

FINAL BILL REPORT

SHB 2699

C 232 L 02

Synopsis as Enacted

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).

House Committee on Judiciary
Senate Committee on Judiciary

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:

A legislative finding and intent section is provided stating that: SLAPP suits are intended to intimidate the exercise of First Amendment rights and rights granted under Article I, Section 5 of the Washington Constitution; the anti-SLAPP law has failed to set forth clear rules for early dismissal of these kinds of suits; and United States Supreme Court precedent has established that as long as government petitioning is aimed at having some effect on government decision-making, the petitioning is protected, regardless of content or motive, and the case should be dismissed.

The anti-SLAPP law is amended to remove the requirements that the communication be made in good faith and to cover communications to a branch of the federal, state, or local government. In addition, the law is amended to allow a person who prevails on the defense to recover expenses,– as opposed to costs,– incurred in establishing the defense and statutory damages of \$10,000. The court may deny statutory damages if it finds the communication was not made in good faith.

Votes on Final Passage:

House 97 0
Senate 47 0 (Senate amended)
House 94 0 (House concurred)

Effective: June 13, 2002