

- SUBJECT:** Application of the Securities Act to private sales
- COMMITTEE:** Pensions and Investments — committee substitute recommended
- VOTE:** 6 ayes — Tillery, Crownover, Salinas, George, Goodman, Williams  
0 nays  
3 absent — Woolley, Rangel, Telford
- WITNESSES:** For — Robert Kinney and Ronald Skloss, Brobeck, Phleger & Harrison, L.L.P.; *Registered but did not testify:* Scott Yore, Silicon Metrics Corp.  
Against — None  
On — Denise Voigt Crawford, State Securities Board
- BACKGROUND:** Many companies, especially startup companies that do not have a lot of cash, often wish to grant stock options to their nonemployee consultants and advisors as part of compensation.
- The Texas Securities Act (Art. 581, V.T.C.S.) requires registration of all securities, including options, before they can be transferred, unless the security or the transaction is exempt from registration. Art. 581-5.I exempts certain types of sales and distributions of securities, including certain transactions considered private sales that are made without public advertising or solicitation. One kind of private sale occurs when an employer whose security is being sold sells or distributes, or has its subsidiary sell or distribute, its securities under an employee benefit plan for its or its subsidiary's employees or directors.
- Many other states, including California and New York, allow private sales of securities, not only to employees but to nonemployee consultants and advisors.

**DIGEST:** CSHB 2728 would amend one of the exemptions in the Securities Act for private sales of securities to exempt sales or distributions by an issuer under all bona-fide written compensation plans or contracts that the issuer or its subsidiary established for the benefit of not only its employees and directors, but also for general partners, managers, officers, consultants, advisors, or trustees of the issuer or its subsidiary.

Transfers of securities to consultants and advisors would not be exempt if the consultant or advisor provided the issuer with services related to the offer or sale of securities for the purpose of raising capital.

This bill would take effect September 1, 2001.

**NOTES:** The committee substitute deleted provisions in the filed version that would have required a sale of a security to be made under the U.S. Internal Revenue Code or be exempt from registration requirements of the federal Securities Act of 1933.