

BILL ANALYSIS

Senate Research Center

S.B. 813
By: Hughes et al.
State Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, Texans facing regulatory action by state agencies are at a distinct disadvantage. Currently, a state agency can pursue claims, even baseless claims, against a private citizen or business, often running up legal fees and numerous other costs that the victim cannot afford. Due to the expense and inconvenience, Texans are often compelled to accept unfair and unjust sanctions, just to stop the pain. All of this can be done with no consequences for the government agency.

S.B. 813 levels the playing field between Texans and their government. This allows for a person to bring a claim against a state agency for a regulatory action that is frivolous or unreasonable. The court may award attorney's fees and costs against a state agency in both the claim for a frivolous suit and for the underlying agency action if the court finds that the agency is unable to demonstrate it had good cause for the action.

S.B. 813 was filed in the 84th Legislature, Regular Session, 2015, as H.B. 3662. It passed the house of representatives by a vote of 138-1-2.

S.B. 813 amends current law relating to recovery of damages, attorney's fees, and costs related to frivolous regulatory actions by state agencies.

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 Chapter 105, Civil Practice and Remedies Code, to read as follows:

CHAPTER 105. FRIVOLOUS CLAIM OR REGULATORY ACTION BY STATE AGENCY

SECTION 2. Amends the heading to Section 105.002, Civil Practice and Remedies Code, to read as follows:

Sec. 105.002. RECOVERY OF FEES, EXPENSES, AND ATTORNEY'S FEES FOR FRIVOLOUS CLAIM.

SECTION 3. Amends Chapter 105, Civil Practice and Remedies Code, by adding Sections 105.005 and 105.006, as follows:

Sec. 105.005. CAUSE OF ACTION FOR FRIVOLOUS REGULATORY ACTION. (a) Authorizes a claimant to bring an action against a state agency if the state agency takes a regulatory action against the claimant that is frivolous, unreasonable, or without foundation.

(b) Authorizes a claimant to bring an action under this section only after the claimant has exhausted the claimant's administrative remedies with respect to the regulatory action against the claimant.

(c) Authorizes a claimant, in an action brought under this section, to recover the damages caused by the state agency's frivolous regulatory action, reasonable attorney's fees, and court costs, in addition to all other costs allowed by law or rule.

Sec. 105.006. RECOVERY OF ATTORNEY'S FEES AND COSTS IN FRIVOLOUS REGULATORY ACTION. Authorizes a person to recover, in addition to all other costs allowed by law or rule, reasonable attorney's fees and costs incurred in defending against a frivolous regulatory action during an administrative proceeding and judicial review of that proceeding if the person prevails in the judicial review of an administrative proceeding and the state agency is unable to demonstrate that the agency has good cause for the regulatory action.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2017.