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**SUBSTITUTE SENATE BILL 6395**

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**State of Washington**

**61st Legislature**

**2010 Regular Session**

**By** Senate Judiciary (originally sponsored by Senators Kline, Kauffman, and Kohl-Welles)

READ FIRST TIME 01/25/10.

1       AN ACT Relating to lawsuits aimed at chilling the valid exercise of  
2 the constitutional rights of speech and petition; adding a new section  
3 to chapter 4.24 RCW; creating new sections; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5       NEW SECTION.   **Sec. 1.** (1) The legislature finds and declares that:

6       (a) It is concerned about lawsuits brought primarily to chill the  
7 valid exercise of the constitutional rights of freedom of speech and  
8 petition for the redress of grievances;

9       (b) Such lawsuits, called "Strategic Lawsuits Against Public  
10 Participation" or "SLAPPs," are typically dismissed as groundless or  
11 unconstitutional, but often not before the defendants are put to great  
12 expense, harassment, and interruption of their productive activities;

13       (c) The costs associated with defending such suits can deter  
14 individuals and entities from fully exercising their constitutional  
15 rights to petition the government and to speak out on public issues;

16       (d) It is in the public interest for citizens to participate in  
17 matters of public concern and provide information to public entities  
18 and other citizens on public issues that affect them without fear of  
19 reprisal through abuse of the judicial process; and

1 (e) An expedited judicial review would avoid the potential for  
2 abuse in these cases.

3 (2) The purposes of this act are to:

4 (a) Strike a balance between the rights of persons to file lawsuits  
5 and to trial by jury and the rights of persons to participate in  
6 matters of public concern;

7 (b) Establish an efficient, uniform, and comprehensive method for  
8 speedy adjudication of strategic lawsuits against public participation;  
9 and

10 (c) Provide for attorneys' fees, costs, and additional relief where  
11 appropriate.

12 NEW SECTION. **Sec. 2.** A new section is added to chapter 4.24 RCW  
13 to read as follows:

14 (1) As used in this section:

15 (a) "Claim" includes any lawsuit, cause of action, claim, cross-  
16 claim, counterclaim, or other judicial pleading or filing requesting  
17 relief;

18 (b) "Government" includes a branch, department, agency,  
19 instrumentality, official, employee, agent, or other person acting  
20 under color of law of the United States, a state, or subdivision of a  
21 state or other public authority;

22 (c) "Moving party" means a person on whose behalf the motion  
23 described in subsection (4) of this section is filed seeking dismissal  
24 of a claim;

25 (d) "Other governmental proceeding authorized by law" means a  
26 proceeding conducted by any board, commission, agency, or other entity  
27 created by state, county, or local statute or rule, including any self-  
28 regulatory organization that regulates persons involved in the  
29 securities or futures business and that has been delegated authority by  
30 a federal, state, or local government agency and is subject to  
31 oversight by the delegating agency.

32 (e) "Person" means an individual, corporation, business trust,  
33 estate, trust, partnership, limited liability company, association,  
34 joint venture, or any other legal or commercial entity;

35 (f) "Responding party" means a person against whom the motion  
36 described in subsection (4) of this section is filed.

1 (2) This section applies to any claim, however characterized, that  
2 is based on an action involving public participation and petition. As  
3 used in this section, an "action involving public participation and  
4 petition" includes:

5 (a) Any oral statement made, or written statement or other document  
6 submitted, in a legislative, executive, or judicial proceeding or other  
7 governmental proceeding authorized by law;

8 (b) Any oral statement made, or written statement or other document  
9 submitted, in connection with an issue under consideration or review by  
10 a legislative, executive, or judicial proceeding or other governmental  
11 proceeding authorized by law;

12 (c) Any oral statement made, or written statement or other document  
13 submitted, that is reasonably likely to encourage or to enlist public  
14 participation in an effort to effect consideration or review of an  
15 issue in a legislative, executive, or judicial proceeding or other  
16 governmental proceeding authorized by law;

17 (d) Any oral statement made, or written statement or other document  
18 submitted, in a place open to the public or a public forum in  
19 connection with an issue of public concern; or

20 (e) Any other lawful conduct in furtherance of the exercise of the  
21 constitutional right of free speech in connection with an issue of  
22 public concern, or in furtherance of the exercise of the constitutional  
23 right of petition.

24 (3) This section does not apply to any action brought by the  
25 attorney general, prosecuting attorney, or city attorney, acting as a  
26 public prosecutor, to enforce laws aimed at public protection.

27 (4)(a) A party may bring a special motion to strike any claim that  
28 is based on an action involving public participation and petition, as  
29 defined in subsection (2) of this section.

30 (b) A moving party bringing a special motion to strike a claim  
31 under this subsection has the initial burden of showing by a  
32 preponderance of the evidence that the claim is based on an action  
33 involving public participation and petition. If the moving party meets  
34 this burden, the burden shifts to the responding party to establish by  
35 clear and convincing evidence a probability of prevailing on the claim.  
36 If the responding party meets this burden, the court shall deny the  
37 motion.

1 (c) In making a determination under (b) of this subsection, the  
2 court shall consider pleadings and supporting and opposing affidavits  
3 stating the facts upon which the liability or defense is based.

4 (d) If the court determines that the responding party has  
5 established a probability of prevailing on the claim:

6 (i) The fact that the determination has been made and the substance  
7 of the determination may not be admitted into evidence at any later  
8 stage of the case; and

9 (ii) The determination does not affect the burden of proof or  
10 standard of proof that is applied in the underlying proceeding.

11 (e) The attorney general's office or any government body to which  
12 the moving party's acts were directed may intervene to defend or  
13 otherwise support the moving party.

14 (5)(a) The special motion to strike may be filed within sixty days  
15 of the service of the most recent complaint or, in the court's  
16 discretion, at any later time upon terms it deems proper. A hearing  
17 shall be held on the motion not later than thirty days after the  
18 service of the motion unless the docket conditions of the court require  
19 a later hearing. Notwithstanding this subsection, the court is  
20 directed to hold a hearing with all due speed and such hearings should  
21 receive priority.

22 (b) The court shall render its decision as soon as possible but no  
23 later than seven days after the hearing is held.

24 (c) All discovery and any pending hearings or motions in the action  
25 shall be stayed upon the filing of a special motion to strike under  
26 subsection (4) of this section. The stay of discovery shall remain in  
27 effect until the entry of the order ruling on the motion.  
28 Notwithstanding the stay imposed by this subsection, the court, on  
29 motion and for good cause shown, may order that specified discovery or  
30 other hearings or motions be conducted.

31 (d) Every party has a right of expedited appeal from a trial court  
32 order on the special motion or from a trial court's failure to rule on  
33 the motion in a timely fashion.

34 (6)(a) The court shall award to a moving party who prevails, in  
35 part or in whole, on a special motion to strike made under subsection  
36 (4) of this section, without regard to any limits under state law:

37 (i) Costs of litigation and any reasonable attorneys' fees incurred  
38 in connection with each motion on which the moving party prevailed;

1 (ii) An amount of ten thousand dollars, not including the costs of  
2 litigation and attorney fees; and

3 (iii) Such additional relief, including sanctions upon the  
4 responding party and its attorneys or law firms, as the court  
5 determines to be necessary to deter repetition of the conduct and  
6 comparable conduct by others similarly situated.

7 (b) If the court finds that the special motion to strike is  
8 frivolous or is solely intended to cause unnecessary delay, the court  
9 shall award to a responding party who prevails, in part or in whole,  
10 without regard to any limits under state law:

11 (i) Costs of litigation and any reasonable attorneys' fees incurred  
12 in connection with each motion on which the responding party prevailed;

13 (ii) An amount of ten thousand dollars, not including the costs of  
14 litigation and attorneys' fees; and

15 (iii) Such additional relief, including sanctions upon the moving  
16 party and its attorneys or law firms, as the court determines to be  
17 necessary to deter repetition of the conduct and comparable conduct by  
18 others similarly situated.

19 (7) Nothing in this section limits or precludes any rights the  
20 moving party may have under any other constitutional, statutory, case  
21 or common law, or rule provisions.

22 NEW SECTION. **Sec. 3.** This act shall be applied and construed  
23 liberally to effectuate its general purpose of protecting participants  
24 in public controversies from an abusive use of the courts.

25 NEW SECTION. **Sec. 4.** This act may be cited as the Washington Act  
26 Limiting Strategic Lawsuits Against Public Participation.

27 NEW SECTION. **Sec. 5.** If any provision of this act or its  
28 application to any person or circumstance is held invalid, the  
29 remainder of the act or the application of the provision to other  
30 persons or circumstances is not affected.

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