

HOUSE BILL REPORT

SHB 2699

As Passed Legislature

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.

House Concurred.

Passed House: 3/11/02, 94-0.

Passed Legislature.

Brief Summary of Substitute Bill

- Amends the law that gives immunity to persons who make communications to a governmental agency to: remove the requirement that the communication be made in good faith; include communications to branches of the government; and allow recovery of expenses and statutory damages of \$10,000.

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:

A legislative finding and intent section is provided that states 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.

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.