

House Bill No. 135

An act relating to government; creating the “Citizen Participation in Government Act”; creating s. 768.29, F.S.; providing legislative intent; defining terms; prohibiting SLAPP lawsuits by governmental entities because persons or entities exercise certain constitutional rights; providing procedures for expediting resolution of motions regarding SLAPP suits; authorizing court to award actual damages, including costs and attorney’s fees; requiring reporting of SLAPP suits to Attorney General and reporting of violations to certain state officers; providing an effective date.

WHEREAS, the framers of our constitutions, recognizing citizen participation in government as an inalienable right essential to the survival of democracy, secured its protection through the right to petition the government for redress of grievances in the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution, and

WHEREAS, the communications, information, opinions, reports, testimony, claims, and arguments provided by citizens to their government are essential to wise government decisions and public policy in protecting the public health, safety, and welfare, in providing effective law enforcement, and in ensuring the efficient operation of government programs, and are essential to the credibility and trust afforded government and the preservation of our republican form of government through representative democracy, and

WHEREAS, civil lawsuits and counterclaims, often involving millions of dollars, have been and are being filed against countless citizens, businesses, and organizations because of their valid exercise of their right to petition, including seeking relief, influencing action, informing, communicating, and otherwise participating with government bodies, officials, or employees or the electorate, and

WHEREAS, such lawsuits, called “Strategic Lawsuits Against Public Participation” or “SLAPPs,” are typically dismissed as unconstitutional, but often not before the defendants are put to great expense, harassment, and interruption of their duties, and

WHEREAS, the number of such lawsuits has increased significantly over the past 30 years, and

WHEREAS, these lawsuits are an abuse of the judicial process and are used to censor, intimidate, or punish citizens, businesses, and organizations for involving themselves in public affairs, and

WHEREAS, controlling these lawsuits will make a major contribution to lawsuit reform, and

WHEREAS, the threat of financial liability, litigation costs, destruction of one’s business, loss of one’s home, and other personal losses from groundless

lawsuits seriously affects government, commerce, and individual rights by significantly diminishing public participation in government, in public discourse, and in voluntary public service, and

WHEREAS, while courts have recognized the harm from such lawsuits and have discouraged them, protection of these fundamental rights has been inadequate, and

WHEREAS, while some citizen communications to government inevitably will be false or unsound or made out of self-interest or in bad faith, it is essential in our democracy that the constitutional rights of citizens to participate fully in the process of government be uniformly, consistently, and comprehensively protected and encouraged, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 768.29, Florida Statutes, is created to read:

768.29 Strategic Lawsuits Against Public Participation (SLAPP) suits by governmental entities prohibited.—

(1) This section may be cited as the “Citizen Participation in Government Act.”

(2) It is the intent of the Legislature to protect the right of Florida’s citizens to exercise their rights to peacefully assemble, instruct their representatives, and petition for redress of grievances before the various governmental entities of this state as protected by the First Amendment to the United States Constitution and Art. I, Section 5 of the State Constitution. The Legislature recognizes that “Strategic Lawsuits Against Public Participation” or “SLAPP” suits, as they are typically called, have increased over the last 30 years and are mostly filed by private industry and individuals. However, it is the public policy of this state that government entities not engage in SLAPP suits because such actions are inconsistent with the right of individuals to participate in the state’s institutions of government. Therefore, the Legislature finds and declares that prohibiting such lawsuits by governmental entities will preserve this fundamental state policy, preserve the constitutional rights of Florida citizens, and assure the continuation of representative government in this state. It is the intent of the Legislature that such lawsuits be expeditiously disposed of by the courts.

(3) As used in this section, “governmental entity” or “government entity” means the state, including the executive, legislative, and the judicial branches of government and the independent establishments of the state, counties, municipalities, corporations primarily acting as instrumentalities of the state, counties, or municipalities, districts, authorities, boards, commissions, or any agencies thereof.

(4) No governmental entity in this state shall file or cause to be filed, through its employees or agents, any lawsuit, cause of action, claim, cross-claim, or counterclaim against a person or entity without merit and solely because such person or entity has exercised the right to peacefully assemble, the right to instruct representatives, and the right to petition for redress of

grievances before the various governmental entities of this state, as protected by the First Amendment to the United States Constitution and Art. I, section 5 of the State Constitution.

(5) A person or entity sued by a governmental entity in violation of this section has a right to an expeditious resolution of a claim that the suit is in violation of this section. A person or entity may petition the court for an order dismissing the action or granting final judgment in favor of that person or entity. The petitioner may file a motion for summary judgment, together with supplemental affidavits, seeking a determination that the governmental entity's lawsuit has been brought in violation of this section. The governmental entity shall thereafter file its response and any supplemental affidavits. As soon as practicable, the court shall set a hearing on the petitioner's motion, which shall be held at the earliest possible time after the filing of the governmental entity's response. The court may award, subject to the limitations in s. 768.28, the party sued by a governmental entity actual damages arising from the governmental entity's violation of this act. The court shall award the prevailing party reasonable attorney's fees and costs incurred in connection with a claim that an action was filed in violation of this section.

(6) In any case filed by a governmental entity which is found by a court to be in violation of this section, the governmental entity shall report such finding and provide a copy of the court's order to the Attorney General no later than 30 days after such order is final. The Attorney General shall report any violation of this section by a governmental entity to the Cabinet, and the President of the Senate, and the Speaker of the House of Representatives. A copy of such report shall be provided to the affected governmental entity.

Section 2. This act shall take effect upon becoming a law.

Approved by the Governor June 2, 2000.

Filed in Office Secretary of State June 2, 2000.