

By: Raymond

H.B. No. 1089

A BILL TO BE ENTITLED

AN ACT

relating to civil actions against persons who file complaints with governmental agencies or quasi-governmental entities.

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

SECTION 1. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 140 to read as follows:

CHAPTER 140. CIVIL ACTIONS AGAINST PERSONS FILING COMPLAINTS WITH GOVERNMENTAL AGENCIES OR QUASI-GOVERNMENTAL ENTITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 140.001. DEFINITIONS. In this chapter:

(1) "Bad faith" with respect to a claim described by Section 140.002(a)(1) filed against a complainant means a claim that is:

(A) groundless; or

(B) brought for the purpose of:

(i) harassing or intimidating a complainant; or

(ii) obtaining the withdrawal of a complaint.

(2) "Claimant" means a person who makes a claim described by Section 140.002(a)(1) against a complainant.

(3) "Complainant" means a person who makes a complaint or who communicates information relevant to a complaint.

(4) "Complaint" means a written or oral statement,

1 report, or other communication made to or kept by a governmental
2 agency or quasi-governmental entity.

3 (5) "Exemplary damages" has the meaning assigned by
4 Chapter 41.

5 (6) "Good faith" with respect to a complaint means
6 that at the time the complaint was made or intended to be made the
7 complainant had:

8 (A) any reasonable basis in fact for making the
9 complaint; and

10 (B) any reasonable basis to believe that the
11 governmental agency or quasi-governmental entity to which the
12 complaint was made had authority or jurisdiction to receive or
13 review the complaint.

14 (7) "Governmental agency" means:

15 (A) this state, another state of the United
16 States, or the United States;

17 (B) any court, institution, agency, political
18 subdivision, or organ of government established by the constitution
19 or laws of this state, of another state of the United States, or of
20 the United States, including a department, bureau, board,
21 commission, office, or council; or

22 (C) a law enforcement agency.

23 (8) "Groundless" means:

24 (A) without basis in fact; or

25 (B) not warranted by existing law or a good faith
26 argument for the extension, modification, or reversal of existing
27 law.

1 (9) "Harassing conduct" means conduct intended or
2 reasonably calculated to threaten, intimidate, coerce, or mislead a
3 complainant through the use or threat of:

4 (A) physical force against a person or property;

5 (B) injury or damage to a person's personal or
6 business reputation;

7 (C) invasion of a person's right to privacy;

8 (D) a tortious or injurious act intended or
9 likely to cause economic damage or severe emotional distress to a
10 person;

11 (E) communication of information relevant to a
12 complaint known by the person communicating the information to be
13 false at the time it was communicated; or

14 (F) an act in violation of the constitution or a
15 penal law of this state, another state of the United States, or the
16 United States.

17 (10) "Quasi-governmental entity" means a person who,
18 under law or under a formal or informal request by, agreement with,
19 delegation of authority by, or rule adopted by a governmental
20 agency:

21 (A) receives or reviews complaints for the
22 agency; or

23 (B) performs a function of the agency.

24 Sec. 140.002. APPLICABILITY; VENUE; REMOVAL. (a) This
25 chapter applies only to a claim made a basis of a suit filed:

26 (1) against a complainant that:

27 (A) is filed by or on behalf of a person who may

1 be adversely affected by the filing of the complaint; and

2 (B) alleges that the contents of or the filing of
3 the complaint constitutes a basis for relief, including a claim
4 alleging that the contents of the complaint constitute libel or
5 slander; or

6 (2) by or on behalf of a complainant alleging
7 harassing conduct giving rise to liability under Section 140.101.

8 (b) Notwithstanding Subsection (a)(1), this chapter does
9 not apply to a claim if:

10 (1) the complaint is confidential by other law and not
11 a public record available to a member of the public who is not
12 affected by the complaint and the complainant communicated the
13 contents of the complaint to a person other than to the governmental
14 agency or quasi-governmental entity that initially received or
15 reviewed the complaint; or

16 (2) the complainant is an employee or former employee
17 of the person who is the subject of the complaint.

18 (c) This chapter does not create or authorize a cause of
19 action against a governmental agency, a quasi-governmental entity,
20 or an officer, agent, or employee of a governmental agency or
21 quasi-governmental entity acting in the course and scope of the
22 person's duties or employment. Notwithstanding Chapter 104, the
23 state is not liable for indemnification of a person for damages
24 arising under this chapter.

25 (d) A claim governed by this chapter shall be brought:

26 (1) in the county of the complainant's residence if the
27 complainant is a natural person;

1 (2) in the county in which the complainant's principal
2 office is located if the complainant is not a natural person; or

3 (3) in the county in which the complaint was made, if
4 the complainant:

5 (A) is a natural person who is not a resident of
6 this state; or

7 (B) is not a natural person and does not have an
8 office in this state.

9 (e) Notwithstanding any other law, on motion of the
10 complainant, a claim governed by this chapter that is brought in a
11 court other than a district court may be removed to a district court
12 in which venue is authorized under Subsection (d).

13 Sec. 140.003. CERTAIN ORDERS PROHIBITED. A court of this
14 state may not issue a temporary restraining order, temporary
15 injunction, permanent injunction, or other order prohibiting a
16 complainant from communicating with a governmental agency or
17 quasi-governmental entity concerning the subject matter of a
18 complaint or a claim governed by this chapter.

19 [Sections 140.004-140.050 reserved for expansion]

20 SUBCHAPTER B. DETERMINATION OF WHETHER COMPLAINT WAS MADE IN GOOD
21 FAITH OR BAD FAITH; CONSEQUENCES

22 Sec. 140.051. BURDEN OF PLEADING. (a) A person asserting
23 a claim against a complainant under Section 140.002(a)(1) must
24 plead with particularity all material facts that the person
25 contends establish the right to recovery, including all facts
26 supporting the contention that the complainant did not act in good
27 faith. Each fact asserted in the pleading must be verified by an

1 affidavit made on personal knowledge unless the truth of the fact
2 appears of record.

3 (b) The court shall, on motion by the complainant or on the
4 court's own motion, review the pleadings to determine compliance
5 with Subsection (a).

6 Sec. 140.052. NO LIABILITY FOR GOOD FAITH COMPLAINT. (a)
7 A complainant who makes a complaint in good faith is not:

8 (1) liable for monetary damages arising from the
9 complaint; or

10 (2) subject to injunctive or declaratory relief with
11 respect to the complaint.

12 (b) A complaint is presumed to be made in good faith. A
13 complainant may prove the complaint is made in good faith by
14 demonstrating that a reasonably prudent person, under the same or
15 similar circumstances, could have believed that:

16 (1) a reasonable basis in fact existed for making the
17 complaint; and

18 (2) the agency or entity to which the complaint was
19 made had authority or jurisdiction to receive or review the
20 complaint.

21 Sec. 140.053. SUMMARY JUDGMENT; EXPEDITED HEARING TO
22 DETERMINE BAD FAITH CLAIM. (a) The court shall promptly grant
23 summary judgment with respect to a claim described by Section
24 140.002(a)(1) if:

25 (1) the complainant demonstrates that the complaint
26 that is the subject of the claim was made in good faith under
27 Section 140.052(b); or

1 (2) the pleadings fail to allege:

2 (A) a cause of action against the complainant for
3 which relief may be granted; or

4 (B) facts sufficient to rebut the presumption
5 that the complaint was filed in good faith.

6 (b) On motion of the complainant, a court that grants
7 summary judgment under Subsection (a) shall promptly hold a hearing
8 to determine whether the claim was brought in bad faith.

9 (c) A complainant must file the motion for an expedited
10 hearing under Subsection (b) not later than the 30th day after the
11 date on which the order granting summary judgment is signed. On
12 request of a party, the hearing shall be before a jury. The Texas
13 Rules of Civil Procedure apply to the selection of the jury, the
14 court's charge to the jury, and all other aspects of the
15 proceedings.

16 (d) On motion of the complainant in a case involving three
17 or more parties, the court shall sever the claims as necessary to
18 allow relief granted under Subsection (a) or Section 140.054 to
19 become immediately final and appealable.

20 Sec. 140.054. BAD FAITH CLAIM; EXEMPLARY DAMAGES
21 AUTHORIZED. (a) If the trier of fact determines that a claim
22 described by Section 140.002(a)(1) was brought in bad faith,
23 judgment may be entered awarding the complainant:

24 (1) actual damages;

25 (2) attorney's fees and court costs under Section
26 140.055; and

27 (3) notwithstanding Chapter 41, exemplary damages in

1 an amount equal to five times the amount of attorney's fees and
2 court costs awarded under Section 140.055.

3 (b) A person against whom judgment is entered under this
4 section and the person's attorney are jointly and severally liable
5 for damages awarded under this section.

6 Sec. 140.055. COURT COSTS AND ATTORNEY'S FEES. A
7 complainant is entitled to recover court costs and reasonable and
8 necessary attorney's fees if judgment is entered holding a
9 complaint made the basis of a suit under Section 140.002(a)(1) was
10 filed in good faith.

11 Sec. 140.056. PROFESSIONAL DISCIPLINE. (a) If judgment is
12 entered against an attorney under Section 140.054(b), the attorney
13 is subject to professional discipline for professional misconduct
14 in accordance with Subchapter E, Chapter 81, Government Code, and
15 to suspension or disbarment for dishonorable conduct under Section
16 82.062, Government Code.

17 (b) The court shall promptly report a judgment described by
18 Subsection (a) to an appropriate grievance committee under Chapter
19 81, Government Code, or under a similar law in any jurisdiction in
20 which the attorney resides or is licensed.

21 (c) A report under Subsection (b) must contain:

22 (1) the name of the attorney against whom judgment was
23 entered;

24 (2) the jury verdict or findings of fact by the court;
25 and

26 (3) the judgment.

27 [Sections 140.057-140.100 reserved for expansion]

1 SUBCHAPTER C. LIABILITY FOR HARASSING CONDUCT

2 Sec. 140.101. LIABILITY FOR HARASSING CONDUCT; EXEMPLARY
3 DAMAGES AUTHORIZED. (a) A person is liable for damages to a
4 complainant and is subject to injunctive or declaratory relief if
5 the complainant demonstrates by a preponderance of the evidence
6 that:

7 (1) the complainant made or intended to make a
8 complaint in good faith;

9 (2) the person committed or caused to be committed
10 harassing conduct against the complainant; and

11 (3) the harassing conduct was committed to:

12 (A) obtain the withdrawal of the complaint;

13 (B) prevent or limit the complainant's
14 participation in a formal or informal investigation or proceeding
15 by a governmental agency or quasi-governmental entity arising from
16 or relating to the complaint;

17 (C) prevent the filing of the complaint; or

18 (D) retaliate for the complaint.

19 (b) If the trier of fact determines that a complainant has
20 demonstrated facts proving liability under Subsection (a),
21 judgment may be entered awarding the complainant:

22 (1) actual damages;

23 (2) reasonable attorney's fees and court costs; and

24 (3) notwithstanding Chapter 41, exemplary damages in
25 an amount equal to five times the amount of attorney's fees and
26 court costs awarded under this section.

27 SECTION 2. This Act applies only to a claim described by

1 Section 140.002, Civil Practice and Remedies Code, as added by this
2 Act, filed on or after the effective date of this Act. A claim filed
3 before the effective date of this Act is governed by the law
4 applicable to the claim immediately before the effective date of
5 this Act, and that law is continued in effect for that purpose.

6 SECTION 3. This Act takes effect September 1, 2007.