

HOUSE BILL No. 2711

By Committee on Judiciary

2-14

1 AN ACT enacting the public speech protection act.

2

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

4 Section 1. As used in the public speech protection act:

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

7 (b) "Expression" means any oral, written or electronic statement or
8 document made in furtherance of the exercise of the constitutional right to
9 free speech or right to petition the government for redress of grievances.

10 (c) "Government" means a branch, department, agency,
11 instrumentality, official, employee, agent or other person acting under
12 color of law of the United States, a state, or subdivision of a state or other
13 public authority.

14 (d) "Moving party" means a person on whose behalf the motion
15 described in section 4, and amendments thereto, is filed seeking to strike a
16 claim.

17 Sec. 2. The public speech protection act shall apply to any claim
18 based on an action involving participation and petition. An action
19 involving public participation and petition includes any expression:

20 (1) In a government proceeding, public forum, or place open to the
21 public; and

22 (2) regarding an issue, finding, determination, ruling, interpretation,
23 law, rule, policy, program, activity or contract that was or is being
24 considered, enacted, decided, executed or administered by the government.

25 Sec. 3. (a) Any party asserting a claim in a civil action against a
26 person that arises from that person's expression shall include in the
27 pleadings written verification under oath certifying that:

28 (1) The party and the attorney of record, if any, have read the claim;

29 (2) to the best of the party and the attorney's belief formed after
30 reasonable inquiry, the claim is well grounded in fact and is warranted by
31 existing law or a good faith argument for the extension, modification or
32 reversal of existing law, and the asserted injury is actual, concrete and
33 redressable by the court; and

34 (3) the claim is not asserted for any improper purpose, such as to
35 suppress the right of free speech or right to petition government of a
36 person or entity, to harass, or to cause unnecessary delay or needless

1 increase in the cost of litigation.

2 (b) If a claim governed by section 2, and amendments thereof, is not
3 verified as required by this subsection, the claim shall be stricken unless it
4 is verified within 10 days after the omission is called to the attention of the
5 party asserting the claim or the attorney of record.

6 (c) If a verified claim is in violation of this section, the court, upon
7 motion or upon its own initiative, shall impose upon the persons who
8 signed the verification, a represented party, or both, an appropriate
9 sanction, which may include dismissal of the claim and any other relief
10 provided in section 6, and amendments thereto, at the discretion of the
11 court.

12 Sec. 4. (a) A party may bring a motion to strike any civil claim that is
13 based on an action involving public participation and petition.

14 (b) A party bringing a motion to strike has the initial burden of
15 making a prima facie showing the claim against which the motion is based
16 concerns an action involving public participation and petition. If the
17 moving party meets the burden, the burden shifts to the responding party
18 to establish a likelihood of prevailing on the claim by presenting
19 substantial evidence to support a prima facie case. If the responding party
20 meets this burden, the court shall deny the motion.

21 (c) In making its determination, the court shall consider pleadings and
22 supporting and opposing affidavits stating the facts upon which the
23 liability or defense is based.

24 (d) If the court determines the responding party established a
25 likelihood of prevailing on the claim: (1) The fact that the court made that
26 determination and the substance of the determination may not be admitted
27 into evidence later in the case; and (2) the determination does not affect
28 the burden or standard of proof in the proceeding.

29 Sec. 5. (a) The motion to strike made under section 4, and
30 amendments thereto, may be filed within 60 days of the service of the
31 most recent complaint or, in the court's discretion, at any later time upon
32 terms it deems proper. A hearing shall be held on the motion not more than
33 30 days after the service of the motion.

34 (b) All discovery, motions or other pending hearings shall be stayed
35 upon the filing of a motion to strike. The stay of discovery shall remain in
36 effect until the entry of the order ruling on the motion. Notwithstanding
37 the stay imposed by this subsection, the court, on motion and for good
38 cause shown, may order that specified discovery, motions or other pending
39 hearings be conducted.

40 (c) The movant in a motion to strike has the right: (1) To petition for a
41 writ of mandamus if the court fails to rule on the motion in an expedited
42 fashion; or (2) to file an interlocutory appeal from a trial court order
43 denying the motion to strike.

1 Sec. 6. (a) The court shall award a defending party, upon a
2 determination that a claim was not verified as required by section 3, and
3 amendments thereto; or a moving party that prevails on a motion to strike
4 made under section 4, and amendments thereto, without regard to any
5 limits under state law:

6 (1) Costs of litigation and reasonable attorney fees; and

7 (2) such additional relief, including punitive damages and other
8 sanctions, upon the responding party and its attorneys and law firms as the
9 court determines necessary to deter repetition of the conduct and
10 comparable conduct by others similarly situated.

11 (b) If the court finds the motion to strike is frivolous or is solely
12 intended to cause delay, the court shall award to the responding party
13 reasonable attorney fees and costs related to the motion.

14 Sec. 7. In any case filed by a government contractor that is found by a
15 court to be in violation of section 3 or 4, and amendments thereto, the
16 court shall provide for its ruling to be sent to the head of the relevant
17 governmental entity doing business with the contractor.

18 Sec. 8. The provisions of the public speech protection act shall be
19 applied and construed liberally to effectuate its general purposes.

20 Sec. 9. If any provision of the public speech protection act or its
21 application is held invalid, the invalidity does not affect other provisions or
22 applications that can be given effect without the invalid provision or
23 application.

24 Sec. 10. Sections 1 through 10, and amendments thereto, shall be
25 known and may be cited as the public speech protection act.

26 Sec. 11. This act shall take effect and be in force from and after its
27 publication in the statute book.