

BILL ANALYSIS

Senate Research Center
87R8829 SCL-D

S.B. 808
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State Affairs
3/12/2021
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Originally, the CPRC provisions providing for recovery of attorney fees in certain actions said that fees could be recovered from any person. When the Legislative Council codified the original law, they changed person to individual or corporation. Since that time, Texas courts have interpreted corporation to apply only to that specific type of business organization, not more broadly to LLCs and other entities not specifically listed.

S.B. 808 provides for all contracting parties to be equally situated on the recovery of fees, regardless of the way your business entity is structured.

Additionally, there is a symmetry under current law in breach of contract suits. In a scenario in which one party sues another for breach of contract, if the plaintiff alleging breach wins the case, that party may recover fees. If, however the defendant successfully defends the case on the grounds that there was no valid contract, that party cannot get fees even though they prevailed in the action. This creates a scenario in which only one party pays fees regardless of outcome. S.B. 808 would provide that in a breach of contract case, the prevailing party may recover fees, regardless of which side that is.

As proposed, S.B. 808 amends current law relating to recovery of attorney's fees in certain civil cases.

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 Sections 38.001 and 38.002, Civil Practice and Remedies Code, as follows:

Sec. 38.001. RECOVERY OF ATTORNEY'S FEES. (a) Creates this subsection from existing text. Authorizes a person to recover reasonable attorney's fees from another person, rather than from an individual or corporation, in addition to the amount of a valid claim and costs, if the claim is for certain services or events. Deletes existing text providing that a claim for an oral or written contract is among the claims for which a person may obtain attorney's fees. Makes nonsubstantive changes.

(b) Authorizes a claimant or defendant to recover reasonable attorney's fees from a person if the claimant or defendant prevails in an action for an oral or written contract.

Sec. 38.002. PROCEDURE FOR RECOVERY OF ATTORNEY'S FEES. Provides that to recover attorney's fees under Chapter 38 (Attorney's Fees):

(1) the claimant or defendant, rather than the claimant, is required to be represented by an attorney;

(2) the claimant or defendant, rather than the claimant, is required to present the claim to the opposing party or to a duly authorized agent of the opposing party; and

(3) makes no changes to this subdivision.

SECTION 2. Makes application of Sections 38.001 and 38.002, Civil Practice and Remedies Code, as amended by this Act, prospective.

SECTION 3. Effective date: September 1, 2021.