

BILL ANALYSIS

Senate Research Center
83R15464 SCL-F

H.B. 1445
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State Affairs
4/30/2013
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Civil legal service providers assist low-income and moderate-income clients with consumer-related concerns, such as protective orders, identity theft, evictions, and foreclosures. The persistent economic downturn has led to an increase in poverty, federal budget shortfalls, and historically low interest rates on a primary revenue source for legal aid, the interest on lawyers' trust accounts (IOLTA). These factors have created a strain on the available resources for Texans in need of civil legal services.

The proposed legislation expands Section 402.007 (Payment to Treasury; Allocation of Certain Penalties), Government Code, which details the types of civil penalties and civil restitution recovered by the attorney general that can be credited to fund civil legal services for the indigent.

H.B. 1445 allows other civil restitution recovered from an action by the attorney general on a matter that violates a consumer protection, public health, or general welfare law to be credited to basic civil legal services to the indigent. The bill also increases the amount per biennium that may be transferred to the judicial fund from these actions to \$50 million.

The bill expands the language of S.B. 2279, 81st Legislature, Regular Session, 2009, which required the comptroller of public accounts of the State of Texas to credit to the judicial fund for programs approved by the Supreme Court of Texas that provide basic civil legal services to the indigent the net amount of a civil penalty that is recovered in an action by the attorney general in any matter that is actionable under the Deceptive Trade Practices-Consumer Protection Act after deducting amounts allocated to or retained by the attorney general as authorized by law, unless another law requires that the penalty be credited to a different fund or account or the judgment awarding the penalty requires that the penalty be paid to another named recipient.

H.B. 1445 amends current law relating to the distribution of certain civil penalties and civil restitution received by the attorney general.

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 402.007, Government Code, as follows:

Sec. 402.007. New heading: PAYMENT TO TREASURY; ALLOCATION OF CERTAIN MONEY RECEIVED BY ATTORNEY GENERAL. (a) Requires the attorney general to immediately pay into the state treasury money received for a debt, a penalty, or restitution. Makes nonsubstantive changes.

(b) Requires the comptroller of public accounts of the State of Texas, subject to Subsection (d), rather than subject to Subsection (c), to credit to the judicial fund for programs approved by the Supreme Court of Texas (supreme court) that provide basic civil legal services to the indigent the net amount of:

(1) a civil penalty that is recovered in an action by the attorney general in any matter actionable under Subchapter E (Deceptive Trade Practices and Consumer Protection), Chapter 17, Business & Commerce Code, after deducting amounts allocated to or retained by the attorney general as authorized by law, unless another law requires that the penalty be credited to a different fund or account; or the judgment awarding the penalty requires that the penalty be paid to another named recipient; or

(2) civil restitution recovered by the attorney general in an action brought by the attorney general arising from conduct that violates a consumer protection, public health, or general welfare law, if, on the hearing of an ex parte motion filed by the attorney general after the entry of a judgment awarding civil restitution, the court:

(A) determines that, based on the facts and circumstances of the case:

(i) it is impossible or impracticable to identify injured parties;

(ii) it is impossible or impracticable to determine the degree to which each claimant was injured and entitled to recover;

(iii) the cost of administering a claim procedure will disproportionately reduce the amount of restitution available for the payment of individual claims; or

(iv) the claims of all identifiable persons eligible to receive restitution have been paid without exhausting the funds available for restitution; and

(B) enters a judgment or order that the restitution be credited to the judicial fund for programs approved by the supreme court that provide basic civil legal services to the indigent.

(c) Requires the attorney general, if a court enters a judgment or order that restitution be credited to the judicial fund, to notify the Legislative Budget Board and to distribute that restitution in accordance with the court judgment or order.

(d) Redesignates existing Subsection (c) as Subsection (d). Prohibits the total amount credited to the judicial fund for programs approved by the supreme court that provide basic civil legal services to the indigent under Subsection (b) from exceeding \$50 million, rather than \$10 million, per state fiscal biennium.

(e) Provides that the provisions of this section do not limit the common law authority or other statutory authority of the attorney general to seek and obtain cy pres distribution from a court.

SECTION 2. Provides that the change in law made by this Act applies only to a civil penalty or civil restitution that is received by the attorney general on or after the effective date of this Act.

SECTION 3. Effective date: upon passage or September 1, 2013.