

SUBJECT: Protections from SLAPP suits

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 8 ayes — Bosse, Janek, Dutton, Goodman, Hope, Nixon, Smithee, Zbranek

0 nays

1 absent — Alvarado

WITNESSES: For — Martin Hoffman, Dallas Homeowners League; Maxine Aaronson, Texas Neighborhoods Together

Against — None

On — Tom Blackwell

DIGEST: CSHB 2488 would provide immunity from civil liability, including monetary damages or declaratory or injunctive relief, for good-faith communications with a governmental body or decisions by a public official. Immunity would apply in communications made to a governmental agency, a public official, the public information media, or another person that related to a matter reasonably of concern to a governmental agency or public official. Immunity also would protect an elected or appointed public official from liability for good-faith decisions when sued in the official's individual capacity, not in the official's official capacity.

When filing a suit based on a communication or decision described by this legislation, the pleading would have to verify by affidavit the facts alleged in the complaint, including the lack of good faith. The defendant in a suit could ask a court to review the pleadings for such verification.

At any time after the filing of a suit, the defendant could ask the court to force the plaintiff to provide a security bond sufficient to cover the litigation costs and expenses, including attorney's fees and expert witness fees, that the defendant might incur. Such a motion would have to heard within 30 days of filing unless docket conditions prevented such a hearing. The court would have to grant the motion unless it found, by a preponderance of the evidence,

that the communication or decision was not made in good faith.

If the motion was granted and the plaintiff failed to post the security bond within 14 days of the granting of the motion, the court would have to dismiss the suit. During the time when a motion for a security bond was pending, all discovery proceedings would be stayed. A court could allow specified discovery to continue for good cause.

If a defendant prevailed in an action based on a communication or decision covered by this bill, the defendant could recover court costs, reasonable attorney's fees, expert witness fees, and other litigation expenses. The defendant also could recover actual damages if the claim was frivolous under Civil Practice and Remedies Code, chapter 10. The defendant could recover exemplary (punitive) damages by showing that the suit was brought for harassment, to inhibit the communication or decision, to retaliate, to interfere with the exercise of constitutional rights, or "to wrongfully injure the defendant in another manner."

Actions based on a communication or decision covered by this bill would have to be brought in:

- the defendant's home county;
- the county in which the defendant's principal place of business was located, if the defendant was a business or organization; or
- the county in which the communication or decision was made, if the defendant was not a resident of the state.

CSHB 2488 would not create a cause of action, nor would it limit other defenses or immunities under other laws.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. It would apply to any claims filed on or after the bill's effective date.

SUPPORTERS
SAY:

SLAPP suits, or strategic lawsuits against public participation, are being used more often to influence governmental decisions or to prevent people from reporting problems to governmental entities. These suits often are filed against whistleblowers who report violations of laws or codes to

governmental authorities. They also have been used to harass public officials by suing those officials in their individual capacity for decisions they make. Suits in the official's official capacity often are handled by attorneys for the governmental body, but suits against the individual must be defended by the individual's own attorney at their own expense.

Nearly all SLAPP suits are dismissed eventually, but only after they serve their purpose of stifling open communication or harassing those who make good-faith communications or decisions. There have been many instances of these suits in many Texas cities, including Dallas, where whistleblowers were sued for reporting code violations of a development plan. In another Dallas incident, a majority of the members of the city council were sued in their individual capacity for voting against a particular development.

The purpose of this legislation is not to provide immunity for all actions by a governmental body or communications to a governmental body. However, when such communications or decisions are made in good faith, this bill would protect those individuals from having to spend thousands of dollars to defend against these harassing and frivolous lawsuits. Several other states have enacted similar legislation that protects individuals and officials from SLAPP suits.

This bill would discourage the filing of SLAPP suits because plaintiffs would be wary of filing such harassing suits for fear that they might be assessed the defendant's costs, actual damages, and punitive damages.

OPPONENTS
SAY:

CSHB 2488, if interpreted broadly, could be used to harass and intimidate legitimate plaintiffs. It could stifle suits brought legitimately under libel or slander laws if the communications were made to a governmental entity, because the plaintiff in such suits would have to overcome motions testing its pleadings and also would have to post a security for the defendant's costs. These requirements could intimidate some plaintiffs from proceeding with such suits even when they had a legitimate claim.

OTHER
OPPONENTS
SAY:

This legislation would not necessarily discourage the filing of such suits, because those who truly wished to harass people would do so even with the possibility of having to pay costs if they lost the case. Because the judgment of what constitutes "good faith" could be a question of fact, and therefore, required to be decided by a jury, any case filed still could take several months

to resolve. During that time, the purpose of harassing the defendant would be accomplished.

NOTES:

The committee substitute made no substantive changes.

In the 1995 legislative session, a similar bill, HB 2967 by Raymond, passed the House on the Local and Consent Calendar but was tagged in the Senate State Affairs Committee. In the 1997, another similar bill, HB 1319 by Raymond, was reported favorably by the House State Affairs Committee and placed on the General State Calendar but was not considered by the House.