SUBJECT: Dismissing SLAPP suits on free speech, petition, and assembly grounds

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 10 ayes — Jackson, Lewis, Bohac, Castro, S. Davis, Hartnett, Madden, Raymond, Scott, Thompson

0 nays

1 absent — Woolley

WITNESSES: For — Shane Fitzgerald and Laura Prather, Freedom of Information Foundation of Texas; Joe Ellis and Laura Prather, Texas Association of Broadcasters; Laura Prather, Better Business Bureau and Texas Daily Newspaper Association; Janet Ahmad, HomeOwners for Better Building; Robin Lent, Coalition of HOA Reform; Carla Main; Brenda Johnson; (*Registered, but did not testify:* Keith Elkins, Freedom of Information Foundation of Texas; Mike Hull, Texans for Lawsuit Reform; Frank Knaack, ACLU of Texas; Arif Panju, Institute for Justice; Michael Schneider, Texas Association of Broadcasters; Tom "Smitty" Smith, Public Citizen; Ed Sterling and Doug Toney, Texas Press Association; Doug Toney, Texas Daily Newspaper Association; David Weinberg, Texas League of Conservation Voters; Ware Wendell, Texas Watch; Andy Wilson, Public Citizen, Inc.; Monty Wynn, Texas Municipal League; Irene Adolph, Coalition of HOA Reform, hoadata.org; Lou Ann Anderson; Mary Lou Durham)

Against — None

On — Steve Harrison, Texas Trial Lawyers Association

DIGEST: CSHB 2973 would allow a party to file a motion to dismiss if a lawsuit were based on that party's exercise of the right of free speech, right to petition, or right of association. On the filing of a motion to dismiss, all discovery would be suspended until the court ruled on the motion. The court could allow specified and limited discovery on a motion by a party or on the court's own motion and on a showing of good cause.

A court would be required to grant the motion to dismiss if the moving party showed by a preponderance of the evidence that the lawsuit was based on, related to, or was in response to the party's exercise of the right of free speech, petition, or association. A court could not grant the motion to dismiss if the plaintiff established by clear and specific evidence a prima facie case for each essential element of the claim.

If the court granted the motion to dismiss, the court would be required to award to the moving party:

- court costs, reasonable attorney's fees, and other expenses incurred in defending the lawsuit; and
- sanctions against the plaintiff to deter similar actions.

If the court found the motion to dismiss was frivolous or solely intended to delay, the court could award court costs and reasonable attorney's fees to the responding party.

The motion to dismiss would have to be filed within 60 days after service of process. The deadline could be extended by the court on a showing of good cause. A hearing on a motion to dismiss would have to be set by 30 days after the date of service of the motion, unless docket conditions required a later hearing. The court would be required to rule on the motion to dismiss by 30 days after the hearing.

The bill would provide for expedited appeal of the motion to dismiss. An appeal would have to be filed within 60 days after the order was signed or the motion was denied by operation of law.

The bill would not apply to enforcement actions by the state or a political subdivision, a lawsuit against a person primarily engaged in selling or leasing goods or services when the intended audience was a customer, or a personal injury suit.

At the request of a party filing a motion to dismiss, the court would be required to issue findings regarding whether the lawsuit was brought to deter or prevent the moving party from exercising constitutional rights and was brought for an improper purpose, including to harass, cause unnecessary delay, or increase litigation costs.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011. The bill would apply only to a legal action filed on or after the effective date.

SUPPORTERS SAY:

CSHB 2973 would allow a person to file a motion to dismiss if a lawsuit was based on that person's exercise of the right of free speech, petition, or association. Citizen participation benefits society, whether it comes in the form of petitioning the government, writing a news article or blog post, or commenting on the quality of a business.

"SLAPP" suits, or strategic lawsuits against public participation, are frivolous lawsuits aimed at silencing people involved in these forms of citizen participation. In one case, a woman who complained to the Texas State Board of Medical Examiners about a doctor and later complained to a television station was sued by the doctor. The suit eventually was dismissed, but the television station was forced to pay $100,000 in legal expenses. SLAPP suits chill public debate because they cost money to defend, even if the person being sued was speaking the truth. These suits are particularly problematic for independent voices that are not part of a news or media company. SLAPP suits are becoming more common, in part because the Internet has created a searchable record of public participation.

Under current law, the victim of a SLAPP suit must rely on a motion for summary judgment. While summary judgment disposes of a controversy before a trial, both parties still must conduct expensive discovery. By allowing a motion to dismiss, CSHB 2973 would allow frivolous lawsuits to be dismissed at the outset of the proceeding, promoting the constitutional rights of citizens and helping to alleviate some of the burden on the court system.

Anti-SLAPP legislation similar to this bill has been passed by 27 states and the District of Columbia.

OPPONENTS SAY:

HB 2973, if interpreted broadly, could be used to intimidate legitimate plaintiffs. It could stifle suits brought legitimately under libel or slander laws because the plaintiff in such suits would have to overcome motions testing its pleadings.

The Senate companion bill contains language that would limit court costs, attorney fees, and other expenses "as justice and equity may require." This language should be added to the House bill to ensure a court could award attorney fees that were lower than what the attorney typically charges, if appropriate.

NOTES:

The companion bill, SB 1565 by Ellis, was reported favorably, as substituted, by the Senate State Affairs Committee on April 13.