

BILL ANALYSIS

Senate Research Center

S.B. 918
By: Harris
Jurisprudence
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, a corporation is not expressly allowed to be sued in a charitable trust case, thereby limiting the ability of the Office of the Attorney General (OAG) to pursue the claims. OAG is not expressly allowed to collect fees in these cases, even though OAG is allowed to collect in other consumer protection cases. The purpose of this bill is to clarify the statutes to allow OAG to pursue breach of fiduciary duty cases against corporations, not just a corporation's managerial or fiduciary agent, and to collect attorney's fees in charitable trust cases.

S.B. 918 requires that a venue in a proceeding brought by OAG alleging breach of a fiduciary duty by a charitable entity or a fiduciary or managerial agent of a charitable trust be a court of competent jurisdiction in Travis County or in the county where the defendant resides or has its principal office. S.B. 918 entitles OAG to recover from the charitable entity or fiduciary or managerial agent of the charitable trust actual costs incurred in bringing the suit and is authorized to recover reasonable attorney's fees.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 123.005, Property Code, as follows:

Sec. 123.005. New heading: BREACH OF FIDUCIARY DUTY: VENUE. Requires that a venue in a proceeding brought by the attorney general alleging breach of a fiduciary duty by a charitable entity or a fiduciary or managerial agent of a charitable trust be a court of competent jurisdiction in Travis County or in the county where the defendant resides or has its principal office. Deletes existing Subsection (b) entitling the attorney general, if successful in the proceeding, to recover from a fiduciary or managerial agent of a charitable trust actual costs incurred in bringing the suit and is authorized to recover reasonable attorney's fees. Makes a nonsubstantive change.

SECTION 2. Amends Chapter 123, Property Code, by adding Section 123.006, as follows:

Sec. 123.006. ATTORNEY'S FEES. (a) Entitles the attorney general, if successful in a proceeding subject to Section 123.005, to recover from the charitable entity or fiduciary or managerial agent of the charitable trust actual costs incurred in bringing the suit and authorizes the attorney general to recover reasonable attorney's fees.

(b) Authorizes a court, in a proceeding in which the attorney general intervenes under this chapter, other than a proceeding subject to Section 123.005, to award the attorney general court costs and reasonable and necessary attorney's fees as may seem equitable and just.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2009.