

BILL ANALYSIS

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C.S.S.B. 27
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State Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, all Texans, but especially small business owners, who face regulatory actions and administrative proceedings brought by a state agency are at a distinct disadvantage. A state agency has functionally unlimited resources, and can take any action against a private citizen or business without recourse. This process can run up legal fees and other costs that the citizen cannot afford. Due to the expense and inconvenience, Texans are often compelled to accept unfair and unjust sanctions just to stop the pain. The legislature recognized this imbalance in the civil litigation context, and in 1985 passed the Texas Frivolous or Unreasonable Claims Act. Chapter 105, Civil Practice and Remedies Code, provides that a person against whom the state makes a frivolous or unreasonable claim can recover costs and attorney's fees. According to the Texas Supreme Court, a claim is frivolous or unreasonable when "the totality of the tendered evidence fails to demonstrate any arguable basis for the claim." *Brainard v. State*, 12 S.W.3d 6, 30 (Tex. 1999), disapproved of on other grounds by *Martin v. Amerman*, 133 S.W.3d 262, 267–68 (Tex. 2004). The court said that the policy of the law "is to afford an aggrieved citizen some remedy from a governmental agency for the misuse of governmental power." *Id.* at 31. This policy clearly acknowledges that, while most state regulators are doing great work, there is still potential for periodic bad actors. Citizens need some recourse against the state in this circumstance. The problem is that current law only applies to original suits brought in civil courts with the state as a party to the suit. Businesses that are licensed and/or regulated by a state agency often have their disputes resolved in administrative proceedings, which are not covered by Chapter 105. Their appeals to a district court are heard under an appellate-like "substantial evidence" standard, and Chapter 105 does not apply to those appeals either. This leaves Texans unable to recover damages or costs for regulatory actions taken by overzealous regulators.

Texans need protection from and recourse against the state for the most egregious frivolous regulatory actions. S.B. 27 provides this protection. S.B. 27 allows a person to recover attorney's fees and costs incurred in defending against the regulatory action in the administrative proceeding and the judicial review of the proceeding if: (1) the person wins the case, and (2) the court finds that the state's regulatory action was frivolous. S.B. 27 standardizes this type of recovery by making "frivolous" the sole standard in Chapter 105 as well. Additionally, it caps recovery of fees at \$1 million in each context, so that the state is not exposed to abusive or unlimited fees. (Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 27 amends current law relating to recovery of damages, attorney's fees, and costs related to frivolous claims and 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 Section 105.002, Civil Practice and Remedies Code, as follows:

Sec. 105.002. New heading: RECOVERY OF FEES, EXPENSES, AND ATTORNEY'S FEES FOR FRIVOLOUS CLAIM. Provides that a party to a civil suit in a court of this state brought by or against a state agency in which the agency asserts a cause of action against the party, either originally or as a counterclaim or cross claim, is entitled to recover a total amount not to exceed \$1 million for fees, expenses, and reasonable attorney's fees, in addition to all other costs allowed by law or rule, incurred by the party defending the agency's action if:

- (1) the court finds that the action is frivolous, rather than frivolous, unreasonable, or without foundation; and
- (2) the action is dismissed or judgment is awarded to the party.

SECTION 3. Amends Section 105.003(a), Civil Practice and Remedies Code, as follows:

(a) Requires the party, to recover under Section 105.002, rather than under this chapter (Frivolous Claim by State Agency), to file a written motion alleging that the agency's claim is frivolous, rather than frivolous, unreasonable, or without foundation.

SECTION 4. Amends Chapter 105, Civil Practice and Remedies Code, by adding Section 105.005, as follows:

Sec. 105.005. RECOVERY OF ATTORNEY'S FEES AND COSTS IN FRIVOLOUS REGULATORY ACTION. Authorizes the court reviewing a decision in a contested case under Chapter 2001 (Administrative Procedure), Government Code, to award a person, in addition to all other costs allowed by law or rule, an amount not to exceed \$1 million for reasonable attorney's fees and costs incurred in defending against a frivolous regulatory action during the contested case and judicial review of the decision in the contested case if:

- (1) the person prevails on review; and
- (2) there is a final determination that the regulatory action is frivolous.

SECTION 5. Amends Section 2001.058, Government Code, by adding Subsection (e-1), as follows:

(e-1) Prohibits a state agency, notwithstanding Subsection (e) (relating to authorizing a state agency to change the findings of a fact or conclusion made by the administrative law judge or vacate or modify an order issued by the administrative judge if the agency determines certain findings), from vacating or modifying an order of an administrative law judge that awards attorney's fees and costs under Section 2001.903.

SECTION 6. Amends Subchapter Z, Chapter 2001, Government Code, by adding Section 2001.903, as follows:

Sec. 2001.903. RECOVERY OF ATTORNEY'S FEES AND COSTS IN CONTESTED CASES INVOLVING FRIVOLOUS REGULATORY ACTION. Authorizes the administrative law judge in a contested case to award a person, in addition to all other costs allowed by law or rule, an amount not to exceed \$1 million for reasonable attorney's fees and costs incurred in defending against a frivolous regulatory action during the case if there is no judicial review of the decision in the case and:

- (1) the person prevails in the case; and
- (2) there is a final determination that the regulatory action is frivolous.

SECTION 7. Makes application of this Act prospective.

SECTION 8. Effective date: September 1, 2019.