

SUBJECT: Prohibiting referral of state enforcement actions to multidistrict litigation

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Leach, Krause, Meyer, Smith, White

3 nays — Farrar, Julie Johnson, Neave

1 absent — Y. Davis

SENATE VOTE: On final passage, April 11 — 31-0, on Local and Uncontested Calendar

WITNESSES: *On House companion bill, HB 2083:*

For — (*Registered, but did not testify*: Lee Parsley, Texans for Lawsuit Reform)

Against — None

On — Ryan Bangert, Office of the Attorney General

BACKGROUND: Government Code sec. 74.162 allows the judicial panel on multidistrict litigation to transfer civil actions involving one or more common questions of fact pending in the same or different constitutional courts, county courts at law, probate courts, or district courts to any district court for consolidated or coordinated pretrial proceedings, including summary judgment and other dispositive motions, but not for trial on the merits.

Business and Commerce Code ch. 17, also known as the Deceptive Trade Practices Act, protects consumers against false, misleading, and deceptive business practices, unconscionable actions, and breaches of warranty.

Secs. 17.47 and 17.48 allow the attorney general and district and county attorneys to obtain injunctive relief and penalties from persons engaged in such practices, actions, or breaches of warranty. Sec. 17.50 also provides consumers with causes of action in certain circumstances.

Human Resources Code ch. 36, or the Medicaid Fraud Prevention Act,

allows the attorney general to obtain injunctive relief and penalties from persons engaging in certain unlawful acts with regard to benefits and payments under the Medicaid program. The act also authorizes private persons to bring certain causes of actions on behalf of the state.

DIGEST:

SB 827 would prohibit the judicial panel on multidistrict litigation from transferring actions brought under the Deceptive Trade Practices Act, except for certain actions brought by consumers, or under the Medicaid Fraud Prevention Act.

The Texas Supreme Court could not amend or adopt rules in conflict with the bill.

The 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, 2019, and would apply only to actions commenced on or after that date.

**SUPPORTERS
SAY:**

SB 827 would allow the state to take swift action against bad actors by prohibiting actions brought under the Deceptive Trade Practices Act (DTPA) and Medicaid Fraud Prevention Act (TMFPA) from being referred to the multidistrict litigation process.

The attorney general is charged with enforcing the DTPA and TMFPA, which protect consumers from scammers, promote fair markets, and allow for the recovery of taxpayer dollars. While private actions also can be brought, only the state can sue for injunctions to prevent immediate harm to citizens from ongoing violations of these acts.

However, the attorney general's recent enforcement actions have been hampered by being referred to the multidistrict litigation process, an administrative process that allows multiple related cases throughout the state to be referred to a single judicial panel for pretrial proceedings. Referral of enforcement actions to the multidistrict litigation process has led to indefinite delays in the attorney general's ability to investigate and enjoin persons who may continue to violate the DTPA and TMFPA.

While the multidistrict litigation process serves an important purpose in promoting judicial economy, it should not prevent the state from protecting the public from ongoing violations of the DTPA and TMFPA. SB 827 would correct this problem by exempting suits brought by the state in enforcing these acts from being referred to the multidistrict litigation process. The bill would not apply to private parties seeking to bring claims under the DTPA.

**OPPONENTS
SAY:**

SB 827 could allow the state to jump ahead of pending private litigation by prohibiting certain state actions from being referred to the multidistrict litigation process. This could potentially leave private parties that later prevailed in such litigation with less money for damages and relief.