

SECOND REGULAR SESSION

# HOUSE BILL NO. 2634

## 101ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE LOVASCO.

5496H.01I

DANA RADEMAN MILLER, Chief Clerk

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### AN ACT

To repeal section 537.528, RSMo, and to enact in lieu thereof four new sections relating to strategic lawsuits against public participation.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 537.528, RSMo, is repealed and four new sections enacted in lieu thereof, to be known as sections 537.530, 537.531, 537.532, and 537.533, to read as follows:

**537.530. For purposes of sections 537.530 to 537.533, the term "SLAPP" means strategic lawsuit against public participation.**

**537.531. 1. All laws in this state shall be construed to afford qualified immunity from suit and liability for any defendant or counterdefendant in any action that impacts the defendant's or counterdefendant's First Amendment rights.**

**2. Immunity may be invoked by a defendant or counterdefendant at any time, but immunity may be waived if the defendant or counterdefendant substantially litigates the case beyond a jurisdictional challenge.**

**3. Immunity may be invoked by making a showing that a claim or counterclaim is based upon the defendant's or counterdefendant's use of the rights afforded under the First Amendment of the Constitution of the United States or the free speech provision under Article I, Section 8 of the Constitution of Missouri.**

**4. If the claim or counterclaim is also based on acts not in furtherance of such rights, immunity may be invoked so long as a claim or counterclaim is based upon at least one act in furtherance of such rights.**

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14           **5. Immunity may only be overcome by a showing that the claim or counterclaim**  
15 **is of sufficient merit and that the plaintiff or counterplaintiff can show, with prima facie**  
16 **evidence, a probability of prevailing on the claim or counterclaim.**

17           **6. Any denial of a motion invoking immunity under this section shall be**  
18 **appealable on an interlocutory basis.**

19           **7. If a defendant or counterdefendant successfully invokes immunity, the**  
20 **defendant or counterdefendant shall be entitled to all actual costs, disbursements, and**  
21 **reasonable attorney's fees expended in the defense of the case, as well as all actual costs,**  
22 **disbursements, and reasonable attorney's fees expended in any successful appeal.**

23           **8. If a defendant or counterdefendant successfully disposes of all claims or**  
24 **counterclaims by a party brought against it under this section, the defendant or**  
25 **counterdefendant may recover all actual costs, disbursements, and reasonable**  
26 **attorney's fees incurred in defending the claims or counterclaims, regardless of**  
27 **whether such costs, disbursements, or attorney's fees are related to a motion under this**  
28 **section. If fewer than all claims or counterclaims are disposed of under this section, the**  
29 **defendant or counterdefendant may recover only those costs, disbursements, and**  
30 **attorney's fees incurred in connection with a motion under this section.**

**537.532. 1. If an action is brought against a person in violation of substantive**  
2 **immunity from SLAPP litigation, the person against whom the action is brought may**  
3 **bring a special motion to dismiss.**

4           **2. A special motion to dismiss shall be filed within sixty days after service of the**  
5 **complaint or, in the court's discretion, at any later time upon terms the court deems**  
6 **proper.**

7           **3. If a special motion to dismiss is filed, the court shall:**

8           **(1) Determine whether the moving party has established by a preponderance of**  
9 **the evidence that the claim fits within the substantive immunity protections;**

10          **(2) If the court determines that the moving party has met the burden under**  
11 **subdivision (1) of this subsection, determine whether the nonmoving party has**  
12 **demonstrated with prima facie evidence a probability of prevailing on the claim;**

13          **(3) If the court determines that the nonmoving party has established a**  
14 **probability of prevailing on the claim under subdivision (2) of this subsection, ensure**  
15 **that such determination shall not:**

16          **(a) Be admitted into evidence at any later stage of the underlying action or**  
17 **subsequent proceeding; or**

18          **(b) Affect the burden of proof that is applied in the underlying action or**  
19 **subsequent proceeding;**

20           (4) Consider such evidence, written or oral, by witnesses or affidavits, as may be  
21 material in making a determination under subdivisions (1) and (2) of this subsection;

22           (5) Except as otherwise provided in subsection 4 of this section, stay discovery  
23 and all other motions pending:

24           (a) A ruling by the court on the motion; and

25           (b) The disposition of any appeal from the ruling on the motion; and

26           (6) Rule on the motion within thirty judicial days after the motion is served upon  
27 the plaintiff, with such time to be extended by good cause shown or as the court's  
28 schedule requires.

29           4. (1) Upon a showing by a party that information necessary to meet or oppose  
30 the burden under subsection 3 of this section is in the possession of another party or a  
31 third party and is not reasonably available without discovery, the court shall allow  
32 limited discovery for the purpose of ascertaining such information.

33           (2) Such showing shall be demonstrated by a separate motion and shall be  
34 accompanied by an affidavit, signed under penalty of perjury, by the moving party and  
35 the moving party's attorney.

36           (3) Such motion shall lay out, with specificity, the discovery requested, the  
37 reason it is necessary, and why it cannot be gathered in any other way.

38           (4) If the motion lacks such specificity, the motion shall be denied and the  
39 reasonable attorney's fees incurred in opposing the motion shall be awarded to the  
40 nonmoving party.

41           (5) Before bringing such discovery motion, the prospective moving party shall  
42 meet and confer with the nonmoving party in order to resolve the matter without a  
43 motion. If the nonmoving party has unreasonably declined to agree to the discovery, the  
44 moving party shall be entitled to the reasonable attorney's fees incurred in bringing the  
45 motion.

46           5. If the court dismisses the action under a special motion to dismiss, the  
47 dismissal operates as an adjudication upon the merits.

48           6. If the plaintiff or counterplaintiff notices dismissal or moves to dismiss the  
49 action, or seeks to amend the complaint, after a special motion to dismiss is filed:

50           (1) Such notice of dismissal or motion to dismiss shall function as an admission  
51 that the special motion was meritorious and the court shall grant the motion; and

52           (2) Such motion to amend shall function as an admission that the special motion  
53 was meritorious as to any claims that the amendment would remove.

54           7. The court may modify any deadlines under this section or any other deadlines  
55 relating to a complaint filed under this section if such modification would serve the  
56 interests of justice.

**537.533. 1. If a person is sued and successfully invokes sections 537.531 to 537.532, such person may bring a SLAPP-back claim under this section to recover any costs and fees that the trial court failed to grant. The elements of such claim include:**

**(1) A claim was filed;**  
**(2) An anti-SLAPP motion was filed, or an equivalent motion in federal court;**  
**(3) The motion was successful; and**  
**(4) If the claim is successful, the following damages and fees and costs to be awarded by the court:**

**(a) Statutory damages of no less than ten thousand dollars;**  
**(b) Compensatory damages;**  
**(c) Additional damages to the plaintiff in an amount calculated to deter the SLAPP plaintiff from bringing further SLAPP suits;**  
**(d) Attorney's fees and costs to the prevailing plaintiff.**

**The motion shall be considered successful if a court rules it so or if the plaintiff in the prior action withdraws its claim after the motion is filed but before the court can adjudicate it.**

**2. If any citizen of this state is sued in another jurisdiction outside this state and that citizen raises the anti-SLAPP protections under sections 537.530 to 537.533 but the foreign jurisdiction declines to apply sections 537.530 to 537.533 and that citizen ultimately prevails in the action, such citizen shall have a cause of action against the plaintiff or counterplaintiff in the foreign action if the following are proven:**

**(1) The claim would have been subject to sections 537.530 to 537.533 if it had been brought in the state or federal courts in Missouri;**

**(2) The defendant or counterdefendant in the foreign action invoked sections 537.530 to 537.533;**

**(3) The foreign court declined to apply sections 537.530 to 537.533;**

**(4) The Missouri defendant prevailed in that foreign action, including obtaining a dismissal without prejudice or a dismissal for a lack of personal jurisdiction; and**

**(5) The Missouri defendant in the foreign action gave the plaintiff in the foreign action notice, in writing, that if the Missouri defendant in the foreign action prevailed, the Missouri defendant in the foreign action would bring a claim under this section.**

**3. If the elements under subdivisions (1) to (5) of subsection 2 of this section are proven by a preponderance of the evidence, the plaintiff in this action shall be entitled to:**

**(1) Statutory damages of not less than ten thousand dollars but not to exceed one hundred thousand dollars;**

38           (2) Damages in an amount equal to the actual costs, disbursements, and  
39 reasonable attorney's fees expended in the foreign action that were incurred after the  
40 giving of notice;

41           (3) All actual costs, disbursements, and reasonable attorney's fees expended in  
42 bringing the Missouri action; and

43           (4) Punitive damages.

2           ~~[537.528. 1. Any action against a person for conduct or speech~~  
3 ~~undertaken or made in connection with a public hearing or public meeting, in a~~  
4 ~~quasi-judicial proceeding before a tribunal or decision-making body of the~~  
5 ~~state or any political subdivision of the state is subject to a special motion to~~  
6 ~~dismiss, motion for judgment on the pleadings, or motion for summary~~  
7 ~~judgment that shall be considered by the court on a priority or expedited basis~~  
8 ~~to ensure the early consideration of the issues raised by the motion and to~~  
9 ~~prevent the unnecessary expense of litigation. Upon the filing of any special~~  
10 ~~motion described in this subsection, all discovery shall be suspended pending a~~  
11 ~~decision on the motion by the court and the exhaustion of all appeals regarding~~  
12 ~~the special motion.~~

13           ~~2. If the rights afforded by this section are raised as an affirmative~~  
14 ~~defense and if a court grants a motion to dismiss, a motion for judgment on the~~  
15 ~~pleadings or a motion for summary judgment filed within ninety days of the~~  
16 ~~filing of the moving party's answer, the court shall award reasonable attorney~~  
17 ~~fees and costs incurred by the moving party in defending the action. If the~~  
18 ~~court finds that a special motion to dismiss or motion for summary judgment is~~  
19 ~~frivolous or solely intended to cause unnecessary delay, the court shall award~~  
20 ~~costs and reasonable attorney fees to the party prevailing on the motion.~~

21           ~~3. Any party shall have the right to an expedited appeal from a trial~~  
22 ~~court order on the special motions described in subsection 2 of this section or~~  
23 ~~from a trial court's failure to rule on the motion on an expedited basis.~~

24           ~~4. As used in this section, a "public meeting in a quasi-judicial~~  
25 ~~proceeding" means and includes any meeting established and held by a state or~~  
26 ~~local governmental entity, including without limitations meetings or~~  
27 ~~presentations before state, county, city, town or village councils, planning~~  
28 ~~commissions, review boards or commissions.~~

29           ~~5. Nothing in this section limits or prohibits the exercise of a right or~~  
30 ~~remedy of a party granted pursuant to another constitutional, statutory,~~  
31 ~~common law or administrative provision, including civil actions for~~  
32 ~~defamation.~~

33           ~~6. If any provision of this section or the application of any provision of~~  
34 ~~this section to a person or circumstance is held invalid, the invalidity shall not~~  
35 ~~affect other provisions or applications of this section that can be given effect~~  
36 ~~without the invalid provision or application, and to this end the provisions of~~  
37 ~~this section are severable.~~

~~7. The provisions of this section shall apply to all causes of actions.]~~