

BILL ANALYSIS

Senate Research Center

H.B. 2425
By: Thompson (Hegar)
State Affairs
5/18/2011
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, a party challenging the constitutionality of a state statute is not required to notify the Office of the Attorney General (OAG) of the suit. Consequently, OAG is often unaware of a constitutional challenge to state statute until the litigation has substantially progressed or concluded. This delay greatly reduces the ability of the attorney general to intervene and defend the state.

H.B. 2425 requires the court to give written notice of the challenge to the attorney general when a party is asserting a challenge to the constitutionality of a state statute or a rule adopted by a state agency. This notice would allow the attorney general to be able to have the best opportunity to defend the state, while also saving the state money by avoiding an unnecessary appeals process.

H.B. 2425 amends current law relating to notice to the attorney general of challenges to the constitutionality of Texas statutes.

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 Subchapter A, Chapter 402, Government Code, by adding Section 402.010, as follows:

Sec. 402.010. LEGAL CHALLENGES TO CONSTITUTIONALITY OF STATE STATUTES. (a) Requires the court, in an action in which a party to the litigation files a petition, motion, or other pleading challenging the constitutionality of a statute of this state, to, if the attorney general is not a party to or counsel involved in the litigation, serve notice of the constitutional question and a copy of the petition, motion, or other pleading that raises the challenge on the attorney general either by certified or registered mail or electronically to an e-mail address designated by the attorney general for the purposes of this section. Requires that notice under this section identify the statute in question, state the basis for the challenge, and specify the petition, motion, or other pleading that raises the challenge.

(b) Prohibits a court from entering a final judgment holding a statute of this state unconstitutional before the 45th day after the date notice required by Subsection (a) is served on the attorney general.

(c) Provides that a court's failure to file or serve notice as required by Subsection (a) does not deprive the court of jurisdiction or forfeit an otherwise timely filed claim or defense based on the challenge to the constitutionality of a statute of this state.

(d) Provides that this section or the state's intervention in litigation in response to notice under this section does not constitute a waiver of sovereign immunity.

SECTION 2. Provides that Section 402.010, Government Code, as added by this Act, applies only to a petition, motion, or other pleading filed in litigation on or after the effective date of this Act. Provides that a pleading filed in litigation before the effective date of this Act is governed by the law applicable to the pleading immediately before the effective date of this Act, and that law is continued in effect for that purpose.

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