

SUBJECT: Limiting the liability of certain securities issuers

COMMITTEE: Civil Practices — favorable, with amendment

VOTE: 5 ayes — Bosse, Dutton, Goodman, Roman, Zbranek
0 nays
3 present, not voting — Gray, Alvarado, Nixon
1 absent — Hilbert

WITNESSES: For — Arthur Perkins, Texas Business Law Foundation; David Pinkus, Small Business United of Texas
Against — Richard Hile, Texas Trial Lawyers Association

BACKGROUND : Securities issuances are the sale of equity or stock in a business or company. Those persons who issue the securities or aid in the issuance may be held liable if the information provided to the buyer is untruthful or fraudulent.

DIGEST: HB 1507 would limit the liability of persons who provide services relating to an offer of securities, including an attorney, accountant or consultant or a firm of such individuals. Liability would be limited to an amount equal to three times the fee paid by the issuer to the person providing services. The liability limit would not apply if the judge or jury found intentional wrongdoing on the part of the person providing the support services.

The liability limits would apply only to certain issuances of securities. The issuer would have to have a gross annual income of less than \$25 million and not have a class of securities registered with the Securities and Exchange Commission, and the particular issuance for which the person provides services would have to be less than \$5 million.

HB 1507 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house and apply to all actions filed on or after the effective date.

**SUPPORTERS
SAY:**

Small companies that wish to issue securities are finding it very difficult to obtain services from attorneys and accountants because of the liability potential available under the Texas Securities Act. Under that law, persons who provide services can be found jointly and severally liable for all damages no matter what their portion of liability may be. The fees that these service providers are able to charge for these small issuances do not even begin to cover their liability potential.

HB 1507 would not limit the liability of these service providers if a jury found that they did something intentionally wrong under the securities act. Nearly all liability related to securities stems from fraud or misrepresentations made in the offer to sell the securities. Because those are intentional acts, those who provide services should only have unlimited liability if they engage in such intentional conduct. Allowing unlimited liability based on a reasonable care standard would not improve the current state of the law. An intentional conduct standard would ensure that those service providers who do commit acts of fraud or misrepresentation will have unlimited liability while those who did not intentionally defraud a buyer would have their liability limited.

Most of transactions covered by HB 1507 are often private or limited securities offerings where sophisticated parties or persons associated with the business are purchasing securities. Most unsophisticated buyers of securities usually purchase securities on a regulated market. The purchases covered under HB 1507 are those that would not be covered by the federal securities act or regulated by the Securities and Exchange Commission (SEC).

**OPPONENTS
SAY:**

Under the Texas Securities Act, those persons who aid in an issuance of securities can be held liable unless they did not know or , in the exercise of reasonable care, had no reason to know of the fraud or misrepresentation. This standard is usually expressed as a knowing or reckless standard of liability. Such a standard is much lower than intentional wrongdoing. By limiting liability for knowing and reckless acts in violation of the securities act, HB 1507 would give securities service providers less of an incentive to ensure that the information they provided to a buyer was accurate.

Those engaged in small securities issuances should be held to the highest standards because all information about the securities issuance comes from the issuer. Unlike large issuances that are regulated by the SEC and often have a great deal of public information to accompany the issuance, for small issuances the buyer must be able to trust the issuer that all information provided is truthful and accurate.

The liability immunity under this bill would apply to actions filed after the bill's effective date, which would be immediately if the bill receives the requisite vote on final passage. A person who may have been defrauded by the actions of a service provider in a securities issuance would have no advance warning of enactment of this legislation or an opportunity to file any suit based on the previous law.

NOTES: The committee amendment to HB 1507 makes technical corrections only.

The companion bill, SB 808 by Ratliff and Lucio, passed the Senate on April 25 and has been referred to the House Civil Practices Committee.