
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: S-3276.1/15

ATTY/TYPIST: AI:lcl

BRIEF DESCRIPTION: Concerning lawsuits aimed at chilling the valid exercise of the constitutional rights of speech and petition.

1 AN ACT Relating to lawsuits aimed at chilling the valid exercise
2 of the constitutional rights of speech and petition; and reenacting
3 and amending RCW 4.24.525.

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

5 **Sec. 1.** RCW 4.24.525 and 2010 c 118 s 2 are each reenacted and
6 amended to read as follows:

7 (1) As used in this section:

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

11 (b) "Government" includes a branch, department, agency,
12 instrumentality, official, employee, agent, or other person acting
13 under color of law of the United States, a state, or subdivision of a
14 state or other public authority;

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

18 (d) "Other governmental proceeding authorized by law" means a
19 proceeding conducted by any board, commission, agency, or other
20 entity created by state, county, or local statute or rule, including
21 any self-regulatory organization that regulates persons involved in

1 the securities or futures business and that has been delegated
2 authority by a federal, state, or local government agency and is
3 subject to oversight by the delegating agency.

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

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

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

13 (a) Any oral statement made, or written statement or other
14 document submitted, in a legislative, executive, or judicial
15 proceeding or other governmental proceeding authorized by law;

16 (b) Any oral statement made, or written statement or other
17 document submitted, in connection with an issue under consideration
18 or review by a legislative, executive, or judicial proceeding or
19 other governmental proceeding authorized by law;

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

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

28 (e) Any other lawful conduct in furtherance of the exercise of
29 the constitutional right of free speech in connection with an issue
30 of public concern, or in furtherance of the exercise of the
31 constitutional right of petition.

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

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

38 (b) A moving party bringing a special motion to strike a claim
39 under this subsection has the initial burden of showing by a
40 preponderance of the evidence that the claim is based on an action

1 involving public participation and petition. If the moving party
2 meets this burden, the ~~((burden shifts to the responding party to
3 establish by clear and convincing evidence a probability of
4 prevailing on the claim. If the responding party meets this burden,
5 the court shall deny the motion))~~ court shall render judgment if
6 there is no genuine issue as to any material fact and that the moving
7 party is entitled to judgment as a matter of law.

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

11 ~~((If the court determines that the responding party has
12 established a probability of prevailing on the claim:~~

13 ~~(i) The fact that the determination has been made and the
14 substance of the determination may not be admitted into evidence at
15 any later stage of the case; and~~

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

18 ~~(e))~~ The attorney general's office or any government body to
19 which the moving party's acts were directed may intervene to defend
20 or otherwise support the moving party.

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

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

31 (c) All discovery and any pending hearings or motions in the
32 action shall be stayed upon the filing of a special motion to strike
33 under subsection (4) of this section. The stay of discovery shall
34 remain in effect until the entry of the order ruling on the motion.
35 Notwithstanding the stay imposed by this subsection, the court, on
36 motion and for good cause shown, may order that specified discovery
37 or other hearings or motions be conducted.

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

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

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

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

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

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

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

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

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

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

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