

HOUSE BILL REPORT

SHB 2699

As Amended by the Senate

Title: An act relating to communications with government branches or agencies and self-regulatory organizations.

Brief Description: Providing immunity for communications with government agencies and self-regulatory organizations.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Lantz, Ahern, Benson, Crouse, Morell, Miloscia, Schindler, Dunshee and Esser).

Brief History:

Committee Activity:

Judiciary: 2/7/02 [DPS].

Floor Activity:

Passed House: 2/18/02, 97-0.

Senate Amended.

Passed Senate: 3/5/02, 47-0.

Brief Summary of Substitute Bill

- Amends the law that gives immunity to persons who make communications to a governmental agency to: include branches of the government, allow recovery of reasonable expenses, and specify that the person who brings the action has the burden of proving that the communication was not made in good faith.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Lantz, Chair; Hurst, Vice Chair; Carrell, Ranking Minority Member; Boldt, Dickerson, Esser, Jarrett, Lovick and Lysen.

Staff: Edie Adams (786-7180).

Background:

In 1989 the Legislature passed a law to help protect people who make complaints to government from civil suit regarding those complaints. The law was a request from the

Governor and Attorney General to address concerns that arose from a situation where a citizen reported a tax violation to a state agency, and the person who was in violation of the tax law sued the citizen for defamation. This type of suit is referred to as a SLAPP suit. SLAPP stands for "Strategic Lawsuit Against Public Participation." SLAPP suits are instituted as a means of retaliation or intimidation against citizens or activists for speaking out about a matter of public concern. Typically, a person who institutes a SLAPP suit claims damages for defamation or interference with a business relationship.

The anti-SLAPP law passed in 1989 provides that a person who in good faith communicates a complaint or information to any federal, state, or local governmental agency is immune from civil liability for any claim relating to that communication. An individual who prevails with the immunity defense is entitled to recover costs and reasonable attorneys' fees incurred in establishing the defense. This provision is also applicable to communications made to a self-regulatory organization that regulates persons in the securities or futures business and that has been delegated authority by a government agency and is subject to oversight by that agency.

Under appellate court interpretation of this statute in cases involving defamation actions, the court has held that the plaintiff has the burden of showing that the communication was not made in good faith, by showing that the communication was made with knowledge that it was false or with reckless disregard for its truth. A recent appellate court case found that the statute's application to communications made to a government "agency" includes communications made to the courts.

Summary of Substitute Bill:

The anti-SLAPP law is amended to cover communications to a branch of the federal, state, or local government and to allow the recovery of reasonable expenses, in addition to costs, incurred in establishing the defense. In addition, the law is amended to specify that the person who brings the cause of action based on the communication has the burden to prove that the communication was not made in good faith by showing that it was made with knowledge of its falsity or with reckless disregard as to its truth.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment returns the bill to its original House version with the addition of a provision allowing statutory damages and the addition of an intent section. The Senate amendment makes the following changes to the bill as it passed the House: (1) removes the requirement that the communication be made in good faith and the provision that states that the party who brings the action has the burden of proving a lack of good faith; (2) replaces the ability of a party who prevails on the defense to recover "costs and other reasonable expenses" with the ability to receive "expenses;" (3) provides that a party

who prevails on the defense shall receive statutory damages of \$10,000 unless the court finds the information was communicated in bad faith; and (4) adds an intent section stating that the bill brings the anti-SLAPP law into line with United States Supreme Court decisions that protect the right to petition the government, regardless of content or motive, as long as the person seeks to have some effect on government decision-making.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: SLAPPs are an abuse of the legal system involving civil complaints against citizens who speak out against special interests of public concern. They are intended to stifle free speech and the right to petition the government. They are usually filed by deep pocket plaintiffs against average citizens of modest means. Even if the suits are eventually dismissed, the time, cost and emotional toll of years of litigation makes people give up. Public officials can be sued for comments made in a public forum relating to their official duties. This discourages people from speaking out, but also discourages people from running for public office. This bill improves the existing statute which is not working as intended. The problem with the good faith standard in the law is that it creates a question of fact and a judge won't dismiss early if there is a question of fact. People should be able to petition their government, regardless of good or bad intentions, as long as they are seeking government action.

Testimony Against: None.

Testified: Representative Lantz, prime sponsor; Phil Watkins, Taxpayers for Accountable Government; Cherie Rodgers, Spokane City Council; Steve Corker, Spokane City Council; and Shawn Newman, attorney.