

**SUBJECT:** Awarding attorney's fees and costs in fraudulent transfer cases

**COMMITTEE:** Business and Industry — favorable, without amendment

**VOTE:** 9 ayes — Brimer, Dukes, Corte, J. Davis, Elkins, George, Giddings, Solomons, Woolley  
0 nays

**WITNESSES:** None

**BACKGROUND:** Business and Commerce Code, chapter 24, prohibits transfers of property that are made to avoid creditors as fraudulent. The statute provides remedies to the creditor, including, in some cases, allowing the creditor to reach assets that already have been transferred or to receive a judgment against the person who took the property.

**DIGEST:** HB 1051 would allow the judge in a fraudulent transfer case to award court costs and attorney's fees as were just and equitable.  
  
This bill would take effect September 1, 2001.

**SUPPORTERS SAY:** HB 1051 would put in place a just policy that would discourage unscrupulous practices and help creditors collect amounts owed them by allowing creditors to be awarded attorney's fees and court costs. Those who seek to avoid their creditors by transferring their assets to others without receiving a reasonable value in return and those who assist the debtor in that effort deserve to be held liable — especially since, in these cases, the creditor often already had a judgment against the debtor. Fraudulent transfers force creditors to spend a great deal of money to undo transactions that deprived them of any assets against which to collect the amounts owed them. In these cases, attorney's fees often far exceed the amount of the original debt.  
  
On the other side of the coin, it would not make sense to limit the party who can be awarded fees to the creditor/plaintiff. If the debtor or the person to whom the debtor transferred property prevails in the lawsuit, that party should be able to recover fees and costs as well, especially since the creditor often has more assets than the debtor or the transferee and is more able to

pursue frivolous litigation.

OPPONENTS  
SAY:

The authority that HB 1051 would grant courts to award attorney's fees and court costs is too broad. It would not limit the party to whom the court could award fees and costs to the plaintiff/creditor or even to the prevailing party. Instead, it simply would leave it to the court's discretion to award attorney's fees and costs when that was "equitable and just." This could result in inappropriate awards of fees and costs.

For instance, in a three-way suit in which the creditor sued the transferee and the transferee sued the debtor, HB 1051 would allow a judge to require the creditor to pay the transferee's attorney's fees, even if the court determined that the debtor made the transfer intending to avoid the creditor, because the court also determined that the transferee took the property in good faith and paid a fair price and thus was not liable.

OTHER  
OPPONENTS  
SAY:

HB 1051 would not go far enough because it would not require the court to award attorney's fees to a prevailing plaintiff.