

BILL ANALYSIS

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S.B. 1524
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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. 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.

Civil legal service providers assist low-income and moderate-income clients with consumer-related complaints, such as identity theft, housing, and foreclosures. The persistent economic downturn has led to an increase in poverty, budget shortfalls, and historically low interest rates on 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.

Due to low interest rates, the IOLTA revenue for legal aid in 2011-2012 is projected to fall to only \$5 million per year, which will result in \$15 million less in available funds compared to 2007 levels. A \$20 million appropriation in the 2009 legislative session made up for the funding shortfall in the 2010-2011 biennium and allowed legal services organizations to continue to provide legal aid to more than 100,000 Texas families annually.

A legislative appropriation to make up for the funding shortfall of approximately \$20 million for basic civil legal services during the upcoming biennium would be ideal, but is unlikely. In the alternative, the proposed legislation creates a consumer assistance account where funding would come from a payment of restitution under a court judgment or order arising from a violation of consumer protection, public health, or general welfare law in an action by the attorney general. The funds shall be held and distributed to one or more charitable organizations by the attorney general for the purpose of funding programs that provide assistance to consumers. A high priority shall be given to programs that provide basic civil legal services in consumer law for low-income and moderate-income households.

As proposed, S.B. 1524 amends current law relating to the payment and distribution of consumer assistance funds in an action by the attorney general.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the attorney general in SECTION 1 (Section 67.004, Civil Practice and Remedies Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 3, Civil Practice and Remedies Code, by adding Chapter 67, as follows:

CHAPTER 67. CONSUMER ASSISTANCE FUNDS IN ACTION BY ATTORNEY GENERAL

Sec. 67.001. CONSUMER ASSISTANCE FUNDS. Authorizes the court, in an action brought by the attorney general arising from conduct that violates a consumer protection, public health, or general welfare law, to enter a judgment or order for payment of restitution to be distributed by the attorney general as provided by Section 67.003 if the court determines that, based on the facts and circumstances of the case:

- (1) it is impossible or impracticable to identify injured parties;
- (2) it is impossible or impracticable to determine the degree to which each claimant was injured and entitled to recover; or
- (3) the cost of administering a claim procedure is prohibitive due to a low probability of recovery for each claimant.

Sec. 67.002. CREATION OF CONSUMER ASSISTANCE ACCOUNT. (a) Provides that the consumer assistance account is created as a restitution account in the departmental suspense account in the state treasury. Provides that the account consists of consumer assistance funds paid under a court judgment or order as provided by Section 67.001. Prohibits civil penalties, costs, or attorney's fees from being deposited in the account. Provides that funds in the account are held in trust for the benefit of charitable entities as provided by Section 67.003. Requires the attorney general to administer the account.

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

Sec. 67.003. USE OF CONSUMER ASSISTANCE FUNDS. (a) Defines "charitable entity" in this section.

- (b) Requires the attorney general to distribute restitution paid under a court judgment or order as provided by this chapter to one or more charitable entities to fund programs that provide assistance to consumers. Requires that the distribution be in accordance with the court judgment or order. Requires the attorney general to notify the Legislative Budget Board before the distribution, and the court when the distribution is complete.

Sec. 67.004. RULEMAKING AUTHORITY. Requires the attorney general to adopt rules as necessary to implement this chapter. Requires that the rules, to the extent practicable, give priority to programs that provide basic civil legal services in consumer law to persons of low and moderate income.

Sec. 67.005. MEMORANDUM OF UNDERSTANDING. Requires the attorney general to enter into a memorandum of understanding with the supreme court for the administration and monitoring of consumer legal assistance activities.

Sec. 67.006. 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. Provides that the change in law made by this Act applies to funds paid under a court judgment as provided by Section 67.001, Civil Practice and Remedies Code, as added by

this Act, that are held in the attorney general's departmental suspense account on or after the effective date of this Act, notwithstanding the fact that the funds were paid into that account before the effective date of this Act.

SECTION 3. Effective date: upon passage or September 1, 2011.