registered by . . . completion of the procedures outlined in paragraph b of this subdivision:

. . .

b. . . . Upon the receipt of a registration statement, prospectus, if any, payment of the filing fee and registration fee, and, if required, a consent to service of process, the Commissioner shall record the registration by notification of the securities described. . . .

[Art. 581-10]

B. . . . [No permit instrument need be issued if securities are registered under Sections 7B . . . of this Act, but] the Commissioner will examine the registration papers to determine their sufficiency under the requirements there stated.

Revised Law

Sec. 4003.055. EFFECTIVE DATE OF REGISTRATION BY NOTIFICATION. (a) Except as provided by Subsection (b), the registration of securities by notification takes effect five days after the date the commissioner receives the registration statement filed under Section 4003.052 and all accompanying papers.

(b) The commissioner may waive or reduce the five-day waiting period if the commissioner determines that the public will not be injured by the waiver or reduction of the waiting period.

(V.A.C.S. Art. 581-7, Subsec. B, Subdiv. (2) (part).)

Source Law

(2) . . .

b. [Such filing with the Commissioner shall constitute the registration of securities by notification and] such registration shall become effective five (5) days after receipt of the registration statement and all accompanying papers by the Commissioner; provided that the Commissioner may in his discretion waive or reduce the five (5) days waiting period in any case where he finds no injury to the public will result therefrom. . . .
Revised Law

Sec. 4003.056. EFFECT OF REGISTRATION BY NOTIFICATION. On registration of securities by notification, the securities may be sold in this state by a registered dealer or a registered agent. (V.A.C.S. Art. 581-7, Subsec. B, Subdiv. (2) (part).)

Source Law

(2) ... b. ... Upon such registration by notification, securities may be sold in this state by registered dealers and registered salesmen. ...

Revisor's Note

Paragraph b, Subdivision (2), Subsection B, Article 581-7, Vernon's Texas Civil Statutes, refers to registered "salesmen." Before the enactment of Chapter 1091 (H.B. 2255), Acts of the 77th Legislature, Regular Session, 2001, Subsection D, Article 581-4, Vernon's Texas Civil Statutes, defined the terms "salesman" and "agent" with the same meaning. Section 2.01 of Chapter 1091 removed the defined term "salesman" from Subsection D, Article 581-4, and other provisions of Chapter 1091 either removed other references to "salesman" in The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), revised as this title, or, when appropriate, replaced references to "salesman" with references to "agent" in that act. Because the remaining reference to "salesmen" in Paragraph b is an oversight, the revised law substitutes "agent" for "salesmen."

Revised Law

Sec. 4003.057. TERM OF REGISTRATION. A registration of securities by notification is effective for one year. (V.A.C.S. Art. 581-7, Subsec. B, Subdiv. (2) (part).)

Source Law

(2) ... b. ... [the Commissioner shall
record the registration by notification of the
securities described.] Such registration shall be
effective for a period of one (1) year and . . . .

Revised Law

Sec. 4003.058. RENEWAL OF REGISTRATION. A registration of
securities by notification may be renewed for additional periods of
one year if:

(1) the securities are entitled to registration under
this subchapter at the time of renewal; and

(2) a new filing is made under this subchapter
together with the payment of the renewal fee of $10. (V.A.C.S. Art.
581-7, Subsec. B, Subdiv. (2) (part).)

Source Law

(2) . . . . [the Commissioner shall
record the registration by notification of the
securities described.] Such registration . . . may be
renewed for additional periods of one (1) year, if the
securities are entitled to registration under this
subsection at the time of renewal, by a new filing
under this section together with the payment of the
renewal fee of Ten Dollars ($10.00).

Revised Law

Sec. 4003.059. INSUFFICIENT OR FRAUDULENT REGISTRATION
STATEMENT. (a) If at any time, in the commissioner's opinion, the
information in a registration statement filed under this subchapter
is insufficient to establish that the securities described in the
statement are or were entitled to registration by notification
under this subchapter, or that the registration information
contains or contained false, misleading, or fraudulent facts, the
commissioner may order the applicant who filed the statement to
cease and desist from selling or offering for sale the securities
registered or proposed to be registered by notification under this
subchapter until additional information is filed with the
commissioner that in the commissioner's judgment is necessary to
establish that those securities are or were entitled to
registration by notification under this subchapter.

(b) The provisions of Section 4007.107 relating to hearings
apply to an order entered under this section. (V.A.C.S. Art. 581-7,
Subsec. B, Subdiv. (2) (part).

Source Law

(2) .. .

c. If at any time, before or after registration of securities under this section, in the opinion of the Commissioner the information in a registration statement filed with him is insufficient to establish the fact that the securities described therein are, or were, entitled to registration by notification under this section, or that the registration information contains, or contained, false, misleading or fraudulent facts, he may order the applicant who filed such statement to cease and desist from selling, or offering for sale, such securities registered, or proposed to be registered, under provisions of this section, until there is filed with the Commissioner such further information as may in his judgment be necessary to establish the fact that such securities are, or were, entitled to registration under this section. The provisions of Section 24 of this Act as to hearing shall be applicable to an order issued hereunder.

Revisor's Note

(1) Paragraph c, Subdivision (2), Subsection B, Article 581-7, Vernon's Texas Civil Statutes, provides that the securities commissioner may issue a cease and desist order if "at any time, before or after registration of securities under this section" the commissioner is of the opinion that information in a registration statement is insufficient or that registration information contains false, misleading, or fraudulent facts. The revised law omits the reference to "before or after registration of securities under this section" as unnecessary because the phrase is included within the meaning of "at any time."

(2) Paragraph c, Subdivision (2), Subsection B, Article 581-7, Vernon's Texas Civil Statutes, refers to the registration of securities under "this section" and contains other similar references with respect to registration by notification. It is clear from the context that the registration references to "this section" refer to registration by notification under
Article 581-7, Vernon's Texas Civil Statutes. The applicable provision of Article 581-7 that authorizes registration by notification is Subsection B, revised as this subchapter, and the revised law is drafted accordingly.

SUBCHAPTER C. REGISTRATION BY COORDINATION

Revised Law

Sec. 4003.101. ELIGIBILITY FOR REGISTRATION BY COORDINATION. A security may be registered by coordination if a registration statement has been filed under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) in connection with the same offering. (V.A.C.S. Art. 581-7, Subsec. C, Subdiv. (1) (part).)

Source Law

C. Registration by Coordination. (1) Any security for which a registration statement has been filed under the federal Securities Act of 1933, as amended, in connection with the same offering, may be registered by coordination. . . .

Revisor's Note

Subdivision (1), Subsection C, Article 581-7, Vernon's Texas Civil Statutes, refers to the "federal Securities Act of 1933, as amended." The revised law substitutes "Securities Act of 1933 (15 U.S.C. Section 77a et seq.)" for the quoted language for the following reasons. The revised law substitutes "Securities Act of 1933" for "federal Securities Act of 1933" because 15 U.S.C. Section 77a provides that the proper citation for the act is "Securities Act of 1933." The revised law omits "as amended" because under Section 311.027, Government Code (Code Construction Act), applicable to the revised law, unless expressly provided otherwise, a reference to a statute or rule applies to all reenactments, revisions, or amendments of the statute or rule. For the convenience of the reader, the revised law also includes a reference to the United States Code citation for the entire act.
Sec. 4003.102. REGISTRATION STATEMENT REQUIRED. To register securities by coordination, an issuer of the securities or a registered dealer must file with the commissioner a registration statement that contains:

1. the following information:
   a. the amount of securities to be offered in this state;
   b. the states in which a registration statement or similar document in connection with the offering has been or is expected to be filed; and
   c. any adverse order, judgment, or decree previously entered in connection with the offering by a court or the Securities and Exchange Commission;

2. one copy of the prospectus filed under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) together with all amendments to the prospectus;

3. a copy of:
   a. the articles of incorporation and bylaws, or their substantial equivalents, currently in effect;
   b. any agreements with or among underwriters; and
   c. any indenture or other instrument governing the issuance of the securities to be registered;

4. a specimen or copy of the security;

5. any other information or copies of any other documents filed under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) the commissioner requests;

6. an undertaking to promptly forward all amendments to the federal registration statement other than an amendment that delays the effective date only; and

7. a consent to service of process conforming to the requirements of Section 4001.102 if:
the registration statement is filed by the
issuer or by a dealer that will offer the securities for sale as the
issuer's agent; and

the issuer is not a resident of this state or
incorporated or formed under the laws of this state. (V.A.C.S. Art.
581-7, Subsec. C, Subdiv. (1) (part).)

Source Law

(1) . . . A registration statement under
this section shall be filed with the Commissioner by
the issuer or any registered dealer, shall contain the
following information, and shall be accompanied by the
following documents:

a. One copy of the prospectus filed
under the Securities Act of 1933 together with all
amendments thereto;

b. The amount of securities to be
offered in this state;

c. The states in which a registration
statement or similar document in connection with the
offering has been or is expected to be filed;

d. Any adverse order, judgment or
decree previously entered in connection with the
offering by any court or the Securities and Exchange
Commission;

e. A copy of the articles of
incorporation and by-laws (or their substantial
equivalents) currently in effect, a copy of any
agreements with or among underwriters, a copy of any
indenture or other instrument governing the issuance
of the security to be registered, and a specimen or
copy of the security;

f. If the Commissioner requests any
other information, or copies of any other documents,
filed under the Federal Securities Act of 1933;

g. An undertaking to forward promptly
all amendments to the federal registration statement,
other than an amendment which merely delays the
effective date; and

h. If the registration statement is
filed by the issuer, or by a dealer who will offer such
securities for sale as the agent of the issuer, and the
issuer is not a resident of this state or is not
incorporated under the laws of this state, a consent to
service of process conforming to the requirements of
Section 8.

Revisor's Note

Subdivision (1), Subsection C, Article 581-7,
Vernon's Texas Civil Statutes, refers to a
registration statement "under this section," meaning
Article 581-7, Vernon's Texas Civil Statutes. It is
clear from the context of Subsection C, Article 581-7,
that the reference to a registration statement "under

this section" refers to a registration statement for securities registered by coordination under Subsection C, Article 581-7, revised as this subchapter, and not a registration statement for securities registered by notification under Subsection B, Article 581-7, revised as Subchapter B of this chapter, and the revised law is drafted accordingly.

Revised Law

Sec. 4003.103. EXAMINATION OF AND DETERMINATION ON REGISTRATION STATEMENT. (a) In this section, "price amendment" means the final federal amendment that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent on the offering price.

(b) The commissioner shall examine a registration statement filed under Section 4003.102 and the accompanying documents on receipt.

(c) The commissioner may enter an order denying registration of the securities to be registered under the registration statement if after the examination the commissioner determines that the registrant has not proven that:

(1) the proposed plan of business of the issuer of the securities is fair, just, and equitable;

(2) any consideration paid or to be paid by promoters for the securities is fair, just, and equitable if that consideration is less than the proposed offering price to the public; and

(3) the securities the registrant proposes to issue and the methods to be used by the registrant in issuing and disposing of the securities will not work a fraud upon the purchaser of the securities.

(d) If the commissioner enters an order denying the registration of securities under this subchapter, the commissioner
shall notify the registrant immediately.

(e) A registration statement under this subchapter becomes effective automatically at the moment the federal registration statement becomes effective if all of the following conditions are satisfied:

(1) the commissioner has not entered an order denying registration of the securities;

(2) the registration statement has been on file with the commissioner for at least 10 days; and

(3) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two full business days or a shorter period as the commissioner expressly permits and the offering is made within those limitations.

(f) The commissioner may waive either or both of the conditions specified in Subsections (e)(2) and (3).

(g) The registrant shall promptly:

(1) notify the commissioner by telephone or telegram of the date and time when the federal registration statement became effective and the content of any price amendment; and

(2) file a post-effective amendment containing the information and documents in the price amendment.

(h) The commissioner may enter a stop order, without notice or hearing, retroactively denying effectiveness to or suspending effectiveness of the registration statement until the registrant complies with this subchapter if the commissioner:

(1) does not receive the notification and post-effective amendment required under Subsection (g); and

(2) promptly notifies the registrant by telephone or telegram of the issuance of the stop order, and promptly confirms by letter or telegram if the commissioner notifies by telephone.

(i) A stop order entered under Subsection (h) is void from the time of the order's entry if the registrant proves compliance with the notice and post-effective amendment requirements of this
If the federal registration statement becomes effective before all conditions under this section are satisfied and the conditions are not waived, the registration statement becomes effective automatically when all the conditions are satisfied.

If the registrant advises the commissioner of the date the federal registration statement is expected to become effective, the commissioner shall promptly advise the registrant by telephone or telegram, at the registrant's expense, whether all the conditions are satisfied and whether the commissioner then contemplates the issuance of an order denying registration. This advice by the commissioner does not preclude the issuance of the order at any time. (V.A.C.S. Art. 581-7, Subsec. C, Subdiv. (2) (part); Art. 581-10, Subsec. B (part).)

Source Law

[Art. 581-7, Subsec. C]

(2) Upon receipt of a registration statement under this section the Commissioner shall examine such registration statement and he may enter an order denying registration of the securities described therein if he finds that the registrant has not proven the proposed plan of business of the issuer to be fair, just and equitable, and also that any consideration paid, or to be paid, for such securities by promoters is fair, just and equitable when such consideration for such securities is less than the proposed offering price to the public, and that the securities which it proposes to issue and the methods to be used by it in issuing and disposing of the same will be such as will not work a fraud upon the purchaser thereof. If the Commissioner enters an order denying the registration of securities under this section, he shall notify the registrant immediately. . . . A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied:

a. No order has been entered by the Commissioner denying registration of the securities;

b. The registration statement has been on file with the Commissioner for at least ten (10) days; and

c. A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two full business days or such shorter period as the Commissioner expressly permits and the offering is made within those limitations. The registrant shall promptly notify the Commissioner by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall
promptly file a post-effective amendment containing
the information and documents in the price amendment.
"Price amendment" means the final federal amendment
which includes a statement of the offering price,
underwriting and selling discounts or commissions,
amount of proceeds, conversion rates, call prices, and
other matters dependent upon the offering price.
Upon failure to receive the required notification
and post-effective amendment with respect to the price
amendment, the Commissioner may enter a stop order,
without notice or hearing, retroactively denying
effectiveness to the registration statement or
suspending its effectiveness until compliance with
this subsection, if he promptly notifies the
registrant by telephone or telegram (and promptly
confirms by letter or telegram when he notifies by
telephone) of the issuance of the order. If the
registrant proves compliance with the requirements of
this subsection as to notice and post-effective
amendment, the stop order is void as of the time of its
entry. The Commissioner may waive either or both of
the conditions specified in clauses b and c. If the
federal registration statement becomes effective
before all these conditions are satisfied and they are
not waived, the registration statement automatically
becomes effective as soon as all the conditions are
satisfied. If the registrant advises the Commissioner
of the date when the federal registration statement is
expected to become effective the Commissioner shall
promptly advise the registrant by telephone or
telegram, at the registrant's expense, whether all the
conditions are satisfied and whether he then
contemplates the issuance of an order denying
registration; but this advice by the Commissioner
does not preclude the issuance of such an order at any
time.

[Art. 581-10]

B. . . . [No permit instrument need be issued if
securities are registered under Sections 7B or C of
this Act, but] the Commissioner will examine the
registration papers to determine their sufficiency
under the requirements there stated.

Revisor's Note

(1) Subdivision (2), Subsection C, Article
581-7, Vernon's Texas Civil Statutes, refers to a
registration statement "under this section," meaning
Article 581-7, Vernon's Texas Civil Statutes. It is
clear from the context of Subsection C, Article 581-7,
that the reference to a registration statement "under
this section" refers to a registration statement for
securities registered by coordination under
Subsection C, Article 581-7, revised as this
subchapter, and not a registration statement for
securities registered by notification under
Subsection B, Article 581-7, revised as Subchapter B of this chapter, and the revised law is drafted accordingly.

(2) Subdivision (2), Subsection C, Article 581-7, Vernon's Texas Civil Statutes, refers to an order by the securities commissioner denying the registration of securities "under this section," meaning Article 581-7, Vernon's Texas Civil Statutes. It is clear from the context of Subdivision (2), Subsection C, Article 581-7, Vernon's Texas Civil Statutes, that the reference to an order by the commissioner denying the registration of securities "under this section" refers to an order by the commissioner denying the registration of securities by coordination under Subsection C, Article 581-7, revised as this subchapter, and not an order denying the registration of securities by notification under Subsection B, Article 581-7, revised as Subchapter B of this chapter, and the revised law is drafted accordingly.

(3) Subdivision (2), Subsection C, Article 581-7, Vernon's Texas Civil Statutes, states that Section 24 of The Securities Act (Article 581-24, Vernon's Texas Civil Statutes), revised in this title as Section 4007.107, applies to a hearing on an order denying the registration of securities under Article 581-7 of that act, the relevant portion of which is revised as this subchapter. The revised law omits that provision as unnecessary because Article 581-24 applies by its own terms. The omitted law reads:

(2) ... The provisions of Section 24 of this Act as to hearing shall be applicable to an order issued hereunder.

(4) Paragraph c, Subdivision (2), Subsection C,
Article 581-7, Vernon's Texas Civil Statutes, refers
to the conditions specified in "clauses b and c,"
meaning Paragraphs b and c, Subdivision (2),
Subsection C, Article 581-7, Vernon's Texas Civil
Statutes. The provisions of Paragraphs b and c that
specify conditions under those paragraphs are revised
respectively as Subsections (e)(2) and (3) of this
section, and the revised law is drafted accordingly.

Revised Law
Sec. 4003.104. TERM OF REGISTRATION. (a) Except as
provided by this section, a registration by coordination of
securities under this subchapter is effective until the first
anniversary of the date the commissioner declares the registration
to be effective.

(b) The initial registration by coordination of securities
of an open-end investment company, as defined by the Investment
Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), is effective
until two months after the end of the issuer's fiscal year.

(c) The registration by coordination of securities of a unit
investment trust, as defined by the Investment Company Act of 1940
(15 U.S.C. Section 80a-1 et seq.), is effective until the first
anniversary of the date of effectiveness granted by the Securities
(3) (part).)

Source Law
(3) Registration of securities under this
subsection shall be effective for the following
periods:

a. The initial registration of
securities of an open-end investment company, as
defined in the Investment Company Act of 1940, shall be
effective until two (2) months after the end of the
issuer's fiscal year...

b. The registration of securities of
a unit investment trust, as defined in the Investment
Company Act of 1940, shall be effective until one (1)
year from the date of effectiveness granted by the
federal Securities and Exchange Commission.

c. Any other registration of
securities shall be effective for a period of one (1)
year from the date the registration is declared
effective by the Commissioner.
Paragraphs a and b, Subdivision (3), Subsection C, Article 581-7, Vernon's Texas Civil Statutes, refer to the "Investment Company Act of 1940." For the convenience of the reader, the revised law includes references to the United States Code citation for the entire act.

Revised Law
Sec. 4003.105. RENEWAL OF REGISTRATION. (a) Except as provided by Subsection (b) and subject to Subsection (c), a registration of securities under Section 4003.104 may be renewed for additional periods of one year if the appropriate registration forms and renewal fees are received before the expiration date of the registration to be renewed.

(b) Subject to Subsection (c), for renewal of the initial registration of securities described by Section 4003.104(b), the issuer or the issuer's agent may renew the registration by submitting the appropriate registration forms and renewal fees not later than two months after the end of the issuer's fiscal year.

(c) The same standards of fairness, justice, and equity prescribed by this subchapter for original approval of a registration apply to the renewal of the registration. (V.A.C.S. Art. 581-7, Subsec. C, Subdivs. (3) (part), (4).)

Source Law
(3) a. . . . After the initial registration, the issuer or its agent may renew the registration by submitting the appropriate registration forms and renewal fees within two (2) months after the end of the issuer's fiscal year.

(4) Registrations of securities under subdivision (3) may be renewed for additional periods of one (1) year if the appropriate registration forms and renewal fees are received prior to the expiration date. The same standards of fairness, justice and equity as prescribed by this subsection for original approval will apply to the renewal of all registrations.

SUBCHAPTER D. PROHIBITED SALES
Sec. 4003.151. CERTAIN SALES PROHIBITED. If the sale of a security entitles the purchaser or subsequent holder to exchange that security for another, or to purchase another security, the sale of, including an exchange for, the other security may not be made unless the sale is authorized under this title, if not exempt under this title, or by another provision of law. (V.A.C.S. Art. 581-4, Subsec. E (part).)

Source Law

E. . . . The sale of a security under conditions which entitle the purchaser or subsequent holder to exchange the same for, or to purchase some other security, . . . no exchange for or sale of such other security shall ever be made unless and until the sale thereof shall have been first authorized in Texas under this Act, if not exempt hereunder, or by other provisions of law.

Revisor's Note

(1) Subsection E, Article 581-4, Vernon's Texas Civil Statutes, refers to an "exchange for or sale of" a certain security. The revised law substitutes "sale of, including an exchange for," for the quoted language because the portion of Subsection E, Article 581-4, Vernon's Texas Civil Statutes, revised as Section 4001.067 of this title defines "sale" for the purposes of the law revised as this title to include every disposition of a security for value, including an agreement in which a security is exchanged for money or another thing of value.

(2) Subsection E, Article 581-4, Vernon's Texas Civil Statutes, refers to "unless and until." The revised law omits "until" because, in context, the meaning of that word is included within the meaning of "unless."

(3) Subsection E, Article 581-4, Vernon's Texas Civil Statutes, provides that a sale of or exchange for a security may not be made unless the sale of the...
security is first authorized "in Texas under this Act," meaning The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes). The provisions of The Securities Act are revised as this title. The revised law throughout this chapter therefore substitutes references to "this title" for references to "this Act." The revised law also omits "in Texas" as unnecessary because a sale of a security authorized under The Securities Act is authorized "in Texas."

SUBCHAPTER E. REGULATION OF OFFERS

Revised Law
Sec. 4003.201. DEFINITION. In this subchapter, "broadcast offer" means an offer disseminated by radio, television, recorded telephone presentation, or other mass media. (V.A.C.S. Art. 581-22, Subsecs. A (part), B (part).)

Source Law
A. . . . a broadcast offer (i.e., an offer disseminated by radio, television, recorded telephone presentation, or other mass media) . . . .
B. . . . [An oral] offer ([not] broadcast, [i.e., not] disseminated by radio, television, recorded telephone presentation, or other mass media) . . . .

Revised Law
Sec. 4003.202. APPLICABILITY. This subchapter does not apply to transactions or securities exempt under Chapter 4005. (V.A.C.S. Art. 581-22, Subsec. E.)

Source Law
E. Applicability. Section 22 does not apply to transactions or securities exempt under Section 5 or Section 6.

Revisor's Note
Subsection E, Article 581-22, Vernon's Texas Civil Statutes, refers to transactions or securities exempt "under Section 5 or Section 6," meaning Article 581-5 or 581-6, Vernon's Texas Civil Statutes. The relevant provisions of Articles 581-5 and 581-6 pertaining to exempt transactions and securities are
revised in Chapter 4005 of this title, and the revised law is drafted accordingly.

Revised Law

Sec. 4003.203. AUTHORIZED WRITTEN, PRINTED, OR BROADCAST OFFERS. A person may make in this state a written or printed offer, including a pictorial demonstration with any accompanying script, or broadcast offer to sell a security if:

(1) a copy of the offer is filed with the commissioner not later than the 10th day after the date of the offer's first use in this state;

(2) the person making or distributing the offer is a registered dealer or registered agent of a registered dealer;

(3) either:
   (A) the security is registered under Subchapter B or C or the commissioner has issued a permit qualifying securities for sale for the security under Subchapter A; or
   (B) an application for registration under Subchapter B or C or for a permit under Subchapter A has been filed with the commissioner;

(4) for a registration for the security that has not become effective under Subchapter B or C or for a permit that has not been issued under Subchapter A, the offer prominently states on the first page of a written or printed offer or as a preface to any pictorial or broadcast offer either:
   (A) "INFORMATIONAL ADVERTISING ONLY. THE SECURITIES HEREIN DESCRIBED HAVE NOT BEEN QUALIFIED OR REGISTERED FOR SALE IN TEXAS. ANY REPRESENTATION TO THE CONTRARY OR CONSUMMATION OF SALE OF THESE SECURITIES IN TEXAS PRIOR TO QUALIFICATION OR REGISTRATION THEREOF IS A CRIMINAL OFFENSE."; or
   (B) other language required by the Securities and Exchange Commission that in the commissioner's opinion will inform investors that the securities may not yet be sold;

(5) the person making or distributing the offer in this state:
(A) has not received written notice of an order prohibiting the offer under Section 4007.101 or 4007.102; or
(B) has received notice of an order described by Paragraph (A) but the order is no longer in effect; and
(6) payment is not accepted from the offeree and no contract of sale is made before registration of the security is effective under Subchapter B or C or a permit is issued under Subchapter A. (V.A.C.S. Art. 581-22, Subsec. A (part).)

Source Law
Art. 581-22. A. Permitted Written, Pictorial, or Broadcast Offers. A written or printed offer (including a pictorial demonstration with any accompanying script) or a broadcast offer . . . to sell a security may be made in this State if:
(1) a copy of the offer is filed with the Commissioner within 10 days after the date of its first use in this State; and
(2) the person making or distributing the offer in this State is a registered dealer or a registered agent of a registered dealer, as required by this Act; and
(3) either:
   (a) the security is registered under Subsection B or C of Section 7 or a permit has been granted for the security under Section 10, or
   (b) an application for registration under Subsection B or C of Section 7 or for a permit under Section 10 has been filed with the Commissioner; and
(4) if registration has not become effective under Subsection B or C of Section 7 or a permit has not been granted under Section 10, the offer prominently states on the first page of a written or printed offer or as a preface to any pictorial or broadcast offer either:
   (a) INFORMATIONAL ADVERTISING ONLY.
   The securities herein described have not been qualified or registered for sale in Texas. Any representation to the contrary or consummation of sale of these securities in Texas prior to qualification or registration thereof is a criminal offense.
   or
   (b) other language required by the United States Securities and Exchange Commission that in the Commissioner’s opinion will inform investors that the securities may not yet be sold; and
(5) the person making or distributing the offer in this State;
(a) has not received notice in writing of an order prohibiting the offer under Subsection A or B of Section 23, or
(b) has received such notice but the order is no longer in effect; and
(6) payment is not accepted from the offeree and no contract of sale is made before registration is effective under Subsection B or C or a permit is granted under Section 10.
Revisor's Note

(1) Subdivision (2), Subsection A, Article 581-22, Vernon's Texas Civil Statutes, requires a person making or distributing a written, printed, or broadcast offer in this state to be a registered dealer or a registered agent of a registered dealer, "as required by this Act," meaning The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), revised as this title. The revised law omits the quoted language as unnecessary because the provisions of that act that require a person to be a registered dealer or a registered agent of a registered dealer before making or distributing an offer in this state apply by their own terms.

(2) Subdivisions (3), (4), and (6), Subsection A, Article 581-22, Vernon's Texas Civil Statutes, refer to a permit issued "under Section 10," meaning Article 581-10, Vernon's Texas Civil Statutes. The provisions of Article 581-10 pertaining to an application for and the issuance of a permit are revised in Subchapter A of this chapter, and the revised law is drafted accordingly.

Revised Law

Sec. 4003.204. AUTHORIZED ORAL OFFERS. (a) In this section, "oral offer" means an offer that is not a broadcast offer.

(b) A person may make in this state an oral offer to sell a security in person, by telephone, or by other direct individual communication if:

(1) the person making the offer is a registered dealer or registered agent of a registered dealer;

(2) either:

(A) the security is registered under Subchapter B or C or the commissioner has issued a permit qualifying securities for sale for the security under Subchapter A; or
an application for registration under Subchapter B or C or for a permit under Subchapter A has been filed with the commissioner;

(3) the person making or distributing the offer:
   (A) has not received written notice of an order prohibiting the offer under Section 4007.101 or 4007.102; or
   (B) has received notice of an order described by Paragraph (A) but the order is no longer in effect; and

(4) payment is not accepted from the offeree and no contract of sale is made before registration of the security is effective under Subchapter B or C or a permit is issued under Subchapter A. (V.A.C.S. Art. 581-22, Subsec. B (part).)

Source Law

B. Permitted Oral Offers. An oral offer (not broadcast, i.e., not [disseminated by radio, television, recorded telephone presentation, or other mass media]) to sell a security may be made in this State in person, by telephone, or by other direct individual communication if:

(1) the person making the offer in this State is a registered dealer or a registered agent of a registered dealer, as required by this Act; and

(2) either:
   (a) the security is registered under Subsection B or C of Section 7 or a permit has been granted for the security under Section 10, or
   (b) an application for registration under Subsection B or C of Section 7 or for a permit under Section 10 has been filed with the Commissioner; and

(3) the person making or distributing the offer in this State:
   (a) has not received notice in writing of an order prohibiting the offer under Subsection A or B of Section 23, or
   (b) has received such notice but the order is no longer in effect; and

(4) payment is not accepted from the offeree and no contract of sale is made before registration is effective under Subsection B or C of Section 7 or before a permit is granted under Section 10.

Revisor's Note

Subdivision (1), Subsection B, Article 581-22, Vernon's Texas Civil Statutes, requires a person making an oral offer in this state to be a registered dealer or a registered agent of a registered dealer, "as required by this Act," meaning The Securities Act
(Article 581-1 et seq., Vernon's Texas Civil Statutes), revised as this title. The revised law omits the quoted language as unnecessary for the reason stated in Revisor's Note (1) to Section 4003.203.

Revised Law
Sec. 4003.205. DEALER NAMED IN OFFER. A dealer whose name is included in a written, printed, or broadcast offer along with the name of a registered dealer is not deemed, on that fact alone, to have made an offer in this state to sell a security. (V.A.C.S. Art. 581-22, Subsec. F.)

Source Law
F. Dealers Named in Offer. A dealer whose name is included in a written or printed or broadcast offer along with the name of a registered dealer is not deemed to make an offer in this State by that fact alone.

Revised Law
Sec. 4003.206. EFFECT OF COMPLIANCE OR NONCOMPLIANCE. (a) An offer to sell a security that complies with Section 4003.203 or 4003.204 does not violate Subchapter A, B, or C.
(b) An offer to sell a security that does not comply with Section 4003.203 or 4003.204 violates this title. (V.A.C.S. Art. 581-22, Subsecs. C, D.)

Source Law
C. Effect of Compliance. An offer in compliance with Subsection A or B of Section 22 is not a violation of Section 7.
D. Effect of Noncompliance. An offer not in compliance with Subsection A or B of Section 22 is unlawful and a violation of this Act.

Revisor's Note
Subsection D, Article 581-22, Vernon's Texas Civil Statutes, provides that an offer that does not comply with Subsection A or B of that article is "unlawful and a violation of this Act." The revised law omits the reference to "unlawful" because, in context, "unlawful" is included within the meaning of
"violation of this Act."

SUBCHAPTER F. CROWDFUNDING

Revised Law

Sec. 4003.251. DEFINITION. In this subchapter, "authorized small business development entity" means:

(1) a Type A corporation authorized under Chapter 504, Local Government Code;

(2) a Type B corporation authorized under Chapter 505, Local Government Code;

(3) a nonprofit organization authorized by an agency or authority of the federal government to distribute housing and community development block grants;

(4) a municipal corporation;

(5) the Texas Veterans Commission; or

(6) a nonprofit community development financial institution certified by the Community Development Financial Institutions Fund. (V.A.C.S. Art. 581-44, Subsec. (c).)

Source Law

(c) In this section, "authorized small business development entity" means:

(1) a Type A corporation authorized under Chapter 504, Local Government Code;

(2) a Type B corporation authorized under Chapter 505, Local Government Code;

(3) a nonprofit organization authorized by an agency or authority of the federal government to distribute housing and community development block grants;

(4) a municipal corporation;

(5) the Texas Veterans Commission; or

(6) a nonprofit community development financial institution certified by the Community Development Financial Institutions Fund.

Revised Law

Sec. 4003.252. CROWDFUNDING. (a) The board shall adopt rules to regulate and facilitate online intrastate crowdfunding applicable to authorized small business development entities. The board may create other requirements necessary to carry out this subchapter.

(b) The rules must:

(1) allow an authorized small business development
entity to list on the entity's web portal offerings of securities by issuers in which the entity is financially interested;

(2) allow an authorized small business development entity and the entity's web portal to list offerings of securities without offering investment advice;

(3) allow an authorized small business development entity to subcontract the operations of a crowdfunding web portal to a third party as permitted by board rule; and

(4) limit the offerings of securities on an authorized small business development entity's web portal to securities of issuers located within the service area of the entity. (V.A.C.S. Art. 581-44, Subsecs. (a), (b).)

Source Law

Art. 581-44. (a) The Board shall adopt rules to regulate and facilitate online intrastate crowdfunding applicable to authorized small business development entities. The Board may create other requirements necessary to carry out this section.

(b) The rules for authorized small business development entities must:

(1) allow authorized small business development entities to list on their web portals offerings of securities by issuers in which they are financially interested;

(2) allow authorized small business development entities and their portals to list offerings of securities without offering investment advice;

(3) allow authorized small business development entities to subcontract the operations of a crowdfunding web portal to a third party as permitted by Board rule; and

(4) limit the offerings of securities on an authorized small business development entity's web portal to securities of issuers located within the service area of the authorized small business development entity.

Revisor's Note

Subdivision (2), Subsection (b), Article 581-44, Vernon's Texas Civil Statutes, refers to small business entities' "portals." Subdivisions (1) and (3), Subsection (b), Article 581-44, refer to the entities' "web portals" and to a crowdfunding "web portal," respectively. The revised law substitutes "web portal" for "portals" for consistency with the
terminology used within the section and because in context, the quoted phrases are synonymous.

SUBCHAPTER G. PROTECTION FOR PURCHASERS OF SECURITIES

Revised Law

Sec. 4003.301. DEPOSIT IN TRUST ACCOUNT. (a) If the commissioner considers it necessary to protect the interests of prospective purchasers of securities a company sells or offers for sale, the commissioner may require the company to deposit in a trust account at a bank or trust company approved by the commissioner and doing business in this state:

(1) all or part of the proposed securities; or

(2) subject to Subsection (b), all or part of the money and other funds received from the sale of those securities.

(b) A company is not required to deposit funds received from the sale of securities in a trust account to the extent the commissioner considers the funds necessary to be used, provided that the amount of the funds the company is not required to deposit does not exceed the amount allowed as expenses and commissions for the sale of the securities.

(c) The funds must remain on deposit until the proposed or existing company sells a specified monetary amount or number of shares of the securities that in the commissioner's opinion will reasonably assure the public's protection.

(d) When the commissioner makes a written determination that the terms of the escrow agreement have been fully met, the bank or trust company in which the funds of a proposed or existing corporation are deposited in a trust account as provided by this section shall transfer to the corporation and the corporation's executive officers the funds to allow the corporation to use the securities or money in the corporation's business.

(e) If a proposed or existing company that deposits funds in a trust account as provided by this section does not sell the minimum amount of capital necessary under the escrow agreement within two years, the commissioner may authorize the bank or trust
company at which the funds are deposited to return to the
subscribers the portion of the funds that were deposited or
escrowed under the escrow agreement. The bank or trust company
shall return the funds to the subscribers on receipt of
authorization from the commissioner under this subsection. If the
bank or trust company holds securities under the escrow agreement,
the bank or trust company may return the securities to the
corporation only after the bank or trust company receives from the
issuer evidence of cancellation thereof.

(f) A dealer or issuer of securities shall provide to the
commissioner and the bank or trust company at the time the dealer or
issuer makes the deposit required by this section:

(1) the names of the purchasers of or subscribers for
the securities; and

(2) the amount of money paid by each. (V.A.C.S. Art.
581-9, Subsec. A.)

Source Law

Art. 581-9. A. In the event any company, as
defined herein, shall sell, or offer for sale, any
securities, as defined in this Act, the Commissioner,
if he deems it necessary to protect the interests of
prospective purchasers of such securities, may require
the company so offering such securities for sale to
deposit all, or any part, of the proposed securities, or all, or any part, of the moneys and funds received
from the sale thereof, except such amounts thereof as
the Commissioner deems necessary to be used, and not to
exceed the amount allowed as expenses and commissions
for the sale of such securities, to be deposited in a
trust account in some bank or trust company approved by
the Commissioner and doing business in the State of
Texas, until such time as such proposed company or
existing company shall have sold a specified monetary
amount or number of shares of such securities as in his
opinion will reasonably assure protection of the
public. When the Commissioner makes a written finding
that the terms of the escrow agreement have been fully
met, the bank or trust company shall transfer such
funds to the proposed or existing corporation and its
executive officers for the purpose of permitting it to
use such securities or money in its business. In the
event such proposed or existing company shall fail
within two (2) years to sell the minimum amount of
capital necessary under the escrow agreement, the
Commissioner may authorize, and the bank or trust
company shall return to the subscribers, upon receipt
of such authority from the Commissioner, that portion
of the funds which were deposited or escrowed under
such escrow agreement; provided, however, that any
securities held by such bank or trust company under the
escrow agreement shall be returned to the corporation only after the bank or trust company has received evidence of cancellation thereof from the issuer. At the time of making the deposits, as herein provided for, the dealer or issuer shall furnish to such bank or trust company, and to the Commissioner, the names of the persons purchasing or subscribing for such securities, and the amount of money paid in by each.

Revisor's Note

Subsection A, Article 581-9, Vernon's Texas Civil Statutes, refers to any company, "as defined herein," and any securities, "as defined in this Act," meaning The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), revised as this title. The revised law omits the quoted language as unnecessary because the definitions of "company" and "securities" in that act, revised respectively as Sections 4001.064 and 4001.068 of this title, apply by their own terms.

Revised Law

Sec. 4003.302. MARKETING EXPENSES. (a) Total expenses for marketing securities, including all commissions for the sale of the securities, and all other incidental selling expenses, may not in the aggregate exceed 20 percent of the price at which the stock or other securities of a proposed or existing company are to be sold or offered for sale to the public of this state.

(b) The commissioner may reduce the percentage listed in Subsection (a) to a percentage that in the commissioner's opinion is fair, just, and equitable under the facts of the particular case. (V.A.C.S. Art. 581-9, Subsec. B.)

Source Law

B. The total expenses for marketing securities, including all commissions for the sale of such securities, and all other incidental selling expenses, shall not in the aggregate exceed twenty per cent (20%) of the price at which the stock or other securities of any proposed or existing company are to be sold, or offered for sale, to the public of this State; and this amount may be limited by the Commissioner to a less percentage which is in his opinion fair, just and equitable under the facts of the particular case.

Revised Law

Sec. 4003.303. PROSPECTUS REQUIRED FOR CERTAIN OFFERS. (a)
Except as provided by Subsection (b), the commissioner shall require that, in connection with a permit qualifying securities for sale, all offers for the sale of the securities be made through a prospectus that:

(1) fairly discloses the material facts about the plan of finance and business; and

(2) must be filed with and approved by the commissioner.

(b) The prospectus requirements of this section are satisfied if the applicant files a prospectus or offering circular with the commissioner that is also filed with the Securities and Exchange Commission under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) or the regulations under that law.

(c) Failure to comply with the prospectus requirements of this section violates this title. (V.A.C.S. Art. 581-9, Subsec. C.)

Source Law

C. In connection with any permit to sell securities the Commissioner shall require all offers for sale of said securities to be made through and by prospectus which fairly discloses the material facts about the plan of finance and business. Said prospectus shall be filed with and approved by the Commissioner; provided, however, if the applicant files a prospectus or offering circular with the Commissioner which is also filed with the S.E.C. under the Securities Act of 1933, as amended, or the regulations thereunder, this subsection shall in all respects be satisfied. Failure to comply with this requirement shall be treated as a violation of this Act, subjecting the parties responsible to the consequences thereof as provided herein.

Revisor's Note

(1) Subsection C, Article 581-9, Vernon's Texas Civil Statutes, refers to a prospectus or offering circular filed with the "S.E.C." under the Securities Act of 1933. The revised law substitutes a reference to the "Securities and Exchange Commission" because that is the full name of that agency.

(2) Subsection C, Article 581-9, Vernon's Texas Civil Statutes, provides that the failure to comply with the requirements of that subsection is a
violation of The Securities Act (V.A.C.S. Art. 581-1 et seq.), revised as this title, "subjecting the parties responsible to the consequences thereof as provided herein." The revised law omits the quoted language as unnecessary because the provisions of that act pertaining to the consequences of a violation of the act apply by their own terms.

Revised Law

Sec. 4003.304. INVESTOR EDUCATION. (a) The commissioner, with board approval, shall develop and implement investor education initiatives to inform the public about the basics of investing in securities. The initiatives must place a special emphasis on the prevention and detection of securities fraud. Materials developed for and distributed as part of the initiatives must be published in both English and Spanish.

(b) In developing and implementing the initiatives, the commissioner shall use the commissioner's best efforts to collaborate with public or nonprofit entities with an interest in investor education.

(c) For use in providing investor education initiatives and subject to Chapter 575, the commissioner may accept grants and donations from:

(1) a person who is not affiliated with the securities industry; or

(2) a nonprofit association, regardless of whether the entity is affiliated with the securities industry. (V.A.C.S. Art. 581-43.)

Source Law

Art. 581-43. A. The Commissioner, with Board approval, shall develop and implement investor education initiatives to inform the public about the basics of investing in securities, with a special emphasis placed on the prevention and detection of securities fraud. Materials developed for and distributed as part of the initiatives must be published in both Spanish and English.

B. In developing and implementing the initiatives, the Commissioner shall use the Commissioner's best efforts to collaborate with public
or nonprofit entities with an interest in investor education.

C. Subject to Chapter 575, Government Code, the Commissioner may accept grants and donations from a person who is not affiliated with the securities industry or from a nonprofit association, regardless of whether the entity is affiliated with the securities industry, for use in providing investor education initiatives.

CHAPTER 4004. REGULATION OF DEALERS, INVESTMENT ADVISERS, DEALERS' AGENTS, AND INVESTMENT ADVISER REPRESENTATIVES

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Source Law

C. The Board may adopt rules and regulations exempting certain classes of persons from the dealer, agent, investment adviser, and investment adviser representative registration requirements, or providing conditional exemptions from registration, if the Board determines that such rules and regulations are consistent with the purposes of this Act.

Revisor's Note

(1) Subsection C, Article 581-12, Vernon's Texas Civil Statutes, refers to "rules and regulations." The revised law omits the reference to "regulations" because under Section 311.005(5), Government Code (Code Construction Act), applicable to the revised law, a rule is defined to include a regulation.

(2) Subsection C, Article 581-12, Vernon's Texas...
Civil Statutes, refers to rules and regulations that are consistent with the purposes of "this Act," meaning The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes). The provisions of The Securities Act are revised as this title. The revised law throughout this chapter therefore substitutes references to "this title" for references to "this Act."

**Revised Law**

Sec. 4004.002. CERTAIN DISPLAYS OR ADVERTISEMENT OF REGISTRATION PROHIBITED. Except as expressly provided by this title, a dealer, agent, investment adviser, or investment adviser representative may not by public display or advertisement use the fact that the person is registered under this title, the person's registration certificate or evidence of registration, or a certified copy of the certificate or evidence of registration in connection with any sale or effort to sell any security or any rendering of services as an investment adviser. (V.A.C.S. Art. 581-20.)

**Source Law**

Art. 581-20. It shall be unlawful for any dealer, agent, investment adviser, or investment adviser representative to use the fact of his registry, by public display or advertisement, except as hereinafter expressly provided, for the registration certificate or evidence of registration or any certified copy thereof, in connection with any sale or effort to sell any security or any rendering of services as an investment adviser.

**Revisor's Note**

Article 581-20, Vernon's Texas Civil Statutes, states that in connection with the sale of a security or the rendering of services as an investment adviser, a person may not use the fact of the person's registry, by public display or advertisement "for the registration certificate or evidence of registration or any certified copy thereof." When that provision was enacted by Section 20, Chapter 269 (S.B. 294), Acts
of the 55th Legislature, Regular Session, 1957, the law stated that a person may not use the fact of the person's registry, by public display or advertisement "or the registration certificate [or evidence of registration] or any certified copy thereof." The revised law substitutes "or" for "for" to correct an apparent typographical error.

Revised Law
Sec. 4004.003. DISPLAY OF INFORMATION REGARDING COMPLAINTS. A dealer, agent, investment adviser, or investment adviser representative regulated under this title shall prominently display at all times in the person's place of business:

(1) a sign containing the name, mailing address, and telephone number of the board; and

(2) a statement informing consumers that complaints against a dealer, agent, investment adviser, or investment adviser representative may be directed to the board. (V.A.C.S. Art. 581-2, Subsec. L (part).)

Source Law
L. . . . There shall be prominently displayed at all times in the place of business of each dealer, agent, investment adviser, or investment adviser representative regulated under this Act, a sign containing the name, mailing address, and telephone number of the Board and a statement informing consumers that complaints against a dealer, agent, investment adviser, or investment adviser representative may be directed to the Board.

SUBCHAPTER B. REGISTRATION OF DEALERS AND INVESTMENT ADVISERS

Revised Law
Sec. 4004.051. REGISTRATION OF DEALERS REQUIRED. Except as provided by Section 4001.056(d) or Subchapter A, Chapter 4005, a dealer or other person or company, including a corporation or firm, may not, directly or through the dealer's or other person's or company's agents, offer for sale, sell, or make a sale of any securities in this state unless the dealer or other person or company is first registered as provided by this chapter. (V.A.C.S. Art. 581-12, Subsec. A (part).)
Source Law

Art. 581-12. A. Except as provided in Section 5 of this Act, no person, firm, corporation or dealer shall, directly or through agents, offer for sale, sell or make a sale of any securities in this state without first being registered as in this Act provided. . . .

Revisor's Note

(1) Subsection A, Article 581-12, Vernon's Texas Civil Statutes, refers to an exception provided by "Section 5 of this Act," meaning Article 581-5, Vernon's Texas Civil Statutes. Article 581-5 is revised as Section 4001.056(d) and Subchapter A, Chapter 4005, of this title, and the revised law is drafted accordingly.

(2) Subsection A, Article 581-12, Vernon's Texas Civil Statutes, refers to a "person, firm, corporation or dealer." The revised law substitutes "dealer or other person or company, including a corporation or firm" for the quoted language because Subsection B, Article 581-4, Vernon's Texas Civil Statutes, revised as Section 4001.064 of this title, defines "person" and "company" to include a corporation or firm and because Subsection C, Article 581-4, Vernon's Texas Civil Statutes, revised as Section 4001.056 of this title, defines "dealer" to include a "person or company" that engages in certain activities with respect to securities.

(3) Subsection A, Article 581-12, Vernon's Texas Civil Statutes, requires a dealer or other person or company to first register before selling or offering for sale securities in this state "directly or through agents." The revised law substitutes "directly or through the dealer's or other person's or company's agents" for the quoted language to make clear that a dealer may sell or offer for sale securities through
agents only if the agents are registered as such for that particular dealer, as provided by another provision of Subsection A, Article 581-12, Vernon's Texas Civil Statutes, which is revised as Section 4004.101 of this chapter.

(4) Subsection A, Article 581-12, Vernon's Texas Civil Statutes, refers to a person being registered as provided "in this Act," meaning The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), revised as this title. The provisions of The Securities Act specifically relating to the registration requirements and procedures for a dealer, agent, investment adviser, or investment adviser representative are revised in various provisions of this chapter. Throughout this chapter, the revised law substitutes "this chapter" for "this Act" when the context indicates that "this Act" is referring only to the registration requirements and procedures revised in this chapter.

Revised Law
Sec. 4004.052. REGISTRATION OF INVESTMENT ADVISERS REQUIRED. Except as provided by Subchapter A, Chapter 4005, a person may not, directly or through the person's investment adviser representative, render services as an investment adviser in this state unless the person:

(1) is registered under this chapter;
(2) submits a notice filing as provided by Subchapter G; or
(3) is otherwise exempt under this title. (V.A.C.S. Art. 581-12, Subsec. B (part).)

Source Law
B. Except as provided by Section 5 of this Act, a person may not, directly or through an investment adviser representative, render services as an investment adviser in this state unless the person is registered under this Act, submits a notice filing as
provided by Section 12-1 of this Act, or is otherwise exempt under this Act. . . .

Revisor's Note

(1) Subsection B, Article 581-12, Vernon's Texas Civil Statutes, refers to an exception provided by "Section 5 of this Act," meaning Article 581-5, Vernon's Texas Civil Statutes. The relevant provisions of Article 581-5 are revised in Subchapter A, Chapter 4005, of this title, and throughout this chapter, the revised law is drafted accordingly.

(2) Subsection B, Article 581-12, Vernon's Texas Civil Statutes, requires that a person must satisfy certain requirements before the person may render services in this state as an investment adviser "directly or through an investment adviser representative." The revised law substitutes "directly or through the person's investment adviser representative" for the quoted language to make clear that an investment adviser may render services only through an investment adviser representative who is registered or submits a notice filing as such for that particular investment adviser, as provided by another provision of Subsection B, Article 581-12, Vernon's Texas Civil Statutes, which is revised as Section 4004.102 of this chapter.

Revised Law

Sec. 4004.053. APPLICATION FOR REGISTRATION. (a) To be registered, a dealer or investment adviser must submit to the commissioner a sworn application that must be in the form the commissioner prescribes and must state:

(1) the applicant's principal place of business;

(2) the location of the applicant's principal place of business and all branch offices of the applicant in this state;

(3) the name or style of doing business and the address of the applicant;
the name, residence, and business address of each
person interested in the business as a principal, officer,
director, or managing agent of the applicant's business, specified
by capacity and title;
the general plan and character of the applicant's
business;
the period the applicant has been engaged in the
business; and
the places at which the applicant has engaged in
the business.
(b) An application filed under this section must contain
additional information relating to the previous history, record,
associations, and present financial condition of the applicant as
the commissioner may require or as necessary to enable the
commissioner to determine whether the sale of any securities the
applicant proposes to issue or deal in would result in fraud.
(c) An application must be accompanied by a certificate or
other evidence satisfactory to the commissioner that establishes
the good reputation of:
(1) the applicant; and
(2) the directors, officers, copartners, or
principals of the applicant.
(d) For an applicant that is a corporation organized under
the laws of another state, territory, or government or that will
have the applicant's principal place of business therein, the
application must be accompanied by a copy of the corporation's:
(1) articles of incorporation or similar
organizational instrument, and all amendments to the document or
instrument, as applicable, certified by the appropriate officer of
the corporation or of the state or other jurisdiction in which the
corporation is organized;
(2) regulations; and
(3) bylaws.
(e) For an applicant that is a limited partnership, the
application must be accompanied by either:

(1) a copy of the articles of copartnership or similar
organizational instrument of the partnership; or

(2) a verified statement of the partnership's plan of
doing business.

(f) For an applicant that is an unincorporated association
or organization under the laws of another state, territory, or
government or is an unincorporated association or organization that
has its principal place of business therein, the application must
be accompanied by a copy of the association's or organization's
articles of association, trust agreement, or other form of
organization.

(g) The commissioner shall:

(1) prescribe the application form to be used by an
applicant under this section; and

(2) provide copies of the application form for
registration to all persons who seek to submit an application to
register as a dealer or investment adviser. (V.A.C.S. Art. 581-13,

Source Law

Art. 581-13. A. A dealer or investment adviser
to be registered must submit a sworn application
therefor to the Commissioner, which shall be in such
form as the Commissioner may determine and which shall
state:

(1) The principal place of business of the
applicant wherever situated;

(2) The location of the principal place of
business and all branch offices in this state, if any;

(3) The name or style of doing business and
the address of the applicant;

(4) The names, residences and the business
addresses of all persons interested in the business as
principal, officer, director or managing agent,
specified as to each his capacity and title; and

(5) The general plan and character of
business of such applicant and the length of time
during and the places at which the applicant has been
engaged in the business.

B. An application filed by a dealer or
investment adviser shall also contain such additional
information as to the applicant's previous history,
record, associations and present financial condition
as may be required by the Commissioner, or as is
necessary to enable the Commissioner to determine
whether the sale of any securities proposed to be
issued or dealt in by such applicant would result in
Each application shall be accompanied by certificates or other evidences satisfactory to the Commissioner establishing the good reputation of the applicant, his directors, officers, copartners or principals.

G. If the applicant is a corporation organized under the laws of any other state or territory or government or shall have its principal place of business therein, it shall accompany the application with a copy of its Articles of Incorporation and all amendments thereto, certified by the proper officer of such state or government or of the corporation, and its regulations and by laws.

H. If a limited partnership, either a copy of its Articles of Copartnership or a verified statement of the plan of doing business.

I. If an unincorporated association or organization under the laws of any other state, territory or government, or having its principal place of business therein, a copy of its Articles of Association, Trust Agreement or other form of organization.

J. It shall be the duty of the Commissioner to prepare a proper form to be used by the applicant under the terms of this Section, and the Commissioner shall furnish copies thereof to all persons desiring to make application to be registered as a dealer or investment adviser.

Revisor's Note
Subsections G and H, Article 581-13, Vernon's Texas Civil Statutes, refer to the "[a]rticles of [i]ncorporation" of a foreign corporation and the "[a]rticles of [c]opartnership" of a limited partnership, respectively. In both contexts, the revised law adds "or similar organizational instrument" after each reference to recognize that other jurisdictions may refer to similar filings using other terminology.

Revised Law
Sec. 4004.054. ISSUANCE OF REGISTRATION CERTIFICATE. The commissioner shall issue a certificate of registration to an applicant for registration as a dealer or investment adviser if:

(1) the commissioner is satisfied that the applicant has complied with the requirements of this chapter; and

(2) the applicant:

(A) if applicable, has filed a written consent to service that complies with Section 4001.102; and
(B) has paid the fees required by Chapter 4006.

(V.A.C.S. Art. 581-15 (part).)

*Source Law*

Art. 581-15. If the Commissioner is satisfied that the applicant for a dealer's or investment adviser's certificate of registration has complied with the requirements of the Act above, that the applicant has filed a written consent to service as and when required by Section 8 of this Act, and upon the payment of the fees required by Section 35 of this Act, the Commissioner shall register the applicant and issue to it or him a registration certificate...

*Revisor's Note*

Article 581-15, Vernon's Texas Civil Statutes, states that the securities commissioner shall register an applicant and then issue to the applicant a certificate of registration if the applicant complies with all the statutory requirements for registration. The revised law omits the reference to the commissioner registering an applicant because, in practice, the issuance of a certificate of registration to an applicant constitutes registration, and therefore the use of both references is redundant.

*Revised Law*

Sec. 4004.055. FORM AND CONTENTS OF REGISTRATION CERTIFICATE. The registration certificate must be in the form the commissioner prescribes and must state:

1. the principal place of business and address of the dealer or investment adviser;
2. the name and business address of each person interested in the business as a principal, officer, director, or managing agent of the dealer or investment adviser; and
3. that the dealer or investment adviser has been registered for a current calendar year as a dealer in securities or as an investment adviser, as appropriate. (V.A.C.S. Arts. 581-15 (part), 581-17 (part).)
Art. 581-15. . . . [the Commissioner shall register the applicant and issue to it or him a registration certificate,] stating the principal place of business and address of the dealer or investment adviser, the names and business addresses of all persons interested in the business as principals, officers, directors or managing agents, and the fact that the dealer or investment adviser has been registered for a current calendar year as a dealer in securities or as an investment adviser. . . .

Art. 581-17. The certificate shall be in such form as the Commissioner may determine. . . .

Sec. 4004.056. TEMPORARY PERMISSION TO ENGAGE IN BUSINESS AS DEALER OR INVESTMENT ADVISER. (a) Pending final disposition of an application under this subchapter, the commissioner may, for special cause shown, grant an applicant temporary permission to engage in business as a dealer or investment adviser under this title, subject to any terms and conditions that the commissioner prescribes.

(b) Temporary permission granted by the commissioner under this section may be revoked at any time.

(c) A dealer or investment adviser acting under temporary permission granted under this section is considered to be a registered dealer or registered investment adviser for any purpose of this title. (V.A.C.S. Art. 581-15 (part).)

Sec. 4004.057. AMENDMENT OF REGISTRATION CERTIFICATE. (a) A dealer or investment adviser shall immediately certify under oath to the commissioner any change in the personnel of a partnership or in the principals, officers, directors, or managing agents of the
dealer or investment adviser.

(b) A change in the registration certificate required as the result of a change described by Subsection (a) may be made at any time by submitting to the commissioner a written application that specifies the reason for the change.

(c) On the issuance of an amended registration certificate, the dealer or investment adviser shall promptly surrender the original certificate and any outstanding certified copies of the original certificate to the commissioner. (V.A.C.S. Art. 581-17 (part).)

Source Law

Art. 581-17. . . . Any changes in the personnel of a partnership or in the principals, officers, directors or managing agents of any dealer or investment adviser shall be immediately certified under oath to the Commissioner and any change in the certificate necessitated thereby may be made at any time, upon written application setting forth the fact necessitating the change. Upon the issue of the amended certificates, the original certificate and the certified copies thereof outstanding shall be promptly surrendered to the Commissioner.

Revised Law

Sec. 4004.058. POSTING REGISTRATION CERTIFICATES. On receipt of a registration certificate issued under this chapter, the dealer or investment adviser named in the certificate shall immediately post and conspicuously display the certificate at all times in the dealer's or investment adviser's principal place of business, if the dealer's or investment adviser's principal place of business is maintained in this state. The dealer or investment adviser shall similarly post and conspicuously display a duplicate copy of the dealer's or investment adviser's certificate in each branch office located in this state. (V.A.C.S. Art. 581-21.)

Source Law

Art. 581-21. Immediately upon receipt of the dealer's or investment adviser's registration certificate issued pursuant to the authority of this Act, the dealer or investment adviser named therein shall cause such certificate to be posted and at all times conspicuously displayed in such dealer's or investment adviser's principal place of business, if one is maintained in this state, and shall likewise forthwith cause a duplicate of such certificate to be
posted and at all times conspicuously displayed in each branch office located within this state.

SUBCHAPTER C. REGISTRATION OF AGENTS AND INVESTMENT ADVISER REPRESENTATIVES

Revised Law

Sec. 4004.101. REGISTRATION OF AGENTS. (a) An agent may not, on behalf of a registered dealer, sell, offer for sale, or make a sale of any securities in this state unless the agent is registered as an agent for that particular registered dealer under this chapter.

(b) On written application by a registered dealer, and on satisfactory compliance with the requirements of this title, the commissioner shall register a person as an agent of the registered dealer. (V.A.C.S. Art. 581-12, Subsec. A (part); Art. 581-18 (part).)

Source Law

Art. 581-12. A. . . . No agent shall, in behalf of any dealer, sell, offer for sale, or make sale of any securities within the state unless registered as an agent for that particular registered dealer under the provisions of this Act.

Art. 581-18. Upon written application by a registered dealer or . . . . and upon satisfactory compliance with the requirements of the Act above, the Commissioner shall register as an agent of such dealer or . . . . such persons as the dealer or . . . . may request. . . .

Revised Law

Sec. 4004.102. REGISTRATION OF INVESTMENT ADVISER REPRESENTATIVES. (a) A person may not act or render services as an investment adviser representative for an investment adviser in this state unless the person is registered or submits a notice filing as an investment adviser representative for that particular investment adviser as provided by this subchapter and Subchapter G.

(b) On written application by an investment adviser and on satisfactory compliance with the requirements of this title, the commissioner shall register a person as an investment adviser representative of that investment adviser. (V.A.C.S. Art. 581-12, Subsec. B (part); Art. 581-18 (part).)
Source Law

[Art. 581-12]

B. . . . A person may not act or render services as an investment adviser representative for a certain investment adviser in this state unless the person is registered or submits a notice filing as an investment adviser representative for that particular investment adviser as provided in Section 18 or 12-1 of this Act.

Art. 581-18. Upon written application by a . . . investment adviser, and upon satisfactory compliance with the requirements of the Act above, the Commissioner shall register . . . as a representative of the investment adviser such persons as the . . . investment adviser may request. . . .

Revised Law

Sec. 4004.103. APPLICATION FOR REGISTRATION. The application described by Sections 4004.101 and 4004.102 must:

(1) be in the form the commissioner prescribes;

(2) state:

(A) the residence and address of the person whose registration as an agent or investment adviser representative is requested through the application; and

(B) any other information relating to that person's previous history, record, and associations that the commissioner may require; and

(3) be signed and sworn to by the person whose registration as an agent or investment adviser representative is requested through the application. (V.A.C.S. Art. 581-18 (part).)

Source Law

Art. 581-18. . . . The application shall be in such form as the Commissioner may prescribe and shall state the residences and addresses of the persons whose registration is requested, together with such information as to such agent's or investment adviser representative's previous history, record and association as may be required by the Commissioner. Such application shall also be signed and sworn to by the agent or investment adviser representative for whom registration is requested. . . .

Revisor's Note

Article 581-18, Vernon's Texas Civil Statutes, lists the information that must be contained in an application of the person "whose registration is requested" and "for whom registration is requested."
The revised law adds "[whose registration] . . . is requested through the application" to provide context and for the convenience of the reader.

Revised Law
Sec. 4004.104. ISSUANCE OF EVIDENCE OF REGISTRATION. For each person registered under this subchapter, the commissioner shall issue evidence of registration of the agent or investment adviser representative to the registered dealer or investment adviser who requested the person's registration, as appropriate. The registered dealer or investment adviser who requested the person's registration shall retain the evidence of registration for the dealer's agents or investment adviser's representatives, as appropriate. (V.A.C.S. Art. 581-18 (part).)

Source Law
Art. 581-18. . . . The Commissioner shall issue to such dealer or investment adviser, to be retained by such dealer or investment adviser for each person so registered, evidence of registration . . . .

Revised Law
Sec. 4004.105. FORM AND CONTENTS OF EVIDENCE OF REGISTRATION. The evidence of registration described by Section 4004.104 must:

(1) be in the form the commissioner prescribes; and
(2) state:
   (A) the name of the agent or investment adviser representative;
   (B) the address of the registered dealer or investment adviser, as appropriate; and
   (C) that the person is registered for the current calendar year as an agent of the dealer or as an investment adviser representative of the investment adviser, as appropriate.

(V.A.C.S. Art. 581-18 (part).)
investment adviser representative of the dealer or
investment adviser, as appropriate. The evidence of
registration shall be in such form as the Commissioner
shall determine. . . .

Revised Law
Sec. 4004.106. CANCELLATION OF REGISTRATION. On
application by a registered dealer or investment adviser, the
commissioner shall cancel the registration of the registered
dealer's agent or the investment adviser's representative.
(V.A.C.S. Art. 581-18 (part).)

Source Law
Art. 581-18. . . . Upon application by the
dealer or the investment adviser, the registration of
any agent or investment adviser representative shall
be cancelled.

SUBCHAPTER D. EXAMINATION REQUIREMENTS

Revised Law
Sec. 4004.151. EXAMINATION REQUIREMENTS. (a) Except as
provided by Subsection (c), the commissioner shall require that, to
be registered under this chapter, each applicant must pass a
written examination to determine whether the applicant possesses
the qualifications and competency to engage in the business of
dealing in and selling securities as a dealer or agent, or rendering
services as an investment adviser or investment adviser
representative. If the applicant is a corporation or partnership,
the officers, directors, or partners to be licensed by the
corporation or partnership must pass the written examination
described by this section.

(b) The commissioner may accept some or all of the
examinations administered by securities self-regulatory
organizations to fulfill the examination requirements of this
section.

(c) The board may waive the examination requirement under
Subsection (a) for any applicant or class of applicants. (V.A.C.S.
Art. 581-13, Subsecs. D, K.)

Source Law
D. The Commissioner shall require as a condition
of registration for all registrations granted after
the effective date of this Subsection D that the applicant (and, in the case of a corporation or partnership, the officers, directors or partners to be licensed by the applicant) pass successfully a written examination to determine the applicant's qualifications and competency to engage in the business of dealing in and selling securities as a dealer or agent, or rendering services as an investment adviser or investment adviser representative. This condition may be waived as to any applicant or class of applicants by action of the State Securities Board.

K. The Commissioner may accept some or all of the examinations administered by securities self-regulatory organizations to fulfill the examination requirements of Subsection D.

Revisor's Note

Subsection D, Article 581-13, Vernon's Texas Civil Statutes, provides for an examination requirement for "all registrations granted after the effective date of this Subsection D." The revised law omits the quoted language because Section 311.022, Government Code (Code Construction Act), applicable to the revised law, provides that a statute is presumed to be prospective in its operation unless expressly made retrospective.

Revised Law

Sec. 4004.152. EXAMINATION RESULTS. (a) Except as provided by Subsection (b), the board shall notify each examinee of the results of a registration examination required by this subchapter not later than the 30th day after the date the examinee takes the examination.

(b) If an examination is graded or reviewed by a testing service:

(1) the board shall notify each examinee of the results of the examination not later than the 14th day after the date the board receives the results from the testing service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the board shall notify each examinee of the reason for the delay before the 90th day.
(c) The board may require a testing service to notify an examinee of the results of the examination.

(d) If requested in writing by an examinee who fails an examination administered under this subchapter, the board shall provide the examinee with an analysis of the examinee's performance on the examination. (V.A.C.S. Art. 581-13, Subsecs. E, F.)

Source Law

E. Not later than the 30th day after the date a person takes a registration examination under this Act, the Board shall notify the person of the results of the examination. If the examination is graded or reviewed by a testing service:

(1) the Board shall notify the person of the results of the examination not later than the 14th day after the date the Board receives the results from the testing service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the Board shall notify the person of the reason for the delay before the 90th day.

F. The Board may require a testing service to notify a person of the results of the person's examination. If requested in writing by a person who fails a registration examination administered under this Act, the Board shall furnish the person with an analysis of the person's performance on the examination.

SUBCHAPTER E. DENIAL OR REVOCATION OF REGISTRATION

Revised Law

Sec. 4004.201. DENIAL OF REGISTRATION. The commissioner may deny an application for registration under this chapter in accordance with Section 4007.105. (New.)

Revisor's Note

Article 581-14, Vernon's Texas Civil Statutes, contains the procedures governing the denial, suspension, or revocation of the registration of a dealer, agent, investment adviser, or investment adviser representative. The revised law places the substance of Article 581-14 in Section 4007.105 of this title. Because the denial of a person's registration is related to the registration requirements and procedures revised in this chapter, the revised law adds a reference to Section 4007.105
for guidance and for the reader's convenience.

Revised Law

Sec. 4004.202. AUTOMATIC REVOCATION OF REGISTRATION OF AGENTS AND INVESTMENT ADVISER REPRESENTATIVES AFTER REVOCATION OF REGISTRATION OF DEALER OR INVESTMENT ADVISER. (a) The revocation of the registration of a dealer or an investment adviser under Section 4007.105 constitutes a revocation of the registration of any agent of the dealer or of any investment adviser representative of the investment adviser, as appropriate.

(b) The commissioner shall promptly send notice of the revocation of the registration of a dealer or of an investment adviser to each applicable agent or investment adviser representative.

(c) All evidences of registration that have been revoked shall be immediately surrendered to the commissioner on request.

(V.A.C.S. Art. 581-25 (part).)

Source Law

Art. 581-25. The revocation of a dealer's or investment adviser's registration shall constitute a revocation of the registration of any agent of the dealer or any investment adviser representative of the investment adviser and notice of its operation on such agent or investment adviser representative shall be forthwith sent by the Commissioner to each of such agents or investment adviser representatives. All . . . evidences of registration revoked shall at once be surrendered to the Commissioner upon request.

Revisor's Note

(1) Article 581-14, Vernon's Texas Civil Statutes, contains the procedures governing the denial, suspension, or revocation of the registration of a dealer, agent, investment adviser, or investment adviser representative. The revised law places the substance of Article 581-14 in Section 4007.105 of this title. Because the revocation of a person's registration is related to the registration requirements and procedures revised in this chapter, the revised law adds a reference to Section 4007.105
for guidance and for the reader's convenience.

(2) Article 581-25, Vernon's Texas Civil Statutes, requires the securities commissioner to send a notice of revocation of registration to a dealer's agent or to an investment adviser representative "forthwith." The revised law substitutes "promptly" for "forthwith" because in context the terms are synonymous and "promptly" is more consistent with modern usage.

SUBCHAPTER F. EXPIRATION AND RENEWAL OF REGISTRATION

Revised Law
Sec. 4004.251. EXPIRATION OF REGISTRATION. Except as provided by Sections 4004.252(a) and 4004.253, all registrations expire at the end of the calendar year. (V.A.C.S. Art. 581-19, Subsec. A (part).)

Source Law
Art. 581-19. A. Except as provided in Subsections B and C of this section, all registrations shall expire at the close of the calendar year, but . . . .

Revisor's Note
Subsection A, Article 581-19, Vernon's Texas Civil Statutes, refers to expiration of registrations at the end of the calendar year "[e]xcept as provided by Subsections B and C of this section," meaning Subsections B and C, Article 581-19, Vernon's Texas Civil Statutes, which are revised as Sections 4004.252(a), 4004.253, 4004.254, 4004.255, and 4004.256 of this chapter. The applicable provisions of Subsections B and C, Article 581-19, Vernon's Texas Civil Statutes, that are exceptions to the annual expiration of registrations are Subsection B and Subdivision (1), Subsection C, Article 581-19, revised as Sections 4004.252(a) and 4004.253 of this chapter, respectively, and the revised law is drafted
accordingly.

Revised Law
Sec. 4004.252. RENEWAL OF REGISTRATION. (a) A person may renew an unexpired registration by filing a renewal application in the form the commissioner prescribes and by paying the required renewal fee to the board before the registration's expiration date.

(b) New registrations for the year succeeding the expiration of registrations shall be issued on the filing of a written application and payment of the fee as provided by this subchapter. If an applicant registers after December 1 of any year, the applicant may immediately apply for a renewal of the applicant's registration for the ensuing year.

(c) The filing of additional statements or the provision of additional information is not required for renewal unless specifically requested by the commissioner. (V.A.C.S. Art. 581-19, Subsecs. A (part), C, Subdiv. (1).)

Source Law
A. . . . new registrations for the succeeding year shall be issued upon written application and upon payment of the fees as hereinafter provided, without filing of further statements or furnishing any further information unless specifically requested by the Commissioner. If any applicant is registered after December 1st of any year, he may immediately apply for a renewal of his registration for the ensuing year.

C. Renewal of Registration. (1) A person may renew an unexpired registration by filing a renewal application in the form prescribed by the Commissioner and paying to the Board, before the expiration date of the registration, the required renewal fee.

Revised Law
Sec. 4004.253. STAGGERED RENEWAL; PRORATION OF REGISTRATION RENEWAL FEE. (a) The board by rule may adopt a system under which registrations expire on various dates during the year.

(b) For the year in which the registration expiration date is changed, registration fees payable after the 60th day and before the 30th day before January 1 of the next year shall be prorated on a monthly basis so that each person pays only that portion of the registration fee that is allocable to the number of months during
which the registration is valid. On renewal of the registration on
the new expiration date, the total registration renewal fee is
payable. (V.A.C.S. Art. 581-19, Subsec. B.)

Source Law
B. The Board by rule may adopt a system under
which registrations expire on various dates during the
year. For the year in which the registration
expiration date is changed, registration fees payable
after the 60th day and before the 30th day before
January 1st of the next year shall be prorated on a
monthly basis so that each person shall pay only that
portion of the registration fee that is allocable to
the number of months during which the registration is
valid. On renewal of the registration on the new
expiration date, the total registration renewal fee is
payable.

Revised Law
Sec. 4004.254. NOTICE OF EXPIRATION REQUIRED. Not later
than the 30th day before the date a person's registration is
scheduled to expire, the commissioner shall send written notice of
the impending expiration to the person at the person's last known
address according to the board's records. (V.A.C.S. Art. 581-19,
Subsec. C, Subdiv. (5).)

Source Law
(5) At least thirty (30) days before the
expiration of a person's registration, the
Commissioner shall send to the person at the person's
last known address according to the records of the
Board a written notice of the impending expiration of
the registration.

Revised Law
Sec. 4004.255. RENEWAL OF EXPIRED REGISTRATION. (a) A
person whose registration has been expired for 90 days or less may
renew the registration by:
(1) filing a renewal application with the
commissioner; and
(2) paying to the board:
(A) the required renewal fee; and
(B) a fee that is equal to one-half of the
original registration application fee.
(b) A person whose registration has been expired for more
than 90 days but less than two years may renew the registration by:
filing a renewal application with the commissioner; and

(2) paying to the board:

(A) all unpaid renewal fees; and

(B) a fee that is equal to the original registration application fee.

(c) A person whose registration has been expired for two years or more may not renew the registration. The person may obtain a new registration by complying with the requirements and procedures, including the examination requirements, for obtaining an original registration. The person must pay to the board a fee that is equal to the original registration application fee.

(V.A.C.S. Art. 581-19, Subsec. C, Subdivs. (2), (3), (4).)

Source Law

(2) If a person's registration has been expired for ninety (90) days or less, the person may renew the registration by filing a renewal application with the Commissioner and paying to the Board the required renewal fee and a fee that is equal to one-half of the original application fee for the registration.

(3) If a person's registration has been expired for longer than ninety (90) days but less than two years, the person may renew the registration by filing a renewal application with the Commissioner and paying to the Board all unpaid renewal fees and a fee that is equal to the original application fee for the registration.

(4) If a person's registration has been expired for two years or more, the person may not renew the registration. The person may obtain a new registration by submitting to reexamination and complying with the requirements and procedures for obtaining an original registration. The person must pay to the Board a fee that is equal to the original application fee.

Revised Law

Sec. 4004.256. EFFECT OF EXPIRED REGISTRATION. A person who sells securities or who renders investment advising services after the person's registration has expired but before the registration is renewed is subject to the sanctions provided by this title for selling securities or rendering investment advice without being registered. (V.A.C.S. Art. 581-19, Subsec. C, Subdiv. (6).)
(6) A person who sells securities or renders investment advisory services after the person’s registration has expired and before it is renewed is subject to the sanctions provided by this Act for selling securities or rendering investment advice without being registered.

Sec. 4004.257. CONTINUING EDUCATION. (a) The board may recognize, prepare, or administer continuing education programs for a person who is registered under this chapter.

(b) A person who is registered under this chapter must participate in continuing education programs if the board requires participation as a condition of maintaining the person’s certificate or evidence of registration. (V.A.C.S. Art. 581-19, Subsec. D.)

D. The Board may recognize, prepare, or administer continuing education programs for a person who is registered under this Act. If participation is required by the Board as a condition of maintaining the certificate or evidence of registration, a person who is registered under this Act must participate in the continuing education programs.

SUBCHAPTER G. NOTICE FILINGS OF FEDERAL COVERED INVESTMENT ADVISERS AND CERTAIN REPRESENTATIVES OF FEDERAL COVERED INVESTMENT ADVISERS

Sec. 4004.301. APPLICABILITY. This subchapter does not apply to an investment adviser or investment adviser representative who is exempt from registration under this title or by board rule. (V.A.C.S. Art. 581-12-1, Subsec. A.)

Art. 581-12-1. A. This section does not apply to an investment adviser or investment adviser representative that is exempt from registration under this Act or Board rule.

Sec. 4004.302. NOTICE FILING. The board by rule shall authorize a federal covered investment adviser or a representative of a federal covered investment adviser to render services as an
investment adviser in this state if the commissioner receives:

(1) a notice filing submitted by the adviser or representative that:

(A) is on the form and contains the information the commissioner prescribes; and

(B) if applicable, contains a consent to service appointing the commissioner as the adviser's attorney for service of process, as required by Section 4001.102; and

(2) a notice filing fee in the amount determined under Chapter 4006. (V.A.C.S. Art. 581-12-1, Subsec. B.)

Source Law

B. The Board by rule shall authorize a federal covered investment adviser or a representative of a federal covered investment adviser to engage in rendering services as an investment adviser in this state on submission to and receipt by the Commissioner of:

(1) a notice filing on the form and containing the information prescribed by the Commissioner and, if applicable, a consent to service appointing the Commissioner as the adviser's agent for service of process as required by Section 8 of this Act; and

(2) a fee in the amount determined under Sections 35 and 41 of this Act.

Revisor's Note

(1) Subsection B, Article 581-12-1, Vernon's Texas Civil Statutes, refers to the appointment of the securities commissioner as "the adviser's agent for service of process as required by Section 8 of this Act," meaning Article 581-8, Vernon's Texas Civil Statutes, which is revised as Section 4001.102 of this title. The revised law substitutes "adviser's attorney" for "adviser's agent" to conform with the terminology in Article 581-8, which refers to the appointment of the securities commissioner as the "attorney upon whom all process may be served."

(2) Subsection B, Article 581-12-1, Vernon's Texas Civil Statutes, refers to Article 581-41, Vernon's Texas Civil Statutes. Throughout this
chapter, the revised law omits the reference to Article 581-41 because that provision was repealed by Section 31(1), Chapter 448 (H.B. 7), Acts of the 84th Legislature, Regular Session, 2015.

Revised Law Sec. 4004.303. EFFECTIVE DATE OF NOTICE FILING. On the commissioner's receipt of a notice filing and fee payment that meet the requirements of Section 4004.302, the notice filing takes effect and is valid for the remainder of the calendar year. (V.A.C.S. Art. 581-12-1, Subsec. C (part).)

Source Law C. After the notice filing fee is paid and all the requirements for a notice filing under Subsection B of this section are met, a notice filing submitted under this section takes effect and is valid for the remainder of the calendar year.

Revised Law Sec. 4004.304. RENEWAL. A federal covered investment adviser or a representative of a federal covered investment adviser may renew a notice filing on or before the filing's expiration date if the commissioner receives:

(1) a renewal notice filing submitted by the adviser or representative; and

(2) a renewal fee in the amount determined under Chapter 4006. (V.A.C.S. Art. 581-12-1, Subsec. C (part).)

Source Law C. . . A federal covered investment adviser or federal covered investment adviser representative may renew a notice filing on or before its expiration date on submission to and receipt by the Commissioner of:

(1) a renewal notice filing; and

(2) a renewal fee in the amount determined under Sections 35 and 41 of this Act.

Revisor's Note Subsection C, Article 581-12-1, Vernon's Texas Civil Statutes, refers to a "federal covered investment adviser representative." The revised law substitutes "a representative of a federal covered investment adviser" for the quoted language for
consistency with Subsection B, Article 581-12-1,
Vernon's Texas Civil Statutes, revised as Section
4004.302 of this chapter, and to correct an error
because it is clear from the context of the source law
this is the person to whom the provision applies.

SUBCHAPTER H. REQUIREMENTS FOR PROTECTION OF VULNERABLE ADULTS
FROM FINANCIAL EXPLOITATION

Revised Law

Sec. 4004.351. DEFINITIONS. In this subchapter:

(1) "Department" means the Department of Family and
Protective Services.

(2) "Exploitation," "financial exploitation," and
"vulnerable adult" have the meanings assigned by Section 280.001,
Finance Code.

(3) "Securities professional" means an agent, an
investment adviser representative, or a person who serves in a
supervisory or compliance capacity for a dealer or investment
adviser. (V.A.C.S. Art. 581-45, Subsec. A.)

Source Law

Art. 581-45. A. In this section:

(1) "Department" means the Department of
Family and Protective Services.

(2) "Exploitation," "financial exploitation," and "vulnerable adult" have the
meanings assigned by Section 280.001, Finance Code.

(3) "Securities professional" means an
agent, an investment adviser representative, or a
person who serves in a supervisory or compliance
capacity for a dealer or investment adviser.

Revisor's Note

Subsection A, Article 581-45, Vernon's Texas
Civil Statutes, provides definitions for "this
section," meaning Article 581-45. The revised law
substitutes a reference to "this subchapter" for the
reference to "this section" because Article 581-45 is
revised as this subchapter.

Revised Law

Sec. 4004.352. REPORTING SUSPECTED FINANCIAL EXPLOITATION
OF VULNERABLE ADULTS. (a) If a securities professional or a person serving in a legal capacity for a dealer or investment adviser has cause to believe that financial exploitation of a vulnerable adult who is an account holder with the dealer or investment adviser has occurred, is occurring, or has been attempted, the securities professional or person serving in a legal capacity for the dealer or investment adviser shall notify the dealer or investment adviser of the suspected financial exploitation.

(b) If a dealer or investment adviser is notified of suspected financial exploitation under Subsection (a) or otherwise has cause to believe that financial exploitation of a vulnerable adult who is an account holder with the dealer or investment adviser has occurred, is occurring, or has been attempted, the dealer or investment adviser shall assess the suspected financial exploitation and submit a report to the commissioner, in accordance with rules adopted under Section 4004.353, and the department in the same manner as and containing the same information required to be included in a report under Section 48.051, Human Resources Code. The dealer or investment adviser shall submit the reports required by this subsection not later than the earlier of:

(1) the date the dealer or investment adviser completes the dealer's or investment adviser's assessment of the suspected financial exploitation; or

(2) the fifth business day after the date the dealer or investment adviser is notified of the suspected financial exploitation under Subsection (a) or otherwise has cause to believe that the suspected financial exploitation has occurred, is occurring, or has been attempted.

(c) A dealer or investment adviser who submits a report to the department of suspected financial exploitation of a vulnerable adult under Subsection (b) is not required to make an additional report of suspected abuse, neglect, or exploitation under Section 48.051, Human Resources Code, for the same conduct constituting the reported suspected financial exploitation.
Each dealer and investment adviser shall adopt internal policies, programs, plans, or procedures for:

(1) the securities professionals or persons serving in a legal capacity for the dealer or investment adviser to make the notification required under Subsection (a); and

(2) the dealer or investment adviser to conduct the assessment and submit the reports required under Subsection (b).

The policies, programs, plans, or procedures adopted under Subsection (d) may authorize the dealer or investment adviser to report the suspected financial exploitation to other appropriate agencies and entities in addition to the commissioner and the department, including the attorney general, the Federal Trade Commission, and the appropriate law enforcement agency. (V.A.C.S. Art. 581-45, Subsecs. B, C, D, E.)

Source Law

B. If a securities professional or a person serving in a legal capacity for a dealer or investment adviser has cause to believe that financial exploitation of a vulnerable adult who is an account holder with the dealer or investment adviser has occurred, is occurring, or has been attempted, the securities professional or person serving in a legal capacity for the dealer or investment adviser shall notify the dealer or investment adviser of the suspected financial exploitation.

C. If a dealer or investment adviser is notified of suspected financial exploitation under Subsection B of this section or otherwise has cause to believe that financial exploitation of a vulnerable adult who is an account holder with the dealer or investment adviser has occurred, is occurring, or has been attempted, the dealer or investment adviser shall assess the suspected financial exploitation and submit a report to the Securities Commissioner, in accordance with rules adopted under Subsection N of this section, and the department in the same manner as and containing the same information required to be included in a report under Section 48.051, Human Resources Code. The dealer or investment adviser shall submit the reports required by this subsection not later than the earlier of:

(1) the date the dealer or investment adviser completes the dealer's or investment adviser's assessment of the suspected financial exploitation; or

(2) the fifth business day after the date the dealer or investment adviser is notified of the suspected financial exploitation under Subsection B of this section or otherwise has cause to believe that the suspected financial exploitation has occurred, is occurring, or has been attempted.

D. A dealer or investment adviser who submits a report to the department of suspected financial

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exploitation of a vulnerable adult under Subsection C of this section is not required to make an additional report of suspected abuse, neglect, or exploitation under Section 48.051, Human Resources Code, for the same conduct constituting the reported suspected financial exploitation.

E. Each dealer and investment adviser shall adopt internal policies, programs, plans, or procedures for the securities professionals or persons serving in a legal capacity for the dealer or investment adviser to make the notification required under Subsection B of this section and for the dealer or investment adviser to conduct the assessment and submit the reports required under Subsection C of this section. The policies, programs, plans, or procedures adopted under this subsection may authorize the dealer or investment adviser to report the suspected financial exploitation to other appropriate agencies and entities in addition to the Securities Commissioner and the department, including the attorney general, the Federal Trade Commission, and the appropriate law enforcement agency.

Revisor's Note

Subsection E, Article 581-45, Vernon's Texas Civil Statutes, authorizes certain actions taken pursuant to policies or procedures adopted under "this subsection," meaning Subsection E, Article 581-45. The revised law substitutes a reference to "Subsection (d)" for the reference to "this subsection" because the relevant provisions of Subsection E, Article 581-45, are revised as Subsection (d) of this section.

Revised Law

Sec. 4004.353. FORM AND CONTENT OF REPORT. The board by rule shall prescribe the form and content of the report required to be submitted by a dealer or investment adviser to the commissioner under Section 4004.352(b). (V.A.C.S. Art. 581-45, Subsec. N.)

Source Law

N. The Board by rule shall prescribe the form and content of the report required to be submitted by a dealer or investment adviser to the Securities Commissioner under Subsection C of this section.

Revised Law

Sec. 4004.354. NOTIFYING THIRD PARTIES OF SUSPECTED FINANCIAL EXPLOITATION OF VULNERABLE ADULTS. If a dealer or investment adviser submits reports of suspected financial exploitation of a vulnerable adult to the commissioner and the
department under Section 4004.352(b), the dealer or investment adviser may at the time the dealer or investment adviser submits the reports also notify a third party reasonably associated with the vulnerable adult of the suspected financial exploitation, unless the dealer or investment adviser suspects the third party of financial exploitation of the vulnerable adult. (V.A.C.S. Art. 581-45, Subsec. F.)

Source Law
F. If a dealer or investment adviser submits reports of suspected financial exploitation of a vulnerable adult to the Securities Commissioner and the department under Subsection C of this section, the dealer or investment adviser may at the time the dealer or investment adviser submits the reports also notify a third party reasonably associated with the vulnerable adult of the suspected financial exploitation, unless the dealer or investment adviser suspects the third party of financial exploitation of the vulnerable adult.

Revised Law
Sec. 4004.355. TEMPORARY HOLD ON TRANSACTIONS IN CERTAIN CASES OF SUSPECTED FINANCIAL EXPLOITATION OF VULNERABLE ADULTS.
(a) Notwithstanding any other law, if a dealer or investment adviser submits reports of suspected financial exploitation of a vulnerable adult to the commissioner and the department under Section 4004.352(b), the dealer or investment adviser:
(1) may place a hold on any transaction that:
(A) involves an account of the vulnerable adult; and
(B) the dealer or investment adviser has cause to believe is related to the suspected financial exploitation; and
(2) must place a hold on any transaction involving an account of the vulnerable adult if the hold is requested by the commissioner, the department, or a law enforcement agency.
(b) Subject to Subsection (c), a hold placed on any transaction under Subsection (a) expires on the 10th business day after the date the dealer or investment adviser submits the reports under Section 4004.352(b).
(c) A dealer or investment adviser may extend a hold placed
on any transaction under Subsection (a) for a period not to exceed
30 business days after the expiration of the period prescribed by
Subsection (b) if requested by a state or federal agency or a law
enforcement agency investigating the suspected financial
exploitation. The dealer or investment adviser may also petition a
court to extend a hold placed on any transaction under Subsection
(a) beyond the period prescribed by Subsection (b). A court may
enter an order extending or shortening a hold or providing other
relief.

(d) Each dealer and investment adviser shall adopt internal
policies, programs, plans, or procedures for placing a hold on a
transaction involving an account of a vulnerable adult under

Source Law

G. Notwithstanding any other law, if a dealer or
investment adviser submits reports of suspected
financial exploitation of a vulnerable adult to the
Securities Commissioner and the department under
Subsection C of this section, the dealer or investment
adviser:

(1) may place a hold on any transaction
that:

(A) involves an account of the
vulnerable adult; and

(B) the dealer or investment adviser
has cause to believe is related to the suspected
financial exploitation; and

(2) must place a hold on any transaction
involving an account of the vulnerable adult if the
hold is requested by the Securities Commissioner, the
department, or a law enforcement agency.

H. Subject to Subsection I of this section, a
hold placed on any transaction under Subsection G of
this section expires on the 10th business day after the
date the dealer or investment adviser submits the
reports under Subsection C of this section.

I. A dealer or investment adviser may extend a
hold placed on any transaction under Subsection G of
this section for a period not to exceed 30 business
days after the expiration of the period prescribed by
Subsection H of this section if requested by a state or
federal agency or a law enforcement agency
investigating the suspected financial exploitation.
The dealer or investment adviser may also petition a
court to extend a hold placed on any transaction under
Subsection C of this section beyond the period
prescribed by Subsection H of this section. A court
may enter an order extending or shortening a hold or
providing other relief.

J. Each dealer and investment adviser shall
adopt internal policies, programs, plans, or
procedures for placing a hold on a transaction
involving an account of a vulnerable adult under
Subsection G of this section.

Revised Law
Sec. 4004.356. IMMUNITY. (a) A securities professional or person serving in a legal capacity for a dealer or investment adviser who makes a notification under Section 4004.352(a), a dealer or investment adviser that submits a report under Section 4004.352(b) or makes a notification to a third party under Section 4004.354, or a securities professional or person serving in a legal capacity who or dealer or investment adviser that testifies or otherwise participates in a judicial proceeding arising from a notification or report is immune from any civil or criminal liability arising from the notification, report, testimony, or participation in the judicial proceeding, unless the securities professional, person serving in a legal capacity for the dealer or investment adviser, or dealer or investment adviser acted in bad faith or with a malicious purpose.

(b) A dealer or investment adviser that in good faith and with the exercise of reasonable care places or does not place a hold on any transaction under Section 4004.355(a)(1) is immune from civil or criminal liability or disciplinary action resulting from the action or failure to act. (V.A.C.S. Art. 581-45, Subsecs. K, L.)

Source Law
K. A securities professional or person serving in a legal capacity for a dealer or investment adviser who makes a notification under Subsection B of this section, a dealer or investment adviser that submits a report under Subsection C of this section or makes a notification to a third party under Subsection F of this section, or a securities professional or person serving in a legal capacity who or dealer or investment adviser that testifies or otherwise participates in a judicial proceeding arising from a notification or report is immune from any civil or criminal liability arising from the notification, report, testimony, or participation in the judicial proceeding, unless the securities professional, person serving in a legal capacity for the dealer or investment adviser, or dealer or investment adviser acted in bad faith or with a malicious purpose.

L. A dealer or investment adviser that in good faith and with the exercise of reasonable care places or does not place a hold on any transaction under Subsection G(1) of this section is immune from civil or criminal liability or disciplinary action resulting
from the action or failure to act.

Revised Law

Sec. 4004.357. RECORDS. To the extent permitted by state or federal law, a dealer or investment adviser, on request, shall provide access to or copies of records relevant to the suspected financial exploitation of a vulnerable adult to the commissioner, the department, a law enforcement agency, or a prosecuting attorney's office, either as part of a report to the commissioner, department, law enforcement agency, or prosecuting attorney's office or at the request of the commissioner, department, law enforcement agency, or prosecuting attorney's office in accordance with an investigation. (V.A.C.S. Art. 581-45, Subsec. M.)

Source Law

M. To the extent permitted by state or federal law, a dealer or investment adviser, on request, shall provide access to or copies of records relevant to the suspected financial exploitation of a vulnerable adult to the Securities Commissioner, the department, a law enforcement agency, or a prosecuting attorney's office, either as part of a report to the Securities Commissioner, department, law enforcement agency, or prosecuting attorney's office or at the request of the Securities Commissioner, department, law enforcement agency, or prosecuting attorney's office in accordance with an investigation.

CHAPTER 4005. EXEMPTIONS

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dealing in, or delivery of a security made in a transaction or under a condition specified in this subchapter. (V.A.C.S. Art. 581-5 (part).)

Source Law

Art. 581-5. Except as hereinafter in this Act specifically provided, the provisions of this Act shall not apply to [the sale of any security when made] in any of the following transactions and under any of the following conditions, and . . . that is to say, the provisions of this Act shall not apply to any sale, offer for sale, solicitation, subscription, dealing in or delivery of any security under any of the following transactions or conditions:

Revisor's Note

(1) Article 581-5, Vernon's Texas Civil Statutes, refers to "this Act," which is The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes). The provisions of The Securities Act are revised as this title. The revised law throughout this chapter therefore substitutes references to "this title" for references to "this Act."

(2) Article 581-5, Vernon's Texas Civil Statutes, states "that is to say, the provisions of this Act shall not apply to" in relation to the sale of a security. The revised law omits "that is to say" as unnecessary and redundant.

Revised Law

Sec. 4005.002. COURT SUPERVISED SALES. The exemption provided by Section 4005.001 applies to the sale of a security made:

(1) at a judicial, executor's, administrator's, guardian's, or conservator's sale; or

(2) by a receiver or trustee in insolvency or bankruptcy. (V.A.C.S. Art. 581-5, Subsec. A.)

Source Law

Art. 581-5. [Except as hereinafter in this Act specifically provided, the provisions of this Act shall not apply to] the sale of any security when made [in any of the following transactions and under any of the following conditions,] . . . that is to say, the provisions of this Act shall not apply to any sale,
offer for sale, solicitation, subscription, dealing in
or delivery of any security under any of the following
transactions or conditions:
A. At any judicial, executor's,
administrator's, guardian's or conservator's sale, or
any sale by a receiver or trustee in insolvency or
bankruptcy.

Revised Law
Sec. 4005.003. PLEDGED SECURITIES. The exemption provided
by Section 4005.001 applies to the sale of a security pledged in
good faith as security for a bona fide debt that is made by or for
the account of a pledge holder or mortgagee that is selling the
security or offering the security for sale or delivery in the
ordinary course of business to liquidate the debt. (V.A.C.S. Art.
581-5, Subsec. B.)

Source Law
Art. 581-5. [Except as hereinafter in this Act
specifically provided, the provisions of this Act
shall not apply to] the sale of any security when made
[in any of the following transactions and under any of
the following conditions,] . . . that is to say, the
provisions of this Act shall not apply to any sale,
offer for sale, solicitation, subscription, dealing in
or delivery of any security under any of the following
transactions or conditions:
B. The sale by or for the account of a pledge
holder or mortgagee, selling or offering for sale or
delivery in the ordinary course of business to
liquidate a bona fide debt, of a security pledged in
good faith as security for such debt.

Revised Law
Sec. 4005.004. ISOLATED TRANSACTIONS. (a) The exemption
provided by Section 4005.001 applies to the sale of a security that
is made by a vendor or on a vendor's behalf by a dealer or other
agent and is made in the ordinary course of a bona fide personal
investment of the vendor's personal holdings or a change in the
investment if:
(1) the vendor is not engaged in the business of
selling securities; and
(2) the sale is an isolated transaction not made in the
course of repeated and consecutive transactions of a like
character.
(b) A sale or offer for sale under Subsection (a) is not
exempt from this title if the sale or offer is made or intended to be
made by the vendor or the vendor's agent for the direct or indirect
benefit of a company other than the individual vendor. The usual
commission of a vendor's agent is not a benefit for the purposes of
this subsection.

(c) A person acting as an agent for a vendor in any sale or
offer for sale under Subsection (a) must be registered under this
title. (V.A.C.S. Art. 581-5, Subsec. C (part).)

Source Law
Art. 581-5. [Except as hereinafter in this Act
specifically provided, the provisions of this Act
shall not apply to] the sale of any security when made
[in any of the following transactions and under any of
the following conditions,] . . . that is to say, the
provisions of this Act shall not apply to any sale,
offer for sale, solicitation, subscription, dealing in
or delivery of any security under any of the following
transactions or conditions:

C. (1) Sales of securities made by or in behalf
of a vendor, whether by dealer or other agent, in the
ordinary course of bona fide personal investment of
the personal holdings of such vendor, or change in such
investment, if such vendor is not engaged in the
business of selling securities and the sale or sales
are isolated transactions not made in the course of
repeated and successive transactions of a like
character; provided, that in no event shall such sales
or offerings be exempt from the provisions of this Act
when made or intended by the vendor or his agent, for
the benefit, either directly or indirectly, of any
company or corporation except the individual vendor
(other than a usual commission to said agent), and
provided further, that any person acting as agent for
said vendor shall be registered pursuant to this Act;

. . .

Revisor's Note
(1) Subsection C, Article 581-5, Vernon's Texas
Civil Statutes, refers to "sale" and "sales." The
revised law omits "sales" as a separate term because
Section 311.012(b), Government Code (Code
Construction Act), applicable to the revised law,
provides that a reference to the singular includes the
plural and vice versa. Throughout this chapter,
references in which both the singular and plural forms
of the word are used are revised using only one form of
the term.
(2) Subsection C, Article 581-5, Vernon's Texas Civil Statutes, refers to the sale or offering of a security for the benefit of a "company or corporation" other than a vendor described by that subsection. The revised law omits the reference to "corporation" because Subsection B, Article 581-4, Vernon's Texas Civil Statutes, revised as Section 4001.064 of this title, defines "company" to include a "corporation."

**Revised Law**

Sec. 4005.005. INSURANCE COMPANY SALES. (a) The exemption provided by Section 4005.001 applies to the sale of a security made by or on behalf of an insurance company that:

(1) is subject to the supervision or control of the Texas Department of Insurance; and

(2) owns the security as a legal and bona fide investment.

(b) A sale or offer for sale under Subsection (a) is not exempt from this title if the sale or offer is made or intended to be made directly or indirectly for the benefit of another company.

(V.A.C.S. Art. 581-5, Subsec. C (part).)

**Source Law**

Art. 581-5. [Except as hereinafter in this Act specifically provided, the provisions of this Act shall not apply to] the sale of any security when made [in any of the following transactions and under any of the following conditions,] . . . . that is to say, the provisions of this Act shall not apply to any sale, offer for sale, solicitation, subscription, dealing in or delivery of any security under any of the following transactions or conditions:

C. . . .

(2) Sales by or on behalf of any insurance company subject to the supervision or control of the Texas Department of Insurance of any security owned by such company as a legal and bona fide investment, provided that in no event shall any such sale or offering be exempt from the provisions of this Act when made or intended, either directly or indirectly, for the benefit of any other company as that term is defined in this Act.

**Revisor's Note**

Subdivision (2), Subsection C, Article 581-5,
Vernon's Texas Civil Statutes, provides that the exemption under Article 581-5 that applies to a transaction described by that subdivision does not apply to a sale or offer for the benefit of "any other company as that term is defined in this Act," meaning The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), revised as this title. The revised law omits "as that term is defined in this Act" as unnecessary because the definition of "company" in The Securities Act, revised as Section 4001.064 of this title, applies on its own terms.

Revised Law
Sec. 4005.006. STOCK DIVIDENDS. The exemption provided by Section 4005.001 applies to a distribution of securities by a corporation directly to the corporation's stockholders as a stock dividend or other distribution paid out of earnings or surplus. (V.A.C.S. Art. 581-5, Subsec. D.)

Source Law
Art. 581-5. [Except as hereinafter in this Act specifically provided, the provisions of this Act shall not apply to] the sale of any security when made [in any of the following transactions and under any of the following conditions,] . . . that is to say, the provisions of this Act shall not apply to any sale, offer for sale, solicitation, subscription, dealing in or delivery of any security under any of the following transactions or conditions:

D. The distribution by a corporation of securities direct to its stockholders as a stock dividend or other distribution paid out of earnings or surplus.

Revised Law
Sec. 4005.007. EXISTING SECURITY HOLDERS. (a) In this section, "existing security holder" includes a person who is a holder of a convertible security or nontransferable warrant at the time of the transaction.

(b) The exemption provided by Section 4005.001 applies to an offer by the issuer of its securities to the issuer's existing security holders and to any transaction pursuant to the offer if no
commission or other remuneration, other than a stand-by commission, is paid or given directly or indirectly for soliciting any security holder in this state. (V.A.C.S. Art. 581-5, Subsec. E.)

Source Law

Art. 581-5. [Except as hereinafter in this Act specifically provided, the provisions of this Act shall not apply to] the sale of any security when made [in any of the following transactions and under any of the following conditions,] . . . that is to say, the provisions of this Act shall not apply to any sale, offer for sale, solicitation, subscription, dealing in or delivery of any security under any of the following transactions or conditions:

E. Any offer and any transaction pursuant to any offer by the issuer of its securities to its existing security holders (including persons who at the time of the transaction are holders of convertible securities or nontransferable warrants) if no commission or other remuneration (other than a stand-by commission) is paid or given directly or indirectly for soliciting any security holder in this State.

Revised Law

Sec. 4005.008. FINANCIAL DISTRESS. (a) The exemption provided by Section 4005.001 applies to the issuance in good faith of securities by a company:

(1) to the company's security holders or creditors in the process of a bona fide reorganization of the company made in good faith; or

(2) to the security holders or creditors of a predecessor company if the issuing company is organized solely for the purpose of taking over the assets and continuing the business of the predecessor company.

(b) The exemption provided by Section 4005.001 applies to an issuance of securities described by Subsection (a) only if:

(1) the securities are issued in exchange for securities of the security holders, claims of the creditors, or both; and

(2) the security holders or creditors do not pay, give, or promise any consideration, and are not obligated to pay or give any consideration, for the securities issued other than the securities of or claims against the company or the company's
predecessor held or owned by the security holders or creditors at
the time of the issuance. (V.A.C.S. Art. 581-5, Subsec. F.)

Source Law

Art. 581-5. [Except as hereinafter in this Act
specified, the provisions of this Act
shall not apply to] the sale of any security when made
[in any of the following transactions and under any of
the following conditions,] . . . that is to say, the
provisions of this Act shall not apply to any sale,
offer for sale, solicitation, subscription, dealing in
or delivery of any security under any of the following
transactions or conditions:

F. The issue in good faith of securities by a
company to its security holders, or creditors, in the
process of a bona fide reorganization of the company
made in good faith, or the issue in good faith of
securities by a company, organized solely for the
purpose of taking over the assets and continuing the
business of a predecessor company, to the security
holders or creditors of such predecessor company,
provided that in either such case such securities are
issued in exchange for the securities of such holders
or claims of such creditors, or both, and in either
such case security holders or creditors do not pay or
give or promise and are not obligated to pay or give
any consideration for the securities so issued other
than the securities of or claims against said company
or its predecessor then held or owned by them.

Revised Law

Sec. 4005.009. MERGER, CONSOLIDATION, AND ASSET SALES.

(a) The exemption provided by Section 4005.001 applies to the
issuance or sale of securities by one corporation to another
corporation or to the security holders of the corporation pursuant
to a vote by one or more classes of those security holders, as
required by the certificate of formation, certificate of
incorporation, or applicable corporation statute, in connection
with:

(1) a merger;
(2) a consolidation; or
(3) a sale of corporate assets.

(b) The exemption provided by Section 4005.001 applies to an
issuance or sale described by Subsection (a) only if the security
holders do not pay, give, or promise any consideration, and are not
obligated to pay or give any consideration, for the securities
issued or sold other than the corporation's securities held by the
security holders at the time of the issuance or sale. (V.A.C.S. Art. 581-5, Subsec. G (part).)

Source Law

Art. 581-5. [Except as hereinafter in this Act specifically provided, the provisions of this Act shall not apply to] the sale of any security when made [in any of the following transactions and under any of the following conditions] . . . that is to say, the provisions of this Act shall not apply to any sale, offer for sale, solicitation, subscription, dealing in or delivery of any security under any of the following transactions or conditions:

G. The issue or sale of securities (a) by one corporation to another corporation or the security holders thereof pursuant to a vote by one or more classes of such security holders, as required by the certificate of incorporation or the applicable corporation statute, in connection with a merger, consolidation or sale of corporate assets, or . . . provided that in any such case such security holders do not pay or give or promise and are not obligated to pay or give any consideration for the securities so issued or sold other than the securities of the corporation then held by them.

Revisor's Note

Subdivision (a), Subsection G, Article 581-5, Vernon's Texas Civil Statutes, refers to a company's "certificate of incorporation or the applicable corporation statute." The revised law adds a reference to a "certificate of formation" to conform to the terminology of the Business Organizations Code, which uses the term "certificate of formation" to describe the document required to be filed with the secretary of state to form a domestic filing entity, including a corporation, an association, and certain partnerships, on or after January 1, 2006.

Revised Law

Sec. 4005.010. EXCHANGE OF SHARES. (a) The exemption provided by Section 4005.001 applies to the issuance or sale of securities by one corporation to the corporation's stockholders in connection with:

(1) the change of par value stock to no par value stock or vice versa; or
(2) the exchange of outstanding shares for the same or a greater or smaller number of shares.

(b) The exemption provided by Section 4005.001 applies to an issuance or sale described by Subsection (a) only if the security holders do not pay, give, or promise any consideration, and are not obligated to pay or give any consideration, for the securities issued or sold other than the corporation's securities held by the security holders at the time of the issuance or sale. (V.A.C.S. Art. 581-5, Subsec. G (part).)

Source Law

Art. 581-5. [Except as hereinafter in this Act specifically provided, the provisions of this Act shall not apply to] the sale of any security when made in any of the following transactions and under any of the following conditions,] ... that is to say, the provisions of this Act shall not apply to any sale, offer for sale, solicitation, subscription, dealing in or delivery of any security under any of the following transactions or conditions:

G. The issue or sale of securities ... (b) by one corporation to its own stockholders in connection with the change of par value stock to no par value stock or vice versa, or the exchange of outstanding shares for the same or a greater or smaller number of shares; provided that in any such case such security holders do not pay or give or promise and are not obligated to pay or give any consideration for the securities so issued or sold other than the securities of the corporation then held by them.

Revised Law

Sec. 4005.011. INSTITUTIONAL INVESTORS. The exemption provided by Section 4005.001 applies to the sale of a security to:

(1) a bank;
(2) a trust company;
(3) a building and loan association;
(4) a savings and loan association;
(5) an insurance company;
(6) a surety or guaranty company;
(7) a savings institution;
(8) an investment company as defined by the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.);
(9) a small business investment company as defined by
seq.); or

(10) a registered dealer actually engaged in buying
and selling securities. (V.A.C.S. Art. 581-5, Subsec. H.)

Source Law

Art. 581-5. [Except as hereinafter in this Act
specifically provided, the provisions of this Act
shall not apply to] the sale of any security when made
[in any of the following transactions and under any of
the following conditions,] . . . that is to say, the
provisions of this Act shall not apply to any sale,
offer for sale, solicitation, subscription, dealing in
or delivery of any security under any of the following
transactions or conditions:

H. The sale of any security to any bank, trust
company, building and loan association, insurance
company, surety or guaranty company, savings
institution, investment company as defined in the
Investment Company Act of 1940, small business
investment company as defined in the Small Business
Investment Act of 1958, as amended, or to any
registered dealer actually engaged in buying and
selling securities.

Revisor's Note

(1) Subsection H, Article 581-5, Vernon's Texas
Civil Statutes, refers to the Small Business
Investment Act of 1958 "as amended." The revised law
omits "as amended" because under Section 311.027,
Government Code (Code Construction Act), applicable to
the revised law, a reference to a statute or rule
applies to all reenactments, revisions, or amendments
of the statute or rule unless expressly provided
otherwise.

(2) Subsection H, Article 581-5, Vernon's Texas
Civil Statutes, refers to the "Investment Company Act
of 1940" and the "Small Business Investment Act of
1958." For the convenience of the reader, the revised
law includes a reference to the United States Code
citation for each act.

(3) Subsection H, Article 581-5, Vernon's Texas
Civil Statutes, refers to a "building and loan
association." The revised law adds a reference to
"savings and loan association" because the terms are
synonymous and the latter is the term used in this
state.

Revised Law
Sec. 4005.012. PRIVATE LIMITED OFFERINGS. (a) The
exemption provided by Section 4005.001 applies to the following
sales made without any public solicitation or advertisement:
(1) the sale of a security by the issuer of the
security if the total number of security holders of the issuer does
not exceed 35 persons after the sale; or
(2) the sale by an issuer of the issuer's securities to
not more than 15 persons during the 12-month period ending with the
date of the sale if the persons purchased the securities for their
own account and not for distribution.
(b) For the purpose of determining the number of persons
under Subsection (a)(2), the following persons are not included:
(1) a purchaser of a security in a transaction exempt
under another provision of this subchapter;
(2) a purchaser of a security exempt under Subchapter
B; and
(3) a purchaser of a security that is part of an
offering registered under Subchapter A, B, or C, Chapter 4003.
(V.A.C.S. Art. 581-5, Subsec. I (part).)

Source Law
Art. 581-5. [Except as hereinafter in this Act
specifically provided, the provisions of this Act
shall not apply to] the sale of any security when made
[in any of the following transactions and under any of
the following conditions,] . . . that is to say, the
provisions of this Act shall not apply to any sale,
offer for sale, solicitation, subscription, dealing in
or delivery of any security under any of the following
transactions or conditions:
I. Provided such sale is made without any public
solicitation or advertisements:
(a) the sale of any security by the issuer
thereof so long as the total number of security holders
of the issuer thereof does not exceed thirty-five (35)
persons after taking such sale into account;
. . . .
(c) the sale by an issuer of its securities
during the period of twelve (12) months ending with the
date of the sale in question to not more than fifteen (15) persons (excluding, in determining such fifteen (15) persons, purchasers of securities in transactions exempt under other provisions of this Section 5, purchasers of securities exempt under Section 6 hereof and purchasers of securities which are part of an offering registered under Section 7 hereof), provided such persons purchased such securities for their own account and not for distribution.

Revisor's Note

Subdivision (c), Subsection I, Article 581-5, Vernon's Texas Civil Statutes, refers to an offering registered under Section 7. The revised law substitutes a reference to "Subchapter A, B, or C, Chapter 4003" of this title for the reference to Section 7 because Article 581-7, Vernon's Texas Civil Statutes, is revised as those subchapters.

Revised Law

Sec. 4005.013. COMPENSATION PLANS AND CONTRACTS. The exemption provided by Section 4005.001 applies to the sale or distribution of a security without any public solicitation or advertisement if the sale or distribution is made:

(1) by an issuer of the security or any participating subsidiary of the issuer; and

(2) under a bona fide thrift, savings, stock purchase, retirement, pension, profit-sharing, option, bonus, appreciation right, incentive, or similar written compensation plan or written compensation contract established by the issuer or the issuer's subsidiary for the benefit of:

(A) employees, directors, general partners, managers, or officers of the issuer or subsidiary;

(B) the issuer's or subsidiary's trustees, if the issuer or subsidiary is a business trust; or

(C) consultants or advisers who provide to the issuer or subsidiary bona fide services unrelated to the offer or sale of securities in a capital-raising transaction. (V.A.C.S. Art. 581-5, Subsec. I (part).)
Art. 581-5. [Except as hereinafter in this Act specifically provided, the provisions of this Act shall not apply to] the sale of any security when made [in any of the following transactions and under any of the following conditions,] . . . . that is to say, the provisions of this Act shall not apply to any sale, offer for sale, solicitation, subscription, dealing in or delivery of any security under any of the following transactions or conditions:

I. Provided such sale is made without any public solicitation or advertisements:

   (b) the sale or distribution by an issuer or a participating subsidiary of the issuer, if any, of a security under a bona fide thrift, savings, stock purchase, retirement, pension, profit-sharing, option, bonus, appreciation right, incentive, or similar written compensation plan or written compensation contract established by the issuer or its subsidiary for the benefit of employees, directors, general partners, managers, or officers of the issuer or subsidiary, for the benefit of its trustees if the issuer or subsidiary is a business trust, or for the benefit of consultants or advisors who provide to the issuer or subsidiary bona fide services unrelated to the offer or sale of securities in a capital-raising transaction; or

   . . .

Sec. 4005.014. MORTGAGES AND LIENS. The exemption provided by Section 4005.001 applies to a single transaction in which:

(1) the securities disposed of consist exclusively of notes or bonds secured by a mortgage or vendor's lien on real property or tangible personal property; and

(2) the entire mortgage or lien is sold or transferred with all of the notes or bonds secured by the mortgage or lien.

(V.A.C.S. Art. 581-5, Subsec. J.)

Art. 581-5. [Except as hereinafter in this Act specifically provided, the provisions of this Act shall not apply to] the sale of any security when made [in any of the following transactions and under any of the following conditions,] . . . . that is to say, the provisions of this Act shall not apply to any sale, offer for sale, solicitation, subscription, dealing in or delivery of any security under any of the following transactions or conditions:

J. Wherein the securities disposed of consist exclusively of notes or bonds secured by mortgage or vendor's lien upon real estate or tangible personal property, and the entire mortgage is sold or transferred with all of the notes or bonds secured
thereby in a single transaction.

Revisor's Note
Subsection J, Article 581-5, Vernon's Texas Civil Statutes, refers to the disposition of securities consisting exclusively of "notes or bonds secured by [a] mortgage or vendor's lien upon real estate," but subsequently refers to only "the entire mortgage." The revised law adds "or lien" to the second reference to the mortgage in Subsection J to conform to the first reference to mortgage in the subsection and to provide consistency with the terminology throughout Section 4005.014. The revised law also substitutes "real property" for "real estate" because the terms are synonymous and the former is the term used in the Property Code.

Revised Law
Sec. 4005.015. NONPROFITS. The exemption provided by Section 4005.001 applies to the disposition of a security or membership:
(1) issued by a corporation or association:
   (A) that is organized exclusively for a religious, educational, benevolent, fraternal, charitable, or reformatory purpose;
   (B) that is not organized for pecuniary profit; and
   (C) for which no part of the net earnings inures to the benefit of any stockholder, shareholder, or individual member of the corporation or association; and
(2) for which no commission or remuneration is paid or given or is to be paid or given. (V.A.C.S. Art. 581-5, Subsec. K.)

Source Law
Art. 581-5. [Except as hereinafter in this Act specifically provided, the provisions of this Act shall not apply to] the sale of any security when made [in any of the following transactions and under any of the following conditions,] . . . that is to say, the provisions of this Act shall not apply to any sale,
offer for sale, solicitation, subscription, dealing in
or delivery of any security under any of the following
transactions or conditions:

K. Any security or membership issued by a
corporation or association, organized exclusively for
religious, educational, benevolent, fraternal,
charitable, or reformatory purposes and not for
pecuniary profit, and no part of the net earnings of
which inures to the benefit of any stockholder,
shareholder, or individual members, and where no
commission or remuneration is paid or given or is to be
paid or given in connection with the disposition
thereof.

Revised Law
Sec. 4005.016. FINANCIAL INSTITUTIONS. The exemption
provided by Section 4005.001 applies to:
(1) the sale, by the issuer itself or by a registered
dealer, of any security issued or guaranteed by:
(A) a bank organized and subject to regulation
under the laws of:
(i) the United States; or
(ii) a state, territory, or insular
possession of the United States; or
(B) a savings and loan association organized and
subject to regulation under the laws of this state; or
(2) the sale, by the issuer itself, of any security
issued by a federal savings and loan association. (V.A.C.S. Art.
581-5, Subsec. L.)

Source Law
Art. 581-5. [Except as hereinafter in this Act
specifically provided, the provisions of this Act
shall not apply to] the sale of any security when made
[in any of the following transactions and under any of
the following conditions,] . . . . that is to say, the
provisions of this Act shall not apply to any sale,
offer for sale, solicitation, subscription, dealing in
or delivery of any security under any of the following
transactions or conditions:

L. The sale by the issuer itself, or by a
registered dealer, of any security issued or
guaranteed by any bank organized and subject to
regulation under the laws of the United States or under
the laws of any State or territory of the United
States, or any insular possession thereof, or by any
savings and loan association organized and subject to
regulation under the laws of this State, or the sale by
the issuer itself of any security issued by any federal
savings and loan association.
Revised Law

Sec. 4005.017. GOVERNMENT ISSUANCE OR GUARANTEE. The exemption provided by Section 4005.001 applies to the sale, by the issuer itself or by a registered dealer, of any security either issued or guaranteed by:

(1) the United States;
(2) the District of Columbia, a state, territory, or insular possession of the United States;
(3) a political subdivision of a state of the United States, including a county, city, municipal corporation, district, and authority; or
(4) a public or governmental agency or instrumentality of an entity described by Subdivisions (1)-(3). (V.A.C.S. Art. 581-5, Subsec. M.)

Source Law

Art. 581-5. [Except as hereinafter in this Act specifically provided, the provisions of this Act shall not apply to] the sale of any security when made [in any of the following transactions and under any of the following conditions,] . . . that is to say, the provisions of this Act shall not apply to any sale, offer for sale, solicitation, subscription, dealing in or delivery of any security under any of the following transactions or conditions:

M. The sale by the issuer itself, or by a registered dealer, of any security either issued or guaranteed by the United States or by any territory or insular possession thereof, or by the District of Columbia, or by any state of the United States, or political subdivision thereof (including but not limited to any county, city, municipal corporation, district, or authority), or by any public or governmental agency or instrumentality of any of the foregoing.

Revisor's Note

Subsection M, Article 581-5, Vernon's Texas Civil Statutes, refers to a political subdivision of a state of the United States, "including but not limited to" several local governmental entities. The revised law omits "but not limited to" because Section 311.005(13), Government Code (Code Construction Act), applicable to the revised law, provides that
"includes" and "including" are terms of enlargement and not of limitation and do not create a presumption that components not expressed are excluded.

**Revised Law**

Sec. 4005.018. COOPERATIVES. (a) The exemption provided by Section 4005.001 applies to:

1. the sale and issuance of:
   1. any securities issued by a farmers' cooperative marketing association organized under Chapter 52, Agriculture Code, or the predecessor of that law (Article 5737 et seq., Revised Statutes);
   2. any securities issued by a mutual loan corporation organized under Chapter 54, Agriculture Code, or the predecessor of that law (Article 2500 et seq., Revised Statutes); or
   3. any equity securities issued by a cooperative association organized under the Texas Cooperative Association Law as described by Section 1.008(i), Business Organizations Code, or the predecessor of that law (Article 1396-50.01, Vernon's Texas Civil Statutes);

2. the sale of any securities issued by a farmers' cooperative society organized under Chapter 51, Agriculture Code, or the predecessor of that law (Article 2514 et seq., Revised Statutes).

(b) The exemption provided by Section 4005.001 does not apply to an agent of a farmers' cooperative marketing association, mutual loan corporation, cooperative association, or farmers' cooperative society if the sale of the securities is made to:

1. nonmembers; or

2. members and a commission is paid or contracted to be paid to the agent. (V.A.C.S. Art. 581-5, Subsec. N.)

**Source Law**

Art. 581-5. [Except as hereinafter in this Act specifically provided, the provisions of this Act shall not apply to] the sale of any security when made
[in any of the following transactions and under any of the following conditions,] . . . that is to say, the provisions of this Act shall not apply to any sale, offer for sale, solicitation, subscription, dealing in or delivery of any security under any of the following transactions or conditions:

N. The sale and issuance of any securities issued by any farmers' cooperative marketing association organized under Chapter 52, Agriculture Code, or the predecessor of that law (Article 5737 et seq., Revised Statutes); the sale and issuance of any securities issued by any mutual loan corporation organized under Chapter 54, Agriculture Code, or the predecessor of that law (Article 2500 et seq., Revised Statutes); the sale and issuance of any equity securities issued by any cooperative association organized under the Cooperative Association Act, as amended (Article 1396-50.01, Vernon's Texas Civil Statutes); and the sale of any securities issued by any farmers' cooperative society organized under Chapter 51, Agriculture Code, or the predecessor of that law (Article 2514 et seq., Revised Statutes). Provided, however, this exemption shall not be applicable to agents of any farmers' cooperative marketing association, mutual loan corporation, cooperative association, or farmers' cooperative society when the sale of such securities is made to non-members, or when the sale of such securities is made to members or non-members and a commission is paid or contracted to be paid to the said agents.

Revisor's Note

Subsection N, Article 581-5, Vernon's Texas Civil Statutes, refers to "the Cooperative Association Act, as amended (Article 1396-50.01, Vernon's Texas Civil Statutes)." Section 1, Chapter 182, Acts of the 78th Legislature, Regular Session, 2003, codified the Cooperative Association Act as the Texas Cooperative Association Law as described by Section 1.008(i), Business Organizations Code. The revised law is drafted accordingly. The revised law also omits "as amended" for the reason stated in Revisor's Note (1) to Section 4005.011 of this chapter.

Revised Law

Sec. 4005.019. SECONDARY MARKET SALES. (a) In this section, "recognized securities manual" means a nationally distributed manual of securities that is approved by the board for use under this section.

(b) The exemption provided by Section 4005.001 applies to
the sale of outstanding securities by a registered dealer if:

(1) the securities do not form part of an unsold allotment to or subscription by the dealer as a participant in the securities' distribution by the issuer of the securities;

(2) the securities are of the same class and the same issuer and are outstanding in the hands of the public;

(3) the securities are offered for sale, in good faith, at prices reasonably related to the current market price of the securities at the time of the sale;

(4) none of the sale proceeds are paid directly or indirectly to the issuer of the securities;

(5) the sale is not directly or indirectly for the purposes of providing or furthering a scheme to violate or evade this title;

(6) the right to sell or resell the securities has not been enjoined by a court in this state by a proceeding instituted by an officer or agency of this state charged with enforcement of this title;

(7) the commissioner has not revoked or suspended the right to sell the securities under this title or, if the commissioner has revoked or suspended the right to sell the securities, the revocation or suspension is not in effect;

(8) at the time of the sale, the issuer of the securities is:

(A) a going concern actually engaged in business; and

(B) not in an organization stage or in receivership or bankruptcy; and

(9) either:

(A) the securities or other securities of the issuer of the same class have been:

(i) qualified for sale by a permit issued under Subchapter A, Chapter 4003;

(ii) registered by notification under
Subchapter B, Chapter 4003; or

(iii) registered by coordination under Subchapter C, Chapter 4003; or

(B) a recognized securities manual or a statement, in form and extent acceptable to the commissioner and filed with the commissioner by the issuer or a registered dealer, is provided at the time of the sale containing at least the following information about the issuer:

(i) a statement of the issuer's principal business;

(ii) a balance sheet as of a date not earlier than 18 months before the date of the sale; and

(iii) profit and loss statements and a record of any dividends paid for:

(a) a period of at least three years before the date of the balance sheet; or

(b) the period of the issuer's existence, if the issuer has been in existence less than three years.

(c) The commissioner may issue a stop order or by order may prohibit, revoke, or suspend the exemption under this section with respect to any security if the commissioner has reasonable cause to believe that the plan of business of the issuer of the security, the security, or the sale of the security would tend to work a fraud or deceit on any purchaser of the security. The order is subject to review in the manner provided by Section 4007.107.

(d) Notice of any court injunction enjoining the sale or resale of a security described by this section, or of an order revoking or suspending the exemption under Subsection (c) with respect to a security, shall be mailed by certified or registered mail with return receipt requested or otherwise delivered to any dealer believed to be selling or offering for sale the type of securities referred to in the notice. Subsections (b)(6) and (7) do not apply to a dealer until the dealer has received from the
commissioner actual notice of the revocation or suspension.

(e) The board, for cause shown, may revoke or suspend the recognition under this section of any manual previously approved under this section only after notice and an opportunity for a hearing is provided as required by law.

(f) A judgment sustaining the board in the board action complained about does not bar an application by the plaintiff for approval of the manual as provided by this section after the first anniversary of the date of the action.

(g) A judgment in favor of the plaintiff does not prevent the board from revoking the recognition of a manual previously approved under this section for any proper cause that may accrue or be discovered. (V.A.C.S. Art. 581-5, Subsec. O.)

Source Law

Art. 581-5. [Except as hereinafter in this Act specifically provided, the provisions of this Act shall not apply to] the sale of any security when made [in any of the following transactions and under any of the following conditions,] . . . that is to say, the provisions of this Act shall not apply to any sale, offer for sale, solicitation, subscription, dealing in or delivery of any security under any of the following transactions or conditions:

O. The sale by a registered dealer of outstanding securities provided that:

(1) Such securities form no part of an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer thereof; and

(2) Securities of the same class, of the same issuer, are outstanding in the hands of the public; and

(3) Such securities are offered for sale, in good faith, at prices reasonably related to the current market price of such securities at the time of such sale; and

(4) No part of the proceeds of such sale are paid directly or indirectly to the issuer of such securities; and

(5) Such sale is not directly or indirectly for the purposes of providing or furthering any scheme to violate or evade any provision of this Act; and

(6) The right to sell or resell such securities has not been enjoined by any court of competent jurisdiction in this State by proceedings instituted by an officer or agency of this State charged with enforcement of this Act; and

(7) The right to sell such securities has not been revoked or suspended by the commissioner under any of the provisions of this Act, or, if so, revocation or suspension is not in force and effect;
and

(8) At the time of such sale, the issuer of such securities shall be a going concern actually engaged in business and shall then be neither in an organization stage nor in receivership or bankruptcy; and

(9) Such securities or other securities of the issuer of the same class have been registered by qualification, notification or coordination under Section 7 of this Act; or at the time of such sale at least the following information about the issuer shall appear in a recognized securities manual or in a statement, in form and extent acceptable to the commissioner, filed with the commissioner by the issuer or by a registered dealer:

(a) A statement of the issuer's principal business;
(b) A balance sheet as of a date within eighteen (18) months of the date of such sale; and
(c) Profit and loss statements and a record of the dividends paid, if any, for a period of not less than three (3) years prior to the date of such balance sheet or for the period of existence of the issuer, if such period of existence is less than three (3) years.

The term "recognized securities manual" means a nationally distributed manual of securities that is approved for use hereunder by the Board.

The Commissioner may issue a stop order or by order prohibit, revoke or suspend the exemption under this Subsection O with respect to any security if the Commissioner has reasonable cause to believe that the plan of business of the issuer of such security, the security, or the sale thereof would tend to work a fraud or deceit upon any purchaser or purchasers thereof, such order to be subject to review in the manner provided by Section 24 of this Act. Notice of any court injunction enjoining the sale, or resale, of any such security, or of an order revoking or suspending the exemption under this subdivision with respect to any security, shall be delivered or shall be mailed by certified or registered mail with return receipt requested, to any dealers believed to be selling, or offering for sale, securities of the type referred to in the notice; and the prohibitions of (6) and (7) above of this Subsection O shall be inapplicable to any dealer until the dealer has received actual notice from the commissioner of such revocation or suspension.

The Board may for cause shown revoke or suspend the recognition hereunder of any manuals previously approved under this Subsection but no such action may be taken unless upon notice and opportunity for hearing before the Board or a hearings officer as now or hereafter required by law. A judgment sustaining the Board in the action complained of shall not bar after one year an application by the plaintiff for approval of its manual or manuals hereunder, nor shall a judgment in favor of the plaintiff prevent the Board from thereafter revoking such recognition for any proper cause which may thereafter accrue or be discovered.

Revisor's Note

(1) Subsection O, Article 581-5, Vernon's Texas
Civil Statutes, refers to the suspension or revocation of recognition "hereunder" of any manuals previously approved under Subsection O, and to an application submitted by a plaintiff for approval of its manual "hereunder." In each instance, it is clear from the context that "hereunder" refers to Subsection O, Article 581-5, revised as Section 4005.019 of this chapter. For that reason, the revised law substitutes a reference to "this section" for the reference to "hereunder."

(2) Subdivision (6), Subsection O, Article 581-5, Vernon's Texas Civil Statutes, refers to a court "of competent jurisdiction." The revised law omits the quoted language as unnecessary. The determination of whether a particular court has jurisdiction over a matter is made under other law, and it is not necessary to refer to that determination in this section.

(3) Subdivision (7), Subsection O, Article 581-5, Vernon's Texas Civil Statutes, refers to a revocation or suspension that is not in "force and effect." The revised law omits "force" because, in context, "force" is included within the meaning of "effect."

(4) Subdivision (9), Subsection O, Article 581-5, Vernon's Texas Civil Statutes, refers to a security "registered by qualification . . . under Section 7 of this Act," meaning Article 581-7 of The Securities Act (V.A.C.S. Article 581-1 et seq.), revised in this title. There are no references to "registration by qualification" in Article 581-7, Vernon's Texas Civil Statutes. However, Subsection A, Article 581-10, Vernon's Texas Civil Statutes, revised as Section 4003.006 of this title, references "an application for qualifying securities under Section
7A," meaning Subsection A, Article 581-7, Vernon's Texas Civil Statutes. Subsection B, Article 581-10, Vernon's Texas Civil Statutes, revised as Section 4003.007 of this title, also references a "permit qualifying securities." It is clear from the portion of Subsection A, Article 581-7, revised in Chapter 4003 of this title and from other provisions of The Securities Act that the referenced permit authorizes the permit holder to offer for sale and sell securities. The revised law substitutes securities "qualified for sale by a permit issued under Subchapter A, Chapter 4003" for "securities registered by qualification" for the reason stated in Revisor's Note (1) to Section 4003.001.

(5) Subdivision (9), Subsection O, Article 581-5, Vernon's Texas Civil Statutes, refers to securities "registered by . . . notification or coordination under Section 7 of this Act." The provisions of Article 581-7, Vernon's Texas Civil Statutes, relating to the registration of securities by notification and coordination are Subsections B and C of that article, revised as Subchapters B and C, Chapter 4003, of this title, respectively, and the revised law is drafted accordingly.

(6) Subsection O, Article 581-5, Vernon's Texas Civil Statutes, refers to a hearing before the State Securities Board or a hearings officer concerning the revocation or suspension of a previously approved manual as "now or hereafter required by law." Chapter 2003, Government Code, which was enacted after Subsection O, Article 581-5, requires an administrative law judge of the State Office of Administrative Hearings to conduct an administrative hearing for a state agency in certain circumstances.
The revised law is drafted to take that requirement into account. The revised law omits the reference to "now or hereafter" because, regardless of the quoted phrase, the law that will apply to a hearing is the law in effect at the time the recognition of a previously approved manual is revoked or suspended.

Revised Law

Sec. 4005.020. UNSOLICITED ORDERS. The exemption provided by Section 4005.001 applies to a dealer's execution of an unsolicited order for the purchase of securities for which the initial offering of the securities has been completed if the dealer:

(1) acts solely as an agent for the purchaser;

(2) does not have a direct or indirect interest in the sale or distribution of securities ordered; and

(3) does not receive a commission, profit, or other compensation from any source other than the purchaser. (V.A.C.S. Art. 581-5, Subsec. P.)

Source Law

Art. 581-5. [Except as hereinafter in this Act specifically provided, the provisions of this Act shall not apply to] the sale of any security when made [in any of the following transactions and under any of the following conditions,] ... that is to say, the provisions of this Act shall not apply to any sale, offer for sale, solicitation, subscription, dealing in or delivery of any security under any of the following transactions or conditions:

P. The execution by a dealer of an unsolicited order for the purchase of securities, where the initial offering of such securities has been completed and provided that the dealer acts solely as an agent for the purchaser, has no direct or indirect interest in the sale or distribution of the security ordered, and receives no commission, profit, or other compensation from any source other than the purchaser.

Revised Law

Sec. 4005.021. OIL, GAS, OR MINING INTERESTS. (a) Subject to Subsection (b), the exemption provided by Section 4005.001 applies to the sales of interests in and under oil, gas, or mining leases, fees, or titles, or contracts relating to those interests
in which:

(1) the total number of sales by any one owner of interests, whether whole, fractional, segregated, or undivided in any single oil, gas, or mineral lease, fee, or title, or contract relating to those interests, is not more than 35 during a 12 consecutive month period; and

(2) no use is made of advertisement or public solicitation.

(b) If a sale of an interest described by Subsection (a) is made for an owner of the interest by an agent of the owner, the exemption under that subsection applies only if the agent is registered under this title.

(c) An oil, gas, or mineral unitization or pooling agreement may not be considered a sale under this title. (V.A.C.S. Art. 581-5, Subsec. Q.)

Source Law

Art. 581-5. [Except as hereinafter in this Act specifically provided, the provisions of this Act shall not apply to] the sale of any security when made [in any of the following transactions and under any of the following conditions,] . . . that is to say, the provisions of this Act shall not apply to any sale, offer for sale, solicitation, subscription, dealing in or delivery of any security under any of the following transactions or conditions:

Q. The sales of interests in and under oil, gas or mining leases, fees or titles, or contracts relating thereto, where (1) the total number of sales by any one owner of interests, whether whole, fractional, segregated or undivided in any single oil, gas or mineral lease, fee or title, or contract relating thereto, shall not exceed thirty-five (35) within a period of twelve (12) consecutive months and (2) no use is made of advertisement or public solicitation; provided, however, if such sale or sales are made by an agent for such owner or owners, such agent shall be licensed pursuant to this Act. No oil, gas or mineral unitization or pooling agreement shall be deemed a sale under this Act.

Revisor's Note

Subsection Q, Article 581-5, Vernon's Texas Civil Statutes, refers to sales of certain property interests made on behalf of certain owners of the interests by agents "licensed" under this title. The
revised law substitutes "registered" for "licensed"
because Subsection A, Article 581-12, Vernon's Texas
Civil Statutes, revised as Section 4004.101 of this
title, requires agents to be registered, not licensed,
under The Securities Act (Article 581-1 et seq.,
Vernon's Texas Civil Statutes), revised as this title.

Revised Law
Sec. 4005.022. ISSUER SALES OF EXEMPT SECURITIES. (a) The
exemption provided by Section 4005.001 applies to the sale by the
issuer itself or by a subsidiary of the issuer of any securities
that would be exempt under Subchapter B if sold by a registered
dealer.

(b) This section does not apply to securities that would be
exempt under Section 4005.053. (V.A.C.S. Art. 581-5, Subsec. R.)

Source Law
Art. 581-5. [Except as hereinafter in this Act
specifically provided, the provisions of this Act
shall not apply to] the sale of any security when made
[in any of the following transactions and under any of
the following conditions,] . . . that is to say, the
provisions of this Act shall not apply to any sale,
offer for sale, solicitation, subscription, dealing in
or delivery of any security under any of the following
transactions or conditions:

R. The sale by the issuer itself, or by a
subsidiary of such issuer, of any securities which
would be exempt if sold by a registered dealer under
Section 6 (other than Section 6E) of this Act.

Revised Law
Sec. 4005.023. OPTIONS. (a) In this section, "option"
means and includes a put, call, straddle, or other option or
privilege of buying from another person or selling to another
person a specified number of securities at a specified price,
without being obligated to do so, on or before a specified date. The
term does not include an option or privilege that by its terms may
terminate before the specified date on the occurrence of a
specified event.

(b) The exemption provided by Section 4005.001 applies to a
sale of an option by or through a registered dealer if, at the time
of the sale:

(1) the performance of the terms of the option is guaranteed by a broker-dealer registered under the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.);

(2) the guaranty and broker-dealer described by Subdivision (1) are in compliance with any requirements or rules adopted or approved by the board;

(3) the option is not sold by or for the benefit of the issuer of the security that may be purchased or sold on exercise of the option;

(4) the security that may be purchased or sold on exercise of the option is either:

(A) exempted under Section 4005.054; or

(B) quoted on the NASDAQ stock market and meets the requirements of Sections 4005.019(b)(1), (6), (7), and (8); and

(5) the sale is not directly or indirectly for the purposes of providing or furthering a scheme to violate or evade this title. (V.A.C.S. Art. 581-5, Subsec. S.)

Source Law

Art. 581-5. [Except as hereinafter in this Act specifically provided, the provisions of this Act shall not apply to] the sale of any security when made [in any of the following transactions and under any of the following conditions,] . . . . that is to say, the provisions of this Act shall not apply to any sale, offer for sale, solicitation, subscription, dealing in or delivery of any security under any of the following transactions or conditions:

S. The sale by or through a registered dealer of any option if at the time of the sale of the option:

(1) the performance of the terms of the option is guaranteed by any broker-dealer registered under the federal Securities Exchange Act of 1934, as amended, which guaranty and broker-dealer are in compliance with such requirements or regulations as may be approved or adopted by the board;

(2) the option is not sold by or for the benefit of the issuer of the security which may be purchased or sold upon exercise of the option;

(3) the security which may be purchased or sold upon exercise of the option is either (a) exempted under Subsection F of Section 6 of this Act or (b) quoted on the NASDAQ stock market and meets the requirements of Paragraphs (1), (6), (7), and (8) of Subsection O of Section 5 of this Act; and

(4) such sale is not directly or indirectly for the purposes of providing or furthering
any scheme to violate or evade any provisions of this Act.

For purposes of this subsection the term "option" shall mean and include any put, call, straddle, or other option or privilege of buying or selling a specified number of securities at a specified price from or to another person, without being bound to do so, on or prior to a specified date, but such term shall not include any option or privilege which by its terms may terminate prior to such specified date upon the occurrence of a specified event.

Revisor's Note


(2) Subdivision (1), Subsection S, Article 581-5, Vernon's Texas Civil Statutes, refers to compliance with "regulations" adopted by the State Securities Board. Throughout this chapter, the revised law substitutes "rules" or "rule" for "regulations" or "regulation" because under Section 311.005(5), Government Code (Code Construction Act), applicable to the revised law, a rule is defined to include a regulation.

Revised Law

Sec. 4005.024. EXEMPTIONS BY RULE OR ORDER. The exemption provided by Section 4005.001 applies to the sale of a security made
in other transactions or under other conditions not specified in
this subchapter as the board by rule or order may define or
prescribe, conditionally or unconditionally. (V.A.C.S. Art.
581-5, Subsec. T.)

Source Law

Art. 581-5. [Except as hereinafter in this Act
specifically provided, the provisions of this Act
shall not apply to] the sale of any security when made
[in any of the following transactions and under any of
the following conditions,] . . . that is to say, the
provisions of this Act shall not apply to any sale,
offer for sale, solicitation, subscription, dealing in
or delivery of any security under any of the following
transactions or conditions:

T. Such other transactions or conditions as the
board by rule, regulation, or order may define or
prescribe, conditionally or unconditionally.

Revised Law

Sec. 4005.025. ISSUANCE OR TRANSFER TO NONPROFITS. The
exemption provided by Section 4005.001 applies to the issuance or
transfer of securities by the issuer of its securities to a
corporation or association organized exclusively for a religious,
educational, benevolent, fraternal, charitable, or reformatory
purpose and not for pecuniary profit, only if:

(1) the corporation or association does not provide
anything of value for the securities other than, for a security that
is an option, payment of the exercise price of the option to acquire
the securities at a price not to exceed the fair market value of the
underlying securities on the date the option was granted;

(2) the issuance or transfer is not made for the
purpose of raising capital for the issuer;

(3) a commission or other form of consideration is not
paid or provided to a third party with respect to the issuance or
transfer; and

(4) the issuance or transfer is not directly or
indirectly for the purposes of providing or furthering a scheme to
violate or evade this title. (V.A.C.S. Art. 581-5, Subsec. U.)

Source Law

Art. 581-5. [Except as hereinafter in this Act
specifically provided, the provisions of this Act shall not apply to the sale of any security when made in any of the following transactions and under any of the following conditions,] ... that is to say, the provisions of this Act shall not apply to any sale, offer for sale, solicitation, subscription, dealing in or delivery of any security under any of the following transactions or conditions:

U. The issuance or transfer of securities by the issuer of its securities to a corporation or association, organized exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, only if:

(a) the corporation or association does not provide anything of value for the securities other than, in the case of any security that is an option, payment of the exercise price of the option to acquire the securities at a price not to exceed the fair market value of the underlying securities on the date the option was granted;

(b) the issuance or transfer of securities is not made for the purpose of raising capital for the issuer;

(c) no commission or other form of consideration is paid or provided to a third party with respect to the issuance or transfer; and

(d) the issuance or transfer is not directly or indirectly for the purpose of providing or furthering a scheme in violation of or to evade this Act.

SUBCHAPTER B. EXEMPT SECURITIES

Revised Law

Sec. 4005.051. SCOPE OF EXEMPTION. Except as expressly provided otherwise in this title, this title does not apply to a security described by this subchapter when offered for sale, sold, or dealt in by a registered dealer or a registered dealer's agent. (V.A.C.S. Art. 581-6 (part).)

Source Law

Art. 581-6. Except as hereinafter in this Act expressly provided, the provisions of this Act shall not apply to any of the following securities when offered for sale, or sold, or dealt in by a registered dealer or agent of a registered dealer:

... 

Revised Law

Sec. 4005.052. RAILROADS OR UTILITIES. The exemption provided by Section 4005.051 applies to:

(1) a security issued or guaranteed either as to principal, interest, or dividend by a corporation that owns or operates a railroad or any other public service utility if the
corporation is subject to regulation or supervision either as to
the corporation's rates and charges or as to the issuance of the
corporation's own securities by:

(A) the Texas Department of Transportation; or
(B) a public commission, an agency, a board, or
officers of:

(i) the government of the United States;
(ii) the District of Columbia, a state, territory, or insular possession of the United States, or a municipal corporation; or
(iii) Canada or a province of Canada; or
(2) equipment trust certificates or equipment notes or bonds:

(A) that are based on chattel mortgages, leases or agreements for conditional sale of cars, motive power or other rolling stock mortgages, leased or sold to or provided for the use of or on a railroad or other public service utility corporation if the corporation is subject to regulation or supervision as described by Subdivision (1); or

(B) for which the ownership or title of the equipment is pledged or retained to secure the payment of the equipment trust certificates, bonds, or notes, in accordance with the laws of:

(i) the United States;
(ii) the District of Columbia or a state, territory, or insular possession of the United States; or
(iii) Canada or a province of Canada.

(V.A.C.S. Art. 581-6, Subsec. D.)

Source Law
Art. 581-6. [Except as hereinafter in this Act expressly provided, the provisions of this Act shall not apply to] any [of the following] securities when offered for sale, or sold, or dealt in by a registered dealer or agent of a registered dealer:

D. Any security issued or guaranteed either as to principal, interest, or dividend, by a corporation owning or operating a railroad or any other public service utility; provided, that such corporation is
subject to regulation or supervision either as to its
rates and charges or as to the issue of its own
securities by the Railroad Commission of Texas, or by a
public commission, agency, board or officers of the
Government of the United States, or of any territory or
insular possession thereof, or of any state or
municipal corporation, or of the District of Columbia,
or of the Dominion of Canada, or any province thereof;
also equipment trust certificates or equipment notes
or bonds based on chattel mortgages, leases or
agreements for conditional sale of cars, motive power
or other rolling stock mortgages, leased or sold to or
furnished for the use of or upon a railroad or other
public service utility corporation, provided that such
corporation is subject to regulation or supervision as
above; or equipment trust certificates, or equipment
notes or bonds where the ownership or title of such
equipment is pledged or retained in accordance with
the provisions of the laws of the United States, or of
any state, territory or insular possession thereof, or
of the District of Columbia, or the Dominion of Canada,
or any province thereof, to secure the payment of such
equipment trust certificates, bonds or notes.

Revisor's Note

Subsection D, Article 581-6, Vernon's Texas Civil
Statutes, refers to a corporation subject to
regulation or supervision by the "Railroad Commission
of Texas" regarding the corporation's rates and
charges or the corporation's issuance of its own
securities. The revised law substitutes "Texas
Department of Transportation" for "Railroad
Commission of Texas" because as provided by Section
111.003, Transportation Code, all powers and duties of
the Railroad Commission of Texas that related to
railroads and the regulation of railroads and that
existed on October 1, 2005, were transferred to the
Texas Department of Transportation, as provided by
Chapter 281, Acts of the 79th Legislature, Regular
Session, 2005.

Revised Law

Sec. 4005.053. NONPROFIT CORPORATIONS. The exemption
provided by Section 4005.051 applies to a security issued and sold
by a domestic corporation that:

(1) is not organized and engaged in business for
profit; and
(2) does not have capital stock. (V.A.C.S. Art. 581-6, Subsec. E.)

**Source Law**

Art. 581-6. [Except as hereinafter in this Act expressly provided, the provisions of this Act shall not apply to] any [of the following] securities when offered for sale, or sold, or dealt in by a registered dealer or agent of a registered dealer:

E. Any security issued and sold by a domestic corporation without capital stock and not organized and not engaged in business for profit.

**Revised Law**

Sec. 4005.054. LISTED SECURITIES. (a) The exemption provided by Section 4005.051 applies to securities that at the time of sale:

(1) are fully listed on:

(A) the American Stock Exchange;
(B) the Boston Stock Exchange;
(C) the Chicago Stock Exchange;
(D) the New York Stock Exchange; or
(E) a recognized and responsible stock exchange approved by the commissioner, as provided by Subchapter C;

(2) are designated or approved for designation on notice of issuance on the national market system of the NASDAQ stock market; or

(3) are senior to, or if of the same issue, on a parity with, any securities listed or designated as described by Subdivision (1) or (2) or represented by subscription rights that are listed or designated as described by Subdivision (1) or (2), or evidence of indebtedness guaranteed by a company, any stock of which is listed or designated as described by Subdivision (1) or (2).

(b) Securities described by Subsection (a) are exempt only so long as the exchange on which the securities are listed remains approved under this section or Subchapter C. (V.A.C.S. Art. 581-6, Subsec. F (part).)
Source Law

Art. 581-6. [Except as hereinafter in this Act expressly provided, the provisions of this Act shall not apply to] any [of the following] securities when offered for sale, or sold, or dealt in by a registered dealer or agent of a registered dealer:

F. Securities which at the time of sale have been fully listed upon the American Stock Exchange, the Boston Stock Exchange, the Chicago Stock Exchange or the New York Stock Exchange, have been designated or approved for designation on notice of issuance on the national market system of the NASDAQ stock market, or have been fully listed upon any recognized and responsible stock exchange approved by the Commissioner as hereinafter in this section provided, and also all securities senior to, or if of the same issues, upon a parity with, any securities so listed or designated or represented by subscription rights which have been so listed or designated, or evidence of indebtedness guaranteed by any company, any stock of which is so listed or designated, such securities to be exempt only so long as the exchange upon which such securities are so listed remains approved under the provisions of this Section...

Revised Law

Sec. 4005.055. COMMERCIAL PAPER. The exemption provided by Section 4005.051 applies to:

(1) commercial paper that:
(A) arises out of a current transaction or the proceeds of which have been or are to be used for current transactions; and
(B) evidences an obligation to pay cash not later than the ninth month after the issuance date of the commercial paper, not including days of grace;

(2) a renewal of commercial paper described by Subdivision (1) that is similarly limited; or

(3) a guarantee of commercial paper described by Subdivision (1) or of a renewal described by Subdivision (2).

(V.A.C.S. Art. 581-6, Subsec. H.)
or are to be used for current transactions, and that evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper that is likewise limited, or any guarantee of such paper or of any such renewal.

Revised Law

Sec. 4005.056. SECURED DEBT. The exemption provided by Section 4005.051 applies to notes, bonds, or other evidence of indebtedness or certificates of ownership that:

1. (1) are equally and proportionately secured without reference of priority of one over another; and
2. (2) by the terms of the instrument creating the lien, continue to be secured by the deposit with a trustee of recognized responsibility approved by the commissioner of any of the securities specified in:
   
   (A) Section 4005.017, if the deposited securities have an aggregate par value of not less than 110 percent of the par value of the securities being secured; or
   
   (B) Section 4005.052, if the deposited securities have an aggregate par value of not less than 125 percent of the par value of the securities being secured. (V.A.C.S. Art. 581-6, Subsec. I.)

Source Law

Art. 581-6. [Except as hereinafter in this Act expressly provided, the provisions of this Act shall not apply to] any [of the following] securities when offered for sale, or sold, or dealt in by a registered dealer or agent of a registered dealer:

I. Notes, bonds, or other evidence of indebtedness or certificates of ownership which are equally and proportionately secured without reference of priority of one over another, and which, by the terms of the instrument creating the lien, shall continue to be so secured by the deposit with a trustee of recognized responsibility approved by the Commissioner of any of the securities specified in Subsection M of Section 5 or Subsection D of Section 6; such deposited securities, if of the classes described in Subsection M of Section 5, having an aggregate par value of not less than one hundred and ten per cent (110%) of the par value of the securities thereby secured, and if of class specified in Subsection D of Section 6, having an aggregate par value of not less than one hundred and twenty five per cent (125%) of the par value of the securities thereby secured.
Revised Law
Sec. 4005.057. NONPROFIT DEBT. The exemption provided by Section 4005.051 applies to notes, bonds, or other evidence of indebtedness of a religious, charitable, or benevolent corporation. (V.A.C.S. Art. 581-6, Subsec. J.)

Source Law
Art. 581-6. [Except as hereinafter in this Act expressly provided, the provisions of this Act shall not apply to] any [of the following] securities when offered for sale, or sold, or dealt in by a registered dealer or agent of a registered dealer:

J. Notes, bonds or other evidence of indebtedness of religious, charitable or benevolent corporations.

Revised Law
Sec. 4005.058. SUSPENSION OF EXEMPT STATUS OF TRADING SYSTEM. (a) The commissioner, by the same procedures described by Section 4005.105, may at any time suspend the exempt status of any trading system exempted by the legislature on or after January 1, 1989, if at the time of the hearing the trading system does not meet the applicable standards for approval of exchanges provided by this title.

(b) The suspension of a trading system under Subsection (a) has the same effect as the withdrawal of approval of a stock exchange under Section 4005.105.

(c) The suspension under Subsection (a) remains in effect until the commissioner by order determines that the trading system:

(1) has corrected each deficiency on which the suspension was based; and

(2) maintains standards and procedures that provide reasonable protection to the public. (V.A.C.S. Art. 581-6, Subsec. F (part).)

Source Law
F. . . .
By the same procedure set out in the preceding paragraph with respect to exchanges approved by the Commissioner, the Commissioner may suspend the exempt status of any trading system exempted by the Legislature on or after January 1, 1989, if that system does not at the time of hearing meet the applicable
standards for approval of exchanges prescribed by this Act. The suspension has the same effect as the removal of approval of an exchange. The suspension remains in effect until the Commissioner by order determines that the trading system has corrected the deficiency or deficiencies on which the suspension was based and maintains standards and procedures that provide reasonable protection to the public.

SUBCHAPTER C. PROCEDURES FOR APPROVAL OF STOCK EXCHANGE

Revised Law
Sec. 4005.101. APPLICATION FOR APPROVAL. An organized stock exchange may apply to the commissioner for approval in the manner and on the forms the commissioner prescribes. (V.A.C.S. Art. 581-6, Subsec. F (part).)

Source Law
F. .... Application for approval by the Commissioner may be made by any organized stock exchange in such manner and upon such forms as may be prescribed by the Commissioner, but ....

Revised Law
Sec. 4005.102. APPROVAL OF STOCK EXCHANGE. The commissioner may approve a stock exchange only if the commissioner finds that the facts and data provided with the application establish that:

(1) the requirements for the listing of securities on the exchange seeking approval provide reasonable protection to the public; and

(2) the governing constitution, bylaws, or regulations of the exchange require:

(A) an adequate examination into the affairs of the issuer of the securities to be listed on the exchange before permitting trading on the exchange;

(B) that the issuer of the securities, while the securities are listed on the exchange, shall periodically prepare, make public, and provide promptly to the exchange appropriate income, profit and loss, and other financial statements;

(C) that securities listed and traded on the exchange be restricted to securities of ascertained, sound asset or income value; and
(D) a reasonable surveillance of the exchange's members, including a requirement for periodical financial statements, a determination of the members' financial responsibility, and the right and obligation of the exchange's governing body to suspend or expel any member found:

(i) to be financially embarrassed or irresponsible; or

(ii) guilty of misconduct in the member's business dealings or of conduct prejudicial to the rights and interests of the member's customers. (V.A.C.S. Art. 581-6, Subsec. F (part).)

Source Law

F. . . . no approval of any exchange shall be given unless the facts and data supplied with the application shall be found to establish:

(1) That the requirements for the listing of securities upon the exchange so seeking approval are such as to effect reasonable protection to the public;

(2) That the governing constitution, by-laws or regulations of such exchange shall require:

1st: An adequate examination into the affairs of the issuer of the securities which are to be listed before permitting trading therein;

2nd: That the issuer of such securities, so long as they be listed, shall periodically prepare, make public and furnish promptly to the exchange, appropriate financial, income, and profit and loss statements;

3rd: Securities listed and traded in on such exchange to be restricted to those of ascertained, sound asset or income value;

4th: A reasonable surveillance of its members, including a requirement for periodical financial statements and a determination of the financial responsibility of its members and the right and obligation in the governing body of such exchange to suspend or expel any member found to be financially embarrassed or irresponsible or found to have been guilty of misconduct in his business dealings, or conduct prejudicial of the rights and interests of his customers;

. . .

Revised Law

Sec. 4005.103. INVESTIGATION AND HEARING. The commissioner may approve a stock exchange only after a reasonable investigation and hearing. (V.A.C.S. Art. 581-6, Subsec. F (part).)

Source Law

F. . . .
The approval of any such exchange by the Commissioner shall be made only after a reasonable investigation and hearing, and...

Revised Law

Sec. 4005.104. ORDER OF APPROVAL. The commissioner's approval of a stock exchange must be made by a written order based on a finding of fact substantially in accordance with the requirements of Sections 4005.101 and 4005.102. (V.A.C.S. Art. 581-6, Subsec. F (part).)

Source Law

... The approval of any such exchange by the Commissioner [shall be made only after a reasonable investigation and hearing, and] shall be by a written order of approval upon a finding of fact substantially in accordance with the requirements hereinabove provided...

Revised Law

Sec. 4005.105. WITHDRAWAL OF APPROVAL. At any time, the commissioner, on 10 days' notice and hearing, may withdraw approval of a stock exchange that at the time of the hearing does not meet the standards for approval under this title. On the withdrawal of approval, securities listed on the exchange are not exempt from this title until the commissioner issues an order approving the exchange. (V.A.C.S. Art. 581-6, Subsec. F (part).)

Source Law

... The Commissioner, upon ten (10) days notice and hearing, shall have power at any time to withdraw approval theretofore granted by him to any such stock exchange which does not at the time of hearing meet the standards of approval under this Act, and thereupon securities so listed upon such exchange shall be no longer entitled to the benefit of such exemption except upon the further order of said Commissioner approving such exchange.

...
The board shall establish the following fees in amounts so that the aggregate amount that exceeds the amount of the fees on September 1,
2002, produces sufficient revenue to cover the costs of administering and enforcing this title:

(1) for filing an original, amended, or renewal application or registration statement to sell or dispose of securities, an amount not to exceed $100;

(2) for filing an original application of a dealer or investment adviser or submitting a notice filing for a federal covered investment adviser, an amount not to exceed $100;

(3) for filing a renewal application of a dealer or investment adviser or submitting a renewal notice filing for a federal covered investment adviser, an amount not to exceed $100;

(4) for filing an original application for each agent, officer, or investment adviser representative or submitting a notice filing for each representative of a federal covered investment adviser, an amount not to exceed $100; and

(5) for filing a renewal application for each agent, officer, or investment adviser representative or submitting a renewal notice filing for each representative of a federal covered investment adviser, an amount not to exceed $100. (V.A.C.S. Art. 581-35, Subsec. A.)

Source Law

Art. 581-35. A. The Board shall establish the following fees in amounts so that the aggregate amount that exceeds the amount of the fees on September 1, 2002, produces sufficient revenue to cover the costs of administering and enforcing this Act:

(1) for the filing of any original, amended, or renewal application to sell or dispose of securities, an amount not to exceed $100;

(2) for the filing of any original application of a dealer or investment adviser or for the submission of a notice filing for a federal covered investment adviser, an amount not to exceed $100;

(3) for the filing of any renewal application of a dealer or investment adviser or for the submission of a renewal notice filing for a federal covered investment adviser, an amount not to exceed $100;

(4) for the filing of any original application for each agent, officer, or investment adviser representative or for the submission of a notice filing for each representative of a federal covered investment adviser, an amount not to exceed $100; and

(5) for the filing of any renewal application for each agent, officer, or investment adviser representative or for the submission of a renewal notice filing for each representative of a federal covered investment adviser, an amount not to exceed $100.
adviser representative or for the submission of a
renewal notice filing for each representative of a
federal covered investment adviser, an amount not to
exceed $100.

Revisor's Note
(1) Article 581-35, Vernon's Texas Civil
Statutes, provides that the State Securities Board
shall establish fees in an amount sufficient to cover
the costs of administering and enforcing "this Act,"
which is The Securities Act (Article 581-1 et seq.,
Vernon's Texas Civil Statutes). The provisions of The
Securities Act are revised as this title. The revised
law throughout this chapter therefore substitutes
references to "this title" for references to "this
Act."

(2) Subdivision (1), Subsection A, Article
581-35, Vernon's Texas Civil Statutes, refers to fees
for "the filing of any original, amended, or renewal
application to sell or dispose of securities." The
revised law substitutes "application or registration
statement" for "application" because Subsections B and
C, Article 581-7, Vernon's Texas Civil Statutes,
revised as Subchapters B and C of Chapter 4003 of this
title, authorize the sale or disposal of securities by
the issuer or a registered dealer through the filing of
a registration statement, not an application.

SUBCHAPTER B. EXEMPTION FEES AND OTHER FEES

Revised Law
Sec. 4006.051. NOTICE FOR SECONDARY TRADING EXEMPTION. The
commissioner or board shall charge and collect:

(1) a fee of $500 for filing an initial notice required
by the commissioner to claim a secondary trading exemption; and

(2) a fee of $500 for filing a secondary trading
(part).)
B. The Commissioner or Board shall charge and collect the following fees and:

(6) for the filing of an initial notice required by the Commissioner to claim a secondary trading exemption, a fee of $500, and for the filing of a secondary trading exemption renewal notice, a fee of $500;

Revised Law
Sec. 4006.052. NOTICE FOR LIMITED OFFERING EXEMPTION. (a)
Subject to Subsection (b), for filing an initial notice required by the commissioner to claim a limited offering exemption, the commissioner or board shall charge and collect a fee of one-tenth of one percent of the aggregate amount of securities described as being offered for sale.

(b) A fee charged under this section may not exceed $500.

(V.A.C.S. Art. 581-35, Subsec. B (part).)

Source Law
B. The Commissioner or Board shall charge and collect the following fees:

(7) for the filing of an initial notice required by the Commissioner to claim a limited offering exemption, a fee of one-tenth (1/10) of one percent (1%) of the aggregate amount of securities described as being offered for sale, but in no case more than $500; and

Revised Law
Sec. 4006.053. APPLICATION FOR APPROVAL OF STOCK EXCHANGE.
The commissioner or board shall charge and collect a fee of $10,000 for filing an application for approval of a stock exchange.

(V.A.C.S. Art. 581-35, Subsec. B (part).)

Source Law
B. The Commissioner or Board shall charge and collect the following fees:

(4) for the filing of any application for approval of a stock exchange so that securities fully listed thereon will be exempt, a fee of $10,000;

Revisor's Note
Subsection B, Article 581-35, Vernon's Texas

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Civil Statutes, refers to filing an application for approval of a stock exchange "so that securities fully listed thereon will be exempt." The revised law omits the quoted language as unnecessary because Subsection F, Article 581-6, Vernon's Texas Civil Statutes, revised in this title as Section 4005.054, provides that securities listed on a stock exchange approved by the securities commissioner are exempt from The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), revised as this title.

Revised Law
Sec. 4006.054. AMENDMENT OR DUPLICATE OF REGISTRATION CERTIFICATE OR EVIDENCE OF REGISTRATION; REGISTRATION OF BRANCH OFFICE. The commissioner or board shall charge and collect a fee of $25 for a filing to:

(1) amend the registration certificate of a dealer or investment adviser or the evidence of registration of an agent or investment adviser representative;

(2) issue a duplicate certificate or evidence of registration; or

(3) register a branch office. (V.A.C.S. Art. 581-35, Subsec. B (part).)

Source Law

B. The Commissioner or Board shall charge and collect the following fees . . . :

(1) for any filing to amend the registration certificate of a dealer or investment adviser or evidence of registration of an agent or investment adviser representative, issue a duplicate certificate or evidence of registration, or register a branch office, $25;

. . .

Revised Law
Sec. 4006.055. EXAMINATION OF CERTAIN APPLICATIONS OR REGISTRATION STATEMENTS. (a) For the examination of an original or amended application or registration statement filed under Subchapter A, B, or C, Chapter 4003, the commissioner or board shall charge and collect a fee of one-tenth of one percent of the
aggregate amount of securities described and proposed to be sold to
persons located in this state based on the price at which the
securities will be offered to the public.

(b) A fee under this section applies regardless of whether
the application or registration statement is denied, abandoned,
withdrawn, or approved. (V.A.C.S. Art. 581-35, Subsec. B (part).)

Source Law

B. The Commissioner or Board shall charge and
collect the following fees . . .:

(2) for the examination of any original or
amended application filed under Subsection A, B, or C
of Section 7 of this Act, regardless of whether the
application is denied, abandoned, withdrawn, or
approved, a fee of one-tenth (1/10) of one percent (1%)
of the aggregate amount of securities described and
proposed to be sold to persons located within this
state based upon the price at which such securities are
to be offered to the public;

Revisor's Note

Subdivision (2), Subsection B, Article 581-35,
Vernon's Texas Civil Statutes, refers to the fee for
the examination of an "application filed under
Subsection A, B, or C of Section 7 of this Act,"
meaning Subsection A, B, or C of Article 581-7,
Vernon's Texas Civil Statutes, revised as Subchapters
A, B, and C, Chapter 4003, of this title. The revised
law substitutes "application or registration
statement" for "application" for the reason stated in
Revisor's Note (2) to Section 4006.001 of this chapter.

Revised Law

Sec. 4006.056. CERTIFIED COPIES. (a) For a certified copy
of any papers filed in the office of the commissioner, the
commissioner shall charge and collect a fee that is reasonably
related to the costs of producing the certified copy.

(b) A fee charged under this section may not be more than a
fee that the secretary of state is authorized to charge for a
similar service. (V.A.C.S. Art. 581-35, Subsec. B (part).)
B. The Commissioner or Board shall charge and collect the following fees:

(3) for certified copies of any papers filed in the office of the Commissioner, the Commissioner shall charge such fees as are reasonably related to costs; however, in no event shall such fees be more than those which the Secretary of State is authorized to charge in similar cases;

(5) for the filing of a request to take the Texas Securities Law Examination, $35;

Sec. 4006.057. REQUEST TO TAKE EXAMINATION. The commissioner or board shall charge and collect a fee of $35 for filing a request to take the Texas Securities Law Examination. (V.A.C.S. Art. 581-35, Subsec. B (part).)

Sec. 4006.058. INTERPRETATION BY GENERAL COUNSEL. (a) Except as provided by Subsection (b), the commissioner or board shall charge and collect a fee of $100 for an interpretation by the board's general counsel of this title or a rule adopted under this title.

(b) An officer or employee of a governmental entity and the entity that the officer or employee represents are exempt from the fee under this section if the officer or employee is conducting official business of the entity. (V.A.C.S. Art. 581-35, Subsec. B (part).)
SUBCHAPTER C. PROVISIONS APPLICABLE TO CERTAIN FEES

Revised Law
Sec. 4006.101. REASONABLE AND NECESSARY REQUIREMENT.
Subject to Subchapter A, the board shall set a fee under Subchapters A and B in an amount that is reasonable and necessary to defray costs. (V.A.C.S. Art. 581-35, Subsec. C.)

Source Law
C. Subject to Subsection A of this section, the Board shall set a fee under this section in an amount that is reasonable and necessary to defray costs.

Revisor's Note
Subsection C, Article 581-35, Vernon's Texas Civil Statutes, requires the State Securities Board to set fees "under this section," meaning Article 581-35, Vernon's Texas Civil Statutes. The provisions of Article 581-35 pertaining to setting fees under that article are revised as various provisions in Subchapters A and B of this chapter, and the revised law is drafted accordingly.

Revised Law
Sec. 4006.102. REDUCED FEES. (a) The board by rule may adopt reduced fees under Section 4006.001 for original and renewal applications of dealers, agents, officers, investment advisers, or investment adviser representatives who have assumed inactive status as defined by the board.
(b) The board by rule may adopt reduced fees under Section 4006.001 as appropriate to accommodate a small business required by this title to register in two or more of the following capacities:
   (1) dealer;
   (2) agent;
   (3) investment adviser;
   (4) investment adviser representative; or
   (5) officer.
(c) A person is not required to pay more than one fee required under Section 4006.001 to engage in business in this state
concurrently for the same person or company as:

(1) a dealer and an investment adviser; or

(2) an agent and investment adviser representative.

(V.A.C.S. Art. 581-42.)

Source Law

Art. 581-42. A. The Board by rule may adopt reduced fees, under Sections 35 and 41 of this Act, for original and renewal applications of dealers, agents, officers, investment advisers, or investment adviser representatives who have assumed inactive status as defined by the Board.

B. The Board by rule may adopt reduced fees, under Sections 35 and 41 of this Act, as appropriate to accommodate a small business required by this Act to register in two or more of the following capacities:

(1) dealer;

(2) agent;

(3) investment adviser;

(4) investment adviser representative; or

(5) officer.

C. Notwithstanding Sections 35 and 41 of this Act, a person shall pay only one fee required under those sections to engage in business in this state concurrently for the same person or company as:

(1) a dealer and an investment adviser; or

(2) an agent and investment adviser representative.

Revisor's Note

(1) Article 581-42, Vernon's Texas Civil Statutes, refers to the authority of the State Securities Board to adopt reduced fees under Article 581-35, Vernon's Texas Civil Statutes. In Subsections (a) and (b) of the revised law, "Section 4006.001" is substituted for references to Article 581-35 because the fees to which those subsections refer are contained in Subsection A, Article 581-35, which is revised in this chapter as Section 4006.001.

(2) Subsections A and B, Article 581-42, Vernon's Texas Civil Statutes, refer to the authority of the State Securities Board to adopt reduced fees under Article 581-41. Subsection C, Article 581-42, refers to payment of a fee, notwithstanding Article 581-41. The revised law omits the references to that provision because Article 581-41 was repealed by

(3) Subsection C, Article 581-42, Vernon's Texas Civil Statutes, provides that a person is not required to pay more than one fee under Article 581-35, Vernon's Texas Civil Statutes, to engage in business in this state concurrently for the same person or company as a dealer and an investment adviser or as an agent and an investment adviser representative. The provisions of Article 581-35 pertaining to the payment of original or renewal application fees necessary to engage in business as a dealer, an investment adviser, an agent, or an investment adviser representative are revised in Section 4006.001 of this chapter, and the revised law is drafted accordingly.

Revised Law
Sec. 4006.103. PAYMENT OF CERTAIN COSTS. A cost incurred by the board in administering this title may be paid only from a fee collected under Section 4006.001. (V.A.C.S. Art. 581-35, Subsec. D.)

Source Law
D. A cost incurred by the Board in administering this Act may be paid only from a fee collected under Subsection A of this section.

Revised Law
Sec. 4006.104. REFUND OF REGISTRATION FEE. If the commissioner or board determines that all or part of a registration fee should be refunded, the commissioner may make the refund by warrant on the state treasury from money appropriated from the general revenue fund for that purpose. (V.A.C.S. Art. 581-36 (part).)

Source Law
Art. 581-36. . . . If the Commissioner or Board determines that all or part of a registration fee should be refunded, the Commissioner may make the refund by warrant on the State Treasury from funds appropriated from the General Revenue Fund for that
Revisor's Note

Article 581-36, Vernon's Texas Civil Statutes, refers to "funds" appropriated from the general revenue fund. The revised law substitutes "money" for "funds" because, in context, the meaning is the same and "money" is the more commonly used term.

SUBCHAPTER D. FEES FOR CERTAIN SALES OR OFFERS OF SECURITIES

Revised Law

Sec. 4006.151. FEE FOR SALE OF EXCESS SECURITIES. (a) An offeror who sells securities in this state in excess of the aggregate amount of securities registered for the offering may apply to register the excess securities by paying:

(1) three times the difference between the initial fee paid and the fee required under Section 4006.055 for the securities sold to persons in this state;

(2) if the registration is no longer in effect, interest on that amount computed at the rate provided by Section 302.002, Finance Code, from the date the registration was no longer in effect until the date the subsequent application is filed; and

(3) the amendment fee prescribed by Section 4006.001(1).

(b) If an application to register excess securities is granted under Subsection (a), the registration of the excess securities is effective retroactively to the effective date of the initial registration for the offering. (V.A.C.S. Art. 581-35-1, Subsec. A.)

Source Law

Art. 581-35-1. A. An offeror who sells securities in this State in excess of the aggregate amount of securities registered for the offering may apply to register the excess securities by paying three times the difference between the initial fee paid and the fee required under Subsection B(2) of Section 35, plus, if the registration is no longer in effect, interest on that amount computed at the rate provided by Section 302.002, Finance Code, from the date the registration was no longer in effect until the date the subsequent application is filed, for the securities sold to persons within this State, plus the
amendment fee prescribed by Subsection A(1) of Section 35. Registration of the excess securities, if granted, shall be effective retroactively to the effective date of the initial registration for the offering.

Revised Law
Sec. 4006.152. FEE FOR EXCEEDING LIMITED OFFERING EXEMPTION. (a) This section applies only to an offeror who:

(1) has filed a notice to claim a limited offering exemption;

(2) paid less than the maximum fee prescribed by Section 4006.052; and

(3) offered a greater amount of securities in the offering than authorized pursuant to the formula prescribed by Section 4006.052.

(b) An offeror may:

(1) file an amended notice disclosing the amount of securities offered; and

(2) pay:

(A) three times the difference between the fee initially paid and the fee that should have been paid; and

(B) interest on that amount computed at the rate provided by Section 302.002, Finance Code, from the date the commissioner received the original notice until the date the commissioner received the amended notice.

(c) An amended notice filed under Subsection (b) is retroactive to the date of the initial filing of the notice to claim the exemption. (V.A.C.S. Art. 581-35-1, Subsec. B.)

Source Law
B. An offeror who has filed a notice to claim a limited offering exemption, who paid less than the maximum fee prescribed in Subsection B(7) of Section 35, and who offered a greater amount of securities in the offering than authorized pursuant to the formula prescribed in Subsection B(7) of Section 35, may file an amended notice disclosing the amount of securities offered and paying three times the difference between the fee initially paid and the fee which should have been paid, plus interest on that amount computed at the rate provided by Section 302.002, Finance Code, from the date the original notice was received by the Commissioner until the date the amended notice is received by the Commissioner. The amended notice
shall be retroactive to the date of the initial filing.

Revised Law

Sec. 4006.153. FEE FOR SALES OF UNREGISTERED SECURITIES.

(a) If, after notice and hearing, the commissioner or a court finds that an offeror has sold securities in this state pursuant to an offering no part of which has been registered under Chapter 4003 and for which the transactions or securities are not exempt under Chapter 4005, the commissioner or court may impose a fee equal to:

(1) six times the amount that would have been paid if the issuer had filed an application or registration statement to register the securities and paid the fee required under Section 4006.055 based on the aggregate amount of sales made in this state in the preceding three years; and

(2) interest on that amount at the rate provided by Section 302.002, Finance Code, from the date of the first such sale made in this state until the date the fee is paid.

(b) Payment of the fee prescribed by this section does not effect registration of the securities or affect the application of any other provision of this title.

(c) Payment of the fee prescribed by this section is not an admission that the transactions or securities were not exempt and is not admissible as evidence in a suit or proceeding for failure to register the securities. (V.A.C.S. Art. 581-35-2.)

Source Law

Art. 581-35-2. If, after notice and hearing, the commissioner or any court of competent jurisdiction finds that an offeror has sold securities in this State pursuant to an offering no part of which has been registered under Section 7 or 10 of this Act and for which the transactions or securities are not exempt under Section 5 or 6 of this Act, the commissioner or said court may impose a fee equal to six times the amount that would have been paid if the issuer had filed an application to register the securities and paid the fee prescribed by Subsection B(2) of Section 35 based on the aggregate amount of sales made in this State within the prior three years, plus interest on that amount at the rate provided by Section 302.002, Finance Code, from the date of the first such sale made in this State until the date the fee is paid. The payment of the fee prescribed by this Section does not effect registration of the securities or affect the application of any other Section of this Act. The payment of the fee prescribed by this Section...
is not an admission that the transactions or
securities were not exempt and is not admissible as
evidence in a suit or proceeding for failure to
register the securities.

Revisor's Note

(1) Article 581-35-2, Vernon's Texas Civil
Statutes, refers to a court "of competent
jurisdiction." The revised law omits the quoted
language because the general laws of civil
jurisdiction determine which courts have jurisdiction
over a matter. For example, see Sections
24.007-24.011, Government Code, for the general
jurisdiction of district courts.

(2) Article 581-35-2, Vernon's Texas Civil
Statutes, refers to a sale of securities pursuant to an
offering that is not registered under "Section 7 or 10
of this Act," meaning Articles 581-7 and 581-10,
Vernon's Texas Civil Statutes, or securities or
transactions that are not exempt under "Section 5 or 6
of this Act," meaning Articles 581-5 and 581-6,
Vernon's Texas Civil Statutes. The provisions of
Articles 581-7 and 581-10 pertaining to registration
under that article are revised as various provisions
in Chapter 4003 and the relevant provisions of
Articles 581-5 and 581-6 pertaining to exemptions of
transactions or securities are revised as various
provisions in Chapter 4005, and the revised law is
drafted accordingly.

SUBCHAPTER E. MISCELLANEOUS FEES

Revised Law

Sec. 4006.201. RENEWAL OF REGISTRATION BY NOTIFICATION. A
registration of securities by notification may be renewed as
provided by Section 4003.058, which includes the payment of the
renewal fee in the amount prescribed by that section. (New.)

Revisor's Note

Paragraph b, Subdivision (2), Subsection B,
Article 581-7, Vernon's Texas Civil Statutes, contains provisions for the renewal of a registration of securities by notification, including a provision requiring the payment of a renewal fee. Those provisions are revised as Section 4003.058 of this title. For clarity and the convenience of the reader, the revised law includes a reference to that renewal fee and a cross-reference to Section 4003.058.

SUBCHAPTER F. DEPOSIT OF FEES

Revised Law

Sec. 4006.251. DEPOSIT OF FEES TO GENERAL REVENUE FUND. The commissioner or board shall deposit money received from fees under this title to the credit of the general revenue fund. (V.A.C.S. Art. 581-36 (part).)

Source Law

Art. 581-36. Upon and after the effective date of this Act all moneys received from fees, . . . under this Act shall be paid by the Commissioner or Board into the General Revenue Fund. . . .

Revisor's Note

Article 581-36, Vernon's Texas Civil Statutes, states that "[u]pon and after the effective date of this Act," money received from fees under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) is to be paid into the general revenue fund. The revised law omits the quoted language as unnecessary because Section 311.022, Government Code (Code Construction Act), applicable to the revised law, provides a presumption that all statutes have prospective application unless expressly provided otherwise.

Revised Law

Sec. 4006.252. DAILY DEPOSIT OF CERTAIN FEES. The commissioner or board shall deposit daily all fees received under Subchapter B to the credit of the general revenue fund. (V.A.C.S. final part of text not visible.)
Source Law

B. The Commissioner or Board . . . shall daily pay all fees received into the State Treasury:

Revisor's Note

Subsection B, Article 581-35, Vernon's Texas Civil Statutes, provides that the securities commissioner or the State Securities Board shall deposit daily all fees received under Subsection B "into the State Treasury." The revised law substitutes "to the credit of the general revenue fund" for the quoted language because Section 404.094(b), Government Code, applicable to the revised law, provides that money required by law to be deposited in the treasury is required to be deposited to the credit of the general revenue fund unless the money is expressly required to be deposited to another fund. Additionally, Article 581-36, Vernon's Texas Civil Statutes, revised in part in this chapter as Section 4006.251, provides that money from fees under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), revised as this title, is to be deposited to the credit of the general revenue fund.

CHAPTER 4007. ENFORCEMENT

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Enforcement by Commissioner, Attorney General, and District or County Attorney. (a) The administration of the provisions of this title is vested in the commissioner.

(b) The commissioner and the attorney general shall:

(1) ensure that the provisions of this title are obeyed; and

(2) conduct investigations and take measures to prevent or detect a violation of this title.

(c) The commissioner shall at once submit any evidence of a criminal violation of this title to the district or county attorney of the appropriate county after the evidence comes to the commissioner's knowledge.

(d) If the district or county attorney neglects or refuses to prosecute the alleged criminal violation, the commissioner shall submit the evidence of the alleged violation to the attorney general. The attorney general may proceed with the criminal prosecution of the alleged violation and has all the rights, privileges, and powers conferred by law on a district or county attorney, including the authority to appear before a grand jury and to interrogate witnesses before a grand jury. (V.A.C.S. Art. 581-3.)
Art. 581-3. The administration of the provisions of this Act shall be vested in the Securities Commissioner. It shall be the duty of the Securities Commissioner and the Attorney General to see that its provisions are at all times obeyed and to take such measures and to make such investigations as will prevent or detect the violation of any provision thereof. The Commissioner shall at once lay before the District or County Attorney of the proper county any evidence which shall come to his knowledge of criminality under this Act. In the event of the neglect or refusal of such attorney to institute and prosecute such violation, the Commissioner shall submit such evidence to the Attorney General, who is hereby authorized to proceed therein with all the rights, privileges and powers conferred by law upon district or county attorneys, including the power to appear before grand juries and to interrogate witnesses before such grand juries.

Revisor's Note

(1) Article 581-3, Vernon's Texas Civil Statutes, requires the securities commissioner to administer the provisions of "this Act," meaning The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), and requires the securities commissioner and the attorney general to investigate and prevent the violation of any provision "thereof," meaning any provision of that act. The provisions of The Securities Act are revised as this title. Throughout this chapter, the revised law therefore substitutes references to "this title" for references to "this Act." The revised law in this section substitutes "this title" for "thereof" for the same reason.

(2) Article 581-3, Vernon's Texas Civil Statutes, states that the securities commissioner and the attorney general are required to ensure that the provisions of The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), revised as this title, are "at all times obeyed." The revised law omits "at all times" as unnecessary because, without an express limitation, the duty to ensure that the
provisions of The Securities Act are obeyed necessarily requires the enforcement of and compliance with this title at all times.

(3) Article 581-3, Vernon's Texas Civil Statutes, refers to the neglect or refusal of a district or county attorney to "institute and prosecute" a criminal violation of The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), revised as this title. The revised law omits "institute" because, in context, "institute" is included within the meaning of "prosecute."

Revised Law
Sec. 4007.002. MEANS OF ENFORCEMENT NOT EXCLUSIVE. The commissioner may use any or all penalties, sanctions, remedies, or relief that the commissioner considers necessary. (V.A.C.S. Art. 581-3-1.)

Source Law
Art. 581-3-1. The Commissioner may utilize any or all penalties, sanctions, remedies, or relief as the Commissioner deems necessary.

SUBCHAPTER B. INSPECTIONS AND INVESTIGATIONS
Revised Law
Sec. 4007.051. COMPLAINTS FILED WITH COMMISSIONER OR BOARD.
(a) The commissioner or the commissioner's designee shall maintain a file on each written complaint filed with the commissioner or board concerning a person registered under this title. The file must include:

(1) the name of the person who filed the complaint;
(2) the date the complaint was received by the commissioner or board;
(3) the subject matter of the complaint;
(4) the name of each person contacted in relation to the complaint;
(5) a summary of the results of the review or investigation of the complaint; and
(6) an explanation of the reason the file was closed, if the commissioner closed the file without taking action other than the investigation of the complaint.

(b) The commissioner or the commissioner's designee shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the board's policies and procedures relating to complaint investigation and resolution.

(c) The commissioner or the commissioner's designee, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation, unless the notice would jeopardize an undercover investigation. (V.A.C.S. Art. 581-2-6, Subsecs. A (part), B, C.)

Source Law

Art. 581-2-6. A. The Commissioner or the Commissioner's designee shall maintain a file on each written complaint filed with the Commissioner or Board concerning an . . . person registered under this Act. The file must include:

(1) the name of the person who filed the complaint;
(2) the date the complaint is received by the Commissioner or Board;
(3) the subject matter of the complaint;
(4) the name of each person contacted in relation to the complaint;
(5) a summary of the results of the review or investigation of the complaint; and
(6) an explanation of the reason the file was closed, if the Commissioner closed the file without taking action other than to investigate the complaint.

B. The Commissioner or the Commissioner's designee shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the Board's policies and procedures relating to complaint investigation and resolution.

C. The Commissioner or the Commissioner's designee, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Revised Law

Sec. 4007.052. INSPECTIONS. (a) The commissioner without notice may inspect a registered dealer or registered investment adviser as necessary to ensure compliance with this title and board
rules.

(b) The commissioner, during regular business hours, may enter the business premises of a registered dealer or registered investment adviser and examine and copy books and records pertinent to the inspection.

(c) During the inspection, the registered dealer or registered investment adviser shall:

(1) provide to the commissioner or the commissioner's authorized representative immediate and complete access to the registered dealer's or registered investment adviser's office, place of business, files, safe, and any other location at which books and records pertinent to the inspection are located; and

(2) allow the commissioner or the commissioner's authorized representative to make photostatic or electronic copies of books or records subject to inspection.

(d) A registered dealer or registered investment adviser may not charge a fee for copying information under this section.

(e) Information obtained under this section and any intra-agency or interagency notes, memoranda, reports, or other communications consisting of advice, analyses, opinions, or recommendations that are made in connection with the inspection are confidential. The commissioner may not disclose to the public or release documents or other information made confidential by this subsection except to the same extent provided for the release or disclosure of confidential documents or other information made or obtained in connection with an investigation under Section 4007.053. (V.A.C.S. Art. 581-13-1.)

Source Law

Art. 581-13-1. A. The Commissioner, without notice, may inspect a registered dealer or registered investment adviser as necessary to ensure compliance with this Act and Board rules.

B. The Commissioner, during regular business hours, may:
(1) enter the business premises of a registered dealer or registered investment adviser; and
(2) examine and copy books and records pertinent to the inspection.
C. During the inspection, the dealer or investment adviser shall:
   
   (1) provide to the Commissioner or the Commissioner's authorized representative immediate and complete access to the person's office, place of business, files, safe, and any other location in which books and records pertinent to the inspection are located; and
   
   (2) allow the Commissioner or the Commissioner's authorized representative to make photostatic or electronic copies of books or records subject to inspection.
   
D. A dealer or investment adviser may not charge a fee for copying information under this section.

E. Information obtained under this section and any intra-agency or interagency notes, memoranda, reports, or other communications consisting of advice, analyses, opinions, or recommendations that are made in connection with the inspection are confidential and may not be disclosed to the public or released by the Commissioner except to the same extent provided for the release or disclosure of confidential documents or other information made or obtained in connection with an investigation under Section 28 of this Act.

Revisor's Note

(1) Subsections C and D, Article 581-13-1, Vernon's Texas Civil Statutes, refer to a "dealer or investment adviser." Article 581-13-1 applies only to the inspection of a "registered dealer or registered investment adviser." For that reason, the revised law substitutes references to "registered dealer" or "registered investment adviser" for the references to "dealer or investment adviser" in Subsections C and D, Article 581-13-1.

(2) Subsection E, Article 581-13-1, Vernon's Texas Civil Statutes, refers to an investigation under "Section 28 of this Act," meaning Article 581-28, Vernon's Texas Civil Statutes. The applicable provision of Article 581-28 authorizing an investigation under that article to enforce The Securities Act (Art. 581-1 et seq., Vernon's Texas Civil Statutes), revised as this title, is Subsection A, revised in relevant part as Section 4007.053 of this chapter. The revised law is drafted accordingly.

Revised Law

Sec. 4007.053. INVESTIGATIVE AUTHORITY. (a) The
commissioner shall conduct investigations as the commissioner
considers necessary to prevent or detect a violation of this title
or a board rule or order.

(b) For the purpose of conducting an investigation under
this section, the commissioner may:

(1) administer oaths;
(2) sign subpoenas;
(3) issue subpoenas or summons to compel the
attendance and testimony of witnesses and the production of all
records, electronic or otherwise, relating to any matter that the
commissioner has the authority under this title to consider or
investigate;
(4) examine witnesses; and
(5) receive evidence.

(c) During an investigation, the commissioner may cause the
deposition of witnesses residing inside or outside this state to be
taken in the manner prescribed by the laws of this state for taking
a deposition in a civil action. (V.A.C.S. Art. 581-28, Subsec. A
(part).)

Source Law

Art. 581-28. A. Investigations by
Commissioner. The Commissioner shall conduct
investigations as the Commissioner considers
necessary to prevent or detect the violation of this
Act or a Board rule or order. For this purpose, the
Commissioner may require, by subpoena or summons
issued by the Commissioner, the attendance and
testimony of witnesses and the production of all
records, whether maintained by electronic or other
means, relating to any matter which the Commissioner
has authority by this Act to consider or investigate,
and may sign subpoenas, administer oaths and
affirmations, examine witnesses and receive evidence;
provided, however, that . . . .

The Commissioner may in any investigation cause
the deposition of witnesses residing within or without
the state to be taken in the manner prescribed for
depositions in civil actions under the laws of Texas.

. . .

Revisor's Note

Subsection A, Article 581-28, Vernon's Texas
Civil Statutes, refers to "oaths and affirmations."
The revised law omits the reference to "affirmations"
because Section 311.005(1), Government Code (Code
Construction Act), applicable to the revised law,
states that an oath includes an affirmation.

Revised Law
Sec. 4007.054. SERVICE OF SUBPOENA, SUMMONS, OR OTHER
PROCESS. (a) The commissioner may serve a subpoena, summons, or
other process issued by the commissioner or have the subpoena,
summons, or other process served by an authorized agent of the
commissioner, a sheriff, or a constable.
(b) The sheriff's or constable's fee for serving the
subpoena is the same as the fee paid the sheriff or constable for
similar services. (V.A.C.S. Art. 581-28, Subsec. A (part).)

Source Law
A. . . . The sheriff's or constable's fee for serving the
subpoena shall be the same as those paid the sheriff or
constable for similar services. . . .
Any subpoena, summons, or other process issued by
the Commissioner may be served, at the Commissioner's
discretion, by the Commissioner, the Commissioner's
authorized agent, a sheriff, or a constable.
. . .

Revised Law
Sec. 4007.055. ENFORCEMENT OF SUBPOENA; CONTEMPT. (a) If a
person disobeys a subpoena or if a witness appearing before the
commissioner refuses to give evidence, the commissioner may
petition the district court of a jurisdiction in which the person or
witness may be found, and the court on this petition may issue an
order requiring the person or witness to, as applicable, obey the
subpoena, testify, or produce a book, an account, a record, a paper,
and correspondence relating to the matter in question.
(b) The district court may punish as contempt the failure to
obey an order under Subsection (a). (V.A.C.S. Art. 581-28, Subsec.
A (part).)

Source Law
A. . . . In case of disobedience of any
subpoena, or of the contumacy of any witness appearing
before the Commissioner, the Commissioner may invoke
the aid of the District Court within whose
jurisdiction any witness may be found, and such court
may thereupon issue an order requiring the person
subpoenaed to obey the subpoena or give evidence, or
produce books, accounts, records, papers, and
correspondence touching the matter in question. Any
failure to obey such order of the court may be punished
by such court as contempt thereof.

Revised Law

Sec. 4007.056. CONFIDENTIALITY OF INVESTIGATIVE
INFORMATION. (a) All information received in connection with an
investigation under Section 4007.053 and all internal notes,
memoranda, reports, or communications made in connection with an
investigation under that section are confidential.
(b) The commissioner may not disclose a document or other
information made confidential by Subsection (a) unless the
disclosure is made:
  (1) to the public under court order for good cause
  shown; or
  (2) at the commissioner's discretion, as part of an
administrative proceeding or a civil or criminal action to enforce
this title.
(c) The commissioner, at the commissioner's discretion, may
disclose confidential information in the commissioner's possession
to:
  (1) a governmental or regulatory authority or any
association of governmental or regulatory authorities approved by
board rule; or
  (2) any receiver appointed under Section 4007.151.
(d) Disclosure of information under Subsection (c) does not
violate any other provision of this title or Chapter 552.
(e) This section may not be interpreted to prohibit or limit
the publication of rulings or decisions of the commissioner.
(V.A.C.S. Art. 581-28, Subsec. A (part).)

Source Law

A. . . . all information of every kind and nature
received in connection with an investigation and all
internal notes, memoranda, reports, or communications
made in connection with an investigation shall be
treated as confidential by the Commissioner and shall
not be disclosed to the public except under order of

court for good cause shown. Nothing in this section shall be interpreted to prohibit or limit the publication of rulings or decisions of the Commissioner nor shall this limitation apply if disclosure is made, in the discretion of the Commissioner, as part of an administrative proceeding or a civil or criminal action to enforce this Act.

The Commissioner may, at the Commissioner's discretion, disclose any confidential information in the Commissioner's possession to any governmental or regulatory authority or association of governmental or regulatory authorities approved by Board rule or to any receiver appointed under Section 25-1 of this Act. The disclosure does not violate any other provision of this Act or Chapter 552, Government Code.

Revisor's Note

(1) Subsection A, Article 581-28, Vernon's Texas Civil Statutes, refers to "all information of every kind and nature" received in connection with an investigation. The revised law omits the reference to "of every kind and nature" because, in context, "of every kind and nature" is included within the meaning of "all information."

(2) Subsection A, Article 581-28, Vernon's Texas Civil Statutes, refers to information received and certain notes, memoranda, reports, and communications made in connection with "an investigation." The immediately preceding sentence of Subsection A, revised in Section 4007.053 of this chapter, requires the securities commissioner to conduct investigations for the purpose of preventing or detecting violations with respect to The Securities Act. It is clear from the context that "an investigation" refers to an investigation conducted for the purpose provided by the immediately preceding sentence of Subsection A, and the revised law is drafted accordingly.

Revised Law

Sec. 4007.057. COMPENSATION OF WITNESSES. (a) A witness required to attend a hearing before the commissioner shall receive for each day's attendance a fee in an amount set by board rule.

(b) A disbursement made in payment of a fee under this
section shall be:

(1) made in accordance with board rule; and

(2) included in, and paid in the same manner that is
provided for, the payment of other expenses incurred in the
administration and enforcement of this title. (V.A.C.S. Art.
581-28, Subsec. A (part).)

Source Law

A. . . .

Each witness required to attend before the
Commissioner shall receive a fee, for each day's
attendance, in an amount set by Board rule. All
disbursements made in the payment of such fees shall be
made in accordance with Board rule and shall be
included in, and paid in the same manner as is provided
for, the payment of other expenses incident to the
administration and enforcement of this Act.

. . .

Revised Law

Sec. 4007.058. IMPOSITION OF COSTS ON PARTIES. The
commissioner may impose on a party of record fees, expenses, or
costs incurred in connection with a hearing or may divide the fee,
expense, or cost among any or all parties of record as determined by
the commissioner. (V.A.C.S. Art. 581-28, Subsec. A (part).)

Source Law

A. . . .

. . . The fees, expenses and costs incurred at or
in connection with any hearing may be imposed by the
Commissioner upon any party to the record, or may be
divided between any and all parties to the record in
such proportions as the Commissioner may determine.

. . .

Revised Law

Sec. 4007.059. ASSISTANCE TO SECURITIES REGULATORS IN OTHER
JURISDICTIONS. (a) On request from a securities regulator of
another state or of a foreign jurisdiction, the commissioner may
provide assistance to the regulator in conducting an investigation
to determine whether a person has violated, is violating, or is
about to violate a law or rule of the other state or foreign
jurisdiction relating to a securities matter that the regulator is
authorized to administer or enforce.

(b) The commissioner may provide assistance under this
section through the use of the authority to investigate and any other power conferred by this section or Section 4007.054, 4007.055, 4007.056, or 4007.057, as the commissioner determines to be necessary and appropriate.

(c) In determining whether to provide assistance under this section, the commissioner may consider whether:

(1) the securities regulator is permitted and has agreed to provide assistance within the regulator's jurisdiction to the commissioner reciprocally and at the commissioner's request concerning securities matters;

(2) compliance with the request for assistance would violate or otherwise prejudice the public policy of this state;

(3) the conduct described in the request would also constitute a violation of this title or another law of this state had the conduct occurred in this state; and

(4) board employees and board or commissioner resources necessary to carry out the request for assistance are available. (V.A.C.S. Art. 581-28, Subsec. C.)

C. Assistance to Securities Regulator of Another Jurisdiction. The Commissioner may provide assistance to a securities regulator of another state or a foreign jurisdiction who requests assistance in conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction relating to a securities matter the securities regulator is authorized to administer or enforce. The Commissioner may provide assistance by using the authority to investigate and any other power conferred by this section as the Commissioner determines is necessary and appropriate. In determining whether to provide the assistance, the Commissioner may consider:

(1) whether the securities regulator is permitted and has agreed to provide assistance within the regulator's jurisdiction to the Commissioner reciprocally and at the Commissioner's request concerning securities matters;

(2) whether compliance with the request for assistance would violate or otherwise prejudice the public policy of this state;

(3) whether the conduct described in the request would also constitute a violation of this Act or another law of this state that had the conduct occurred in this state; and

(4) the availability of Board employees and resources of the Board or Commissioner necessary
to carry out the request for assistance.

**Revisor's Note**

Subsection C, Article 581-28, Vernon's Texas Civil Statutes, provides that the securities commissioner may provide assistance to other jurisdictions using the commissioner's investigative authority and "any other power conferred by this section," meaning Article 581-28, Vernon's Texas Civil Statutes. The powers conferred to the commissioner by Article 581-28, Vernon's Texas Civil Statutes, other than investigative authority, are revised as Sections 4007.054, 4007.055, 4007.056, 4007.057, 4007.058, and 4007.059 of this chapter. A provision of Subsection A, Article 581-28, Vernon's Texas Civil Statutes, revised as Section 4007.058 of this chapter, gives the commissioner the authority to impose costs on a party of record in connection with a hearing before the commissioner. The revised law omits the reference to Section 4007.058 as unnecessary because that provision is unrelated to and would not apply to a case in another jurisdiction requesting the assistance of the commissioner under Subsection C, Article 581-28.

SUBCHAPTER C. ADMINISTRATIVE ACTIONS

**Revised Law**

Sec. 4007.101. CEASE AND DESIST ORDER: OFFER OR SALE OF SECURITIES. (a) The commissioner may hold a hearing as provided by this section if at any time it appears to the commissioner that the sale, proposed sale, or method of sale of securities, regardless of whether exempt:

(1) is a fraudulent practice;

(2) does not comply with this title;

(3) would tend to work a fraud on any purchaser of the securities; or

(4) would not be fair, just, or equitable to any
1 purchaser of the securities.
2
3 (b) The commissioner may hold a hearing under this section on a date set by the commissioner that is not later than the 30th day after the date the issuer or registrant of the securities, the person on whose behalf the securities are being or will be offered, or any person that is acting as a dealer or agent in violation of this title, as applicable:
4
5 (1) receives actual notice; or
6
7 (2) is provided notice by registered or certified mail to the person's last known address.
8
9 (c) If the commissioner determines at the hearing that the sale, proposed sale, or method of sale of the securities is a fraudulent practice, does not comply with this title, would tend to work a fraud on any purchaser of the securities, or would not be fair, just, or equitable to any purchaser of the securities, the commissioner may issue a written cease and desist order:
10
11 (1) prohibiting or suspending the sale of the securities;
12
13 (2) denying or revoking the registration of the securities;
14
15 (3) prohibiting an unregistered person from acting as a dealer or agent; or
16
17 (4) prohibiting the fraudulent conduct.
18
19 (d) After the issuance of a cease and desist order under Subsection (c), a dealer or agent may not knowingly sell or offer for sale any security named in the order. (V.A.C.S. Art. 581-23, Subsec. A.)
20
21 Source Law
22 Art. 581-23. Anything in this Act to the contrary notwithstanding,
23 A. If it appears to the commissioner at any time that the sale or proposed sale or method of sale of any securities, whether exempt or not, is a fraudulent practice or would not be in compliance with this Act or would tend to work a fraud on any purchaser thereof or would not be fair, just or equitable to any purchaser thereof, the commissioner may hold a hearing on a date determined by the commissioner within 30 days after the date of receipt of actual notice by, or notice by
registered or certified mail to the person's last known address is given to, the issuer, the registrant, the person on whose behalf such securities are being or are to be offered, or any person acting as a dealer or agent in violation of this Act. If the commissioner shall determine at such hearing that such sale would not be in compliance with the Act, is a fraudulent practice, or would tend to work a fraud on any purchaser thereof or would not be fair, just or equitable to any purchaser thereof, the commissioner may issue a written cease and desist order, prohibiting or suspending the sale of such securities or denying or revoking the registration of such securities, prohibiting an unregistered person from acting as a dealer or an agent, or prohibiting the fraudulent conduct. No dealer or agent shall thereafter knowingly sell or offer for sale any security named in such cease and desist order.

Revisor's Note

Article 581-23, Vernon's Texas Civil Statutes, which is a provision of The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), revised as this title, refers to "[a]nything in this Act to the contrary notwithstanding." In addition to applying to the other subsections of Article 581-23, the quoted language applies to Subsection A of that article, which is revised as this section. Subsection A, Article 581-23, authorizes the securities commissioner to issue a cease and desist order to prohibit fraudulent conduct or practices in relation to the sale or proposed sale of securities. The revised law omits the quoted language as unnecessary with respect to Subsection A, Article 581-23, because The Securities Act does not contain any provisions contrary to that subsection.

Revised Law

Sec. 4007.102. CEASE AND DESIST ORDER: INVESTMENT ADVISER OR INVESTMENT ADVISER REPRESENTATIVE. (a) Notwithstanding any provision of this title to the contrary, the commissioner may hold a hearing as provided by this section if at any time it appears to the commissioner that:

(1) an investment adviser or investment adviser representative is engaging or is likely to engage in fraud or a
fraudulent practice with respect to rendering services as an investment adviser or investment adviser representative; or

(2) a person is acting as an investment adviser or investment adviser representative in violation of this title.

(b) A hearing under this section must be held not later than the 30th day after the date the person described by Subsection (a):

(1) receives actual notice; or

(2) is provided notice by registered or certified mail, return receipt requested, to the person's last known address.

(c) After the hearing, the commissioner shall issue or decline to issue a cease and desist order. An order issued under this subsection must:

(1) require the investment adviser or investment adviser representative to immediately cease and desist from the fraudulent conduct; or

(2) prohibit an unregistered or other unauthorized person who is not exempt from the registration or notice filing requirements of this title from acting as an investment adviser or investment adviser representative in violation of this title.

(V.A.C.S. Art. 581-23, Subsec. B.)

Source Law

Art. 581-23. Anything in this Act to the contrary notwithstanding,

B. If it appears to the Commissioner at any time that an investment adviser or investment adviser representative is engaging or is likely to engage in fraud or a fraudulent practice with respect to rendering services as an investment adviser or investment adviser representative or that a person is acting as an investment adviser or investment adviser representative in violation of this Act, the Commissioner may hold a hearing not later than the 30th day after the date on which the person receives actual notice or is provided notice by registered or certified mail, return receipt requested, to the person's last known address. After the hearing, the Commissioner shall issue or decline to issue a cease and desist order. An order issued under this subsection must:

(1) require the investment adviser or investment adviser representative to immediately cease and desist from the fraudulent conduct; or

(2) prohibit an unregistered or other unauthorized person who is not exempt from the registration or notice filing requirements of this Act.
from acting as an investment adviser or investment adviser representative in violation of this Act.

Revised Law

Sec. 4007.103. CEASE PUBLICATION ORDER.  (a) Notwithstanding any provision of this title to the contrary, the commissioner may issue a cease publication order if at any time it appears to the commissioner that an offer contains any statement that is materially false or misleading or is otherwise likely to deceive the public.

(b) A person may not make an offer that is prohibited by an order issued under Subsection (a). (V.A.C.S. Art. 581-23, Subsec. C.)

Source Law

Art. 581-23. Anything in this Act to the contrary notwithstanding,

C. If it appears to the Commissioner at any time that an offer contains any statement that is materially false or misleading or is otherwise likely to deceive the public, the Commissioner may issue a cease publication order. No person shall make an offer prohibited by such cease publication order.

Revised Law

Sec. 4007.104. EMERGENCY CEASE AND DESIST ORDER. (a) On the commissioner's determination that the conduct, act, or practice threatens immediate and irreparable public harm, the commissioner may issue an emergency cease and desist order to a person who the commissioner reasonably believes:

(1) is engaging in or is about to engage in fraud or a fraudulent practice in connection with:

(A) the offer for sale or sale of a security; or
(B) the rendering of services as an investment adviser or investment adviser representative;

(2) has made an offer containing a statement that is materially misleading or is otherwise likely to deceive the public; or

(3) is engaging or is about to engage in an act or practice that violates this title or a board rule.

(b) The emergency order must:
(1) be sent on issuance to each person affected by the order by personal delivery or registered or certified mail, return receipt requested, to the person's last known address;

(2) state the specific charges and require the person to immediately cease and desist from the unauthorized activity; and

(3) contain a notice that a request for a hearing may be filed under this section.

(c) Unless a person against whom the emergency order is directed requests a hearing in writing before the 31st day after the date the order is served on the person, the emergency order is final and nonappealable as to that person. A request for a hearing must:

(1) be in writing and directed to the commissioner;

and

(2) state the grounds for the request to set aside or modify the order.

(d) On receiving a request for a hearing, the commissioner shall serve notice of the time and place of the hearing by personal delivery or registered or certified mail, return receipt requested. The hearing must be held not later than the 10th day after the date the commissioner receives the request for a hearing unless the parties agree to a later hearing date. At the hearing, the commissioner has the burden of proof and must present evidence in support of the emergency order.

(e) After the hearing, the commissioner shall affirm, modify, or set aside, wholly or partly, the emergency order. An order affirming or modifying the emergency order is immediately final for purposes of enforcement and appeal.

(f) An emergency order continues in effect unless the order is stayed by the commissioner. The commissioner may impose any condition before granting a stay of the order. (V.A.C.S. Art. 581-23-2.)

Source Law

Art. 581-23-2. A. On the Commissioner's determination that the conduct, act, or practice threatens immediate and irreparable public harm, the
Commissioner may issue an emergency cease and desist order to a person whom the Commissioner reasonably believes:

1. (1) is engaging in or is about to engage in fraud or a fraudulent practice in connection with:
   (A) the offer for sale or sale of a security; or
   (B) the rendering of services as an investment adviser or investment adviser representative;
2. (2) has made an offer containing a statement that is materially misleading or is otherwise likely to deceive the public; or
3. (3) is engaging or is about to engage in an act or practice that violates this Act or a Board rule.

B. The order must:

1. (1) be sent on issuance to each person affected by the order by personal delivery or registered or certified mail, return receipt requested, to the person's last known address;
2. (2) state the specific charges and require the person to immediately cease and desist from the unauthorized activity; and
3. (3) contain a notice that a request for hearing may be filed under this section.

C. Unless a person against whom the emergency order is directed requests a hearing in writing before the 31st day after the date it is served on the person, the emergency order is final and nonappealable as to that person. A request for a hearing must:

1. (1) be in writing and directed to the Commissioner; and
2. (2) state the grounds for the request to set aside or modify the order.

D. On receiving a request for a hearing, the Commissioner shall serve notice of the time and place of the hearing by personal delivery or registered or certified mail, return receipt requested. The hearing must be held not later than the 10th day after the date the Commissioner receives the request for a hearing unless the parties agree to a later hearing date. At the hearing, the Commissioner has the burden of proof and must present evidence in support of the order.

E. After the hearing, the Commissioner shall affirm, modify, or set aside in whole or part the emergency order. An order affirming or modifying the emergency order is immediately final for purposes of enforcement and appeal.

F. An emergency order continues in effect unless the order is stayed by the Commissioner. The Commissioner may impose any condition before granting a stay of the order.

Revised Law
Sec. 4007.105. DENIAL, SUSPENSION, OR REVOCATION OF REGISTRATION. (a) The commissioner may deny an application for registration under this title, suspend or revoke a registration issued under this title, place on probation a dealer, agent, investment adviser, or investment adviser representative whose registration has been suspended under this title, or reprimand a person registered under this title if the person:
(1) has been convicted of a felony;
(2) has been convicted of a misdemeanor that directly relates to the person's securities-related duties and responsibilities;
(3) has engaged in:
   (A) an inequitable practice in the sale of securities or in rendering services as an investment adviser; or
   (B) a fraudulent business practice;
(4) is an insolvent dealer or investment adviser;
(5) is a dealer and is selling or sold securities in this state through an agent other than a registered agent;
(6) is an investment adviser and is engaging or engaged in rendering services as an investment adviser in this state through a representative who is not registered to perform services for that investment adviser;
(7) is an agent and is selling or sold securities in this state for a dealer, issuer, or controlling person with knowledge that the dealer, issuer, or controlling person has not complied with this title;
(8) is an investment adviser representative and is rendering or rendered services as an investment adviser for an investment adviser in this state whom the representative is not or was not registered to represent;
(9) has:
   (A) made a material misrepresentation to the commissioner or board in connection with information considered necessary by the commissioner or board to determine:
      (i) a dealer's or investment adviser's financial responsibility; or
      (ii) a dealer's, agent's, investment adviser's, or investment adviser representative's business repute or qualifications; or
   (B) refused to provide information described by Paragraph (A) that the commissioner or board has requested;
(10) is registered as a dealer, agent, investment adviser, or investment adviser representative and has not complied with an applicable requirement under Section 4004.151(a);

(11) is the subject of any of the following orders issued within the preceding five years that remain effective:

(A) an order by the securities agency or administrator of any state, the financial regulatory authority of a foreign country, or the Securities and Exchange Commission, entered after notice and opportunity for hearing, denying, suspending, or revoking the person's license as a dealer, agent, investment adviser, or investment adviser representative or the substantial equivalent of those terms;

(B) an order suspending or expelling from membership in or association with a member of a self-regulatory organization;

(C) a United States Postal Service fraud order;

(D) an order by the securities agency or administrator of any state, the financial regulatory authority of a foreign country, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, finding, after notice and opportunity for hearing, that the person engaged in acts involving fraud, deceit, false statements or omissions, or wrongful taking of property; or

(E) an order by the Commodity Futures Trading Commission denying, suspending, or revoking registration under the Commodity Exchange Act (7 U.S.C. Section 1 et seq.);

(12) is subject to any order, judgment, or decree entered by a court that permanently restrains or enjoins the person from engaging in or continuing any conduct, action, or practice in connection with any aspect of the purchase or sale of securities or the rendering of investment advice; or

(13) has violated:

(A) any provision of this title;

(B) a board rule;
(C) any order issued by the commissioner; or

(D) any undertaking or agreement with the commissioner.

(b) If the commissioner proposes the suspension or revocation of a person's registration, the person is entitled to a hearing before the commissioner or a hearings officer as required by law.

(c) All registration certificates that have been revoked shall be immediately surrendered to the commissioner on request.

(d) This section does not affect the confidentiality of investigative records maintained by the commissioner or board.

(V.A.C.S. Arts. 581-14, 581-25 (part).)

Source Law

Art. 581-14. A. The Commissioner may deny, revoke, or suspend a registration issued under this Act, place on probation a dealer, agent, investment adviser, or investment adviser representative whose registration has been suspended under this Act, or reprimand a person registered under this Act if the person:

(1) has been convicted of any felony;
(2) has been convicted of any misdemeanor which directly relates to the person's securities-related duties and responsibilities;
(3) has engaged in any inequitable practice in the sale of securities or in rendering services as an investment adviser, or in any fraudulent business practice;
(4) is a dealer or investment adviser who is insolvent;
(5) meets one of the following criteria:
   (a) is a dealer who is selling or has sold securities in this state through an agent other than a registered agent;
   (b) is an investment adviser who is engaging or has engaged in rendering services as an investment adviser in this state through a representative who is not registered to perform services for that investment adviser as required by this Act;
   (c) is an agent who is selling or has sold securities in this state for a dealer, issuer or controlling person with knowledge that such dealer, issuer or controlling person has not complied with the provisions of this Act; or
   (d) is an investment adviser representative who is rendering or has rendered services as an investment adviser for an investment adviser in this state for whom the representative is not or was not registered to represent as required by this Act;
(6) has violated any of the provisions of this Act or a rule of the Board;
(7) has made any material
misrepresentation to the Commissioner or Board in
connection with any information deemed necessary by
the Commissioner or Board to determine a dealer's or
investment adviser's financial responsibility or a
dealer's, agent's, investment adviser's or investment
adviser representative's business repute or
qualifications, or has refused to furnish any such
information requested by the Commissioner or Board;
(8) became registered as a dealer, agent,
investment adviser, or investment adviser
representative after August 23, 1963, and has not
complied with a condition imposed by the Commissioner
under Section 13-D;
(9) is the subject of any of the following
orders that are currently effective and were issued
within the last five years:
(a) an order by the securities agency
or administrator of any state, by the financial
regulatory authority of a foreign country, or by the
Securities and Exchange Commission, entered after
notice and opportunity for hearing, denying,
suspending, or revoking the person's license as a
dealer, agent, investment adviser, or investment
adviser representative or the substantial equivalent
of those terms;
(b) a suspension or expulsion from
membership in or association with a member of a
self-regulatory organization;
(c) a United States Postal Service
fraud order;
(d) an order by the securities agency
or administrator of any state, the financial
regulatory authority of a foreign country, the
Securities and Exchange Commission, or by the
Commodity Futures Trading Commission, finding, after
notice and opportunity for hearing, that the person
engaged in acts involving fraud, deceit, false
statements or omissions, or wrongful taking of
property;
(e) an order by the Commodity Futures
Trading Commission denying, suspending, or revoking
registration under the Commodity Exchange Act;
(10) is subject to any order, judgment, or
decree entered by any court of competent jurisdiction
which permanently restrains or enjoins such person
from engaging in or continuing any conduct, action, or
practice in connection with any aspect of the purchase
or sale of securities or the rendering of security
investment advice; or
(11) has violated any provision of any
order issued by the Commissioner or has violated any
provision of any undertaking or agreement with the
Commissioner.
B. If the Commissioner proposes to suspend or
revoke a person's registration, the person is entitled
to a hearing before the Commissioner or a hearings
officer as now or hereafter required by law.
Proceedings for the suspension or revocation of a
registration are governed by Chapter 2001, Government
Code.
C. This section does not affect the
confidentiality of investigative records maintained
by the Commissioner or Board.

Art. 581-25. . . . All registrations and . . .
revoked shall at once be surrendered to the
Commissioner upon request.
(1) Paragraph (b), Subdivision (5), Subsection A, Article 581-14, Vernon's Texas Civil Statutes, refers to an investment adviser who renders services as an investment adviser through a representative who is not registered to perform services for that investment adviser "as required by this Act," meaning The Securities Act (V.A.C.S. Art. 581-1 et seq.), revised as this title. The revised law omits the quoted language as unnecessary because the provisions of The Securities Act that require a representative of an investment adviser to register under the act apply by their own terms.

(2) Paragraph (d), Subdivision (5), Subsection A, Article 581-14, Vernon's Texas Civil Statutes, refers to an investment adviser representative who renders services as an investment adviser for an investment adviser whom the representative is not or was not registered to represent "as required by this Act." The revised law omits the quoted language as unnecessary for the reason stated in Revisor's Note (1) to this section.

(3) Subdivision (8), Subsection A, Article 581-14, Vernon's Texas Civil Statutes, refers to a person registered as a dealer, agent, investment adviser, or investment adviser representative "after August 23, 1963" and to a condition of registration imposed by the securities commissioner under "Section 13-D," meaning Subsection D, Article 581-13, Vernon's Texas Civil Statutes. The revised law substitutes a reference to Section 4004.151(a) of this title because the relevant part of Subsection D, Article 581-13, is revised as that subsection. In addition, the revised law substitutes "an applicable requirement" for the
"condition [of registration] imposed" because the examination requirement of Subsection D, Article 581-13, applies only to registrations issued after August 23, 1963, the effective date of that subsection, and the State Securities Board has the authority under that provision to grant waivers of the examination requirement. The revised law omits the reference to "after August 23, 1963" with respect to the effective date of a person's registration in relation to the examination requirement of Subsection D, Article 581-13, for the reason stated in the Revisor's Note to Section 4004.151.

(4) Paragraph (e), Subdivision (9), Subsection A, Article 581-14, Vernon's Texas Civil Statutes, refers to the "Commodity Exchange Act." For the convenience of the reader, the revised law includes a reference to the United States Code citation for the entire act.

(5) Subdivision (10), Subsection A, Article 581-14, Vernon's Texas Civil Statutes, refers to a court "of competent jurisdiction." The revised law omits the quoted language as unnecessary. The determination of whether a particular court has jurisdiction over a matter is made under other law, and it is not necessary to refer to that determination in this section.

(6) Subsection B, Article 581-14, Vernon's Texas Civil Statutes, provides that if the securities commissioner proposes to suspend or revoke a person's registration, the person is entitled to a hearing before the commissioner or a hearings officer as "now or hereafter required by law." The revised law omits the reference to "now or hereafter" as unnecessary because, regardless of the quoted phrase, the law that
will apply regarding whether a hearing is before the
commissioner or a hearings officer is the law in effect
at the time the commissioner proposes to suspend or
revoke a person's registration.

(7) Subsection B, Article 581-14, Vernon's Texas
Civil Statutes, provides that "[p]roceedings for the
suspension or revocation of a registration are
governed by Chapter 2001, Government Code." Because
that proceeding is a "contested case," as defined by
applies to the proceeding by its own terms. It is
unnecessary to repeat that requirement in this
section.

(8) Article 581-25, Vernon's Texas Civil
Statutes, provides that on the revocation of the
registration of a dealer or investment adviser, "[a]ll
registrations" must be surrendered to the securities
commissioner on request. The revised law substitutes
"registration certificates" for "registrations"
because the document that a dealer or investment
adviser receives under Section 4004.054 of this title
and is required to surrender on revocation is a
registration certificate.

Revised Law
Sec. 4007.106. ASSESSMENT OF ADMINISTRATIVE FINE. (a) In
addition to any other remedies, the commissioner, after giving
notice and opportunity for a hearing, may issue an order that
assesses an administrative fine against a person or company found
to have:

(1) engaged in fraud or a fraudulent practice in
connection with:

(A) the offer for sale or sale of a security; or

(B) the rendering of services as an investment
adviser or investment adviser representative;
made an offer containing a statement that is materially misleading or is otherwise likely to deceive the public;

(3) engaged in an act or practice that violates this title or a board rule or order; or

(4) with intent to deceive or defraud or with reckless disregard for the truth or the law, materially aided any person in engaging in an act or practice described by Subdivision (1), (2), or (3).

(b) An administrative fine assessed under this section when added to the amount of any civil penalty previously awarded under Section 4007.154 must be in an amount that does not exceed:

(1) the greater of:

(A) $20,000 per violation; or

(B) the gross amount of any economic benefit gained by the person or company as a result of the act or practice for which the fine was assessed; and

(2) if the act or practice was committed against a person 65 years of age or older, an additional amount of not more than $250,000.

(c) For purposes of determining the amount of an administrative fine assessed under this section, the commissioner shall consider factors set out in guidelines established by the board.

(d) For purposes of private civil litigation, the payment of a fine assessed in an agreed order under this title does not constitute an admission of any misconduct described in the order.

(e) A proceeding for the assessment of an administrative fine must be commenced within five years after the violation occurs. (V.A.C.S. Art. 581-23-1.)

Source Law

Art. 581-23-1.

A. After giving notice and opportunity for a hearing, the Commissioner may, in addition to any other remedies, issue an order which assesses an administrative fine against any person or company found to have:

(1) engaged in fraud or a fraudulent
practice in connection with:
   (A) the offer for sale or sale of a
security; or
   (B) the rendering of services as an
investment adviser or investment adviser
representative;
(2) made an offer containing a statement
that is materially misleading or is otherwise likely
to deceive the public;
(3) engaged in an act or practice that
violates this Act or a Board rule or order; or
(4) with intent to deceive or defraud or
with reckless disregard for the truth or the law,
materially aided any person in engaging in an act or
practice described by Subdivision (1), (2), or (3) of
this subsection.
B. Any administrative fine assessed under this
Section, together with the amount of any civil penalty
already awarded under Subsection C of Section 32, must
be in an amount not to exceed:
(1) the greater of:
   (A) $20,000 per violation; or
   (B) the gross amount of any economic
benefit gained by the person or company a result of the
act or practice for which the fine was assessed; and
(2) if the act or practice was committed
against a person 65 years of age or older, an
additional amount of not more than $250,000.
C. For purposes of determining the amount of an
administrative fine assessed under this Section, the
Commissioner shall consider factors set out in
guidelines established by the Board.
D. For purposes of private civil litigation, the
payment of a fine assessed in an agreed order under
this Act shall not constitute an admission of any
misconduct described in the agreed order.
E. Any proceeding for the assessment of an
administrative fine must be commenced within five
years after the violation occurs.

Revised Law
Sec. 4007.107. HEARINGS ON CERTAIN MATTERS. (a) A person
or company may request a hearing to dispute the commissioner's:
(1) failure or refusal to:
   (A) register and issue a certificate of
registration for a dealer or investment adviser under Section
4004.054; or
   (B) register and issue evidence of registration
for an agent or investment adviser representative under Section
4004.104;
(2) issuance of an order under Section 4007.101,
4007.102, 4007.103, or 4007.104; or
(3) taking of an action in any other particular matter
for which no other procedure is specified by this title.

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(b) A hearing under Subsection (a) must be held before the commissioner or a hearings officer as required by law.

(c) On complaint by a person aggrieved by the denial of a permit qualifying securities for sale under Subchapter A, Chapter 4003, or by the failure or refusal to register securities under Subchapter B or C, Chapter 4003, the board or a hearings officer, as required by law, shall conduct a hearing.

(d) A hearing under this section is subject to Chapter 2001.

(V.A.C.S. Art. 581-24.)

Source Law

Art. 581-24. A. If any person or company should take exception to the action of the Commissioner in failing or refusing to register and issue certificate for a dealer or investment adviser or evidence of registration for an investment adviser representative or agent under Section 15 or 18 of this Act, in issuing an order under Section 23 or 23-2 of this Act, or in any other particular where this Act specifies no other procedure, the complaining party may request a hearing before the Commissioner or before a hearings officer as now or hereafter required by law.

B. On complaint by a person aggrieved by a denial of a permit for the sale of securities under Section 10 of this article or a failure or refusal to register securities under Section 7 of this article, the Board or a hearings officer as now or hereafter required by law shall conduct a hearing.

C. Hearings under this Section are subject to the requirements of Chapter 2001, Government Code.

Revisor's Note

(1) Subsection A, Article 581-24, Vernon's Texas Civil Statutes, refers to the failure or refusal of the securities commissioner to register and issue a certificate for a dealer or investment adviser "under Section 15 . . . of this Act," meaning Article 581-15, Vernon's Texas Civil Statutes, or an evidence of registration for an agent or investment adviser representative under "Section . . . 18 of this Act," meaning Article 581-18, Vernon's Texas Civil Statutes. The provisions of Article 581-15 relating to the commissioner registering and issuing a certificate of registration for a dealer or investment adviser are revised in relevant part as Section 4004.054 of this...
title, and the provisions of Article 581-18 relating
to the commissioner registering and issuing an
evidence of registration for an agent or investment
adviser representative are revised in relevant part as
Section 4004.104 of this title, and the revised law is
drafted accordingly.

(2) Subsections A and B, Article 581-24,
Vernon's Texas Civil Statutes, provide for a hearing as
"now or hereafter required by law." The revised law
omits the reference to "now or hereafter" for the
reason stated in Revisor's Note (6) to Section
4007.105.

(3) Subsection B, Article 581-24, Vernon's Texas
Civil Statutes, refers to the denial of a permit for
the sale of securities under Section 10 "of this
article," meaning Article 581, Vernon's Texas Civil
Statutes. The provisions of Section 10 of Article 581
relating to the denial of a permit for the sale of
securities are revised in Subchapter A, Chapter 4003,
of this title, and the revised law is drafted
accordingly.

(4) Subsection B, Article 581-24, Vernon's Texas
Civil Statutes, refers to a "permit for the sale of
securities" and to a failure or refusal to register
securities under Section 7 "of this article," meaning
Article 581, Vernon's Texas Civil Statutes. The
provisions of Section 7 of Article 581 relating to the
registration of securities are Subsections B and C of
that section, revised as Subchapters B and C, Chapter
4003, of this title, respectively, and the revised law
is drafted accordingly.

In addition, the revised law throughout this
chapter substitutes "permit qualifying securities for
sale" for "permit for the sale of securities,"
"permit," and other similar references for the reason stated in Revisor's Note (1) to Section 4003.001.

SUBCHAPTER D. CIVIL PROCEEDINGS

Revised Law

Sec. 4007.151. RECEIVERSHIP. (a) This section applies only to a person or company acting as a dealer, agent, investment adviser, investment adviser representative, or issuer or as an affiliate of a dealer, agent, investment adviser, investment adviser representative, or issuer, regardless of whether the person or company is required to be registered as provided in this title.

(b) The commissioner may request the attorney general to bring an action as provided by this section for the appointment of a receiver for a person or company to which this section applies or the assets of the person or company if it appears to the commissioner, on complaint or otherwise, that:

(1) the person or company has:

(A) engaged in an act, transaction, practice, or course of business declared as a fraudulent practice under Section 4007.152 or 4007.153; and

(B) acted as a dealer, agent, investment adviser, investment adviser representative, or issuer or as an affiliate of a dealer, agent, investment adviser, investment adviser representative, or issuer in connection with the fraudulent practice; and

(2) the appointment of a receiver for the person or company or the assets of the person or company is necessary to conserve and protect the assets for the benefit of customers, security holders, and other claimants and potential claimants of the person or company.

(c) On the commissioner's request under Subsection (b), the attorney general may bring an action against a person or company in the name and on behalf of the state if it appears to the attorney general that the facts described by that subsection exist with respect to the person or company. The facts contained in the
petition for the appointment of a receiver must be verified by the commissioner on information and belief.

(d) An action under this section may be brought in a district court of any county in which the fraudulent practice that is the subject of the petition was wholly or partly committed or in a county in which any defendant for whom the appointment of a receiver is sought has the defendant's principal place of business. A district court described by this subsection has jurisdiction and venue of the action. This subsection is superior to any other provision of law establishing jurisdiction or venue with regard to an action for receivership.

(e) The attorney general may apply for and, on proper showing, is entitled to have a subpoena issued by the court that requires:

(1) the appearance, without delay, of a defendant or any employee, investment adviser representative, or agent of the defendant to testify and give evidence concerning a matter relevant to the appointment of a receiver; and

(2) the production of documents, books, and records that may be necessary for a hearing on the action.

(f) The court may appoint a receiver for the person or company or the person's or company's assets on the attorney general's proper showing of the existence of the facts described by Subsection (b) with respect to the person or company.

(g) If the court appoints a receiver without providing the person or company with notice and an opportunity for hearing, the person or company may file with the court a written application for an order dissolving the receivership. If the application is filed not later than the 30th day after the date the person or company is served with the order appointing the receiver, the person or company is entitled to a hearing on the application not later than the 10th day after the date written notice is provided to the attorney general.

(h) A person may not be appointed as a receiver under this
section unless the court finds that the person is qualified to
discharge the duties of receiver after:
(1) hearing the views of:
   (A) the attorney general;
   (B) the commissioner; and
   (C) the defendant against whom the appointment of
a receiver is sought, if the court considers it practicable; and
(2) considering the probable nature and magnitude of
the receiver's duties in the particular case.
(i) The commissioner or attorney general may not be required
to give a bond for receivership in an action brought under this
section. The court shall require a person appointed as a receiver
to give a bond that is:
   (1) in an amount found by the court to be sufficient
after considering the probable nature and magnitude of the
receiver's duties in the particular case; and
   (2) conditioned on the faithful discharge of the
receiver's duties.
(j) The remedy provided by this section is in addition to
any other remedy made available to the commissioner or the attorney
general by statutory laws or case law of this state, including any
provision authorizing receiverships. (V.A.C.S. Art. 581-25-1.)

Source Law

Art. 581-25-1. A. Whenever it shall appear to
the commissioner, either upon complaint or otherwise,
that:
   (1) any person or company acting as a
dealer, agent, investment adviser, investment adviser
representative, or issuer (as defined in Section 4 of
this Act), or an affiliate of a dealer, agent,
investment adviser, investment adviser
representative, or issuer, whether or not required to
be registered by the commissioner as in this Act
provided, shall have engaged in any act, transaction,
practice, or course of business declared by Section 32
of this Act to be a fraudulent practice;
   (2) such person or company shall have
acted as a dealer, agent, investment adviser,
investment adviser representative, or issuer or an
affiliate of a dealer, agent, investment adviser,
investment adviser representative, or issuer in
connection with such fraudulent practice; and
   (3) the appointment of a receiver for such
person or company, or the assets of such a person or
company is necessary in order to conserve and protect
the assets of such person or company for the benefit of
customers, security holders, and other actual and
potential claimants of such person or company the
commissioner may request the attorney general to bring
an action for the appointment of a receiver for such
person or company or the assets of such person or
company.

B. Upon request by the commissioner pursuant to
Subsection A of this Section 25-1, and if it appears to
the attorney general that the facts enumerated in
Paragraphs (1) through (3) of Subsection A of this
Section 25-1 exist with respect to any person or
company, the attorney general may bring an action in
the name and on behalf of the State of Texas for the
appointment of a receiver for such person or company.
The facts set forth in the petition for such relief
shall be verified by the commissioner upon information
and belief. Such action may be brought in a district
court of any county wherein the fraudulent practice
complained of has been committed in whole or part, or
of any county wherein any defendant with respect to
whom appointment of a receiver is sought has its
principal place of business, and such district court
shall have jurisdiction and venue of such action; this
provision shall be superior to any other provision of
law fixing jurisdiction or venue with regard to suits
for receivership. In any such action the attorney
general may apply for and on due showing be entitled to
have issued the court's subpoena requiring the
forthwith appearance of any defendant and his
employees, investment adviser representatives, or
agents and the production of documents, books, and
records as may appear necessary for any hearing, to
testify and give evidence concerning matters relevant
to the appointment of a receiver.

C. In any action brought by the attorney general
pursuant to Subsection B of this Section 25-1, the
court, upon a proper showing by the attorney general of
the existence of the facts enumerated in Paragraphs
(1) through (3) of Subsection A of this Section 25-1
with respect to any person or company, may appoint a
receiver for such person or company or the assets of
such person or company. If such receiver is appointed
without notice to and opportunity to be heard for such
person or company, such person or company shall be
entitled to apply in writing to the court for an order
dissolving the receivership, and, if such application
is made within 30 days after service upon such person
or company of the court's order making such
appointment, shall be entitled to a hearing thereon
upon 10 days written notice to the attorney general.

D. No person shall be appointed a receiver
pursuant to this Section 25-1 unless such person be
found by the court, after hearing the views of the
attorney general, the commissioner, and, if deemed by
the court to be practicable, the person or company
against whom such relief is sought, to be qualified to
discharge the duties of receiver giving due
consideration to the probable nature and magnitude of
the duties of receiver in the particular case. No bond
for receivership shall be required of the commissioner
or attorney general in any proceeding under this
Section 25-1, but the court shall require a bond of any
receiver appointed hereunder, conditioned upon
faithful discharge of the receiver's duties, in an
amount found by the court to be sufficient giving due
consideration to the probable nature and magnitude of
the duties of receiver in the particular case.

E. The remedy of receivership provided by this
Section 25-1 shall be in addition to any and all other
remedies afforded the commissioner or the attorney
general by other provisions of statutory or decisional
law of this state, including, without limitation of
the generality of the foregoing, any such provision
authorizing receiverships.

Revisor's Note

(1) Subdivision (1), Subsection A, Article
581-25-1, Vernon's Texas Civil Statutes, refers to a
dealer, agent, investment adviser, investment adviser
representative, or issuer "as defined in Section 4 of
this Act," meaning Article 581-4, Vernon's Texas Civil
Statutes. The revised law omits the quoted language as
unnecessary because the definitions of "dealer,"
"agent," "investment adviser," "investment adviser
representative," and "issuer" in Article 581-4,
revised as Sections 4001.056, 4001.052, 4001.059,
4001.060, and 4001.061 of this title, respectively,
apply by their own terms.

(2) Subdivision (1), Subsection A, Article
581-25-1, Vernon's Texas Civil Statutes, refers to a
fraudulent practice under "Section 32 of this Act,"
meaning Article 581-32, Vernon's Texas Civil Statutes.
The only provisions of Article 581-32 that refer to a
fraudulent practice are Subsections A and B, revised
as Sections 4007.152 and 4007.153 of this chapter, and
the revised law is drafted accordingly.

(3) Subdivision (3), Subsection A, Article
581-25-1, Vernon's Texas Civil Statutes, refers to
"other actual and potential claimants." The revised
law omits "actual" as unnecessary in this context
because the term does not add to the clear meaning of
the law. Each claimant is an "actual" claimant.

(4) Subsection B, Article 581-25-1, Vernon's
Texas Civil Statutes, refers to a subpoena requiring
the "forthwith" appearance of certain persons. The
revised law substitutes "without delay" for "forthwith" because, in this context, the terms are synonymous and "without delay" is more consistent with modern usage.

(5) Subsection E, Article 581-25-1, Vernon's Texas Civil Statutes, refers to "any and all" other remedies made available by law to the securities commissioner or the attorney general. The revised law omits the reference to "all" because, in context, "all" is included within the meaning of "any."

(6) Subsection E, Article 581-25-1, Vernon's Texas Civil Statutes, refers to "decisional law." The revised law substitutes "case law" for "decisional law" because, in context, the terms are synonymous and "case law" is more commonly used.

(7) Subsection E, Article 581-25-1, Vernon's Texas Civil Statutes, refers to statutory or case law of this state, "including, without limitation of the generality of the foregoing," any law authorizing receiverships. The revised law omits "without limitation of the generality of the foregoing" because Section 311.005(13), Government Code (Code Construction Act), applicable to the revised law, provides that "includes" and "including" are terms of enlargement and not limitation and do not create a presumption that components not expressed are excluded.

Revised Law

Sec. 4007.152. INJUNCTIVE RELIEF. (a) The commissioner may request the attorney general to bring an action as provided by this section against a person or company if it appears to the commissioner, on complaint or otherwise, that the person or company:

(1) has engaged, is engaging, or is about to engage in
fraud or a fraudulent practice in connection with the sale of a
security;

(2) has engaged, is engaging, or is about to engage in
fraud or a fraudulent practice in rendering services as an
investment adviser or investment adviser representative;

(3) has made an offer containing a statement that is
materially misleading or is otherwise likely to deceive the public;
or

(4) has engaged, is engaging, or is about to engage in
an act or practice that violates this title or a board rule or
order.

(b) On the commissioner's request under Subsection (a), the
attorney general, in addition to other remedies, may bring an
action in the name and on behalf of the state:

(1) against:

(A) a person or company described by Subsection
(a);

(B) any person who, with intent to deceive or
defraud or with reckless disregard for the truth or the law, has
materially aided, is materially aiding, or is about to materially
aid the person or company; and

(C) any other person concerned with or in any
manner participating in or about to participate in the acts or
practices described by Subsection (a); and

(2) to enjoin the person or company and any other
person described by Subdivision (1) from continuing the acts or
practices that are the subject of the action for injunctive relief
or from doing any act to further the acts or practices.

(c) The facts contained in an application for injunctive
relief must be verified by the commissioner on information and
belief.

(d) The attorney general may apply for and, on proper
showing, is entitled to have a subpoena issued by the court that
requires:
(1) the appearance, without delay, of a defendant and any employee or agent of the defendant to testify and give evidence concerning the acts, conduct, or other matters complained about in the application for injunctive relief; and

(2) the production of documents, books, and records that may be necessary for the hearing on the action.

(e) A district court in any county in which it is shown that the acts that are the subject of the application for injunctive relief have been or are about to be committed or a district court in Travis County has jurisdiction and venue of an action brought under this section. This subsection is superior to any provision establishing jurisdiction or venue with regard to an action for an injunction.

(f) The commissioner or attorney general shall not be required to give a bond for injunction in an action brought under this section. (V.A.C.S. Art. 581-32, Subsec. A.)

Source Law

Art. 581-32. A. Whenever it shall appear to the Commissioner either upon complaint or otherwise, that any person has engaged, is engaging, or is about to engage in fraud or a fraudulent practice in connection with the sale of a security, has engaged, is engaging, or is about to engage in fraud or a fraudulent practice in the rendering of services as an investment adviser or investment adviser representative, has made an offer containing a statement that is materially misleading or is otherwise likely to deceive the public, or has engaged, is engaging, or is about to engage in an act or practice that violates this Act or a Board rule or order, the Attorney General may, on request by the Commissioner, and in addition to any other remedies, bring action in the name and on behalf of the State of Texas against such person or company and any person who, with intent to deceive or defraud or with reckless disregard for the truth or the law, has materially aided, is materially aiding, or is about to materially aid such person and any other person or persons heretofore concerned in or in any way participating in or about to participate in such acts or practices, to enjoin such person or company and such other person or persons from continuing such acts or practices or doing any act or acts in furtherance thereof. The Commissioner shall verify, on information and belief, the facts contained in an application for injunction under this section. In any such court proceedings, the Attorney General may apply for and on due showing be entitled to have issued the court's subpoena requiring the forthwith appearance of any defendant and the defendant's employees or agents and the production of documents, books and records as
may appear necessary for the hearing of such petition, to testify and give evidence concerning the acts or conduct or things complained of in such application for injunction. The District Court of any county, wherein it is shown that the acts complained of have been or are about to be committed, or a district court in Travis County shall have jurisdiction of any action brought under this section, and this provision shall be superior to any provision fixing the jurisdiction or venue with regard to suits for injunction. No bond for injunction shall be required of the Commissioner or Attorney General in any such proceeding.

Revisor's Note

(1) Subsection A, Article 581-32, Vernon's Texas Civil Statutes, refers to any other "person or persons" concerned with or participating in fraudulent acts or practices. The revised law omits the reference to "persons" because Section 311.012(b), Government Code (Code Construction Act), applicable to the revised law, provides that a reference to the singular includes the plural and vice versa. Throughout this chapter, references in which both the singular and plural forms of the word are used are revised using only one form of the term.

(2) Subsection A, Article 581-32, Vernon's Texas Civil Statutes, refers to any other person or persons "heretofore" concerned with respect to certain acts or practices. The revised law omits "heretofore" as unnecessary because, in context, the term does not add to the clear meaning of the law.

(3) Subsection A, Article 581-32, Vernon's Texas Civil Statutes, refers to a subpoena requiring the "forthwith" appearance of certain persons and the production of documents and other records. The revised law substitutes "without delay" for "forthwith" for the reason stated in Revisor's Note (4) to Section 4007.151.

(4) Subsection A, Article 581-32, Vernon's Texas Civil Statutes, provides that a district court located in Travis County or any county in which the acts
complained of have been or are about to be committed
has "jurisdiction" of an action brought under
Subsection A, Article 581-32. The revised law
substitutes "jurisdiction and venue" for
"jurisdiction" for clarity and to more accurately
reflect the substance of the provision.

Revised Law
Sec. 4007.153. EQUITABLE RELIEF AND RESTITUTION. (a) On
the commissioner's request, the attorney general may, in addition
to other remedies, seek:

(1) equitable relief, including restitution, for a
victim of a fraudulent practice; and

(2) the disgorgement of any economic benefit gained by
a defendant through an act or practice that violates this title or
for which this title provides the commissioner and attorney general
with a remedy.

(b) The attorney general may seek the remedies described by
Subsection (a) either in:

(1) an action under Section 4007.152; or

(2) a separate action brought in district court.

(c) The court may:

(1) grant any equitable relief the court considers
appropriate; and

(2) order the defendant to deliver to each victim of an
act or practice that violates this title, or for which this title
provides the commissioner or the attorney general with a remedy,
the amount of money or the property the defendant obtained from the
victim, including any bonus, fee, commission, option, proceeds, or
profit from or loss avoided through the sale of the security or
through the rendering of services as an investment adviser or
investment adviser representative, or any other tangible benefit.

(V.A.C.S. Art. 581-32, Subsec. B.)

Source Law
B. In addition to any other remedies, the
Attorney General may, on the request of the Commissioner, either in an action under Subsection A of this section or in a separate action in District Court, seek equitable relief, including restitution, for a victim of fraudulent practices and may seek the disgorgement of any economic benefit gained by a defendant through an act or practice that violates this Act or for which this Act provides the Commissioner or the Attorney General with a remedy. The court may grant any equitable relief that the court considers appropriate and may order the defendant to deliver to each victim of any act or practice that violates this Act or for which this Act provides the Commissioner or the Attorney General with a remedy the amount of money or the property that the defendant obtained from the victim, including any bonus, fee, commission, option, proceeds, or profit from or loss avoided through the sale of the security or through the rendering of services as an investment adviser or investment adviser representative, or any other tangible benefit.

Revised Law

Sec. 4007.154. CIVIL PENALTY. (a) On the commissioner's request, the attorney general may, in addition to other remedies, seek a civil penalty to be paid to the state in an amount that, when added to the amount of any administrative fine previously assessed under Section 4007.106(b), does not exceed:

(1) the greater of:

(A) $20,000 per violation; or

(B) the gross amount of any economic benefit gained by the person or company as a result of the commission of the act or practice; and

(2) if the act or practice was committed against a person 65 years of age or older, an additional amount of not more than $250,000.

(b) The attorney general may seek a civil penalty under this section either in:

(1) an action under Section 4007.152; or

(2) a separate action in district court. (V.A.C.S. Art. 581-32, Subsec. C.)

Source Law

C. In addition to any other remedies, the Attorney General may, on the request of the Commissioner, either in an action under Subsection A of this section or in a separate action in District Court, seek a civil penalty to be paid to the State in an amount, together with the amount of any
administrative fine already assessed under Subsection B of Section 23-1, not to exceed:
(1) the greater of:
   (A) $20,000 per violation; or
   (B) the gross amount of any economic benefit gained by the person or company as a result of the commission of the act or practice; and
(2) if the act or practice was committed against a person 65 years of age or older, an additional amount of not more than $250,000.

Revised Law
Sec. 4007.155. RECOVERY OF COSTS. In an action brought under Section 4007.152, 4007.153, or 4007.154, the attorney general may recover reasonable costs and expenses incurred by the attorney general in bringing the action. (V.A.C.S. Art. 581-32, Subsec. D.)

Source Law
D. In an action brought under this section, the Attorney General may recover reasonable costs and expenses incurred by the Attorney General in bringing the action.

SUBCHAPTER E. CRIMINAL PROVISIONS

Revised Law
Sec. 4007.201. UNAUTHORIZED SALE OF SECURITIES; OFFENSE.
(a) A person commits an offense if the person sells, offers for sale or delivery, solicits subscriptions to or orders for, disposes of, invites orders for, or deals in any other manner in a security issued after September 6, 1955, unless:
   (1) the security has been registered under Subchapter B or C, Chapter 4003; or
   (2) a permit qualifying securities for sale has been issued under Subchapter A, Chapter 4003, with respect to the security.
(b) A person commits an offense if the person sells, offers for sale or delivery, solicits subscriptions to or orders for, disposes of, invites offers for, or deals in any other manner in a security without being a registered dealer or registered agent as provided in this title.
(c) An offense under this section is a felony of the third degree. (V.A.C.S. Art. 581-29 (part).)
Art. 581-29. Any person who shall:

A. Sell, offer for sale or delivery, solicit subscriptions or orders for, dispose of, invite offers for, or who shall deal in any other manner in any security or securities without being a registered dealer or agent as in this Act provided shall be deemed guilty of a felony of the third degree.

B. Sell, offer for sale or delivery, solicit subscriptions to and orders for, dispose of, invite orders for, or who shall deal in any other manner in any security or securities issued after September 6, 1955, unless said security or securities have been registered or granted a permit as provided in Section 7 of this Act, shall be deemed guilty of a felony of the third degree.

... 

Revisor's Note

(1) Subsection A, Article 581-29, Vernon's Texas Civil Statutes, provides that a person commits an offense if the person engages in certain conduct unless the person is a "registered dealer or agent." The revised law adds a reference to a "registered agent" to clarify that an agent is required to be registered under Subsection A, Article 581-12, Vernon's Texas Civil Statutes, revised in relevant part as Section 4004.101(a) of this title.

(2) Subsections A and B, Article 581-29, Vernon's Texas Civil Statutes, provide that a person who engages in certain prohibited conduct "shall be deemed guilty" of a felony of the third degree. Subsequent subsections of Article 581-29 contain similar provisions. Throughout this subchapter, which primarily consists of the offenses described in Article 581-29, the revised law provides that a person who engages in prohibited conduct "commits an offense" to be consistent with the terminology used in the Penal Code.

(3) Subsection B, Article 581-29, Vernon's Texas Civil Statutes, refers to securities that have been registered or issued a permit "as provided in Section 7
of this Act," meaning Article 581-7, Vernon's Texas
Civil Statutes. The provisions of Article 581-7
providing for the registration of securities are
Subsections B and C, revised as Subchapters B and C,
Chapter 4003, of this title, respectively. The
provision of Article 581-7 authorizing the issuance of
a permit qualifying securities for sale is Subsection
A, revised as Subchapter A, Chapter 4003, of this
title. The revised law is drafted accordingly.

Revised Law
Sec. 4007.202. UNAUTHORIZED RENDERING OF SERVICES AS
INVESTMENT ADVISER OR INVESTMENT ADVISER REPRESENTATIVE; OFFENSE.
(a) A person commits an offense if the person:
(1) renders services as an investment adviser or
investment adviser representative; and
(2) is not registered as an investment adviser or
investment adviser representative as required by this title.
(b) An offense under this section is a felony of the third
degree. (V.A.C.S. Art. 581-29 (part).)

Source Law
Art. 581-29. Any person who shall:
I. Render services as an investment adviser or
an investment adviser representative without being
registered as required by this Act shall be deemed
guilty of a felony of the third degree.

Revised Law
Sec. 4007.203. FRAUDULENT CONDUCT; OFFENSE. (a) A person
commits an offense if:
(1) the person directly or indirectly:
(A) engages in any fraud or fraudulent practice;
(B) employs any device, scheme, or artifice to
defraud;
(C) knowingly makes an untrue statement of a
material fact or omits 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; or

(D) engages in any act, practice, or course of business that operates or will operate as a fraud or deceit on any person; and

(2) the applicable conduct is committed in connection with:

(A) the sale of, the offering for sale or delivery of, the purchase of, the offer to purchase, invitation of offers to purchase, invitations of offers to sell, or dealing in any other manner in any security, regardless of whether the transaction or security is exempt under Chapter 4005; or

(B) the rendering of services as an investment adviser or an investment adviser representative.

(b) An offense under this section is:

(1) a felony of the third degree, if the amount involved in the offense is less than $10,000;

(2) a felony of the second degree, if the amount involved in the offense is $10,000 or more but less than $100,000;

or

(3) a felony of the first degree, if the amount involved is $100,000 or more.

(c) An indictment for an offense under this section may be brought only before the fifth anniversary of the date the offense was committed. (V.A.C.S. Art. 581-29 (part); Art. 581-29-1.)

Source Law

Art. 581-29. Any person who shall:

C. In connection with the sale, offering for sale or delivery of, the purchase, offer to purchase, invitation of offers to purchase, invitations of offers to sell, or dealing in any other manner in any security or securities, whether or not the transaction or security is exempt under Section 5 or 6 of this Act, or in connection with the rendering of services as an investment adviser or an investment adviser representative, directly or indirectly:

(1) engage in any fraud or fraudulent practice;

(2) employ any device, scheme, or artifice to defraud;

(3) knowingly make any untrue statement of a material fact or omit to state a material fact
necessary in order to make the statements made, in the
light of the circumstances under which they are made,
not misleading; or
(4) engage in any act, practice or course
of business which operates or will operate as a fraud
or deceit upon any person, is:
(a) guilty of a felony of the third
degree, if the amount involved in the offense is less
than $10,000;
(b) guilty of a felony of the second
degree, if the amount involved in the offense is
$10,000 or more but less than $100,000; or
(c) guilty of a felony of the first
degree, if the amount involved is $100,000 or more.

Art. 581-29-1. An indictment for an offense
under Subsection C of Section 29 may be brought only
before the fifth anniversary of the day on which the
offense is committed.

Revisor's Note
Subsection C, Article 581-29, Vernon's Texas
Civil Statutes, refers to a transaction or security
that is exempt "under Section 5 or 6 of this Act,"
meaning Article 581-5 or 581-6, Vernon's Texas Civil
Statutes. The relevant provisions of Articles 581-5
and 581-6 pertaining to exempt transactions and
securities are revised in Chapter 4005 of this title,
and the revised law is drafted accordingly.

Revised Law
Sec. 4007.204. MATERIALLY FALSE STATEMENT IN DOCUMENT OR
PROCEEDING; OFFENSE. (a) A person commits an offense if the person
knowingly makes or causes to be made any statement in a document
filed with the commissioner or in a proceeding under this title that is,
at the time and in light of the circumstances under which the
statement is made, false or misleading in any material respect.
(b) An offense is established under this section regardless
of whether the document or proceeding relates to a transaction or
security that is exempt under Chapter 4005.
(c) An offense under this section is a felony of the third
degree. (V.A.C.S. Art. 581-29 (part).)

Source Law
Art. 581-29. Any person who shall:

E. Knowingly make or cause to be made, in any
document filed with the commissioner or in any
proceeding under this Act, whether or not such
document or proceeding relates to a transaction or
security exempt under the provisions of Sections 5 or 6
of this Act, any statement which is, at the time and in
the light of the circumstances under which it is made,
false or misleading in any material respect shall be
deemed guilty of a felony of the third degree.

Revisor's Note
Subsection E, Article 581-29, Vernon's Texas
Civil Statutes, refers to a transaction or security
that is exempt "under Sections 5 or 6 of this Act,"
meaning Article 581-5 or 581-6, Vernon's Texas Civil
Statutes. The revised law substitutes "Chapter 4005"
for the quoted language for the reason stated in the
revisor's note to Section 4007.203.

Revised Law
Sec. 4007.205. FALSE STATEMENT OR REPRESENTATION
CONCERNING REGISTRATION; OFFENSE. (a) A person commits an offense
if the person knowingly makes a false statement or representation
concerning a registration made or an exemption claimed under this
title.

(b) An offense under this section is a state jail felony.

(V.A.C.S. Art. 581-29 (part).)

Source Law
Art. 581-29. Any person who shall:
F. Knowingly make any false statement or
representation concerning any registration made or
exemption claimed under the provisions of this Act
shall be deemed guilty of a state jail felony.

Revised Law
Sec. 4007.206. VIOLATION OF CEASE AND DESIST ORDER;
OFFENSE. (a) A person commits an offense if the person knowingly
violates a cease and desist order issued by the commissioner under
Section 4007.101, 4007.102, or 4007.104.

(b) An offense under this section is a felony of the third
degree. (V.A.C.S. Art. 581-29 (part).)

Source Law
Art. 581-29. Any person who shall:

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D. Knowingly violate a cease and desist order issued by the commissioner under the authority of Section 23A, 23B, or 23-2 of this Act shall be deemed guilty of a felony of the third degree.

Revised Law
Sec. 4007.207. NONCOMPLIANT OFFER OR OFFER PROHIBITED BY CEASE PUBLICATION ORDER; OFFENSE. (a) A person commits an offense if the person:

(1) makes an offer of a security in this state that does not comply with the requirements governing offers specified in Subchapter E, Chapter 4003; or

(2) knowingly makes an offer of a security in this state that is prohibited by a cease publication order issued by the commissioner under Section 4007.103.

(b) An offense under this section is a state jail felony.

Source Law
Art. 581-29. Any person who shall:

G. Make an offer of any security within this State that is not in compliance with the requirements governing offers set forth in Section 22 of this Act shall be deemed guilty of a state jail felony.

H. Knowingly make an offer of any security within this State prohibited by a cease publication order issued by the Commissioner under Section 23C of this Act shall be deemed guilty of a state jail felony.

Revisor's Note
Subsection G, Article 581-29, Vernon's Texas Civil Statutes, refers to the requirements governing offers specified in "Section 22 of this Act," meaning Article 581-22, Vernon's Texas Civil Statutes. The revised law substitutes a reference to Subchapter E, Chapter 4003, of this title because Article 581-22 is revised as that subchapter.

Revised Law
Sec. 4007.208. AGGREGATION OF AMOUNTS. When amounts are obtained in violation of this title pursuant to one scheme or continuing course of conduct, whether from the same or several

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sources, the conduct may be considered as one offense and the
amounts aggregated in determining the grade of the offense.
(V.A.C.S. Art. 581-29-2.)

Source Law

Art. 581-29-2. When amounts are obtained in violation of this Act under one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the amounts aggregated in determining the grade of the offense.

Revised Law

Sec. 4007.209. LIABILITY OF CORPORATION. (a) In this section:

(1) "Association" and "corporation" have the meanings assigned by Section 1.07, Penal Code.

(2) "High managerial agent" has the meaning assigned by Section 7.21, Penal Code.

(b) If conduct constituting an offense under this subchapter is performed by an agent acting on behalf of a corporation or association and within the scope of the agent's office or employment, the corporation or association is criminally responsible for the offense only if the commission of the offense was authorized, requested, commanded, performed, or recklessly tolerated by:

(1) a majority of the governing board acting on behalf of the corporation or association; or

(2) a high managerial agent acting on behalf of the corporation or association and within the scope of the high managerial agent's office or employment.

(c) It is an affirmative defense to prosecution of a corporation or association under Subsection (b) that the high managerial agent having supervisory responsibility over the subject matter of the offense employed due diligence to prevent the commission of the offense. (V.A.C.S. Art. 581-29-3.)

Source Law

Art. 581-29-3. A. In this section:

(1) "Association" and "corporation" have
the meanings assigned by Section 1.07, Penal Code.

(2) "High managerial agent" has the meaning assigned by Section 7.21, Penal Code.

B. If conduct constituting an offense under Section 29 of this Act is performed by an agent acting in behalf of a corporation or association and within the scope of the person's office or employment, the corporation or association is criminally responsible for the offense only if its commission was authorized, requested, commanded, performed, or recklessly tolerated by:

(1) a majority of the governing board acting in behalf of the corporation or association; or

(2) a high managerial agent acting in behalf of the corporation or association and within the scope of the high managerial agent's office or employment.

C. It is an affirmative defense to prosecution of a corporation or association under Subsection B of this section that the high managerial agent having supervisory responsibility over the subject matter of the offense employed due diligence to prevent its commission.

Revisor's Note
(End of Subchapter)

Subsection J, Article 581-29, Vernon's Texas Civil Statutes, provides that a conviction of an offense under Article 581-29 may be enhanced as provided by Section 12.42, Penal Code. The revised law omits this provision as unnecessary because under Section 1.03(b), Penal Code, which provides that certain provisions of the Penal Code apply to offenses defined by other laws, Section 12.42 of that code already applies to an offense committed under Article 581-29, the relevant part of which is revised in Subchapter E of this chapter. The omitted law reads:

J. A conviction of an offense under this section may be enhanced as provided by Section 12.42, Penal Code.

Revisor's Note
(End of Chapter)

Article 581-27, Vernon's Texas Civil Statutes, provides that judicial review of a decision of the securities commissioner or State Securities Board is under the substantial evidence rule. The revised law omits this provision as unnecessary because the standard of review for a contested case involving a
state agency is provided under Section 2001.174, Government Code, which is applicable to the revised law. The omitted law reads:

Art. 581-27. Judicial review of a decision of the Commissioner or Board is under the substantial evidence rule.

CHAPTER 4008. PRIVATE RIGHTS OF ACTION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4008.001. UNENFORCEABILITY OF ILLEGAL CONTRACTS

Sec. 4008.002. CERTAIN WAIVERS VOID

Sec. 4008.003. ACTION FOR COLLECTION OF COMMISSION OR COMPENSATION

Sec. 4008.004. STAY OF RECOGNITION OR ENFORCEMENT OF FOREIGN-COUNTRY JUDGMENT

Sec. 4008.005. SURVIVABILITY OF ACTION

Sec. 4008.006. SAVING OF EXISTING RIGHTS AND REMEDIES

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

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

Sec. 4008.052. OFFEROR OR SELLER LIABILITY: UNTRUTH OR OMISSION

Sec. 4008.053. BUYER LIABILITY

Sec. 4008.054. NONSELLING ISSUER LIABILITY

Sec. 4008.055. CONTROLLING PERSON OR AIDER LIABILITY

Sec. 4008.056. RESCSSION

Sec. 4008.057. DAMAGES

Sec. 4008.058. REQUIREMENTS OF RESCISSION OFFER TO BUYERS

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Sec. 4008.060. COSTS; ATTORNEY'S FEES

Sec. 4008.061. LIMITATION OF LIABILITY IN SMALL BUSINESS ISSUANCES

Sec. 4008.062. STATUTE OF LIMITATIONS
Sec. 4008.101. INVESTMENT ADVISER OR INVESTMENT ADVISER REPRESENTATIVE LIABILITY 

Sec. 4008.102. CONTROLLING PERSON OR AIDER LIABILITY 

Sec. 4008.103. DAMAGES 

Sec. 4008.104. STATUTE OF LIMITATIONS 

Sec. 4008.105. REMEDY NOT EXCLUSIVE 

CHAPTER 4008. PRIVATE RIGHTS OF ACTION 

SUBCHAPTER A. GENERAL PROVISIONS 

Revised Law

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. (V.A.C.S. Art. 581-33, Subsec. K.)

Source Law

K. Unenforceability of Illegal Contracts. No person who has made or engaged in the performance of any contract in violation of any provision of this Act or any rule or order or requirement hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract.

Revisor's Note

(1) Subsection K, Article 581-33, Vernon's Texas Civil Statutes, refers to "this Act," which is The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes). The provisions of The Securities Act are revised as this title. The revised law throughout this chapter therefore substitutes references to "this title" for references to "this Act."
(2) Subsection K, Article 581-33, Vernon's Texas Civil Statutes, refers to a rule, order, or requirement "hereunder," meaning under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes). The revised law substitutes a reference to "under this title" for the reference to "hereunder" for the reason stated in Revisor's Note (1) of this section.

(3) Subsection K, Article 581-33, Vernon's Texas Civil Statutes, refers to a person who has acquired any purported right under a contract "with knowledge of the facts by reason of which [the contract's] making or performance was in violation," referring to the previous reference to the making or performance of a contract "in violation of any provision of this Act or any rule or order or requirement hereunder." For clarity, the revised law restates the description of the provisions referenced by Subsection K.

Revised Law
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. (V.A.C.S. Art. 581-33, Subsec. L.)

Source Law
L. Waivers Void. A condition, stipulation, or provision binding 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 a provision of this Act or a rule or order or requirement hereunder is void.

Revised Law
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. (V.A.C.S. Art.
581-34.)

Source Law

Art. 581-34. No person or company shall bring or
maintain any action in the courts of this state for
collection of a commission or compensation for
services rendered in the sale or purchase of
securities, as that term is defined in this Act,
without alleging and proving that such person or
company was duly registered under the provisions of
this Act (or duly exempt from such registration
pursuant to rules adopted under Section 12C of this
Act) and the securities so sold were duly registered
under the provisions of this Act at the time the
alleged cause of action arose; provided, however, that
this section shall not apply to any company or person
that rendered services in connection with any
transaction exempted by Section 5 of this Act or by any
rule promulgated by the Board pursuant to Subsection T
of Section 5 of this Act if the company or person was
not required to be registered by the terms of the
exemption.

Revisor's Note

(1) Article 581-34, Vernon's Texas Civil
Statutes, refers to securities, "as that term is
declared in this Act," meaning The Securities Act
(Article 581-1 et seq., Vernon's Texas Civil
Statutes). The revised law omits the quoted language
as unnecessary because the definition of "securities"
in that act is revised as Section 4001.068 of this
title and applies by its own terms.
(2) Article 581-34, Vernon's Texas Civil Statutes, refers to a person or company who has been "duly" registered or is "duly" exempt from registration under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes). Article 581-34 also refers to securities "duly" registered under that act. The revised law omits "duly" with respect to the registration of a person, company, or security as unnecessary because a person, company, or security that is not properly registered is not considered to be registered. The revised law omits "duly" with respect to an exemption as unnecessary because in context only a properly adopted exemption would apply to the person or company.

(3) Article 581-34, Vernon's Texas Civil Statutes, refers to rules adopted under "Section 12C of this Act," meaning Subsection C, Article 581-12, Vernon's Texas Civil Statutes. Subsection C of Article 581-12 is revised in Section 4004.001 of this title, and the revised law is drafted accordingly.

(4) Article 581-34, Vernon's Texas Civil Statutes, provides for an exception to the applicability of that provision for services rendered in connection with a transaction that is exempted by "Section 5 of this Act," meaning Article 581-5, Vernon's Texas Civil Statutes, or by a rule adopted under "Subsection T of Section 5 of this Act," meaning Subsection T of Article 581-5, Vernon's Texas Civil Statutes. The relevant provisions of Article 581-5 pertaining to exempt transactions are revised in Subchapter A, Chapter 4005, of this title, and Subsection T of Article 581-5 is revised in Section 4005.024 of this title. The revised law is drafted accordingly.
Revised Law
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. (V.A.C.S. Art. 581-33-2.)

Source Law
Art. 581-33-2. (a) Prior to a court's
recognition or enforcement of a foreign country
judgment under Chapter 36, Civil Practice and Remedies
Code, or otherwise, a party against whom recognition
or enforcement of a foreign country judgment is sought
is entitled to de novo review by a court in this state
to determine whether a party, its successors, assigns,
agents, or representatives seeking recognition or
enforcement of a foreign country judgment has violated
this Act 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 Act or Chapter 17,
Business & Commerce Code, not later than the 30th day
after the date of service of the notice of filing of a
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 a foreign country judgment. The stay shall
continue 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
Act 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 Act, or
investment, that imposes an obligation of
indemnification or liquidated damages upon a Texas
resident.

Revisor's Note

Subsection (a), Article 581-33-2, Vernon's Texas
Civil Statutes, refers to the enforcement of a foreign
country judgment under "Chapter 36, Civil Practice and
Remedies Code." The revised law substitutes a
reference to Chapter 36A, Civil Practice and Remedies
Code, for the quoted language because Chapter 390
(S.B. 944), Acts of the 85th Legislature, Regular
Session, 2017, repealed Chapter 36, Civil Practice and
Remedies Code, the uniform act of 1962, and enacted
Chapter 36A of that code, known as the Uniform
Foreign-Country Money Judgments Recognition Act, to
address the enforcement of judgments of other
countries. The revised law also substitutes
"foreign-country judgment" for "foreign country
judgment" because that is the defined term applicable
throughout Chapter 36A.

Revised Law

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. (V.A.C.S. Art. 581-33, Subsec. G.)

Source Law

G. Survivability of Actions. Every cause of action under this Act survives the death of any person who might have been a plaintiff or defendant.

Revised Law

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. (V.A.C.S. Art. 581-33, Subsec. M.)

Source Law

M. Saving of Existing Remedies. The rights and remedies provided by this Act are in addition to any other rights (including exemplary or punitive damages) or remedies that may exist at law or in equity.

Revisor's Note

(1) Subsection M, Article 581-33, Vernon's Texas Civil Statutes, refers to "exemplary or punitive damages." The revised law omits the reference to "punitive damages" as unnecessary because the terms are synonymous and "exemplary damages" is more commonly used.

(2) Subsection M, Article 581-33, Vernon's Texas Civil Statutes, refers to rights or remedies that exist "at law or in equity." The revised law omits the quoted language because, in context, "at law or in equity" is included within the meaning of "any other rights . . . or remedies that [may] exist."

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

Revised Law

Sec. 4008.051. OFFEROR OR SELLER LIABILITY: REGISTRATION AND RELATED VIOLATIONS. (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), 4003.002, 4003.003, or
4003.004; Subchapter B, Chapter 4003, other than Section 4003.054(b)(1); Subchapter C, Chapter 4003, other than Section 4003.103(b); Section 4004.001, 4004.051, 4004.052, 4004.101(a), or 4004.102(a); or Section 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.

(V.A.C.S. Art. 581-33, Subsec. A, Subdiv. (1).)

Source Law

Art. 581-33. A. Liability of Sellers. (1) Registration and Related Violations. A person who offers or sells a security in violation of Section 7, 9 (or a requirement of the Commissioner thereunder), 12, 23C, or an order under 23A or 23-2 of this Act is liable to the person buying the security from him, who may sue either at law or in equity for rescission or for damages if the buyer no longer owns the security.

Revisor's Note

(1) Subdivision (1), Subsection A, Article 581-33, Vernon's Texas Civil Statutes, refers to a person who offers or sells a security in violation of Article 581-7, 581-9, 581-12, or 581-23C or an order under Article 581-23A or 581-23-2, Vernon's Texas Civil Statutes. The revised law substitutes references to various sections of Chapters 4003, 4004, and 4007 of this title because the relevant provisions of those articles are revised as those sections.

(2) Subdivision (1), Subsection A, Article 581-33, Vernon's Texas Civil Statutes, refers to a right to sue "either at law or in equity" for specified remedies. Throughout this chapter, the revised law omits as unnecessary the phrase "either at law or in equity" as it relates to the bringing of a suit for

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specified remedies. A suit can only be brought at law or in equity, the federal courts and the courts of this state administer both legal and equitable remedies, and the right to sue for a specified remedy makes a reference to its legal or equitable nature unnecessary.

Revised Law
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. (V.A.C.S. Art. 581-33, Subsec. A,
Untruth or Omission. A person who offers or sells a security (whether or not the security or transaction is exempt under Section 5 or 6 of this Act) 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 the light of the circumstances under which they are made, not misleading, is liable to the person buying the security from him, who may sue either at law or in equity for rescission, or for damages if the buyer no longer owns the security. However, a person is not liable if he sustains the burden of proof that either (a) the buyer knew of the untruth or omission or (b) he (the offeror or seller) did not know, and in the exercise of reasonable care could not have known, of the untruth or omission. The issuer of the security (other than a government issuer identified in Section 5M) is not entitled to the defense in clause (b) with respect to an untruth or omission (i) in a prospectus required in connection with a registration statement under Section 7A, 7B, or 7C, or (ii) in a writing prepared and delivered by the issuer in the sale of a security.

Revisor's Note

(1) Subdivision (2), Subsection A, Article 581-33, Vernon's Texas Civil Statutes, refers to a security or transaction exempt "under Section 5 or 6 of this Act," meaning Article 581-5 or 581-6, Vernon's Texas Civil Statutes. The relevant provisions of Articles 581-5 and 581-6 pertaining to exempt transactions and securities are revised in Chapter 4005 of this title, and the revised law is drafted accordingly.

(2) Subdivision (2), Subsection A, Article 581-33, Vernon's Texas Civil Statutes, provides that a certain defense to a criminal offense is only available to a government issuer "identified in Section 5M," meaning Subsection M, Article 581-5, Vernon's Texas Civil Statutes. Subsection M, Article 581-5 is revised in Section 4005.017 of this title, and the revised law is drafted accordingly.

(3) Subdivision (2), Subsection A, Article 581-33, Vernon's Texas Civil Statutes, provides that a
certain issuer of a security is not entitled to certain defenses regarding an untruth or omission in a prospectus required in connection with "a registration statement under Section 7A, 7B, or 7C," meaning Subsection A, B, or C of Article 581-7, Vernon's Texas Civil Statutes. The revised law substitutes "an application or registration statement" for "a registration statement" because under Subsection A, Article 581-7, revised as Subchapter A, Chapter 4003, of this title, an issuer of the securities or a registered dealer files an application for a permit qualifying securities for sale, not a registration statement. The revised law also substitutes references to Subchapters B and C, Chapter 4003, of this title because Subsections B and C of Article 581-7 are revised as those subchapters.

Revised Law

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. (V.A.C.S. Art. 581-33, Subsec. B.)

**Source Law**

B. Liability of Buyers. A person who offers to buy or buys a security (whether or not the security or transaction is exempt under Section 5 or 6 of this Act) 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 the light of the circumstances under which they are made, not misleading, is liable to the person selling the security to him, who may sue either at law or in equity for rescission or for damages if the buyer no longer owns the security. However, a person is not liable if he sustains the burden of proof that either (a) the seller knew of the untruth or omission, or (b) he (the offeror or buyer) did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

**Revisor's Note**

Subsection B, Article 581-33, Vernon's Texas Civil Statutes, refers to a security or transaction exempt "under Section 5 or 6 of this Act," meaning Article 581-5 or 581-6, Vernon's Texas Civil Statutes. The revised law substitutes "Chapter 4005" for the quoted language for the reason stated in Revisor's Note (1) to Section 4008.052.

**Revised Law**

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. (V.A.C.S. Art. 581-33, Subsec. C.)

Source Law

C. Liability of Nonselling Issuers Which
Register. (1) This Section 33C applies only to an
issuer which registers under Section 7A, 7B, or 7C of
this Act, or under Section 6 of the U.S. Securities Act
of 1933, its outstanding securities for offer and sale
by or for the owner of the securities.
(2) 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 the light of the
circumstances under which they are made, not
misleading, the issuer is liable to a person buying the
registered security, who may sue either at law or in
equity for rescission or for damages if the buyer no
longer owns the securities. However, an issuer is not
liable if it sustains the burden of proof that the
buyer knew of the untruth or omission.

Revisor's Note

(1) Subdivision (1), Subsection C, Article
581-33, Vernon's Texas Civil Statutes, refers to an
issuer that registers under Article 581-7A, 581-7B, or
581-7C, Vernon's Texas Civil Statutes. The revised law
substitutes references to Subchapters A, B, and C,
Chapter 4003, of this title because Articles 581-7A,
581-7B, and 581-7C are revised as those subchapters.

(2) Subdivision (1), Subsection C, Article
581-33, Vernon's Texas Civil Statutes, refers to
"Section 6 of the U.S. Securities Act of 1933." The
revised law substitutes "Section 6, Securities Act of
1933 (15 U.S.C. Section 77f)" for the quoted language
for the following reasons. The revised law
substitutes "Securities Act of 1933" for "U.S.
Securities Act of 1933" because 15 U.S.C. Section 77a
provides that the proper citation for the act is
"Securities Act of 1933." For the convenience of the
reader, the revised law also includes a reference to
the United States Code citation for that section.

Revised Law
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. (V.A.C.S. Art.
581-33, Subsec. F.)

Source Law
F. Liability of Control Persons and Aiders. (1)
A person who directly or indirectly controls a seller,
buyer, or issuer of a security is liable under Section
33A, 33B, or 33C jointly and severally with the seller,
buyer, or issuer, and to the same extent as if he were
the seller, buyer, or issuer, unless the controlling
person sustains the burden of proof that he 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.

(2) 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 33A, 33B, or 33C jointly and severally with the
seller, buyer, or issuer, and to the same extent as if he
were the seller, buyer, or issuer.

(3) There is contribution as in cases of
contract among the several persons so liable.
Revised Law

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. (V.A.C.S. Art. 581-33, Subsec. D, Subdivs. (1), (2), (5), Subsec. E.)

Source Law

D. Rescission and Damages. For this Section 33:

(1) On rescission, a buyer shall recover the consideration he paid for the security plus interest thereon at the legal rate from the date of payment by him, less (b) the amount of any income he received on the security, upon tender of the security (or a security of the same class and series).

(2) On rescission, a seller shall recover the security (or a security of the same class and series) upon tender of (a) the consideration he received for the security plus interest thereon at the legal rate from the date of receipt by him, less (b) the amount of any income the buyer received on the security.

(5) For a buyer suing under Section 33C, the consideration he paid shall be deemed the lesser of (a) the price he paid and (b) the price at which the security was offered to the public.
E. Time of Tender. Any tender specified in Section 33D may be made at any time before entry of judgment.

Revisor's Note

(1) Subsection D, Article 581-33, Vernon's Texas Civil Statutes, refers to "this Section 33," meaning Article 581-33, Vernon's Texas Civil Statutes. The relevant provisions of Article 581-33 are revised as this subchapter. For that reason, the revised law throughout this subchapter substitutes references to "this subchapter" for references to "Section 33."

(2) Subsection E, Article 581-33, Vernon's Texas Civil Statutes, refers to a tender specified in "Section 33D," meaning Subsection D, Article 581-33, Vernon's Texas Civil Statutes. The relevant provisions of Subsection D are revised as this section. For that reason, the revised law substitutes a reference to "this section" for the reference to "Section 33D."

Revised Law

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. (V.A.C.S. Art. 581-33, Subsec. D, Subdivs. (3), (4), (5).)

Source Law

D. For this Section 33:

(3) In damages, a buyer shall recover (a)
the consideration the buyer paid for the security plus
interest thereon at the legal rate from the date of
payment by the buyer, less (b) the greater of:

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

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

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

(5) For a buyer suing under Section 33C,
the consideration he paid shall be deemed the lesser of
(a) the price he paid and (b) the price at which the
security was offered to the public.

Revised Law

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);
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. (V.A.C.S. Art. 581-33, Subsec. I.)

Source Law

I. Requirements of a Rescission Offer to Buyers.

A rescission offer under Section 33H(1) or (2) shall
meet the following requirements:

(1) The offer shall include financial and
other information material to the offeree's decision
whether to accept the offer, and shall 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 the light of the circumstances
under which they are made, not misleading.

(2) The offeror shall deposit funds in
escrow in a state or national bank doing business in
Texas (or in another bank approved by the
commissioner) or receive an unqualified commitment
from such a bank to furnish funds sufficient to pay the
amount offered.

(3) The amount of the offer to a buyer who
still owns the security shall be the amount (excluding
costs and attorney's fees) he would recover on
rescission under Section 33D(1).

(4) The amount of the offer to a buyer who
no longer owns the security shall be the amount
(excluding costs and attorney's fees) he would recover
in damages under Section 33D(3).

(5) The offer shall state:

(a) the amount of the offer, as
determined pursuant to Paragraph (3) or (4) above,
which shall be given (i) so far as practicable in terms
of a specified number of dollars and a specified rate
of interest for a period starting at a specified date,
and (ii) so far as necessary, in terms of specified
elements (such as the value of the security when it was
disposed of by the offeree) known to the offeree but
not to the offeror, which are subject to the furnishing
of reasonable evidence by the offeror.

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Revised Law
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. (V.A.C.S. Art. 581-33, Subsec. J.)

Source Law

J. Requirements of a Rescission Offer to Sellers. A rescission offer under Section 33H(3) shall meet the following requirements:
The offer shall include financial and other information material to the offeree's decision whether to accept the offer, and shall 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 the light of the circumstances under which they are made, not misleading.

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

The terms of the offer shall be the same (excluding costs and attorney's fees) as the seller would recover on rescission under Section 33D(2).

The offer shall state:

(a) the terms of the offer, as determined pursuant to Paragraph (3) above, which shall be given (i) so far as 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 (ii) so far as necessary, in terms of specified elements known to the offeree but not the offeror, which are subject to the furnishing of reasonable evidence by the offeree.

(b) the name and address of the bank where the terms of the offer will be carried out.

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

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

(ii) evidence, if necessary, of elements referred to in Paragraph (a)(ii) above.

(d) conspicuously that the offeree may not sue on his sale under Section 33 unless:

(i) he accepts the offer but does not receive the securities, in which case he may sue within the time allowed by Section 33H(3)(a) or (b), as applicable; or

(ii) he rejects the offer in writing within 30 days of its receipt and expressly reserves in the rejection his right to sue, in which case he may sue within one year after he so rejects.

(e) in reasonable detail, the nature of the violation of this Act that occurred or may have occurred.

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

Revised Law

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. (V.A.C.S. Art. 581-33, Subsec.
D, Subdivs. (6), (7).

Source Law
D. For this Section 33:

(6) On rescission or as a part of damages, a buyer or a seller shall also recover costs. (7) On rescission or as a part of damages, a buyer or a seller may also recover reasonable attorney's fees if the court finds that the recovery would be equitable in the circumstances.

Revised Law
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 78l).

(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. (V.A.C.S. Art. 581-33, Subsec. N.)

Source Law

N. Limitation of Liability in Small Business Issuances. (1) For purposes of this Section 33N, unless the context otherwise requires, "small business issuer" means an issuer of securities that, at the time of an offer to which this Section 33N applies:

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

(b) does not have a class of equity securities registered, or required to be registered, with the Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934, as amended (15 U.S.C. Section 78l).

(2) This Section 33N applies only to:

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

(b) a person who has been engaged to provide services relating to an offer of securities described by Section 33N(2)(a), including an attorney, an accountant, a consultant, or the firm of the attorney, accountant, or consultant.

(3) The maximum amount that may be recovered against a person to which this Section 33N applies in any action or series of actions under Section 33 relating to an offer of securities to which this Section 33N applies is an amount equal to three times the fee paid by the 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.

(4) A small business issuer making an offer of securities shall provide to the prospective buyer a written disclosure of the limitation of liability created by this Section 33N and shall receive a signed acknowledgement that the disclosure was provided.

Revisor's Note

(1) Subdivision (1), Subsection N, Article 581-33, Vernon's Texas Civil Statutes, states that the defined term has the meaning given "unless the context otherwise requires." The revised law omits the quoted language because the defined term is used consistently in the revision in the context to which the definition
applies.

(2) Subdivision (1), Subsection N, Article 581-33, Vernon's Texas Civil Statutes, refers to an "issuer of securities." The revised law omits "of securities" as unnecessary because the concept is included in the definition of "issuer" under Subsection G, Article 581-4, Vernon's Texas Civil Statutes, revised as Section 4001.061 of this title.

(3) Subdivision (1), Subsection N, Article 581-33, Vernon's Texas Civil Statutes, refers to Section 12 of the Securities Exchange Act of 1934, as amended (15 U.S.C. Section 78l). The revised law omits "as amended" because, under Section 311.027, Government Code (Code Construction Act), applicable to the revised law, a reference to a statute applies to all reenactments, revisions, or amendments of that statute, unless expressly provided otherwise.

(4) Subdivision (3), Subsection N, Article 581-33, Vernon's Texas Civil Statutes, refers to a "fee paid by the issuer." The revised law substitutes "small business issuer" for "issuer" because in this context the terms are synonymous and "small business issuer" is the defined term under this section.

Revised Law
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
(4) more than one year after the date the person so rejected a rescission offer meeting the requirements of Section 4008.059. (V.A.C.S. Art. 581-33, Subsec. H.)

Source Law

H. Statute of Limitations. (1) No person may sue under Section 33A(1) or 33F so far as it relates to Section 33A(1):

(a) more than three years after the sale; or

(b) if he received a rescission offer (meeting the requirements of Section 33I) before suit unless he (i) rejected the offer in writing within 30 days of its receipt and (ii) expressly reserved in the rejection his right to sue; or

(c) more than one year after he so rejected a rescission offer meeting the requirements of Section 33I.

(2) No person may sue under Section 33A(2), 33C, or 33F so far as it relates to 33A(2) or 33C:

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

(b) more than five years after the sale; or

(c) if he received a rescission offer (meeting the requirements of Section 33I) before suit, unless he (i) rejected the offer in writing within 30 days of its receipt, and (ii) expressly reserved in the rejection his right to sue; or

(d) more than one year after he so rejected a rescission offer meeting the requirements of Section 33I.

(3) No person may sue under Section 33B or 33F so far as it relates to Section 33B:

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

(b) more than five years after the purchase; or

(c) if he received a rescission offer (meeting the requirements of Section 33J) before suit unless he (i) rejected the offer in writing within 30 days of its receipt, and (ii) expressly reserved in the rejection his right to sue; or

(d) more than one year after he so rejected a rescission offer meeting the requirements of Section 33J.

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

Revised Law

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. (V.A.C.S. Art. 581-33-1, Subsecs. A, C.)

Source Law

Art. 581-33-1. A. Liability of Investment Advisers and Investment Adviser Representatives. (1) An investment adviser or investment adviser representative who renders services as an investment adviser in violation of Section 12 or an order under Section 23B or 23-2 of this Act is liable to the purchaser, who may sue at law or in equity, for damages in the amount of any consideration paid for the services.

(2) Except as provided by Subsection C of this section, 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 at law or in equity, for damages.

C. Untruth or Omission. An investment adviser or investment adviser representative who in rendering services as an investment adviser makes a false 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, may not be found

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liable under Subsection A(2) of this section 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.

Revisor's Note
(1) Subsection A, Article 581-33-1, Vernon's 
Texas Civil Statutes, establishes civil liability for 
an investment adviser or investment adviser 
representative who renders services as an investment 
adviser in violation of "Section 12 . . . of this Act,"
meaning Article 581-12, Vernon's Texas Civil Statutes, 
or "an order under Section 23B or 23-2 of this Act,"
meaning Articles 581-23B and 581-23-2, Vernon's Texas 
Civil Statutes. While Article 581-12 is revised as 
Sections 4004.001, 4004.051, 4004.052, 4004.101(a),
and 4004.102(a) of this title, it is clear from the 
context of Article 581-33-1 that the relevant portions 
of Article 581-12 are revised as Sections 4004.052 and 
4004.102(a) of this title. Article 581-23B is revised 
as Section 4007.102 of this title, and Article 
581-23-2 is revised as Section 4007.104 of this title. 
The revised law is drafted accordingly.
(2) Subsection C, Article 581-33-1, Vernon's 
Texas Civil Statutes, provides a limited exception to 
liability for an investment adviser or an investment 
adviser representative who makes a "false statement" 
of a material fact. The revised law substitutes 
"untrue statement" for "false statement" for purposes 
of consistency with Subdivision (2), Subsection C, 
Article 581-33-1, revised as part of this section, 
which refers to the "untruth" of the material fact, and 
for consistency with the terminology in various 
provisions of Article 581-33, Vernon's Texas Civil 
Statutes, that relate to untrue statements of material
fact and are revised as Sections 4008.052, 4008.053, 4008.054, 4008.058, and 4008.059 of this chapter.

Revised Law

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. (V.A.C.S. Art. 581-33-1, Subsec. E.)

Source Law

E. Liability of Control Persons and Assistants.

(1) A person who directly or indirectly controls an investment adviser is jointly and severally liable with the investment adviser under this section, and to the same extent as the investment adviser, unless the controlling person sustains the burden of proof that the 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.

(2) 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 section is jointly and severally liable with the investment adviser in an action to recover damages under this section.

Revisor's Note

(1) Subdivisions (1) and (2), Subsection E, Article 581-33-1, Vernon's Texas Civil Statutes, refer to "this section," meaning Article 581-33-1, Vernon's
Texas Civil Statutes. All of the provisions of Article 581-33-1 are revised as this subchapter. For that reason, the revised law throughout this subchapter substitutes references to "this subchapter" for references to "this section."

(2) Subsection E, Article 581-33-1, Vernon's Texas Civil Statutes, describes the liability of a controlling person, and Subdivision (1), Subsection E, creates an exception if the "person did not know" of certain facts. Because it is clear from the context that the person referred to is a "controlling person," the revised law substitutes "controlling person" for "person" for clarity and consistency in the terminology within the section.

Revised Law
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. (V.A.C.S. Art. 581-33-1, Subsec. B.)

Source Law
B. Damages. In damages under Subsection A(2) of this section, 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 person in acting on the services provided by the adviser or representative;

(3) interest at the legal rate for
judgments accruing from the date of the payment of
consideration; and
(4) to the extent the court considers
equitable, court costs and reasonable attorney's fees.

Revisor's Note

Subsection B, Article 581-33-1, Vernon's Texas
Civil Statutes, describes the damages a purchaser is
entitled to recover, and Subdivision (2), Subsection
B, refers to any loss incurred "by the person."
Because it is clear from the context that the person
referred to is the purchaser, the revised law
substitutes "purchaser" for "person" for clarity and
consistency in the terminology within the section.

Revised Law

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. (V.A.C.S. Art. 581-33-1, Subsec. D.)

Source Law

D. Statute of Limitations. (1) A person may not
sue under Subsection A(1) of this section more than
three years after the violation occurred.
(2) A person may not sue under Subsection
A(2) of this section more than five years after the
violation occurs or more than three years after the
person knew or should have known, by the exercise of
reasonable diligence, of the occurrence of the
violation.

Revised Law

Sec. 4008.105. REMEDY NOT EXCLUSIVE. A remedy provided by
this subchapter is not exclusive of any other applicable remedy
provided by law. (V.A.C.S. Art. 581-33-1, Subsec. F.)

Source Law

F. A remedy provided by this section is not
exclusive of any other applicable remedy provided by
law.
APPENDIX A

CONFORMING AMENDMENTS

SECTION 2.01. Section 52.063(c), Agriculture Code, is amended to read as follows:

(c) A marketing association may not sell and issue shares of preferred stock to a person who is not a member of the association unless the association first complies with The Securities Act (Title 12, Government Code) [as amended (Article 581-1 et seq., Vernon's Texas Civil Statutes)].

SECTION 2.02. Section 58.034(b), Agriculture Code, is amended to read as follows:

(b) The bonds issued under this chapter and interest coupons, if any, are investment securities under the terms of Chapter 8, Business & Commerce Code. The bonds are exempt securities under The Securities Act (Title 12, Government Code) [Article 581-1 et seq., Vernon's Texas Civil Statutes], and unless specifically provided otherwise, under any subsequently enacted securities act. Any contract, guaranty, or any other document executed in connection with the issuance of bonds pursuant to this chapter is not a security under The Securities Act [Title 12, Government Code] [Article 581-1 et seq., Vernon's Texas Civil Statutes] and, unless specifically provided otherwise, any subsequently enacted securities act. The board is authorized to do all things necessary to qualify the bonds for offer and sale under the securities laws and regulations of the United States and of the states and other jurisdictions in the United States as the board shall determine.

SECTION 2.03. Section 302.053, Business & Commerce Code, is amended to read as follows:

Sec. 302.053. EXEMPTION: PERSONS REGULATED BY OTHER LAW. This chapter does not apply to:

(1) a person offering or selling a security that has been qualified for sale under Chapter 4003, Government Code [Section 7, The Securities Act (Article 581-7, Vernon's Texas Civil Statutes).]
or that is subject to an exemption under Chapter 4005, Government Code (Section 5 or 6 of that Act);

(2) a publicly traded corporation registered with the Securities and Exchange Commission or the State Securities Board, or a subsidiary or agent of the corporation;

(3) a person who holds a license issued under the Insurance Code if the solicited transaction is governed by that code;

(4) a supervised financial institution or a parent, a subsidiary, or an affiliate of a supervised financial institution;

(5) a person whose business is regulated by the Public Utility Commission of Texas or an affiliate of that person, except that this chapter applies to such a person or affiliate only with respect to one or more automated dial announcing devices;

(6) a person subject to the control or licensing regulations of the Federal Communications Commission;

(7) a person selling a contractual plan regulated by the Federal Trade Commission trade regulation on use of negative option plans by sellers in commerce under 16 C.F.R. Part 425;

(8) a person subject to filing requirements under Chapter 1803, Occupations Code; or

(9) a person who:

(A) is soliciting a transaction regulated by the Commodity Futures Trading Commission; and

(B) is registered or holds a temporary license for the activity described by Paragraph (A) with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. Section 1 et seq.), if the registration or license has not expired or been suspended or revoked.

SECTION 2.04. Section 304.002(3), Business & Commerce Code, is amended to read as follows:

(3) "Consumer good or service" means property of any kind that is normally used for personal, family, or household purposes. The term does not include a security, as defined by
Section 4001.068, Government Code [4. The Securities Act (Article 581-4, Vernon's Texas Civil Statutes)].

SECTION 2.05. Section 23.052, Business Organizations Code, is amended to read as follows:

Sec. 23.052. ORGANIZERS. Subject to The Securities Act (Title 12, Government Code) [(Article 581-1 et seq., Vernon's Texas Civil Statutes)], 25 or more persons, the majority of whom must be residents of this state, may form a business development corporation to promote, develop, and advance the prosperity and economic welfare of this state.

SECTION 2.06. Article 59.01(2), Code of Criminal Procedure, is amended to read as follows:

(2) "Contraband" means property of any nature, including real, personal, tangible, or intangible, that is:

(A) used in the commission of:

(i) any first or second degree felony under the Penal Code;

(ii) any felony under Section 15.031(b), 20.05, 20.06, 21.11, 38.04, or Chapter 43, 20A, 29, 30, 31, 32, 33, 33A, or 35, Penal Code;

(iii) any felony under The Securities Act (Title 12, Government Code) [(Article 581-1 et seq., Vernon's Texas Civil Statutes)]; or

(iv) any offense under Chapter 49, Penal Code, that is punishable as a felony of the third degree or state jail felony, if the defendant has been previously convicted three times of an offense under that chapter;

(B) used or intended to be used in the commission of:

(i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);

(ii) any felony under Chapter 483, Health and Safety Code;

(iii) a felony under Chapter 151, Finance
(iv) any felony under Chapter 34, Penal Code;

(v) a Class A misdemeanor under Subchapter B, Chapter 365, Health and Safety Code, if the defendant has been previously convicted twice of an offense under that subchapter;

(vi) any felony under Chapter 32, Human Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that involves the state Medicaid program;

(vii) a Class B misdemeanor under Chapter 522, Business & Commerce Code;

(viii) a Class A misdemeanor under Section 306.051, Business & Commerce Code;

(ix) any offense under Section 42.10, Penal Code;

(x) any offense under Section 46.06(a)(1) or 46.14, Penal Code;

(xi) any offense under Chapter 71, Penal Code;

(xii) any offense under Section 20.05 or 20.06, Penal Code; or

(xiii) an offense under Section 326.002, Business & Commerce Code;

(C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x), or (xi) of this subdivision, or a crime of violence;

(D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x), or (xi) of this subdivision, or a crime of violence;

(E) used to facilitate or intended to be used to facilitate the commission of a felony under Section 15.031 or 43.25, Penal Code; or
used to facilitate or intended to be used to facilitate the commission of a felony under Section 20A.02 or Chapter 43, Penal Code.

SECTION 2.07. Section 54.6385, Education Code, is amended to read as follows:

Sec. 54.6385. EXEMPTION FROM SECURITIES LAWS. The registration requirements of The Securities Act (Title 12, Government Code) [(Article 581-1 et seq., Vernon's Texas Civil Statutes)] do not apply to the sale of a prepaid tuition contract by the board or by a registered securities dealer or registered investment adviser.

SECTION 2.08. Section 54.768, Education Code, is amended to read as follows:

Sec. 54.768. EXEMPTION FROM SECURITIES LAWS. The registration requirements of The Securities Act (Title 12, Government Code) [(Article 581-1 et seq., Vernon's Texas Civil Statutes)] do not apply to the sale of a prepaid tuition contract by the board or by a registered securities dealer or registered investment adviser.

SECTION 2.09. Section 54.907, Education Code, is amended to read as follows:

Sec. 54.907. EXEMPTION FROM SECURITIES LAWS. An ABLE account is not a security within the meaning of the term as defined by Section 4001.068, Government Code [4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes)], and is exempt from the provisions of The Securities Act (Title 12, Government Code) [(Article 581-1 et seq., Vernon's Texas Civil Statutes)].

SECTION 2.10. Section 255.251(1), Estates Code, is amended to read as follows:

(1) "Securities" has the meaning assigned by Section 4001.068, Government Code [4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes)].

SECTION 2.11. Section 31.007(a), Finance Code, is amended to read as follows:
(a) An officer, director, or employee of a bank that has its main office or a branch located in this state with fewer than 500 shareholders or of a bank holding company with fewer than 500 shareholders that controls a bank that has its main office or a branch located in this state is exempt from the registration and licensing provisions of The Securities Act (Title 12, Government Code) [(Article 581-1 et seq., Vernon's Texas Civil Statutes)] with respect to that person's participation in a transaction, including a sale, involving securities issued by:

1. the bank or bank holding company of which that person is an officer, director, or employee;
2. a bank holding company that controls the bank of which that person is an officer, director, or employee; or
3. a bank controlled by the bank holding company of which that person is an officer, director, or employee.

SECTION 2.12. Section 89.005, Finance Code, is amended to read as follows:

Sec. 89.005. EXEMPTION FROM SECURITIES LAWS. A savings account, certificate, or other evidence of an interest in the savings liability of an association or federal association is not considered a security under The Securities Act (Title 12, Government Code) [(Article 581-1 et seq., Vernon's Texas Civil Statutes)]. A security of these associations, other than an interest in the savings liability of an association, is not subject to the registration requirements of that act. A person whose principal occupation is being an officer of an association is exempt from the registration and licensing provisions of that act with respect to that person's participation in a sale or other transaction involving securities of the association of which the person is an officer.

SECTION 2.13. Section 119.007, Finance Code, is amended to read as follows:

Sec. 119.007. EXEMPTION FROM SECURITIES LAWS. A deposit account, certificate, or other evidence of an interest in the
deposit liability of a savings bank or federal savings bank is not considered a security under The Securities Act (Title 12, Government Code) [(Article 581-1 et seq., Vernon's Texas Civil Statutes)]. A security of these savings banks, other than an interest in the deposit liability of a savings bank, is not subject to the registration requirements of that Act. A person whose principal occupation is being an officer of a savings bank is exempt from the registration and licensing provisions of that Act with respect to that person's participation in a sale or other transaction involving securities of the savings bank of which the person is an officer.

SECTION 2.14. Section 149.002(c), Finance Code, is amended to read as follows:

(c) In this section, "security" has the meaning assigned by Section 4001.068, Government Code [Article 581-4, Vernon's Texas Civil Statutes].

SECTION 2.15. Section 181.006, Finance Code, is amended to read as follows:

Sec. 181.006. EXEMPTION OF TRUST INSTITUTION DIRECTORS AND PERSONNEL FROM SECURITIES LAW. An officer, director, manager, managing participant, or employee of a trust institution with fewer than 500 shareholders or participants, including a state trust company or a trust institution organized under the laws of another state that lawfully maintains an office in this state, or a holding company with fewer than 500 shareholders or participants that controls a trust institution is exempt from the registration and licensing provisions of The Securities Act (Title 12, Government Code) [(Article 581-1 et seq., Vernon's Texas Civil Statutes)] with respect to that person's participation in a transaction, including a sale, involving securities issued by the trust institution or the holding company of which that person is an officer, director, manager, managing participant, or employee if the person is not compensated for the person's participation in the transaction.

SECTION 2.16. Section 273.004, Finance Code, is amended to
read as follows:

Sec. 273.004. EXEMPTION FROM SECURITIES ACT. (a) A security issued by the corporation under this chapter is not considered a "security" under The Securities Act (Title 12, Government Code) [(Article 581-1 et seq., Vernon's Texas Civil Statutes)].

(b) A person authorized by and acting on behalf of the corporation is exempt from the registration and licensing provisions of The Securities Act (Title 12, Government Code) [(Article 581-1 et seq., Vernon's Texas Civil Statutes)] with respect to that person's participation in a sale or other transaction involving a security of the corporation.

SECTION 2.17. Section 103.033, Government Code, is amended to read as follows:

Sec. 103.033. MISCELLANEOUS FEES AND COSTS: THE SECURITIES ACT. A fee shall be collected for the sale of securities under an offering that has not been registered, if the transaction or securities are not exempt under Section 4006.153 [35-2, The Securities Act (Article 581-35-2, Vernon's Texas Civil Statutes)], in an amount set by the securities commissioner or court, but not to exceed six times the amount that would have been paid if the issuer had filed an application to register the securities and paid the fee prescribed based on the amount of sales made in this state within the prior three years, plus interest on that amount from the date of the first sale made in this state until the date the fee is paid.

SECTION 2.18. Section 411.139, Government Code, is amended to read as follows:

Sec. 411.139. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: STATE SECURITIES BOARD. (a) The securities commissioner is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(1) an applicant for a certificate of registration
(2) a holder of a certificate of registration under The Securities Act (Title 12, Government Code) [(Article 581-1 et seq., Vernon's Texas Civil Statutes)];

(3) an applicant for employment by the State Securities Board; or

(4) an employee of the State Securities Board.

(b) Criminal history record information obtained by the securities commissioner under this section may not be released by any person or agency except on court order or with the consent of the person who is the subject of the criminal history record information, unless the information is entered into evidence by the State Securities Board or a court at an administrative proceeding or a civil or criminal action under The Securities Act (Title 12, Government Code) [(Article 581-1 et seq., Vernon's Texas Civil Statutes)].

SECTION 2.19. Section 552.112(b), Government Code, is amended to read as follows:

(b) In this section, "securities" has the meaning assigned by The Securities Act (Title 12, Government Code) [(Article 581-1 et seq., Vernon's Texas Civil Statutes)].

SECTION 2.20. Section 815.301(f), Government Code, is amended to read as follows:

(f) For purposes of the investment authority of the board of trustees under Section 67, Article XVI, Texas Constitution, "securities" means any investment instrument within the meaning of the term as defined by Section 4001.068 [4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes)], 15 U.S.C. Section 77b(a)(1), or 15 U.S.C. Section 78c(a)(10).

SECTION 2.21. Section 825.301(a), Government Code, is amended to read as follows:

(a) The board of trustees shall invest and reinvest assets of the retirement system without distinction as to their source in...
accordance with Section 67, Article XVI, Texas Constitution. For purposes of the investment authority of the board of trustees under Section 67, Article XVI, Texas Constitution, "securities" includes any investment instrument within the meaning of the term as defined by Section 4001.068 [4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes)], 15 U.S.C. Section 77b(a)(1), or 15 U.S.C. Section 78c(a)(10), any derivative instrument, and any other instrument commonly used by institutional investors to manage institutional investment portfolios. An interest in a limited partnership or investment contract is considered a security without regard to the number of investors or the control, access to information, or rights granted to or retained by the retirement system. Any instrument or contract intended to manage transaction or currency exchange risk in purchasing, selling, or holding securities is considered to be a security. Investment decisions are subject to the standard provided in the Texas Trust Code by Section 117.004(b), Property Code.

SECTION 2.22. Section 840.301(c), Government Code, is amended to read as follows:

(c) For purposes of the investment authority of the board of trustees under Section 67, Article XVI, Texas Constitution, "securities" means any investment instrument within the meaning of the term as defined by Section 4001.068 [4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes)], 15 U.S.C. Section 77b(a)(1), or 15 U.S.C. Section 78c(a)(10).

SECTION 2.23. Section 845.301(a), Government Code, is amended to read as follows:

(a) The assets of the retirement system shall be invested and reinvested without distinction as to their source in accordance with Section 67, Article XVI, Texas Constitution. For purposes of the investment authority of the board of trustees under Section 67, Article XVI, Texas Constitution, "securities" means any investment instrument within the meaning of the term as defined by Section 4001.068 [4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes)], 15 U.S.C. Section 77b(a)(1), or 15 U.S.C. Section 78c(a)(10).
Civil Statutes), 15 U.S.C. Section 77b(a)(1), or 15 U.S.C. Section 78c(a)(10). An interest in a limited partnership or investment contract is considered a security without regard to the number of investors or the control, access to information, or rights granted to or retained by the retirement system. Any instrument or contract intended to manage transaction, currency exchange, or interest rate risk in purchasing, selling, or holding securities, or that derives all or substantially all of its value from the value or performance of one or more securities, including an index or group of securities, is considered to be a security. Investment decisions are subject to the standard provided in the Texas Trust Code by Section 117.004(b), Property Code.

SECTION 2.24. Section 855.301(a), Government Code, is amended to read as follows:

(a) The board of trustees shall invest and reinvest the assets of the retirement system without distinction as to their source in accordance with Section 67, Article XVI, Texas Constitution. For purposes of the investment authority of the board of trustees under Section 67, Article XVI, Texas Constitution, "security" means any investment instrument within the meaning of the term as defined by Section 4001.068 [4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes)], 15 U.S.C. Section 77b(a)(1), or 15 U.S.C. Section 78c(a)(10).

SECTION 2.25. Section 1371.154(b), Government Code, is amended to read as follows:

(b) To be eligible to be a financial adviser or an investment adviser under this subchapter, the adviser must:

(1) be registered:

(A) as a dealer or investment adviser in accordance with Section 4004.051, 4004.052, or 4004.302 [Section 12 or 12-1, The Securities Act (Article 581-12 or 581-12-1, Vernon's Texas Civil Statutes)];

(B) with the United States Securities and Exchange Commission under the Investment Advisers Act of 1940 (15
U.S.C. Section 80b-1 et seq.), if the adviser is providing advice on
the investment of bond proceeds and not on the issuance of a public
security or an interest rate management agreement; or

(C) with the United States Securities and
Exchange Commission as a municipal advisor under Section 15B,
Securities Exchange Act of 1934 (15 U.S.C. Section 78o-4);

(2) have relevant experience in providing advice to
issuers in connection with:

(A) the issuance of public securities;

(B) the valuation of interest rate management
agreements; or

(C) the investment of public security proceeds;

and

(3) acknowledge in writing to the issuer that in
connection with the transaction for which the adviser is providing
advice the adviser:

(A) is acting as the issuer's agent; and

(B) has complied with the requirements of this

subchapter.

SECTION 2.26. Sections 1433.069(b) and (c), Government
Code, are amended to read as follows:

(b) A bond issued under this chapter and any coupon
representing interest on the bond are exempt securities under The
Securities Act (Title 12, Government Code) [(Article 581-1 et seq.,
Vernon's Texas Civil Statutes)].

(c) A lease agreement under this chapter is not a security
under The Securities Act (Title 12, Government Code) [(Article
581-1 et seq., Vernon's Texas Civil Statutes)].

SECTION 2.27. Section 2306.556(b), Government Code, is
amended to read as follows:

(b) A bond or other obligation issued by the corporation is
an exempt security under The Securities Act (Title 12, Government
Code) [(Article 581-1 et seq., Vernon's Texas Civil Statutes)], and

unless specifically provided otherwise, under any subsequently
enacted securities act. Any contract, guaranty, or other document executed in connection with the issuance of the bond or other obligation is not an exempt security under that Act, and unless specifically provided otherwise, under any subsequently enacted securities act.

SECTION 2.28. Section 221.067, Health and Safety Code, is amended to read as follows:

Sec. 221.067. EXCEPT SECURITIES. (a) Bonds issued under this chapter and any interest coupons are exempt securities under The Securities Act (Title 12, Government Code) [(Article 581-1 et seq., Vernon’s Texas Civil Statutes)].

(b) If the bonds are secured by an agreement by a user to pay to the development corporation amounts sufficient to pay the principal of and interest and any redemption premium on the bonds, the agreement, for the purposes of The Securities Act (Title 12, Government Code) [(Article 581-1 et seq., Vernon’s Texas Civil Statutes)], is a separate security issued to purchasers of the bonds by the user, and not by the corporation. The agreement is exempt from that Act only if:

(1) that Act exempts the agreement; or
(2) the bonds or the payments to be made under the agreement are guaranteed by any person and the guarantee is an exempt security under that Act.

SECTION 2.29. Section 223.036(a), Health and Safety Code, is amended to read as follows:

(a) Bonds issued under this chapter and any interest coupons are investment securities under Chapter 8, Business & Commerce Code, and are exempt securities under The Securities Act (Title 12, Government Code) [(Article 581-1 et seq., Vernon’s Texas Civil Statutes)].

SECTION 2.30. Section 826.204(b), Insurance Code, is amended to read as follows:

(b) A membership interest in a mutual holding company does not constitute a security as defined by Section 4001.068,

SECTION 2.31. Section 829.007, Insurance Code, is amended to read as follows:

Sec. 829.007. SALE OF SECURITIES. (a) A sale, issuance, or offering of securities under this chapter is exempt from the registration and licensing provisions of The Securities Act (Title 12, Government Code) [(Article 581-1 et seq., Vernon's Texas Civil Statutes)].

(b) An officer, director, or employee of an exchange, an intermediate holding company, a mutual holding company, or a resulting company who participates in a conversion under this chapter is exempt from the registration and licensing provisions of The Securities Act (Title 12, Government Code) [(Article 581-1 et seq., Vernon's Texas Civil Statutes)]. A person may not receive compensation, other than that person's usual salary or compensation, for services performed under the exemption provided by this subsection.

SECTION 2.32. Section 829.152(b), Insurance Code, is amended to read as follows:

(b) A membership interest in a mutual holding company does not constitute a security as defined by Section 4001.068, Government Code [4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes)].

SECTION 2.33. Section 882.756, Insurance Code, is amended to read as follows:

Sec. 882.756. SALE OF SECURITIES. (a) A sale, issuance, or offering of securities under this subchapter is exempt from the registration and licensing provisions of The Securities Act (Title 12, Government Code) [(Article 581-1 et seq., Vernon's Texas Civil Statutes)].

(b) An officer, director, or employee of a mutual life insurance company or a mutual insurance holding company or stock life insurance company resulting from a conversion under this
subchapter who participates in the conversion is exempt from the registration and licensing provisions of The Securities Act (Title 12, Government Code) [(Article 581-1 et seq., Vernon's Texas Civil Statutes)]. A person may not receive compensation, other than that person's usual salary or compensation, for services performed under the exemption provided by this subsection.

SECTION 2.34. Section 884.002(d), Insurance Code, is amended to read as follows:

(d) The Securities Act (Title 12, Government Code) [(Article 581-1 et seq., Vernon's Texas Civil Statutes)] applies to a stipulated premium company.

SECTION 2.35. Section 884.203, Insurance Code, is amended to read as follows:

Sec. 884.203. PUBLIC OFFERING OF CAPITAL STOCK. A stipulated premium company may not make to the public an offering that is subject to The Securities Act (Title 12, Government Code) [(Article 581-1 et seq., Vernon's Texas Civil Statutes)], of any of its capital stock before the company possesses:

1. capital in an amount of at least $100,000; and
2. unencumbered surplus in an amount of at least $100,000.

SECTION 2.36. Section 394.056(a), Local Government Code, is amended to read as follows:

(a) A bond issued under this chapter or a coupon representing interest on the bond is, when delivered, a security as that term is defined under Chapter 8 of the Uniform Commercial Code (Chapter 8, Title 1, Business & Commerce Code) and is an exempt security under The Securities Act (Title 12, Government Code) [(Article 581-1 et seq., Vernon's Texas Civil Statutes)].

SECTION 2.37. Section 501.203, Local Government Code, is amended to read as follows:

Sec. 501.203. SECURITIES COMMISSIONER PERMIT TO SELL SECURITIES REQUIRED. A corporation may not sell or offer for sale bonds or other securities until the securities commissioner grants
a permit authorizing the corporation to offer and sell the bonds or other securities under the registration provisions of The Securities Act (Title 12, Government Code) [(Article 581-1 et seq., Vernon's Texas Civil Statutes)], except as exempted from registration by rule or order of the State Securities Board. Appeal from an adverse decision of the securities commissioner or the State Securities Board is under the administrative procedure law, Chapter 2001, Government Code. The substantial evidence rule applies in an appeal under this subsection.

SECTION 2.38. Section 901.457(b), Occupations Code, is amended to read as follows:

(b) This section does not prohibit a license holder from disclosing information that is required to be disclosed:

(1) by the professional standards for reporting on the examination of a financial statement;

(2) under a summons or subpoena under the provisions of the Internal Revenue Code of 1986 and its subsequent amendments, the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) and its subsequent amendments, the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.) and its subsequent amendments, or The Securities Act (Title 12, Government Code) [(Article 581-1 et seq., Vernon's Texas Civil Statutes)];

(3) under a court order signed by a judge if the order:

(A) is addressed to the license holder;

(B) mentions the client by name; and

(C) requests specific information concerning the client;

(4) in an investigation or proceeding conducted by the board;

(5) in an ethical investigation conducted by a professional organization of certified public accountants;

(6) in the course of a peer review under Section 901.159 or in accordance with the requirements of the Public
Company Accounting Oversight Board or its successor; or
in the course of a practice review by another
certified public accountant or certified public accountancy firm
for a potential acquisition or merger of one firm with another, if
both firms enter into a nondisclosure agreement with regard to all
client information shared between the firms.

SECTION 2.39. Section 221.025(a), Property Code, is amended
to read as follows:
(a) A developer's compliance with this chapter exempts the
developer's offer and disposition of timeshare interests subject to
this chapter from securities and dealer registration under The
Securities Act (Title 12, Government Code) [(Article 581-1 et seq.,
Vernon's Texas Civil Statutes)].

SECTION 2.40. Section 222.013, Property Code, is amended to
read as follows:
Sec. 222.013. EXEMPT FROM SECURITIES ACT. The filing of a
registration under this chapter exempts the sale of a membership
interest or membership right in a membership camping resort subject
to this chapter from registration under The Securities Act (Title
12, Government Code) [(Article 581-1 et seq., Vernon's Texas Civil
Statutes)].

SECTION 2.41. Section 171.055, Tax Code, is amended to read
as follows:
Sec. 171.055. EXEMPTION--OPEN-END INVESTMENT COMPANY. An
open-end investment company, as defined by the Investment Company
Act of 1940 (15 U.S.C. Section 80a-1 et seq. [15 U.S.C.]), that is
subject to that Act and that is registered under The Securities Act
(Title 12, Government Code) [(Article 581-1 et seq., Vernon's Texas Civil
Statutes)] is exempted from the franchise tax.

SECTION 2.42. Section 161.063, Utilities Code, is amended
to read as follows:
Sec. 161.063. EXEMPTION FROM APPLICATION OF SECURITIES ACT.
The Securities Act (Title 12, Government Code) [(Article 581-1 et
seq., Vernon's Texas Civil Statutes)] does not apply to:
(1) an obligation issued to secure a debt of an
electric cooperative to the United States; or

(2) the issuance of a membership certificate by an
electric cooperative.

SECTION 2.43. Section 162.063, Utilities Code, is amended
to read as follows:

Sec. 162.063. EXEMPTION FROM APPLICATION OF SECURITIES ACT.
The Securities Act (Title 12, Government Code) [(Article 581-1 et seq., Vernon's Texas Civil Statutes)] does not apply to:

(1) a note, bond, or other evidence of indebtedness
issued by a telephone cooperative doing business in this state to
the United States;

(2) an instrument executed to secure a debt of a
telephone cooperative to the United States; or

(3) the issuance of a membership certificate by a
telephone cooperative or a foreign corporation doing business in
this state under this chapter.

SECTION 2.44. Section 67.015, Water Code, is amended to
read as follows:

Sec. 67.015. EXEMPTION FROM SECURITIES ACT. The Securities
Act (Title 12, Government Code) [(Article 581-1 et seq., Vernon's
Texas Civil Statutes)] does not apply to:

(1) a note, bond, or other evidence of indebtedness
issued by a corporation doing business in this state to the United
States;

(2) an instrument executed to secure a debt of a
corporation to the United States; or

(3) the issuance of a membership certificate or stock
certificate of a corporation.

REPEALER

SECTION 3.01. The Securities Act (Article 581-1 et seq.,
Vernon's Texas Civil Statutes) is repealed.

GENERAL MATTERS

SECTION 4.01. This Act is enacted under Section 43, Article
III, Texas Constitution. This Act is intended as a recodification only, and no substantive change in law is intended by this Act.

SECTION 4.02. This Act takes effect January 1, 2022.

APPENDIX B

CHAPTER 311. CODE CONSTRUCTION ACT

(current as of end of 86th Legislature, Regular Session, 2019)

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 311.001. SHORT TITLE. This chapter may be cited as the Code Construction Act.

Sec. 311.002. APPLICATION. This chapter applies to:

(1) each code enacted by the 60th or a subsequent legislature as part of the state's continuing statutory revision program;

(2) each amendment, repeal, revision, and reenactment of a code or code provision by the 60th or a subsequent legislature;

(3) each repeal of a statute by a code; and

(4) each rule adopted under a code.

Sec. 311.003. RULES NOT EXCLUSIVE. The rules provided in this chapter are not exclusive but are meant to describe and clarify common situations in order to guide the preparation and construction of codes.

Sec. 311.004. CITATION OF CODES. A code may be cited by its name preceded by the specific part concerned. Examples of citations are:

(1) Title 1, Business & Commerce Code;

(2) Chapter 5, Business & Commerce Code;

(3) Section 9.304, Business & Commerce Code;

(4) Section 15.06(a), Business & Commerce Code; and

(5) Section 17.18(b)(1)(B)(ii), Business & Commerce Code.

Sec. 311.005. GENERAL DEFINITIONS. The following definitions apply unless the statute or context in which the word or phrase is used requires a different definition:

(1) "Oath" includes affirmation.
(2) "Person" includes corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

(3) "Population" means the population shown by the most recent federal decennial census.

(4) "Property" means real and personal property.

(5) "Rule" includes regulation.

(6) "Signed" includes any symbol executed or adopted by a person with present intention to authenticate a writing.

(7) "State," when referring to a part of the United States, includes any state, district, commonwealth, territory, and insular possession of the United States and any area subject to the legislative authority of the United States of America.

(8) "Swear" includes affirm.

(9) "United States" includes a department, bureau, or other agency of the United States of America.

(10) "Week" means seven consecutive days.

(11) "Written" includes any representation of words, letters, symbols, or figures.

(12) "Year" means 12 consecutive months.

(13) "Includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

Sec. 311.006. INTERNAL REFERENCES. In a code:

(1) a reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of the code; and

(2) a reference to a subtitle, subchapter, subsection, subdivision, paragraph, or other numbered or lettered unit without further identification is a reference to a unit of the next larger unit of the code in which the reference appears.
SUBCHAPTER B. CONSTRUCTION OF WORDS AND PHRASES

Sec. 311.011. COMMON AND TECHNICAL USAGE OF WORDS. (a) Words and phrases shall be read in context and construed according to the rules of grammar and common usage.

(b) Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

Sec. 311.012. TENSE, NUMBER, AND GENDER. (a) Words in the present tense include the future tense.

(b) The singular includes the plural and the plural includes the singular.

(c) Words of one gender include the other genders.

Sec. 311.013. AUTHORITY AND QUORUM OF PUBLIC BODY. (a) A grant of authority to three or more persons as a public body confers the authority on a majority of the number of members fixed by statute.

(b) A quorum of a public body is a majority of the number of members fixed by statute.

Sec. 311.014. COMPUTATION OF TIME. (a) In computing a period of days, the first day is excluded and the last day is included.

(b) If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.

(c) If a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of that month.

Sec. 311.015. REFERENCE TO A SERIES. If a statute refers to a series of numbers or letters, the first and last numbers or letters are included.

Sec. 311.016. "MAY," "SHALL," "MUST," ETC. The following
constructions apply unless the context in which the word or phrase appears necessarily requires a different construction or unless a different construction is expressly provided by statute:

(1) "May" creates discretionary authority or grants permission or a power.

(2) "Shall" imposes a duty.

(3) "Must" creates or recognizes a condition precedent.

(4) "Is entitled to" creates or recognizes a right.

(5) "May not" imposes a prohibition and is synonymous with "shall not."

(6) "Is not entitled to" negates a right.

(7) "Is not required to" negates a duty or condition precedent.

SUBCHAPTER C. CONSTRUCTION OF STATUTES

Sec. 311.021. INTENTION IN ENACTMENT OF STATUTES. In enacting a statute, it is presumed that:

(1) compliance with the constitutions of this state and the United States is intended;

(2) the entire statute is intended to be effective;

(3) a just and reasonable result is intended;

(4) a result feasible of execution is intended; and

(5) public interest is favored over any private interest.

Sec. 311.022. PROSPECTIVE OPERATION OF STATUTES. A statute is presumed to be prospective in its operation unless expressly made retrospective.

Sec. 311.023. STATUTE CONSTRUCTION AIDS. In construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the:

(1) object sought to be attained;

(2) circumstances under which the statute was enacted;

(3) legislative history;

(4) common law or former statutory provisions,
including laws on the same or similar subjects;

(5) consequences of a particular construction;

(6) administrative construction of the statute; and

(7) title (caption), preamble, and emergency provision.

Sec. 311.024. HEADINGS. The heading of a title, subtitle, chapter, subchapter, or section does not limit or expand the meaning of a statute.

Sec. 311.025. IRRECONCILABLE STATUTES AND AMENDMENTS. (a) Except as provided by Section 311.031(d), if statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment prevails.

(b) Except as provided by Section 311.031(d), if amendments to the same statute are enacted at the same session of the legislature, one amendment without reference to another, the amendments shall be harmonized, if possible, so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment prevails.

(c) In determining whether amendments are irreconcilable, text that is reenacted because of the requirement of Article III, Section 36, of the Texas Constitution is not considered to be irreconcilable with additions or omissions in the same text made by another amendment. Unless clearly indicated to the contrary, an amendment that reenacts text in compliance with that constitutional requirement does not indicate legislative intent that the reenacted text prevail over changes in the same text made by another amendment, regardless of the relative dates of enactment.

(d) In this section, the date of enactment is the date on which the last legislative vote is taken on the bill enacting the statute.

(e) If the journals or other legislative records fail to disclose which of two or more bills in conflict is latest in date of enactment, the date of enactment of the respective bills is considered to be, in order of priority:
(1) the date on which the last presiding officer signed the bill;

(2) the date on which the governor signed the bill; or

(3) the date on which the bill became law by operation of law.

Sec. 311.026. SPECIAL OR LOCAL PROVISION PREVAILS OVER GENERAL. (a) If a general provision conflicts with a special or local provision, the provisions shall be construed, if possible, so that effect is given to both.

(b) If the conflict between the general provision and the special or local provision is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail.

Sec. 311.027. STATUTORY REFERENCES. Unless expressly provided otherwise, a reference to any portion of a statute or rule applies to all reenactments, revisions, or amendments of the statute or rule.

Sec. 311.028. UNIFORM CONSTRUCTION OF UNIFORM ACTS. A uniform act included in a code shall be construed to effect its general purpose to make uniform the law of those states that enact it.

Sec. 311.029. ENROLLED BILL CONTROLS. If the language of the enrolled bill version of a statute conflicts with the language of any subsequent printing or reprinting of the statute, the language of the enrolled bill version controls.

Sec. 311.030. REPEAL OF REPEALING STATUTE. The repeal of a repealing statute does not revive the statute originally repealed nor impair the effect of any saving provision in it.

Sec. 311.031. SAVING PROVISIONS. (a) Except as provided by Subsection (b), the reenactment, revision, amendment, or repeal of a statute does not affect:

(1) the prior operation of the statute or any prior action taken under it;
(2) any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred under it;

(3) any violation of the statute or any penalty, forfeiture, or punishment incurred under the statute before its amendment or repeal; or

(4) any investigation, proceeding, or remedy concerning any privilege, obligation, liability, penalty, forfeiture, or punishment; and the investigation, proceeding, or remedy may be instituted, continued, or enforced, and the penalty, forfeiture, or punishment imposed, as if the statute had not been repealed or amended.

(b) If the penalty, forfeiture, or punishment for any offense is reduced by a reenactment, revision, or amendment of a statute, the penalty, forfeiture, or punishment, if not already imposed, shall be imposed according to the statute as amended.

(c) The repeal of a statute by a code does not affect an amendment, revision, or reenactment of the statute by the same legislature that enacted the code. The amendment, revision, or reenactment is preserved and given effect as part of the code provision that revised the statute so amended, revised, or reenacted.

(d) If any provision of a code conflicts with a statute enacted by the same legislature that enacted the code, the statute controls.

Sec. 311.032. SEVERABILITY OF STATUTES. (a) If any statute contains a provision for severability, that provision prevails in interpreting that statute.

(b) If any statute contains a provision for nonseverability, that provision prevails in interpreting that statute.

(c) In a statute that does not contain a provision for severability or nonseverability, if any provision of the statute or its application to any person or circumstance is held invalid, the
invalidity does not affect other provisions or applications of the
statute that can be given effect without the invalid provision or
application, and to this end the provisions of the statute are
severable.

Sec. 311.034. WAIVER OF SOVEREIGN IMMUNITY. In order to
preserve the legislature's interest in managing state fiscal
matters through the appropriations process, a statute shall not be
construed as a waiver of sovereign immunity unless the waiver is
effected by clear and unambiguous language. In a statute, the use
of "person," as defined by Section 311.005 to include governmental
entities, does not indicate legislative intent to waive sovereign
immunity unless the context of the statute indicates no other
reasonable construction. Statutory prerequisites to a suit, including
the provision of notice, are jurisdictional requirements
in all suits against a governmental entity.

Sec. 311.035. CONSTRUCTION OF STATUTE OR RULE INVOLVING
CRIMINAL OFFENSE OR PENALTY. (a) In this section, "actor" and
"element of offense" have the meanings assigned by Section 1.07,
Penal Code.

(b) Except as provided by Subsection (c), a statute or rule
that creates or defines a criminal offense or penalty shall be
construed in favor of the actor if any part of the statute or rule is
ambiguous on its face or as applied to the case, including:

(1) an element of offense; or
(2) the penalty to be imposed.

(c) Subsection (b) does not apply to a criminal offense or
penalty under the Penal Code or under the Texas Controlled
Substances Act.

(d) The ambiguity of a part of a statute or rule to which
this section applies is a matter of law to be resolved by the judge.
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