

SESSION OF 2016

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 319**

As Agreed to April 27, 2016

Brief*

SB 319 would create and amend law related to civil procedure in various ways, as follows.

Small Claims Venue

The bill would amend the statute governing venue for small claims to update a reference to the statutory chapter governing venue in limited actions.

Protection from Stalking Act — Drones

The bill would make changes to the Protection from Stalking Act. Under the bill, the definition of “harassment” would be expanded to include any course of conduct carried out through the use of an unmanned aerial system, commonly known as drones, over or near any dwelling, occupied vehicle, or other place where one may reasonably expect to be safe from uninvited intrusion or surveillance.

The bill would define “unmanned aerial system” to mean a powered, aerial vehicle that:

- Does not carry a human operator;
- Uses aerodynamic forces to provide vehicle lift;

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- May fly autonomously or be piloted remotely;
- May be expendable or recoverable; and
- May carry a lethal or nonlethal payload.

Motion to Vacate Sentence — Manifest Injustice

The bill would amend the law concerning motions to vacate, set aside, or correct a sentence to specify that, for the purpose of finding manifest injustice, which extends the time limitation for bringing an action beyond a year, the court's inquiry would be limited to determining why the prisoner failed to file the motion within the one-year time limit or whether the prisoner makes a colorable claim of actual innocence. The bill would specify "actual innocence" would require the prisoner to show it is more likely than not that no reasonable juror would have convicted the prisoner in light of new evidence.

If the court makes a finding of manifest injustice, the bill would require the court to state the factual and legal basis for such finding in writing with service to the parties. If the court, upon its own inspection of the motions, files, and records of the case, determines the time limitations under this section have been exceeded and that the dismissal of the motion would not equate with manifest injustice, the bill would require the court to dismiss the motion as untimely filed.

Public Speech Protection Act

The bill would enact the "Public Speech Protection Act," which the bill would state is intended to encourage and safeguard the constitutional rights of a person to petition, and speak freely and associate freely, in connection with a public issue or issue of public interest 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. Further, the bill would state the Act should be applied and construed liberally to effectuate its general purposes, and

the invalidity of any of its provisions would not affect other provisions or applications that can be given effect without the invalid provision or application.

The bill would allow a party to bring a motion to strike any claim based on, related to, or in response to a party's exercise of the right of free speech, right to petition, or right of association. The motion to strike could be filed within 60 days of the service of the most recent complaint or, in the district court's discretion, at any later time upon terms it deems proper. The bill would require a hearing on the motion to be held within 30 days of service of the motion. All discovery, motions, or other pending hearings would be stayed upon the filing of the motion to strike. The stay would remain in effect until the entry of the order ruling on the motion except, upon motion of a party or the court and on a showing of good cause, the court could allow specified discovery, motions, or other pending hearings to be conducted.

The party bringing the motion to strike would bear the initial burden of making a *prima facie* showing the claim concerns a party's exercise of the right of free speech, right to petition, or right of association. If the movant meets the burden, the burden would shift to the responding party to establish a likelihood of prevailing on the claim by presenting substantial competent evidence to support a *prima facie* case. In determining whether a party meets the established burden of proof, the bill would require the court to consider pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

If the responding party meets the burden, the court would be required to deny the motion to strike. Further, if the court determines the responding party established a likelihood of prevailing on the claim, the bill provides the fact the court made the determination and the substance of the determination would not be admitted in evidence later in the case. Additionally, the determination would not affect the burden or standard of proof in the proceeding.

The party bringing the motion to strike would have the right either to petition for a writ of mandamus if the trial court fails to rule on the motion in an expedited fashion or, within 14 days after entry of such order, file an interlocutory appeal from a trial court order denying the motion to strike.

Upon determining the moving party has prevailed on its motion to strike, the bill would require the court to award costs, attorney fees, and such additional relief, including sanctions, as determined necessary to deter repetition of the conduct. Similarly, costs and attorney fees could be awarded to a responding party if a motion to strike was frivolous or intended to delay. If a government contractor was found to have violated the Act, the bill would require the court to send the ruling to the head of the relevant government agency doing business with the contractor.

The bill provides the Act would not apply to:

- An enforcement action brought in the name of the state or a political subdivision of the state by the Attorney General or a district or county attorney;
- 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, services, or a commercial transaction in which the intended audience is an actual or potential buyer or customer; or
- A claim brought under the Kansas Insurance Code or arising out of an insurance contract.

The bill would specify, however, the provisions of the bill would apply to a claim brought against a person primarily engaged in the business of selling or leasing goods or services when the action is brought against any person or entity based upon the creation, dissemination, exhibition, advertisement, or other similar promotion of any dramatic,

literary, musical, political, or artistic work, including, but not limited to, a motion picture or television program or an article published in a newspaper or magazine of general circulation.

The bill would also define key terms.

Conference Committee Action

The Conference Committee agreed to the Senate version of SB 319 (statute book effective date), regarding small claims venue. The Committee further agreed to add the contents of the following bills to the report:

- HB 2502, related to findings of manifest injustice in consideration of motions attacking sentences, as passed by the House Committee (removing the Senate Committee amendment changing the effective date);
- Sub. for SB 462, related to stalking, as passed by the Senate Committee; and
- Sub. for HB 2054, related to public speech, as amended by House Committee of the Whole.

Background

SB 319

SB 319 was originally introduced by the Senate Committee on Judiciary at the request of the Kansas Judicial Council. In the Senate Committee, a representative of the Judicial Council testified in support of the bill, stating the reference had not been updated when the code of civil procedure for limited actions was revised in 2000, making it unclear what law is to apply to small claims venue issues. There was no opponent or neutral testimony. The Senate

Committee recommended the bill be passed and placed on the Consent Calendar.

The same conferee testified in support of the bill before the House Committee on Judiciary. The House Committee amended the bill to make it effective upon publication in the Kansas Register.

According to the fiscal note prepared by the Division of the Budget, the Office of Judicial Administration indicated the bill would have no fiscal effect on the operation of the courts.

Sub. for SB 462

At the hearing before the Senate Committee on Federal and State Affairs, a private citizen and a representative of the Kansas Livestock Association appeared in support of the original bill. A representative of the Kansas Chamber of Commerce appeared in opposition to the bill. Written testimony in opposition to the bill was provided by a representative of the Kansas Grain and Feed Association, Kansas Cooperative Council, and Kansas Agribusiness Retailers Association. Neutral written testimony on the bill was submitted by the Motion Picture Association of America, Inc.

The Senate Committee created a subcommittee to study the bill, as introduced (related to the regulation of drones). The Senate Committee deleted the original contents of the bill, inserted language drafted by the subcommittee, and recommended a substitute bill.

According to the fiscal note provided on SB 462, as introduced, the Office of Judicial Administration has indicated the bill could increase the number of cases filed in district courts, which would increase the workload of judges and other staff and the collection of docket fees. However, a fiscal effect cannot be estimated as it is not possible to predict the number of additional court cases that would arise or how

complex or time-consuming the cases would be. Any fiscal effect associated with the bill is not reflected in *The FY 2017 Governor's Budget Report*.

A fiscal note for the substitute bill was not available, and the existing fiscal note may not account for changes made in the substitute bill.

HB 2502

HB 2502 was introduced by the House Committee on Corrections and Juvenile Justice at the request of the Office of the Attorney General. At the hearing before the House Committee on Judiciary, representatives of the Office of the Attorney General and the Kansas County and District Attorneys Association appeared as proponents of the bill. Representatives of the Kansas Association of Criminal Defense Lawyers, Midwest Innocence Project, and the Project for Innocence and Post-Conviction Remedies offered opponent testimony.

The House Committee added language to allow the court's inquiry concerning a finding of manifest injustice to include whether the prisoner makes a colorable claim of actual innocence, which would require the prisoner to show it is more likely than not that no reasonable juror would have convicted the prisoner in light of new evidence.

At the Senate Committee on Judiciary hearing on the bill, representatives of the Office of the Attorney General and the Kansas County and District Attorneys Association appeared as proponents. The Senate Committee amended the bill to make it effective upon publication in the Kansas Register.

The fiscal note prepared by the Division of the Budget indicates passage of HB 2502, as introduced, could result in time savings, which would reduce expenditures for the Judicial Branch. The amount would be negligible, however.

Any fiscal effect associated with the bill is not reflected in *The FY 2017 Governor's Budget Report*.

Sub. for HB 2054

HB 2054, as introduced, was based on 2014 HB 2711, which was considered and recommended for introduction by the 2014 Special Committee on Judiciary. In the meeting of the Special Committee, Representative Pauls, who requested introduction of the 2014 bill, told the Special Committee the bill was intended to provide a timely remedy when frivolous lawsuits are filed to intimidate and silence people with limited resources who exercise their First Amendment right to free speech. Such lawsuits, referred to as Strategic Lawsuits Against Public Participation (SLAPP), and the prospect of expensive litigation can have a chilling effect on free speech. Representative Pauls reported similar anti-SLAPP acts have been enacted in 28 states, the District of Columbia, and Guam, usually with widespread bipartisan support.

At the hearing before the House Judiciary Committee on HB 2054, Representative Pauls, a law professor, and a representative of the Kansas Press Association appeared in support of the bill. A local attorney and a representative of the Kansas Association of Broadcasters also offered written testimony in support of the bill. There was no opposing or neutral testimony on the bill.

The House Committee agreed to adopt a similar bill as a substitute, which, among other changes, adopts a purpose statement not included in the original bill and removes a requirement to verify the claim is formed:

- After reasonable inquiry;
- Well-grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

- Based on an actual, concrete, and redressable injury; and
- Not asserted for any improper purpose.

The substitute bill also adds language specifying instances in which the Act would not apply.

The House Committee of the Whole amended the bill to replace the term “matter of public concern” with “public issue, or issue of public interest,” to revise definitions, and to specify the provisions would apply to a claim brought against a person primarily engaged in the business of selling or leasing goods or services when the action is brought against any person or entity based upon the creation, dissemination, exhibition, advertisement, or other similar promotion of any dramatic, literary, musical, political, or artistic work.

The fiscal note prepared by the Division of the Budget indicates HB 2054, as introduced, is unlikely to increase revenues to the Judicial Branch as it imposes new requirements in cases that otherwise might be filed under existing provisions in current law, rather than authorizing a new cause of action. The Office of Judicial Administration indicates the bill would increase district court expenditures for additional district judges and nonjudicial staff time spent hearing civil claims that require written verifications of violations of the Act, in addition to any other motions or hearings falling within its provisions. Until courts have had an opportunity to operate with the provisions of the bill in place, however, an accurate estimate of the fiscal effect on expenditures cannot be given.

A fiscal note for the substitute bill was not available, and the existing fiscal note may not account for changes made in the substitute bill.

civil procedure; small claims venue; motions to vacate, set aside, or correct a sentence; manifest injustice; Public Speech Protection Act; Protection from Stalking Act; drones

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