

- SUBJECT:** Using unclaimed class-action funds for civil indigent legal services
- COMMITTEE:** Civil Practices — favorable, without amendment
- VOTE:** 5 ayes — Gattis, Hartnett, King, Krusee, Woolley
0 nays
4 absent — Nixon, Capelo, Y. Davis, Rose
- SENATE VOTE:** On final passage, May 5 — 31-0
- WITNESSES:** For — Harriet O’Neill, Texas Access to Justice Commission
Against — None
- BACKGROUND:** When a class action lawsuit ends in a settlement or judgment for the plaintiffs, there often are residual funds left over after distributing payments to the identified members of the class. Civil Practices and Remedies Code, sec. 31.008 governs the payment of unclaimed judgments resulting from legal actions of all sorts. Under this section, any money that remains following the distribution of settlement funds to judgment creditors is held in trust by the court. The purpose of the trust can be changed under the doctrine of *cy pres*, which allows the court to distribute the funds in such a way that, while the original intention could not be carried out exactly, it would be carried out as faithfully as possible. In such a case the judge normally awards the leftover money to a charity or other organization that would use the remaining settlement money in an appropriate manner.
- DIGEST:** SB 1601 would add sec. 31.009 to the Civil Practices and Remedies Code pertaining to unclaimed settlement or judgment funds resulting from a class action as defined by Rule 42, Texas Rules of Civil Procedure. It would permit a court to order defendants to pay the sum of unpaid funds to the court clerk, who would deposit it within 30 days into a trust administered by the Supreme Court. The Supreme Court could distribute these funds, along with interest earned on them, only to approved programs that provide civil legal services to

the indigent. These funds would not be subject to the rules governing payment of unpaid judgments under Civil Practices and Remedies Code, sec. 31.008.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

SB 1601 would permit the Supreme Court to allocate money from unpaid class action settlements and judgments to benefit legal services to the poor, a concept that is not without precedent. Lawyers are required to keep their clients' funds in Interest on Lawyer's Trust Accounts (IOLTAs) prior to distribution, and the court distributes interest earned on these accounts toward legal services for the poor. Due to decreases in the interest rate, however, the amount of IOLTA funding has dropped drastically in the last few years. By allowing judges to earmark leftover class action funds for legal services to the indigent, this bill would increase funding where it desperately was needed.

SB 1601, by authorizing the Supreme Court to distribute the funds, would ensure that the organizations most in need of funding — not simply those in the vicinity of the court rendering the judgment — would benefit from money. Because the bill would be permissive, the Supreme Court still could give the money to smaller organizations for special interest projects.

Courts do not have the time or resources to perform subsequent audits to make sure that funds donated are used for the intended purposes. Allowing the Supreme Court to manage these funds and making it clear that it could give them to organizations that provide legal services for the poor better would ensure that the funds were being used for a worthy purpose.

**OPPONENTS
SAY:**

No apparent opposition.