

BILL ANALYSIS

Senate Research Center

S.B. 392
By: West
State Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under Chapter 71 (Texas Judicial Council), Government Code, the Texas Judicial Council is the policymaking body for the Texas judicial branch and is charged with expediting judicial business transactions. The 82nd Legislature created Section 402.010 (Legal Challenges to Constitutionality of State Statutes) of the Government Code concerning legal actions challenging the constitutionality of a Texas statute. The statute requires "the court," generally interpreted to mean "the clerk of the court," to serve notice of the constitutional question on the attorney general and serve a copy of the petition, motion, or other pleading raising the constitutional challenge on the attorney general. This places an additional obligation on clerks to determine whether the complaint rises to a constitutional challenge.

S.B. 392 removes the obligation on clerks to serve the attorney general and places that obligation on the party raising the constitutional question.

S.B. 392 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 Section 402.010, Government Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Requires the party, 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 file the form required by Subsection (a-1). Requires the court to serve notice of the constitutional challenge, rather than 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 if the attorney general is not a party to or counsel involved in the litigation. Deletes existing text requiring 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.

(a-1) Requires the Office of Court Administration of the Texas Judicial System to adopt the form that a party challenging the constitutionality of a statute of this state is required to file with the court in which the action is pending indicating which pleading should be served on the attorney general in accordance with this section.

SECTION 2. Provides that Section 402.010, Government Code, as amended 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: September 1, 2013.