

Public Speech Protection Act; *Habeas Corpus*; Protection from Stalking Act; Venue—Small Claims; SB 319

SB 319 creates and amends law related to civil procedure in various ways.

Small Claims Venue

The bill amends 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 makes changes to the Protection from Stalking Act. Under the bill, the definition of “harassment” is 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 defines “unmanned aerial system” to mean a powered, aerial vehicle that:

- Does not carry a human operator;
- Uses aerodynamic forces to provide vehicle life;
- 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 amends 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 is 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 specifies “actual innocence” requires 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 requires 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 the dismissal of the motion does not equate with manifest injustice, the bill requires the court to dismiss the motion as untimely filed.

Public Speech Protection Act

The bill enacts the Public Speech Protection Act (Act), which the bill states 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 states the Act should be applied and construed liberally to effectuate its general purposes, and the invalidity of any of its provisions does not affect other provisions or applications that can be given effect without the invalid provision or application.

The bill allows 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 may 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 requires a hearing on the motion to be held within 30 days of service of the motion. All discovery, motions, or other pending hearings are stayed upon the filing of the motion to strike. The stay remains 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 bears the initial burden of making a *prima facie* case 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 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. In determining whether a party meets the established burden of proof, the bill requires 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 is 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 may not be admitted in evidence later in the case. Additionally, the determination does not affect the burden or standard of proof in the proceeding.

The party bringing the motion to strike has 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 requires 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 may be awarded to a responding party if a motion to strike was frivolous or intended to delay. If a government contractor is found to have violated the Act, the bill requires the court to send the ruling to the head of the relevant government agency doing business with the contractor.

The bill provides the Act does 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 specifies, however, the provisions of the bill 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 also defines key terms.