

BILL ANALYSIS

C.S.H.B. 2973

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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Citizen participation is the heart of our democracy. Whether petitioning the government, writing a traditional news article, or commenting on the quality of a business, the involvement of citizens in the exchange of ideas benefits our society. The Internet has created a more permanent and searchable record of public participation as citizen participation in democracy grows through self-publishing, citizen journalism, and other forms of public speech. Unfortunately, abuses of the legal system have also grown, including the filing of frivolous lawsuits aimed at silencing these citizens who are participating in the free exchange of ideas. These lawsuits are called strategic lawsuits against public participation.

C.S.H.B. 2973 seeks to encourage greater public participation of Texas citizens through safeguarding the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government by providing for an expedited motion to dismiss frivolous lawsuits aimed at retaliating against someone who exercises the person's right of association, free speech, or right of petition.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2973 amends the Civil Practice and Remedies Code to enact the Citizens Participation Act and to set out its purpose. The bill authorizes a party to file a motion to dismiss a legal action if the legal action is based on, relates to, or is in response to the party's exercise of the right of free speech, right to petition, or right of association. The bill requires the motion to dismiss such a legal action to be filed not later than the 60th day after the date of service of the legal action and authorizes the court to extend the time to file the motion on a showing of good cause.

C.S.H.B. 2973 provides, on the filing of the motion to dismiss, that all discovery in the legal action is suspended until the court has ruled on the motion, except that the court may allow, on a motion by a party or on the court's own motion and on a showing of good cause, specified and limited discovery relevant to the motion to dismiss, as provided by the bill in provisions relating to evidence. The bill requires a hearing on the motion to be set not later than the 30th day after the date of service of the motion unless the docket conditions of the court require a later hearing.

C.S.H.B. 2973 requires the court to rule on the motion to dismiss not later than the 30th day following the date of the hearing on the motion and to dismiss a legal action against the moving party if the moving party shows by a preponderance of the evidence that the legal action is based on, relates to, or is in response to the party's exercise of the right of free speech, the right to petition, or the right of association. The bill prohibits the court from dismissing the legal action if the party bringing the legal action establishes by clear and specific evidence a prima facie case

for each essential element of the claim in question.

C.S.H.B. 2973 requires the court, in determining whether the legal action should be dismissed, to consider the pleadings and supporting and opposing affidavits stating the facts on which the liability or defense is based. The bill requires the court, at the request of the party making a motion to dismiss, to issue findings not later than the 30th day after the date a request is made regarding whether the legal action was brought to deter or prevent the moving party from exercising constitutional rights and is brought for an improper purpose, including to harass or to cause unnecessary delay or to increase the cost of litigation.

C.S.H.B. 2973 provides that the motion to dismiss is considered to have been denied by operation of law and the moving party may appeal if the court does not rule on a motion to dismiss on or before the 30th day following the date of the hearing of the motion. The bill requires an appellate court to expedite an appeal or other writ, whether interlocutory or not, from a trial court order on a motion to dismiss a legal action or from a trial court's failure to rule on that motion on or before the 30th day following the date of the hearing of the motion. The bill requires an appeal or other writ to be filed on or before the 60th day after the date the trial court's order is signed or the time expires, as applicable. The bill requires the court, if the court orders dismissal of a legal action under the bill, to award to the moving party court costs, reasonable attorney's fees, other expenses incurred in defending against the legal action, and sanctions against the party who brought the legal action as the court determines sufficient to deter the party from bringing similar actions. The bill authorizes the court to award court costs and reasonable attorney's fees to the responding party if the court finds that the motion to dismiss is frivolous or solely intended to delay.

C.S.H.B. 2973 exempts from the its provisions an enforcement action that is brought in the name of this state or a political subdivision of this state by the attorney general, a district attorney, a criminal district attorney, or a county attorney; a legal action brought against a person primarily engaged in the business of selling or leasing goods or services, if the statement or conduct arises out of the sale or lease of goods, services, or an insurance product or a commercial transaction in which the intended audience is an actual or potential buyer or customer; a legal action seeking recovery for bodily injury, wrongful death, or survival or statements made regarding that legal action. The bill provides that its provisions do not abrogate or lessen any other defense, remedy, immunity, or privilege available under other constitutional, statutory, case, or common law or rule provisions and requires its provisions to be construed liberally to effectuate its purpose and intent fully.

C.S.H.B. 2973 defines "communication," "exercise of the right of association," "exercise of the right of free speech," "exercise of the right to petition," "governmental proceeding," "legal action," "matter of public concern," "official proceeding," and "public servant."

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2973 differs from the original by including in the definition of "exercise of the right to petition" a communication in or pertaining to an executive or other proceeding, whereas the original specifies only a communication pertaining to an executive proceeding. The substitute, in a provision specifying awards to a moving party if the court orders dismissal of an action, differs from the original by omitting a provision included in the original requiring sanctions against the attorney representing the party who brought the legal action.

C.S.H.B. 2973 differs from the original by exempting from the bill's provisions a legal action brought against a person primarily engaged in the business of selling or leasing goods or

services, if the statement or conduct arises out of the sale or lease of goods, services, or an insurance product or a commercial transaction in which the intended audience is an actual or potential buyer or customer, whereas the original exempts such a legal action if the statement or conduct from which the claim arises is a representation of fact made for the purpose of promoting, securing, or completing the sale or lease of, or a commercial transaction in, the person's goods or services, and the intended audience is an actual or potential buyer or customer. The substitute contains a provision not included in the original exempting from the bill's provisions a legal action seeking recovery for bodily injury, wrongful death, or survival or statements made regarding that legal action.