

By: Hegar

S.B. No. 1162

A BILL TO BE ENTITLED

AN ACT

relating to notice to the attorney general of an action, suit, or proceeding challenging the validity of a Texas statute or rule.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 402, Government Code, is amended by adding Section 402.010 to read as follows:

Sec. 402.010. CHALLENGES TO VALIDITY OF STATE STATUTE OR RULE. (a) For purposes of this section, "state agency" means a board, commission, department, office, court, or other agency that:

(1) is in the executive or judicial branch of the government of this state;

(2) was created by the constitution or a statute of this state; and

(3) has statewide jurisdiction.

(b) In an action, suit, or proceeding, whether original or appellate, in which a party or amicus curiae asserts a challenge to the validity of a state statute or a rule adopted by a state agency, the party asserting the challenge shall give written notice of the challenge to the attorney general if the state, a state agency, or a state officer or employee in the officer's or employee's official capacity is not a party to the action, suit, or proceeding.

(c) An action, suit, or proceeding in which notice to the attorney general is required under this section is an action, suit, or proceeding in which a party or amicus curiae asserts that a state

1 statute or rule conflicts with:

2 (1) the constitution of the United States or of this
3 state;

4 (2) federal law or is preempted by federal law; or

5 (3) a statute of this state, in the case of a challenge
6 to a rule of a state agency.

7 (d) The notice required by Subsection (b) must identify:

8 (1) the challenged statute or rule;

9 (2) the nature of the challenge;

10 (3) the court in which the challenge is pending; and

11 (4) the style and number of the action, suit, or
12 proceeding in which the challenge is pending.

13 (e) At the time the pleading or other document challenging
14 the validity of a statute or rule is filed, the notice required by
15 Subsection (b) must be:

16 (1) sent to the attorney general by certified or
17 registered mail, or electronically to an e-mail address designated
18 by the attorney general for purposes of this section; and

19 (2) filed with the court in which the challenge is
20 asserted.

21 (f) If a party or amicus curiae challenging the validity of
22 a state statute or rule fails to give notice to the attorney general
23 as required by this section, the court in which the challenge is
24 asserted shall give notice of the challenge to the attorney
25 general. Notice given to the attorney general by a court under this
26 subsection must comply with the notice requirements of Subsection
27 (d) and be given in the manner required by Subsection (e)(1). The

1 court may reject, but may not sustain, a challenge to which this
2 section applies before the attorney general has received notice
3 under this section and the state has been allowed to proceed, if it
4 so chooses, under Subsection (g).

5 (g) In an action, suit, or proceeding to which this section
6 applies, the state may intervene for the presentation of evidence
7 otherwise admissible under the rules of evidence and for briefing
8 and argument on the question of the validity of the challenged
9 statute or rule. The court shall grant a motion of the state to
10 intervene if the motion is filed not later than the 60th day after
11 the date the attorney general receives notice under this section.

12 (h) This section and the state's intervention under this
13 section do not constitute a waiver of sovereign immunity.

14 SECTION 2. Section 402.010, Government Code, as added by
15 this Act, applies only to a pleading or other document filed in an
16 action, suit, or proceeding on or after the effective date of this
17 Act. A pleading or other document filed in an action, suit, or
18 proceeding before the effective date of this Act is governed by the
19 law in effect at the time the pleading or other document was filed,
20 and that law is continued in effect for that purpose.

21 SECTION 3. This Act takes effect immediately if it receives
22 a vote of two-thirds of all the members elected to each house, as
23 provided by Section 39, Article III, Texas Constitution. If this
24 Act does not receive the vote necessary for immediate effect, this
25 Act takes effect September 1, 2009.