

By: Leibowitz

H.B. No. 1130

A BILL TO BE ENTITLED

AN ACT

relating to civil actions against persons who file complaints with governmental agencies.

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

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

6 (A) any reasonable basis in fact for making the
7 complaint; and

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

12 (6) "Governmental agency" means:

13 (A) this state, another state of the United
14 States, or the United States;

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

20 (C) a law enforcement agency.

21 (7) "Groundless" means:

22 (A) without basis in fact; or

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

26 (8) "Harassing conduct" means conduct intended or
27 reasonably calculated to threaten, intimidate, coerce, or mislead a

1 complainant through the use or threat of:

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

3 (B) injury or damage to a person's personal or
4 business reputation;

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

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

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

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

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

19 (A) receives or reviews complaints for the
20 agency; or

21 (B) performs a function of the agency.

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

24 (1) against a complainant that:

25 (A) is filed by or on behalf of a person who may
26 be adversely affected by the filing of the complaint; and

27 (B) alleges that the contents of or the filing of

1 the complaint constitutes a basis for relief, including a claim
2 alleging that the contents of the complaint constitute libel or
3 slander; or

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

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

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

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

16 (c) This chapter does not create or authorize a cause of
17 action against a quasi-governmental entity, a governmental unit, or
18 their officers, agents, or employees acting in the course and scope
19 of their duties or employment. Notwithstanding Chapter 104, the
20 state is not liable for indemnification of a person for damages
21 arising under this chapter.

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

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

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

27 (3) in the county in which the complaint was made, if

1 the complainant:

2 (A) is a natural person who is not a resident of
3 this state; or

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

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

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

16 [Sections 140.004-140.050 reserved for expansion]

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

19 Sec. 140.051. BURDEN OF PLEADING. (a) A person asserting
20 a claim against a claimant under Section 140.002(a)(1) must plead
21 with particularity all material facts that the person contends
22 establish the right to recovery, including all facts supporting the
23 contention that the complainant did not act in good faith. Each
24 fact asserted in the pleading must be verified by an affidavit made
25 on personal knowledge unless the truth of the fact appears of
26 record.

27 (b) The court shall, on motion by the complainant or on the

1 court's own motion, review the pleadings to determine compliance
2 with Subsection (a).

3 Sec. 140.052. NO LIABILITY FOR GOOD FAITH COMPLAINT. (a)

4 A complainant who makes a complaint in good faith is not:

5 (1) liable for monetary damages arising from the
6 complaint; or

7 (2) subject to injunctive or declaratory relief with
8 respect to the complaint.

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

13 (1) a reasonable basis in fact existed for making the
14 complaint; and

15 (2) the agency or entity to which the complaint was
16 made had authority or jurisdiction to receive or review the
17 complaint.

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

22 (1) the complainant demonstrates that the complaint
23 that is the subject of the claim was made in good faith under
24 Section 140.052(b); or

25 (2) the pleadings fail to allege:

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

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

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

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

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

17 Sec. 140.054. BAD FAITH CLAIM. (a) If the trier of fact
18 determines that a claim described by Section 140.002(a)(1) was
19 brought in bad faith, judgment may be entered awarding the
20 complainant:

21 (1) actual damages; and

22 (2) attorney's fees and court costs under Section
23 140.055.

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

27 Sec. 140.055. COURT COSTS AND ATTORNEY'S FEES. A

1 complainant is entitled to recover court costs and reasonable and
2 necessary attorney's fees if judgment is entered holding a
3 complaint made the basis of a suit under Section 140.002(a)(1) was
4 filed in good faith.

5 Sec. 140.056. PROFESSIONAL DISCIPLINE. (a) If judgment is
6 entered against an attorney under Section 140.054(b), the attorney
7 is subject to professional discipline for professional misconduct
8 in accordance with Subchapter E, Chapter 81, Government Code, and
9 to suspension or disbarment for dishonorable conduct under Section
10 82.062, Government Code.

11 (b) The court shall promptly report a judgment described by
12 Subsection (a) to an appropriate grievance committee under Chapter
13 81, Government Code, or under a similar law in any jurisdiction in
14 which the attorney resides or is licensed.

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

16 (1) the name of the attorney against whom judgment was
17 entered;

18 (2) the jury verdict or findings of fact by the court;
19 and

20 (3) the judgment.

21 [Sections 140.057-140.100 reserved for expansion]

22 SUBCHAPTER C. LIABILITY FOR HARASSING CONDUCT

23 Sec. 140.101. LIABILITY FOR HARASSING CONDUCT. (a) A
24 person is liable for damages to a complainant and is subject to
25 injunctive or declaratory relief if the complainant demonstrates by
26 a preponderance of the evidence that:

27 (1) the complainant made or intended to make a

1 complaint in good faith;

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

4 (3) the harassing conduct was committed to:

5 (A) obtain the withdrawal of the complaint;

6 (B) prevent or limit the complainant's
7 participation in a formal or informal investigation or proceeding
8 by a governmental agency or quasi-governmental entity arising from
9 or relating to the complaint;

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

11 (D) retaliate for the complaint.

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

15 (1) actual damages; and

16 (2) reasonable attorney's fees and court costs.

17 SECTION 2. This Act applies only to a claim described by
18 Section 140.002, Civil Practice and Remedies Code, as added by this
19 Act, filed on or after the effective date of this Act. A claim filed
20 before the effective date of this Act is governed by the law
21 applicable to the claim immediately before the effective date of
22 this Act, and that law is continued in effect for that purpose.

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