

FIRST REGULAR SESSION

HOUSE BILL NO. 1151

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PERKINS.

2443H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 537.528, RSMo, and to enact in lieu thereof one new section relating to civil actions to protect public expression.

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

Section A. Section 537.528, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 537.529, to read as follows:

537.529. 1. This section shall be known and may be cited as the "Uniform Public Expression Protection Act".

2. (1) As used in this section:

(a) "Goods or services", does not include a dramatic, literary, musical, political, journalistic, or artistic work;

(b) "Governmental unit" means any city, county, or other political subdivision of this state, or any department, division, board, or other agency of any political subdivision of this state;

(c) "Person" means an individual, estate, trust, partnership, business or nonprofit entity, governmental unit, or other legal entity.

(2) Except as otherwise provided in subdivision (3) of this subsection, this section applies to a cause of action asserted in a civil action against a person based on the person's:

(a) Communication in a legislative, executive, judicial, administrative, or other governmental proceeding;

(b) Communication on an issue under consideration or review in a legislative, executive, judicial, administrative, or other governmental proceeding; or

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.

17 (c) Exercise of the right of freedom of speech or of the press, the right to assemble
18 or petition, or the right of association, guaranteed by the Constitution of the United States
19 or the Constitution of Missouri, on a matter of public concern.

20 (3) This section does not apply to a cause of action asserted:

21 (a) Against a governmental unit or an employee or agent of a governmental unit
22 acting or purporting to act in an official capacity;

23 (b) By a governmental unit or an employee or agent of a governmental unit acting
24 in an official capacity to enforce a law to protect against an imminent threat to public
25 health or safety; or

26 (c) Against a person primarily engaged in the business of selling or leasing goods
27 or services if the cause of action arises out of a communication related to the person's sale
28 or lease of the goods or services.

29 3. No later than sixty days after a party is served with a complaint, crossclaim,
30 counterclaim, third-party claim, or other pleading that asserts a cause of action to which
31 this section applies, or at a later time on a showing of good cause, the party may file a
32 special motion to dismiss the cause of action or part of the cause of action.

33 4. (1) Except as otherwise provided in this subsection:

34 (a) All other proceedings between the moving party and responding party in an
35 action, including discovery and a pending hearing or motion, are stayed on the filing of a
36 motion under subsection 3 of this section; and

37 (b) On motion by the moving party, the court may stay:

38 a. A hearing or motion involving another party if the ruling on the hearing or
39 motion would adjudicate a legal or factual issue that is material to the motion under
40 subsection 3 of this section; or

41 b. Discovery by another party if the discovery relates to the issue.

42 (2) A stay under subdivision (1) of this subsection remains in effect until entry of
43 an order ruling on the motion filed under subsection 3 of this section and the expiration
44 of the time to appeal the order.

45 (3) If a party appeals from an order ruling on a motion under subsection 3 of this
46 section, all proceedings between all parties in an action are stayed. The stay remains in
47 effect until the conclusion of the appeal.

48 (4) During a stay under subdivision (1) of this subsection, the court may allow
49 limited discovery if a party shows that specific information is necessary to establish
50 whether a party has satisfied or failed to satisfy a burden imposed by subdivision (1) of
51 subsection 7 of this section and is not reasonably available without discovery.

52 **(5) A motion for costs and expenses under subsection 10 of this section shall not be**
53 **subject to a stay under this section.**

54 **(6) A stay under this subsection does not affect a party's ability to voluntarily**
55 **dismiss a cause of action or part of a cause of action or move to sever a cause of action.**

56 **(7) During a stay under this section, the court for good cause may hear and rule on:**

57 **(a) A motion unrelated to the motion under subsection 3 of this section; and**

58 **(b) A motion seeking a special or preliminary injunction to protect against an**
59 **imminent threat to public health or safety.**

60 **5. (1) The court shall hear a motion under subsection 3 of this section no later than**
61 **sixty days after filing of the motion, unless the court orders a later hearing:**

62 **(a) To allow discovery under subdivision (4) of subsection 4 of this section; or**

63 **(b) For other good cause.**

64 **(2) If the court orders a later hearing under paragraph (a) of subdivision (1) of this**
65 **subsection, the court shall hear the motion under subsection 3 of this section no later than**
66 **sixty days after the court order allowing the discovery, subject to paragraph (b) of**
67 **subdivision (1) of this subsection.**

68 **6. In ruling on a motion under subsection 3 of this section, the court shall consider**
69 **the parties' pleadings, the motion, any replies and responses to the motion, and any**
70 **evidence that could be considered in ruling on a motion for summary judgment.**

71 **7. (1) In ruling on a motion under subsection 3 of this section, the court shall**
72 **dismiss with prejudice a cause of action or part of a cause of action if:**

73 **(a) The moving party establishes under subdivision (2) of subsection 2 of this**
74 **section that this section applies;**

75 **(b) The responding party fails to establish under subdivision (3) of subsection 2 of**
76 **this section that this section does not apply; and**

77 **(c) Either:**

78 **a. The responding party fails to establish a prima facie case as to each essential**
79 **element of the cause of action; or**

80 **b. The moving party establishes that:**

81 **(i) The responding party failed to state a cause of action upon which relief can be**
82 **granted; or**

83 **(ii) There is no genuine issue as to any material fact and the party is entitled to**
84 **judgment as a matter of law on the cause of action or part of the cause of action.**

85 **(2) A voluntary dismissal without prejudice of a responding party's cause of action,**
86 **or part of a cause of action, that is the subject of a motion under subsection 3 of this section**
87 **does not affect a moving party's right to obtain a ruling on the motion and seek costs,**

88 reasonable attorney's fees, and reasonable litigation expenses under subsection 10 of this
89 section.

90 (3) A voluntary dismissal with prejudice of a responding party's cause of action,
91 or part of a cause of action, that is the subject of a motion under subsection 3 of this section
92 establishes for the purpose of subsection 10 of this section that the moving party prevailed
93 on the motion.

94 8. The court shall rule on a motion under subsection 3 of this section no later than
95 sixty days after the hearing under subsection 5 of this section.

96 9. A moving party may appeal within twenty-one days as a matter of right from an
97 order denying, in whole or in part, a motion under subsection 3 of this section.

98 10. On a motion under subsection 3 of this section, the court shall award costs,
99 reasonable attorney's fees, and reasonable litigation expenses related to the motion:

100 (1) To the moving party if the moving party prevails on the motion; or

101 (2) To the responding party if the responding party prevails on the motion and the
102 court finds that the motion was frivolous or filed solely with intent to delay the proceeding.

103 11. This section shall be broadly construed and applied to protect the exercise of
104 the right of freedom of speech and of the press, the right to assemble and petition, and the
105 right of association, guaranteed by the Constitution of the United States or the Constitution
106 of Missouri.

107 12. In applying and construing this section, consideration shall be given to the need
108 to promote uniformity of the law with respect to its subject matter among states that enact
109 it.

110 13. This section applies to a civil action filed or cause of action asserted in a civil
111 action on or after August 28, 2021.

~~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 state
5 or any political subdivision of the state is subject to a special motion to dismiss,
6 motion for judgment on the pleadings, or motion for summary judgment that
7 shall be considered by the court on a priority or expedited basis to ensure the
8 early consideration of the issues raised by the motion and to prevent the
9 unnecessary expense of litigation. Upon the filing of any special motion
10 described in this subsection, all discovery shall be suspended pending a decision
11 on the motion by the court and the exhaustion of all appeals regarding the special
12 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 filing
of the moving party's answer, the court shall award reasonable attorney fees and~~

16 ~~costs incurred by the moving party in defending the action. If the court finds that~~
17 ~~a special motion to dismiss or motion for summary judgment is frivolous or~~
18 ~~solely intended to cause unnecessary delay, the court shall award costs and~~
19 ~~reasonable attorney fees to the party prevailing on the motion.~~

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

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

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

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

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

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