

CHAPTER 290

H.B. No. 440

AN ACT

relating to state agencies paying court costs and attorney's fees of small businesses that prevail in a dispute with a state agency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. DEFINITIONS. In this Act:

- (1) "State agency" means a board, commission, department, or office that:
 - (A) is in the executive branch of state government;
 - (B) was created by the constitution or a statute of this state; and
 - (C) has statewide jurisdiction.
- (2) "Small business" means a corporation, partnership, sole proprietorship, or other legal entity that:
 - (A) is formed for the purpose of making a profit;
 - (B) is independently owned and operated;
 - (C) is not a publicly held corporation; and
 - (D) has fewer than 100 employees or less than \$1 million in annual gross receipts at the end of the fiscal year preceding the year of the filing of the administrative adjudicatory proceeding or civil action.
- (3) "Groundless" means no basis in law or fact.

SECTION 2. RECOVERY OF ATTORNEY'S FEES AND COURT COSTS. (a) In any administrative adjudicatory proceeding or civil action resulting from a complaint issued by a state agency against a small business under the administrative or regulatory functions of the agency, the small business may be awarded reasonable attorney's fees and court costs if:

- (1) the small business prevails in that action; and
- (2) the agency proceeding or action was groundless and brought in bad faith or groundless and brought for purposes of harassment.

(b) A small business is considered to prevail in any action in which there is no adjudication, stipulation, or acceptance of liability or determination of noncompliance, violation, infringement, deficiency, or breach on the part of the small business. A small business may not recover under this Act if the parties have executed a settlement agreement that, while not stipulating liability or violation, requires the small business to take corrective action or pay a monetary sum.

(c) To recover under this Act, a business must meet the qualifications as a small business under this Act at the time it becomes a party to the proceeding or action.

SECTION 3. MOTION OF FRIVOLOUS CLAIM. (a) To recover under this Act, the small business, within 30 days after the date of the filing of the administrative proceeding or action, must file a written motion that:

- (1) alleges that the agency proceeding or action was groundless and brought in bad faith or groundless and brought for purposes of harassment;

- (2) sets forth the facts that justify the small business's claim; and
- (3) states that if the claim is dismissed or judgment is awarded to the small business, the small business will seek recovery of attorney's fees and court costs.
- (b) A small business may not recover under this Act if the agency, within the 30-day period beginning the day after the small business gives notice of the filing of a motion making the allegations set forth in Subsection (a) of this section:
 - (1) amends the pleadings so that the small business that has filed the motion is no longer a party to the lawsuit; or
 - (2) dismisses the action.
- (c) The determination of whether a proceeding or action is groundless and brought in bad faith, or groundless and brought for purposes of harassment shall be made by the hearing officer of an administrative adjudicatory proceeding or by the court in a civil action. The hearing officer or the court shall take into account:
 - (1) the multiplicity of parties;
 - (2) the complexity of the claims and defenses;
 - (3) the length of time available to the agency to investigate and conduct discovery; and
 - (4) affidavits, depositions, and any other relevant matters.
- (d) All determinations and orders pursuant to this Act are for purposes of this Act and shall not be the basis of any liability, sanction, or grievance other than as expressly provided in this Act.
- (e) An amount requested by an agency for damages, civil penalties, fines, taxes, or other monetary recovery in a proceeding or action does not constitute a basis for finding that the proceeding or action is groundless and brought in bad faith or groundless and brought for purposes of harassment.

SECTION 4. APPLICATION. This Act applies only to recovery of costs and attorney's fees in a proceeding or action filed on or after the effective date of this Act. This Act does not apply to proceedings or actions under the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code) or to Chapter 21, Insurance Code.

SECTION 5. EFFECTIVE DATE. This Act takes effect September 1, 1987.

SECTION 6. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 7, 1987, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 440 on June 1, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 30, 1987, by a viva-voce vote.

Approved June 11, 1987.

Effective Sept. 1, 1987.