

BILL ANALYSIS

Senate Research Center
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S.B. 635
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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. These factors have created a strain on the available resources for Texans in need of civil legal services.

S.B. 635 expands Section 402.007 (Payment to Treasury; Allocation of Certain Penalties), Government Code, which details the types of civil penalties and civil restitution recovered from the attorney general that can be credited to fund civil legal services for the indigent.

S.B. 635 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 to \$50 million that may be transferred to the judicial fund from these actions.

The bill expands the language of S.B. 2279, 81st Legislature, Regular Session, 2009, which amended the Government Code to require 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.

As proposed, S.B. 635 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 the heading to Section 402.007, Government Code, to read as follows:

Sec. 402.007. PAYMENT TO TREASURY; ALLOCATION OF CERTAIN MONEY RECEIVED BY ATTORNEY GENERAL.

SECTION 2. Amends Section 402.007, Government Code, by amending Subsections (b) and (c) and adding Subsections (d) and (e), as follows:

(b) Requires the comptroller of public accounts of the State of Texas to, subject to Subsection (d), rather than Subsection (c), 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 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; or

(iii) the cost of administering a claim procedure is prohibitive due to a low probability of recovery for each claimant; and

(B) enters a judgment or order that the restitution be distributed by the attorney general.

(c) Requires the attorney general, notwithstanding Subsection (b)(2), to distribute that restitution in accordance with the court judgment or order, if a court judgment or order specifies that restitution is to be distributed in a manner other than the manner provided by this section. Requires the attorney general to notify the Legislative Budget Board and the court when the distribution of restitution under a court judgment or order is complete.

(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 diminish the common law authority or other statutory authority of the attorney general to seek and obtain cy pres distribution from a court.

SECTION 3. 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 4. Effective date: upon passage or September 1, 2013.