

SUBJECT: Expanding penalties that could be used for indigent civil legal services

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Smithee, Farrar, Clardy, Hernandez, Raymond, Sheets, S. Thompson

2 nays — Laubenberg, Schofield

WITNESSES: For — Harriet Miers, Texas Access To Justice Commission; (*Registered, but did not testify*: Guy Herman, Statutory Probate Courts of Texas; Patricia McAllister, Texas Access to Justice Commission; Randall Chapman)

Against — None

On — Jim Davis, Office of the Attorney General; Eva Guzman, Supreme Court of Texas; Betty Balli Torres, Texas Access to Justice Foundation; (*Registered, but did not testify*: Nathan Hecht, Supreme Court of Texas, Texas Judicial Council)

BACKGROUND: Under Government Code, sec. 402.007, penalties recovered by the attorney general under Business and Commerce Code, subch. E, ch. 17, known as the Deceptive Trade Practices-Consumer Protection Act, must be transferred to the judicial fund for programs approved by the Supreme Court that provide basic civil legal services to the indigent, unless another law or judgment required that the penalties be distributed otherwise. Civil restitutions recovered by the attorney general arising from conduct that violates a consumer protection, public health, or general welfare law may be transferred to the judicial fund if certain conditions are met.

DIGEST: CSHB 1079 would require the comptroller to transfer any civil penalties or payments recovered in an action by the attorney general in any matter actionable under the Business and Commerce Code to the judicial fund for programs approved by the Supreme Court that provide basic legal services to the indigent unless another law or judgment required that the funds be

distributed otherwise.

The bill also would authorize transfers to the judicial fund of any civil restitution recovered by the attorney general if certain conditions were met, regardless of whether it arose from conduct violating a consumer protection, public health, or general welfare law.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015, and would apply only to a civil penalty, payment, or restitution that received by the attorney general on or after that date.

**SUPPORTERS
SAY:**

CSHB 1079 is necessary to ensure that all Texans receive fair and equitable access to the courts. Civil legal aid programs are essential to ensuring this access. Unfortunately, funding for legal aid has declined sharply in recent years. In the past, the Texas Access to Justice Foundation has been funded by interest from attorneys' trust accounts. However, due to the historically low interest rates in recent years, that funding has not been sufficient to meet the growing need for legal aid.

About 5.6 million Texans qualify for assistance, and current programs are meeting only about 20 percent of the civil legal needs of eligible Texans. Under current law, civil legal aid programs are partially funded from penalties collected under the Deceptive Trade Practices-Consumer Protection Act. However, this has not been sufficient to grant indigent Texans fair access to the courts. This bill would expand the funds that could be eligible to fund civil legal aid and provide more stable funding for these programs.

This bill would not adversely affect the Office of the Attorney General because it would apply only to the net amount recovered after the attorney general's expenses in pursuing the claim are paid.

The bill would not impact other programs that receive funds from payments recovered by the attorney general because any law or judgment

requiring that the funds be paid to a different account or named recipient would prevent them from being transferred to the Supreme Court.

OPPONENTS
SAY:

CSHB 1079 is unnecessary because the most recent draft of the House's proposed budget would appropriate about \$61 million in fiscal 2016-17 to basic civil legal services, up from about \$50 million in fiscal 2014-15. There is uncertainty over the amounts that would be recovered from future civil penalties and civil restitutions. The bill would move an indeterminate amount of money from the general revenue to the Supreme Court's judicial fund.

Basic civil legal services are funded through grants to 26 programs throughout the state that provide these services. Information on how those programs spend the grants is difficult to access. If an indeterminate amount of money is going to be granted to these programs, there should be greater transparency and oversight in how they spend their money. Transparency would lead to more effective and efficient provision of legal services.

NOTES:

The Legislative Budget Board's fiscal note states that the implications to the state cannot be determined because amounts recovered from future civil penalties are unknown.