

BILL ANALYSIS

Senate Research Center
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H.B. 2723
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Jurisprudence
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Engrossed

DIGEST AND PURPOSE

A person who provides information or testimony to governmental entities may be subject to various forms of harassment lawsuits. Currently, it is possible for a person to be found liable for slander or libel, even if the information given is accurate. Under current law, the only way to avoid liability in a harassment suit is a final verdict, which requires a person to incur court costs and other expenses. H.B. 2723 requires the court to make a summary judgment in favor of the witness if the witness brought a complaint to a governmental entity in good faith, excluding employee-employer matters. The bill provides for recovery by a defendant of specified costs, fees, and damages.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

H.B. 2723 amends the Civil Practice and Remedies Code to establish provisions for a civil action involving a person who makes a complaint with a governmental agency. The bill provides that these provisions apply only to a claim made against a complainant that is filed by or on behalf of a person who may be adversely affected by the filing of the complaint and that alleges that the contents of or the filing of the complaint constitutes a basis for relief, including a claim alleging that the contents of the complaint constitute libel or slander, or by or on behalf of a complainant alleging conduct giving rise to liability for harassing conduct. The bill does not apply to a claim if the complaint is confidential by other law and not a public record available to a member of the public who is not affected by the complaint and the complainant communicated the contents of the complaint to a person other than to the governmental agency or quasi-governmental entity that initially received or reviewed the complaint, or the complainant is an employee or former employee of the person who is the subject of the complaint. The bill provides provisions relating to civil actions involving persons making complaints with governmental agencies do not create or authorize a cause of action against a quasi-governmental entity, a governmental unit, or their officers, agents, or employees acting in the course and scope of their duties or employment. The bill requires a claim to be brought in a specified venue and county. The state is not liable for indemnification of a person for damages arising under these provisions (Sec. 138.002).

The bill establishes that a complainant who makes a complaint in good faith is not liable for monetary damages arising from the complaint or subject to injunctive or declaratory relief with respect to the complaint. The bill provides that there is a rebuttable presumption that a complaint is made in good faith. The bill sets forth the manner in which a complainant may establish the elements of good faith. The bill requires the burden of pleading to be on the claimant and provides that each fact asserted in the pleading must be verified by affidavit made on personal knowledge unless the truth of the fact appears of record. The bill requires a court, on motion by the complainant or on its own motion, to review the pleadings to determine compliance (Sec. 138.003).

The bill establishes circumstances in which a person is liable for damages to a complainant and is subject to injunctive or declaratory relief. If the trier of fact determines that a complainant has

demonstrated facts proving liability, the bill authorizes judgment to be entered awarding the complainant certain damages, costs, and fees (Sec. 138.004). If the trier of fact determines that a claim was brought in bad faith, the bill authorizes a judgment to be entered awarding the complainant certain damages, costs, and fees. The bill provides that a person against whom a judgment is entered and the person's attorney are jointly and severally liable for such damages (Sec. 138.005).

The bill requires the court to promptly grant summary judgment with respect to a claim if:

- the complainant demonstrates that a complaint was made in good faith; or
- the pleadings fail to allege a cause of action against the complainant for which relief may be granted or facts sufficient to rebut the presumption that the complaint was filed in good faith.

On motion of the complainant, the bill requires a court that grants summary judgment to promptly hold a hearing to determine whether the claim was brought in bad faith. The bill sets forth procedures for a complainant to file the motion for an expedited hearing, for the hearing itself, and for a motion involving three or more parties. The bill provides that a complainant is entitled to recover court costs and reasonable and necessary attorney's fees if a judgment is entered holding that a complaint made the basis of a suit was filed in good faith or a person is liable to the complainant for harassing conduct (Secs. 138.006 and 138.007).

If judgment is entered against an attorney the attorney, is subject to professional discipline for professional misconduct, in accordance with State Bar of Texas rules of attorney discipline, and to suspension or disbarment for dishonorable attorney conduct. The bill requires the court to promptly report such a judgment to an appropriate grievance committee and specifies what the report must contain (Sec. 138.008).

The bill prohibits a court of this state from issuing a temporary restraining order, temporary injunction, permanent injunction, or other order prohibiting a complainant from communicating with a governmental agency or quasi-governmental entity concerning the subject matter of a complaint or a claim governed by these provisions (Sec. 138.009).

Effective date: September 1, 2001.