

## **BILL ANALYSIS**

Senate Research Center

S.B. 808  
By: Ratliff  
Jurisprudence  
4-15-97  
Committee Report (Amended)

### **DIGEST**

Due to the increased risk of jury findings of liability and the potential for enormous damages, a growing number of attorneys, accountants, and other professionals are declining to provide services in connection with the issuance of small securities in offerings for which the professional can earn only a small amount of fees for services performed in connection with the offering. Many professionals have indicated that it would substantially increase the likelihood of professional involvement in small securities offerings if the amount of potential liability could be limited. This bill will limit the liability of certain persons involved in the issuance of securities by a small business.

### **PURPOSE**

As proposed, S.B. 808 limits the liability of certain persons involved in the issuance of securities by a small business.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 33, Article 581-33, V.T.C.S. (The Securities Act), by adding Subsection N, as follows:

N. Limitation of Liability in Small Business Issuances. Defines "small business issuer." Provides that Section 33N applies only to 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 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. Authorizes the maximum amount to be recovered against a person to which Section 33N applies in any action or series of actions under Section 33 relating to an offer of securities to which 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. Requires a small business issuer making an offer of securities to provide to the prospective buyer a written disclosure of the limitation of liability created by this subsection.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Emergency clause.  
Effective date: upon passage.

### **SUMMARY OF COMMITTEE CHANGES**

Amendment 1.

(1) Page 1, lines 9, 11, and 18, and on page 2, lines 3 and 4, replace the word "subsection" with "Section N".

- (2) Page 1, lines 23-24, replace "Paragraph (a) of this subdivision" with "Section N(2)(a)".
- (3) Page 2, line 3, replace "all actions" with "any action or series of actions under Section 33".
- (4) Page 2, lines 7-8, delete "in an action described by this subdivision".

Amendment 2.

Page 2, lines 9 and 10, insert the following:

(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 subsection.