

BILL ANALYSIS

S.B. 2350
By: Ogden
Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Consumer Protection and Public Health Division of the Office of the Attorney General (OAG) typically files lawsuits seeking injunctions to stop unlawful conduct and to recover penalties, restitution and/or investigative costs, and attorney's fees. Restitution to consumers is paid either directly by the defendants, through OAG, or by a third-party administrator appointed by the court.

There are some cases where restitution to consumers for harm done cannot be distributed because it is impossible or impractical. In those cases, common law doctrines allow the courts to distribute the funds to appropriate charitable, educational, or other public service organizations. The courts reason that in the event that funds cannot be distributed to the intended recipients or beneficiaries, the next best use of the funds is to distribute them to an organization that benefits the general public, which is known as the "cy pres" doctrine. Likewise, the cy pres doctrine prevents defendants from avoiding liability merely because it is not feasible or practical to distribute money directly to the intended recipients. Texas courts have the authority to order such distributions and historically have looked to the attorney general to recommend an appropriate recipient of these types of funds.

S.B. 2350 amends current law relating to the payment and distribution of consumer assistance funds in an action by the attorney general.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the attorney general in SECTION 1 (Section 67.004, Civil Practice and Remedies Code) of this bill.

ANALYSIS

SECTION 1. Amends Title 3, Civil Practice and Remedies Code, by adding Chapter 67, as follows:

CHAPTER 67. CONSUMER ASSISTANCE FUNDS IN ACTION BY ATTORNEY GENERAL

Sec. 67.001. CONSUMER ASSISTANCE FUNDS. Authorizes the court, in an action brought by the attorney general arising from conduct that violates a consumer protection, public health, or general welfare law, to enter a judgment or order for payment of funds to be distributed by the attorney general as provided by Section 67.003 if it is impracticable to identify injured parties, or the cost of administering a claim procedure is prohibitive due to a low probability of recovery for each claimant.

Sec. 67.002. CREATION OF CONSUMER ASSISTANCE ACCOUNT. (a) Creates the consumer assistance account as a restitution account in the departmental suspense account in the state treasury. Provides that the account consists of consumer assistance funds paid under a court judgment or order as provided by Section 67.001. Provides that the funds in the account are held in trust for the benefit of charitable entities as provided by Section 67.003. Requires the attorney general to administer the fund.

(b) Requires the attorney general to retain funds that are designated as consumer assistance funds under a court judgment or order and to deposit the funds in the consumer assistance account.

Sec. 67.003. USE OF CONSUMER ASSISTANCE FUNDS. (a) Defines "charitable entity."

(b) Requires the attorney general to distribute funds paid under a court judgment or order as provided by this chapter to one or more charitable entities to fund programs that provide assistance to consumers. Requires that the distribution be in accordance with the court judgment or order. Requires the attorney general to notify the Legislative Budget Board before the distribution, and the court when the distribution is complete.

Sec. 67.004. RULEMAKING AUTHORITY. Authorizes the attorney general to adopt rules as necessary to implement this chapter.

Sec. 67.005. COMMON LAW CY PRES. Provides that the provisions of this chapter do not diminish the common law authority or other statutory authority of the attorney general to seek and obtain cy pres distribution from a court.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: upon passage or September 1, 2009.

EFFECTIVE DATE

Upon passage or September 1, 2009.