

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 suit to which this chapter applies means a suit 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 brings a suit to which this chapter applies 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, report, or other communication made to or kept by a governmental

1 agency or quasi-governmental entity.

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

4 (6) "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 (7) "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 (8) "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 (9) "Quasi-governmental entity" means a person who,

1 under law or under a formal or informal request by, agreement with,
2 delegation of authority by, or rule adopted by a governmental
3 agency:

4 (A) receives or reviews complaints for the
5 agency; or

6 (B) performs a function of the agency.

7 (10) "SLAPP" means a suit:

8 (A) filed against a complainant that:

9 (i) is filed by or on behalf of a person who
10 may be adversely affected by the filing of the complaint; and

11 (ii) alleges that the contents of or the
12 filing of the complaint constitutes a basis for relief, including a
13 claim alleging that the contents of the complaint constitute libel
14 or slander; or

15 (B) that seeks an order prohibited by Section
16 140.005.

17 Sec. 140.002. APPLICABILITY; SCOPE. (a) This chapter
18 applies only to a suit that is a SLAPP.

19 (b) Notwithstanding Subsection (a), this chapter does not
20 apply to a suit if:

21 (1) the complaint is confidential by other law and not
22 a public record available to a member of the public who is not
23 affected by the complaint and the complainant communicated the
24 contents of the complaint to a person other than to the governmental
25 agency or quasi-governmental entity that initially received or
26 reviewed the complaint;

27 (2) the complainant is an employee or former employee

1 of the person who is the subject of the complaint; or

2 (3) the complainant has been finally convicted of a
3 criminal offense under the law of this or another state or Title 18,
4 United States Code, or a successor statute, committed in connection
5 with the complaint, and the pleadings alleging a right to civil
6 recovery are limited to the basis of the record of the final
7 criminal conviction.

8 (c) This chapter does not create or authorize a cause of
9 action against a governmental agency, a quasi-governmental entity,
10 or an officer, agent, or employee of a governmental agency or
11 quasi-governmental entity acting in the course and scope of the
12 person's duties or employment. Notwithstanding Chapter 104, the
13 state is not liable for indemnification of a person for damages
14 arising under this chapter.

15 Sec. 140.003. VENUE. A suit governed by this chapter shall
16 be brought:

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

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

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

23 (A) is a natural person who is not a resident of
24 this state; or

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

27 Sec. 140.004. REMOVAL. Notwithstanding any other law, on

1 motion of the complainant, a suit to which this chapter applies that
2 is brought in a court other than a district court may be removed to a
3 district court in which venue is authorized under Section 140.003.

4 Sec. 140.005. CERTAIN ORDERS PROHIBITED. A court of this
5 state may not issue a temporary restraining order, temporary
6 injunction, permanent injunction, or other order prohibiting a
7 complainant from communicating with a governmental agency or
8 quasi-governmental entity concerning the subject matter of a
9 complaint or a suit to which this chapter applies.

10 Sec. 140.006. NO LIABILITY FOR GOOD FAITH COMPLAINT. (a) A
11 complainant who makes a complaint in good faith is not:

12 (1) liable for monetary damages arising from the
13 complaint; or

14 (2) subject to injunctive or declaratory relief with
15 respect to the complaint.

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

20 (1) a reasonable basis in fact existed for making the
21 complaint; and

22 (2) the agency or entity to which the complaint was
23 made had authority or jurisdiction to receive or review the
24 complaint.

25 [Sections 140.007-140.050 reserved for expansion]

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

2 FAITH OR BAD FAITH; CONSEQUENCES

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

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

14 Sec. 140.052. DISMISSAL; EXPEDITED HEARING TO DETERMINE BAD
15 FAITH CLAIM. (a) The court shall promptly dismiss a suit to which
16 this chapter applies if:

17 (1) the complainant demonstrates in accordance with
18 Section 140.006(b) that the complaint that is the subject of the
19 claim was made in good faith; or

20 (2) the pleadings fail to allege:

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

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

25 (b) On motion of the complainant, a court that dismisses a
26 suit under Subsection (a) shall promptly hold a hearing to
27 determine whether the suit was brought in bad faith.

1 (c) A complainant must file the motion for an expedited
2 hearing under Subsection (b) not later than the 31st day after the
3 date on which the order dismissing the suit is final. On request of
4 a party, the hearing shall be before a jury. The Texas Rules of
5 Civil Procedure apply to the selection of the jury, the court's
6 charge to the jury, and all other aspects of the proceedings.

7 (d) On motion of the complainant in a suit involving three
8 or more parties, the court shall sever the claims as necessary to
9 allow relief granted under Subsection (a) or Section 140.053 to
10 become immediately final and appealable.

11 Sec. 140.053. LIABILITY FOR BAD FAITH CLAIM; EXEMPLARY
12 DAMAGES AUTHORIZED. (a) If the trier of fact determines that a
13 suit to which this chapter applies was brought in bad faith,
14 judgment may be entered awarding the complainant:

15 (1) actual damages;

16 (2) attorney's fees and court costs under Section
17 140.055; and

18 (3) exemplary damages against the person who brought
19 the suit.

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

23 Sec. 140.054. TIME FOR FILING CERTAIN PLEADINGS AND
24 MOTIONS. On or before the 31st day after the date a suit is
25 dismissed under Section 140.052(a) or a judgment under this chapter
26 holding that a complaint was filed in good faith is final, the
27 complainant against whom the suit was filed may file additional

1 pleadings or motions with the court, regardless of whether the time
2 for filing the pleading or motion would be barred under Chapter 16
3 or any other statute of limitation or repose, to assert a claim
4 against the claimant who brought the suit that arises out of the
5 filing of the suit.

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 to which this chapter applies was
10 filed in good faith.

11 Sec. 140.056. PROFESSIONAL DISCIPLINE. (a) If judgment is
12 entered against an attorney under Section 140.053(b), the attorney
13 is subject to professional discipline for professional misconduct
14 in accordance with Subchapter E, Chapter 81, Government Code, and
15 Section 82.062, Government Code.

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

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

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

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

25 (3) the judgment.

26 Sec. 140.057. REFERRAL TO DISTRICT ATTORNEY OR FEDERAL
27 AUTHORITIES. (a) If the court or the trier of fact finds that a

1 person may have committed a criminal act in the course of the
2 proceedings in a suit to which this chapter applies, including a
3 criminal act related to an improper interference with or delay of
4 another government proceeding, or harassment of a witness in any
5 proceeding, the court shall submit a written report to the district
6 attorney or appropriate federal agency. This section does not
7 limit any other remedies or penalties available to the court.

8 (b) A report under this section must contain:

9 (1) the name of the person alleged to have committed
10 the criminal act;

11 (2) the jury verdict or findings of fact by the court;

12 (3) a copy of the judgment; and

13 (4) a citation to this chapter and statement that the
14 report is provided in accordance with this section.

15 SECTION 2. This Act applies only to a suit filed on or after
16 the effective date of this Act. A suit filed before the effective
17 date of this Act is governed by the law applicable to the suit
18 immediately before the effective date of this Act, and that law is
19 continued in effect for that purpose.

20 SECTION 3. This Act takes effect September 1, 2011.