
Judiciary Committee

SSB 6395

Title: An act relating to lawsuits aimed at chilling the valid exercise of the constitutional rights of speech and petition.

Brief Description: Addressing lawsuits aimed at chilling the valid exercise of the constitutional rights of speech and petition.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Kline, Kauffman and Kohl-Welles).

<p style="text-align: center;">Brief Summary of Substitute Bill</p> <ul style="list-style-type: none">• Allows a party to bring a special motion to strike any claim that is based on an action involving public participation and petition.• Provides that a party who prevails on a special motion to strike will be awarded costs of litigation, reasonable attorneys' fees, and \$10,000.

Hearing Date: 2/18/10

Staff: Brian Kilgore (786-7119) and Edie Adams (786-7180).

Background:

The First Amendment to the United States Constitutional provides the right "to petition the government for a redress of grievances." The right to petition covers any peaceful, legal attempt to promote or discourage governmental action at any level and in any branch. All means of expressing views to government are protected, including: filing complaints, reporting violations of law, testifying, writing letters, lobbying, circulating petitions, protesting, and boycotting.

Strategic lawsuits against public participation (SLAPPs) are initiated against people who speak out about a matter of public concern. Typically, the party who institutes a SLAPP claims damages for defamation, or interference with a business relationship, resulting from a communication made by a person or group to the government.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Supreme Court has held that a dismissal of a SLAPP should be granted in all cases except where the target's activities are not genuinely aimed at procuring favorable government action. However, a SLAPP can result in years of litigation and substantial expense before it is dismissed.

Washington law addresses the use of SLAPPs by creating immunity from civil liability for people who communicate a complaint or other information to an agency of the federal, state, or local government, or to a self-regulatory organization that has been delegated authority by a government agency. The anti-SLAPP statute entitles a person who prevails against a SLAPP to expenses, reasonable attorney's fees, and statutory damages of \$10,000. Successfully dismissing a suit under the anti-SLAPP statute can take a year or longer. If the trial court decision is appealed, receiving final judgment can take two or three years.

Summary of Bill:

An "action involving public participation and petition" is defined as including any oral statement made or written statement submitted:

- to a legislative, executive, judicial, or other governmental proceeding authorized by law;
- in connection with an issue under consideration by a legislative, executive, judicial, or other governmental proceeding authorized by law;
- that is reasonably likely to encourage or enlist public participation in an effort to effect the consideration of an issue by a legislative, executive, judicial, or other proceeding authorized by law; or
- in a place open to the public or a public forum in connection with an issue of public concern.

An "action involving public participation and petition" also includes any other lawful action in furtherance of the exercise of the constitutional rights of free speech or petition.

Within 60 days of service of a complaint, or as a court determines, a party may bring a special motion to strike any claim that is based on an action involving public participation and petition. The court is directed to hold a hearing on the special motion with all due speed and to render its decision no later than seven days after the hearing is held. The moving party has the initial burden of showing by a preponderance of the evidence that the claim is based on an action involving public participation and petition. If the moving party meets this burden, the burden shifts to the responding party to establish by clear and convincing evidence a probability of prevailing on the claim.

A moving party who prevails, in whole or in part, on a special motion to strike any claim that is based on an action involving public participation and petition will be awarded costs of litigation, reasonable attorneys' fees, and \$10,000. The court may award additional relief such as sanctions upon the responding party and its attorneys. If the court finds that the special motion to strike a claim is frivolous or was intended to cause unnecessary delay, it must award costs of litigation, reasonable attorneys' fees, and an amount of \$10,000 to the responding party.

Every party has a right of expedited appeal from a trial court order on the special motion, or from a trial court's failure to rule on the motion in a timely fashion.

The act shall be construed liberally to effectuate its general purpose of protecting participants in public controversies from abusive use of the courts.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.