

Substitute for HOUSE BILL NO. 2054

By Committee on Judiciary

AN ACT enacting the public speech protection act.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) This section shall be known and may be cited as the public speech protection act.

(b) The purpose of the public speech protection act is to encourage and safeguard the constitutional rights of a person to petition, speak freely, associate freely and otherwise participate in government to the maximum extent permitted by law while, at the same time, protecting the rights of a person to file meritorious lawsuits for demonstrable injury.

(c) As used in the public speech protection act:

(1) "Claim" means any lawsuit, cause of action, claim, cross-claim, counterclaim or other judicial pleading or filing requesting relief.

(2) "Communication" means the making or submitting of a statement or document in any form or medium, including oral, visual, written or electronic.

(3) "Exercise of the right of association" means a communication between individuals who join together to collectively express, promote, pursue or defend common interests.

(4) "Exercise of the right of free speech" means a communication made in connection with a matter of public concern.

(5) "Exercise of the right to petition" means any of the following:

(A) A communication in or pertaining to:

(i) a judicial proceeding;

(ii) an official proceeding, other than a judicial proceeding, to administer the law;

(iii) an executive or other proceeding before a department of the state, federal government, or other political subdivision of the state;

(iv) a legislative proceeding, including a proceeding of a legislative committee;

(v) a proceeding before an entity that requires by rule that public notice be given before proceedings of such entity;

(vi) a proceeding in or before a managing board of an educational institution supported directly or indirectly from public revenue;

(vii) a proceeding of the governing body of any political subdivision of this state;

(viii) a report of or debate and statements made in a proceeding described by subsection (c)(5)(A)(iii), (iv), (v), (vi) or (vii); or

(ix) a public meeting dealing with a public purpose, including statements and discussions at the meeting or other matters of public concern occurring at the meeting;

(B) a communication in connection with an issue under consideration or review by a legislative, executive, judicial or other governmental or official proceeding;

(C) a communication that is reasonably likely to encourage consideration or review of an issue by a legislative, executive, judicial or other governmental or official proceeding;

(D) a communication reasonably likely to enlist public participation in an effort to effect consideration of an issue by a legislative, executive, judicial or other governmental or official proceeding; and

(E) any other communication that falls within the protection of the right to petition the government under the constitution of the United States or the constitution of the state of Kansas.

(6) "Government proceeding" means a proceeding, other than a judicial proceeding, by

an officer, official or body or political subdivision of this state, including a board or commission, or by an officer, official or body of the federal government.

(7) "Matter of public concern" includes an issue related to:

- (A) Health or safety;
- (B) environmental, economic or community well-being;
- (C) the government;
- (D) a public official or public figure; or
- (E) a good, product or service in the marketplace.

(8) "Moving party" means any person on whose behalf the motion to strike is filed seeking to strike a claim.

(9) "Official proceeding" means any type of administrative, executive, legislative or judicial proceeding that may be conducted before a public servant.

(10) "Public servant" means a person elected, selected, appointed, employed or otherwise designated as one of the following, even if the person has not yet qualified for office or assumed the person's duties:

- (A) An officer, employee or agent of government;
- (B) a juror;
- (C) an arbitrator, mediator or other person who is authorized by law or private written agreement to hear or determine a cause or controversy;
- (D) an attorney or notary public when participating in the performance of a governmental function; or
- (E) a person who is performing a governmental function under a claim of right but is

not legally qualified to do so.

(d) A party may bring a motion to strike the claim if a claim is based on, relates to or is in response to a party's exercise of the right of free speech, right to petition or right of association. A party bringing the motion to strike has the initial burden of making a prima facie case showing the claim against which the motion is based concerns a party's exercise of the right of free speech, right to petition or right of association. If the moving party meets the burden, the burden shifts to the responding party to establish a likelihood of prevailing on the claim by presenting substantial competent evidence to support a prima facie case. If the responding party meets the burden, the court shall deny the motion. In making its determination, the court shall consider pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based. If the court determines the responding party established a likelihood of prevailing on the claim: (1) The fact that the court made that determination and the substance of the determination may not be admitted into evidence later in the case; and (2) the determination does not affect the burden or standard of proof in the proceeding. The motion to strike made under this subsection may be filed within 60 days of the service of the most recent complaint or, in the court's discretion, at any later time upon terms it deems proper. A hearing shall be held on the motion not more than 30 days after the service of the motion.

(e)(1) On a motion by a party or on the court's own motion and on a showing of good cause, the court may allow specified and limited discovery relevant to the motion.

(2) Except as provided by subsection (e)(1), all discovery, motions or other pending hearings shall be stayed upon the filing of the motion to strike. The stay of discovery shall remain in effect until the entry of the order ruling on the motion except that the court, on motion

and for good cause shown, may order that specified discovery, motions or other pending hearings be conducted.

(f) The movant in a motion to strike has the right to: (1) Petition for a writ of mandamus if the trial court fails to rule on the motion in an expedited fashion; or (2) file an interlocutory appeal from a trial court order denying the motion to strike, if notice of appeal is filed within 14 days after entry of such order. However, under subsections (f)(1) and (2), further proceedings in the trial court shall be stayed pending determination of the appeal.

(g) The court shall award the defending party, upon a determination that the moving party has prevailed on its motion to strike, without regard to any limits under state law: (1) Costs of litigation and reasonable attorney fees; and (2) such additional relief, including sanctions upon the responding party and its attorneys and law firms, as the court determines necessary to deter repetition of the conduct by others similarly situated. If the court finds that the motion to strike is frivolous or solely intended to cause delay, the court shall award to the responding party reasonable attorney fees and costs related to the motion.

(h) This section does not apply to:

(1) An enforcement action that is brought in the name of this state or a political subdivision of this state by the attorney general or a district or county attorney;

(2) a claim brought against a person primarily engaged in the business of selling or leasing goods or services, if the statement or conduct arises out of the sale or lease of goods, services or an insurance product, insurance services or a commercial transaction in which the intended audience is an actual or potential buyer or customer; or

(3) a claim brought under the Kansas insurance code or arising out of an insurance

contract.

(i) In any case filed by a government contractor that is found by a court to be in violation of this section, the court shall provide for its ruling to be sent to the head of the relevant governmental entity doing business with the contractor.

(j) The provisions of the public speech protection act shall be applied and construed liberally to effectuate its general purposes. If any provision of the public speech protection act or its application is held invalid, the invalidity does not affect other provisions or applications that can be given effect without the invalid provision or application.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.