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H.B. No. 1338

A BILL TO BE ENTITLED

1 AN ACT
2 relating to certain civil actions against persons who file
3 complaints with governmental agencies or quasi-governmental
4 entities.

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

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

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

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Sec. 140.001. DEFINITIONS. In this chapter:

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

15 (A) groundless; or

16 (B) brought for the purpose of:

17 (i) harassing or intimidating a
18 complainant; or

19 (ii) obtaining the withdrawal of a
20 complaint.

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

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

1 (4) "Complaint" means a written or oral statement,
2 report, or other communication made to or kept by a governmental
3 agency or quasi-governmental entity.

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

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

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

13 (6) "Governmental agency" means:

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

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

21 (C) a law enforcement agency.

22 (7) "Groundless" means:

23 (A) without basis in fact; or

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

27 (8) "Harassing conduct" means conduct intended or

1 reasonably calculated to threaten, intimidate, coerce, or mislead a
2 complainant through the use or threat of:

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

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

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

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

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

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

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

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

22 (B) performs a function of the agency.

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

25 (1) against a complainant that:

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

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

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

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

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

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

17 (3) the contents of the complaint relate to a matter
18 that is pending before a governmental agency or quasi-governmental
19 entity.

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

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

27 (1) in the county of the complainant's residence if the

1 complainant is a natural person;

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

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

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

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

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

14 (f) A person against whom a claim is brought may file a plea
15 to the jurisdiction requesting immediate dismissal of the claim if
16 this chapter does not apply to the claim under Subsection (b)(3).
17 If, after dismissal, the claim is brought again and this chapter
18 does not apply to the claim under Subsection (b)(3), the court
19 shall, on the motion of a party or its own motion, impose sanctions
20 on the person bringing the claim sufficient to deter the person from
21 bringing the claim while this chapter does not apply to the claim
22 under Subsection (b)(3).

23 Sec. 140.003. CERTAIN ORDERS PROHIBITED. A court of this
24 state may not issue a temporary restraining order, temporary
25 injunction, permanent injunction, or other order prohibiting a
26 complainant from communicating with a governmental agency or
27 quasi-governmental entity concerning the subject matter of a

1 complaint or a claim governed by this chapter.

2 [Sections 140.004-140.050 reserved for expansion]

3 SUBCHAPTER B. DETERMINATION OF WHETHER COMPLAINT WAS MADE IN GOOD

4 FAITH OR BAD FAITH; CONSEQUENCES

5 Sec. 140.051. BURDEN OF PLEADING. (a) A person asserting
6 a claim against a complainant under Section 140.002(a)(1) must
7 plead with particularity all material facts that the person
8 contends establish the right to recovery, including all facts
9 supporting the contention that the complainant did not act in good
10 faith. Each fact asserted in the pleading must be verified by an
11 affidavit made on personal knowledge unless the truth of the fact
12 appears of record.

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

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

18 (1) liable for monetary damages arising from the
19 complaint; or

20 (2) subject to injunctive or declaratory relief with
21 respect to the complaint.

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

26 (1) a reasonable basis in fact existed for making the
27 complaint; and

1 (2) the agency or entity to which the complaint was
2 made had authority or jurisdiction to receive or review the
3 complaint.

4 Sec. 140.053. SUMMARY JUDGMENT; EXPEDITED HEARING TO
5 DETERMINE BAD FAITH CLAIM. (a) The court shall promptly grant
6 summary judgment with respect to a claim described by Section
7 140.002(a)(1) if:

8 (1) the complainant demonstrates that the complaint
9 that is the subject of the claim was made in good faith under
10 Section 140.052(b); or

11 (2) the pleadings fail to allege:

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

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

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

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

26 (d) On motion of the complainant in a case involving three
27 or more parties, the court shall sever the claims as necessary to

1 allow relief granted under Subsection (a) or Section 140.054 to
2 become immediately final and appealable.

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

7 (1) actual damages; and

8 (2) attorney's fees and court costs under Section
9 140.055.

10 (b) A person against whom judgment is entered under this
11 section and any attorney representing the person in filing the
12 claim are jointly and severally liable for damages awarded under
13 this section.

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

19 Sec. 140.056. PROFESSIONAL DISCIPLINE. (a) If judgment is
20 entered against an attorney under Section 140.054(b), the attorney
21 is subject to professional discipline for professional misconduct
22 in accordance with Subchapter E, Chapter 81, Government Code, and
23 to suspension or disbarment for dishonorable conduct under Section
24 82.062, Government Code.

25 (b) The court shall promptly report a judgment described by
26 Subsection (a) to an appropriate grievance committee under Chapter
27 81, Government Code, or under a similar law in any jurisdiction in

1 which the attorney resides or is licensed.

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

3 (1) the name of the attorney against whom judgment was
4 entered;

5 (2) the jury verdict or findings of fact by the court;
6 and

7 (3) the judgment.

8 [Sections 140.057-140.100 reserved for expansion]

9 SUBCHAPTER C. LIABILITY FOR HARASSING CONDUCT

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

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

16 (2) the person against whom the claim under this
17 section is made committed or caused to be committed harassing
18 conduct against the complainant; and

19 (3) the harassing conduct was committed to:

20 (A) obtain the withdrawal of the complaint;

21 (B) prevent or limit the complainant's
22 participation in a formal or informal investigation or proceeding
23 by a governmental agency or quasi-governmental entity arising from
24 or relating to the complaint;

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

26 (D) retaliate for the complaint.

27 (b) If the trier of fact determines that a complainant has

1 demonstrated facts proving liability under Subsection (a),
2 judgment may be entered awarding the complainant:

3 (1) actual damages; and

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

5 SECTION 2. This Act applies only to a claim described by
6 Section 140.002, Civil Practice and Remedies Code, as added by this
7 Act, filed on or after the effective date of this Act. A claim filed
8 before the effective date of this Act is governed by the law
9 applicable to the claim immediately before the effective date of
10 this Act, and that law is continued in effect for that purpose.

11 SECTION 3. This Act takes effect September 1, 2009.