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LIMIT STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION

House Bill 4709 (Substitute H-1)
Sponsor: Rep. Liz Brater
Committee: Consumer Protection

Complete to 6-1-97

A SUMMARY OF HOUSE BILL 4709 (SUBSTITUTE H-1)

House Bill 4709 would amend the Revised Judicature Act of 1961 to grant immunity from certain lawsuits for damages alleged to have resulted from a person's communication with a governmental unit or public official.

Specifically, a person would be immune from lawsuits for damages that were alleged to have occurred as the result of that person's communications with a governmental unit or a public official in an attempt to procure any governmental or electoral action, result, or outcome. Such protected communications would include seeking relief, influencing action, informing, communicating, and otherwise participating in the processes of government in furtherance of the constitutional right to petition. Under the bill, in any lawsuit brought against a person for making such communications, the court would be required to grant the person's motion to dismiss the case. However, the court could reject a person's motion for dismissal if the party that brought the lawsuit (the plaintiff) could prove, by clear and convincing evidence, that the person being sued was not entitled to immunity, or that the communication had been made with knowledge of its falsity or with reckless disregard as to whether it was false, provided that the truth or falsity of the communication were material to the cause of action. In addition, both the attorney general and the governmental unit that the person had been communicating with could intervene to defend or otherwise support the person being sued.

During proceedings on a motion for dismissal under the bill, the court would be required to suspend all discovery proceedings in the underlying action until the court had ruled on the motion for dismissal. A person who won a motion to dismiss under the bill's provisions would be awarded costs, including reasonable attorney and expert witness fees incurred as a result of bringing the motion, as well as any additional sanctions that the court determined were sufficient to deter the plaintiff and its attorney or law firm from "filing a claim for damages alleged to have resulted from a communication [granted immunity under the bill]." In addition, that person could also file a claim or bring a lawsuit against the plaintiff to recover any of the following: actual damages, compensatory damages, and/or exemplary damages, and costs and attorney fees. The person's right to bring such an action could only be waived specifically, and would not be waived as part of a general waiver of the right to bring a claim. [Note: It is not clear whether an award stemming from this separate cause of action would be intended to cover the fees and damages that arose from preparing the defense of the lawsuit and other related costs or whether the bill would allow for a duplication of recovery for those costs and fees that would have already been awarded for having brought a successful motion for dismissal. The bill does not specifically prohibit such a duplication of recovery.]

House Bill 4709 (6-1-97)

The bill contains several definitions. "Communication" would be defined to include a statement, claim, allegation in a proceeding, decision, protest, writing, argument, contention, or other expression. "Governmental unit" would mean the state, a municipality, a political subdivision of the state, the federal government, or a public authority, board, or commission. "Public official" would mean a person who was elected or appointed to an office established under the state constitution; a public office of a city, village, township, or county; or a department, board, agency, institution, commission, authority, division, council, college, university, school district, intermediate school district, special district, or other public entity of this state or a city, village, township, or county. "Person" would mean an individual, corporation, partnership, limited liability company, association, organization, two or more persons having a joint or common interest, or other legal entity.

MCL 600.2964

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