

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 2973
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State Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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, involvement of citizens in the exchange of idea benefits our society.

Yet frivolous lawsuits aimed at silencing those involved in these activities are becoming more common, and are a threat to the growth of our democracy. The Internet age 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 speech. Unfortunately, abuses of the legal system, aimed at silencing these citizens, have also grown. These lawsuits are called Strategic Lawsuits Against Public Participation or "SLAAP" suits.

Twenty-seven states and the District of Columbia have passed similar acts, most commonly known as either "Anti-SLAPP" laws or "Citizen Participation Acts" that allow defendants in such cases to dismiss cases earlier than would otherwise be possible, thus limiting the costs and fees. The Texas Citizen Participation Act would allow defendants—who are sued as a result of exercising their right to free speech or their right to petition the government—to file a motion to dismiss the suit, at which point the plaintiff would be required to show by clear and specific evidence that he had a genuine case for each essential element of the claim. In addition, if the motion to dismiss is granted, the plaintiff who has wrongly brought the lawsuit may be required to pay attorney's fees of the defendant.

C.S.H.B. 2973 amends current law relating to encouraging public participation by citizens by protecting a person's right to petition, right of free speech, and right of association from meritless lawsuits arising from actions taken in furtherance of those rights.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Authorizes this Act to be cited as the Citizens Participation Act.

SECTION 2. Amends Subtitle B, Title 2, Civil Practice and Remedies Code, by adding Chapter 27, as follows:

CHAPTER 27. ACTIONS INVOLVING THE EXERCISE OF CERTAIN CONSTITUTIONAL RIGHTS

Sec. 27.001. DEFINITIONS. Defines, in this chapter, "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."

Sec. 27.002. PURPOSE. Provides that the purpose of this chapter is to encourage and safeguard the constitutional rights of persons to petition, speak freely, associate feely, and

otherwise participate in government to the maximum extent permitted by law and, at the same time, protect the rights of a person to file meritorious lawsuits for demonstrable injury.

Sec. 27.003. MOTION TO DISMISS. (a) Authorizes a party, if a 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, to file a motion to dismiss the legal action.

(b) Requires that a motion to dismiss a legal action under this section be filed not later than the 60th day after the date of service of the legal action. Authorizes the court to extend the time to file a motion under this section on a showing of good cause.

(c) Provides that except as provided by Section 27.006(b), on the filing of a motion under this section, all discovery in the legal action is suspended until the court has ruled on the motion to dismiss.

Sec. 27.004. HEARING. Requires that a hearing on a motion under Section 27.003 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.

Sec. 27.005. RULING. (a) Requires the court to rule on a motion under Section 27.003 not later than the 30th day following the date of the hearing on the motion.

(b) Requires a court, except as provided by Subsection (c), on the motion of a party under Section 27.003, 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:

(1) the right of free speech;

(2) the right to petition; or

(3) the right of association.

(c) Prohibits the court from dismissing a legal action under this section 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.

Sec. 27.006. EVIDENCE. (a) Requires the court, in determining whether a legal action should be dismissed under this chapter, to consider the pleadings and supporting and opposing affidavits stating the facts on which the liability or defense is based.

(b) Authorizes the court, on a motion by a party or on the court's own motion and on a showing of a good cause, to allow specified and limited discovery relevant to the motion.

Sec. 27.007. ADDITIONAL FINDINGS. (a) Requires the court, at the request of a party making a motion under Section 27.003, to issue findings 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.

(b) Requires the court to issue findings under Subsection (a) not later than the 30th day after the date a request under that subsection is made.

Sec. 27.008. APPEAL. (a) Provides that if a court does not rule on a motion to dismiss under Section 27.003 in the time prescribed by Section 27.005, the motion is considered to have been denied by operation of law and the moving party may appeal.

(b) 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 under Section 27.003 or from a trial court's failure to rule on that motion in the time prescribed by Section 27.005.

(c) Requires that an appeal or other writ under this section be filed on or before the 60th day after the date the trial court's order is signed or the time prescribed by Section 27.005 expires, as applicable.

Sec. 27.009. DAMAGES AND COSTS. (a) Requires the court, if the court orders dismissal of a legal action under this chapter, to award to the moving party:

(1) court costs, reasonable attorney's fees, and other expenses incurred in defending against the legal action as justice and equity may require; and

(2) sanctions against the party who brought the legal action as the court determines sufficient to deter the party who brought the legal action from bringing similar actions described in this chapter.

(b) Authorizes the court, if the court finds that a motion to dismiss filed under this chapter is frivolous or solely intended to delay, to award court costs and reasonable attorney's fees to the responding party.

Sec. 27.010. EXEMPTIONS. (a) Provides that this chapter does not apply to 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.

(b) Provides that this chapter does not apply to 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.

(c) Provides that this chapter does not apply to a legal action seeking recovery for bodily injury, wrongful death, or survival or to statements made regarding that legal action.

Sec. 27.011. CONSTRUCTION. (a) Provides that this chapter does not abrogate or lessen any other defense, remedy, immunity, or privilege available under other constitutional, statutory, case, or common law or rule provisions.

(b) Requires that this chapter be construed liberally to effectuate its purpose and intent fully.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: upon passage or September 1, 2011.