

HOUSE BILL No. 2054

By 2014 Special Committee on Judiciary

1-20

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. (a) As used in the public speech protection act:

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

7 (2) "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 (3) "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 (4) "Moving party" means a person on whose behalf the motion
15 described in subsection (f) is filed seeking to strike a claim.

16 (b) The public speech protection act shall apply to any claim based on
17 an action involving participation and petition. An action involving public
18 participation and petition includes any expression:

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

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

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

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

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

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

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

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

10 (f) A party may bring a motion to strike any civil claim that is based
11 on an action involving public participation and petition. A party bringing a
12 motion to strike has the initial burden of making a prima facie showing the
13 claim against which the motion is based concerns an action involving
14 public participation and petition. If the moving party meets the burden, the
15 burden shifts to the responding party to establish a likelihood of prevailing
16 on the claim by presenting substantial evidence to support a prima facie
17 case. If the responding party meets this burden, the court shall deny the
18 motion. In making its determination, the court shall consider pleadings and
19 supporting and opposing affidavits stating the facts upon which the
20 liability or defense is based. If the court determines the responding party
21 established a likelihood of prevailing on the claim: (1) The fact that the
22 court made that determination and the substance of the determination may
23 not be admitted into evidence later in the case; and (2) the determination
24 does not affect the burden or standard of proof in the proceeding.

25 (g) The motion to strike made under subsection (f) may be filed
26 within 60 days of the service of the most recent complaint or, in the court's
27 discretion, at any later time upon terms it deems proper. A hearing shall be
28 held on the motion not more than 30 days after the service of the motion.

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

35 (i) The movant in a motion to strike has the right: (1) To petition for a
36 writ of mandamus if the court fails to rule on the motion in an expedited
37 fashion; or (2) to file an interlocutory appeal from a trial court order
38 denying the motion to strike.

39 (j) The court shall award a defending party, upon a determination that
40 a claim was not verified as required by subsection (c), or a moving party
41 that prevails on a motion to strike made under subsection (f), without
42 regard to any limits under state law:

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

1 (2) such additional relief, including punitive damages and other
2 sanctions, upon the responding party and its attorneys and law firms as the
3 court determines necessary to deter repetition of the conduct and
4 comparable conduct by others similarly situated. If the court finds the
5 motion to strike is frivolous or is solely intended to cause delay, the court
6 shall award to the responding party reasonable attorney fees and costs
7 related to the motion.

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

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

17 (m) This section shall be known and may be cited as the public
18 speech protection act.

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