

BILL ANALYSIS

Senate Research Center
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H.B. 2488
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State Affairs
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Engrossed

DIGEST

Persons who provide information to governmental entities are often subject to various forms of harassment lawsuits. It is currently possible for a person to be found liable for slander or libel, even if the information given by the person is accurate. Under current law, the only way to avoid liability in a harassment suit is a final verdict. An entity who received an unfavorable description in a government report could sue the person who gave the description. The person would then have to incur the court costs of defending the report. H.B. 2488 would direct a judge to dismiss a case unless there is substantive proof that a defendant made a complaint without "good faith." This bill also provides for attorney's fees and suit-related expenses and damages, if warranted. H.B. 2488 would also prohibit suits against governmental agencies.

PURPOSE

As proposed, H.B. 2488 establishes provisions regarding civil actions based on communications or decisions concerning matters pending before governmental agencies.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 6, Civil Practice and Remedies Code, by adding Chapter 138, as follows:

CHAPTER 138. CIVIL ACTIONS BASED ON COMMUNICATIONS OR DECISIONS CONCERNING MATTERS PENDING BEFORE GOVERNMENTAL AGENCIES

Sec. 138.001. DEFINITIONS. Defines "good faith," and "governmental agency."

Sec. 138.002. NO LIABILITY FOR GOOD FAITH COMMUNICATION OR DECISION. Provides that a person is not liable for monetary damages or subject to injunctive or declaratory relief based upon certain conditions. Provides that Subsection (a) does not apply if the claimant establishes that the communication or decision was not made in good faith. Provides that the defense conferred by this section does not apply in a civil action against a governmental agency or an elected or appointed official of a governmental agency in the official's official capacity. Provides that the defense conferred by this section is in addition to all other defenses or immunities conferred by applicable law. Provides that this section does not create a cause of action.

Sec. 138.003. BURDEN OF PLEADING. Provides that the claimant in a civil action based upon a communication or decision described in Section 138.002(a), Civil Practice and Remedies Code, has the burden of pleading with particularity all material facts that the claimant contends establish the right to recovery. Requires each fact asserted in the pleading to be verified by affidavit made on personal knowledge unless the truth of the fact appears of record. Requires the court, on motion by the defendant or on the court's own motion, to review the pleadings to determine compliance with Subsection (a).

Sec. 138.004. VENUE. Requires a civil action based upon a communication or decision described in Section 138.002 (a) to be brought in the county of the defendant's residence, principal office, or in which the communication or decision was made.

Sec. 138.005. MOTION FOR SECURITY FOR COSTS AND EXPENSES. Authorizes the

defendant to file a motion seeking security for costs and litigation expenses at any time. Requires the motion to be heard not later than 30 days after it is filed unless otherwise required by the court's docket conditions. Requires the court to grant the motion unless the claimant proves, by a preponderance of evidence, that the complaint or decision was not made in good faith. Requires the court to require the claimant to post security in an amount sufficient to secure the defendant's costs and reasonable attorney's fees, expert witness fees, and other reasonable litigation expenses (litigation expenses). Authorizes the amount of the security to be reviewed and adjusted by the court at any time upon motion of any party. Requires the court to promptly dismiss the claimant's action with prejudice, if the claimant fails to post security in the required amount within 14 days after the date of the signing of an order requiring security. Requires all the discovery proceedings to be stayed during the pendency of a motion for security under this section and pending the posting of any security required under such a motion. Provides an exception authorizing the court to permit specified discovery to be conducted.

Sec. 138.006. LIABILITY FOR COSTS, EXPENSES, AND DAMAGES. Authorizes the defendant who prevails in an action arising from a communication or decision to recover from the claimant certain fees and expenses. Authorizes the defendant to recover from the claimant actual damages if the defendant shows that the action was brought in violation of Chapter 10, Civil Practice and Remedies Code. Authorizes the defendant to also recover from the claimant exemplary damages if the defendant shows that the action was brought for the purpose of harassment, to inhibit the defendant's communication or decision, to retaliate for the defendant's communication or decision, to interfere with the defendant's exercise of protected constitutional rights, or to wrongfully injure the defendant in another manner.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Emergency clause.

Effective date: upon passage.