

BILL ANALYSIS

Senate Research Center
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S.B. 2350
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Finance
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Consumer Protection and Public Health Division of the Office of the Attorney General (OAG) typically files lawsuits seeking injunctions to stop unlawful conduct and to recover penalties, restitution and/or investigative costs, and attorney's fees. Restitution to consumers is paid either directly by the defendants, through OAG, or by a third-party administrator appointed by the court.

There are some cases where restitution to consumers for harm done cannot be distributed because it is impossible or impractical. In those cases, common law doctrines allow the courts to distribute the funds to appropriate charitable, educational, or other public service organizations. The courts reason that in the event that funds cannot be distributed to the intended recipients or beneficiaries, the next best use of the funds is to distribute them to an organization that benefits the general public, which is known as the "cy pres" doctrine. Likewise, the cy pres doctrine prevents defendants from avoiding liability merely because it is not feasible or practical to distribute money directly to the intended recipients. Texas courts have the authority to order such distributions and historically have looked to the attorney general to recommend an appropriate recipient of these types of funds.

As proposed, S.B. 2350 authorizes the creation of a consumer assistance account within a departmental suspense fund in the state treasury and specifically authorizes the attorney general to retain funds in this consumer assistance account and to direct those funds to certain charitable entities. This bill authorizes the attorney general to make the distribution to eligible charities that provide consumer assistance.

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 Title 3, Civil Practice and Remedies Code, by adding Chapter 67, as follows:

CHAPTER 67. CY PRES FUNDS IN ACTION BY ATTORNEY GENERAL

Sec. 67.001. **CY PRES FUNDS.** (a) Authorizes the court, in an action brought by the attorney general arising from conduct that is harmful to consumers or to the public generally, to enter a judgment or order for payment of cy pres funds.

(b) Requires the attorney general to retain funds that are designated as cy pres funds under a court judgment or order and to deposit the funds in the cy pres account.

Sec. 67.002. **CREATION OF CY PRES ACCOUNT.** Creates the cy pres account as a dedicated account in the general revenue fund in the state treasury. Provides that the account consists of cy pres funds paid under a court judgment or order as provided by this chapter. Requires the attorney general to administer the fund.

Sec. 67.003. USE OF CY PRES FUNDS. Authorizes the attorney general to distribute cy pres funds to nonprofit, charitable, or educational entities to fund programs that provide assistance to consumers.

Sec. 67.004. COMMON LAW CY PRES. Provides that the provisions of this chapter 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 2. Effective date: upon passage or September 1, 2009.