

Substitute for HOUSE BILL No. 2054

By Committee on Judiciary

3-23

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) This section shall be known and may be cited as the
5 public speech protection act.

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

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

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

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

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

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

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

23 (A) A communication in or pertaining to:

24 (i) A judicial proceeding;

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

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

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

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

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

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

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

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

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

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

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

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

18 (6) "Government proceeding" means a proceeding, other than a
19 judicial proceeding, by an officer, official or body or political subdivision
20 of this state, including a board or commission, or by an officer, official or
21 body of the federal government.

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

23 (A) Health or safety;

24 (B) environmental, economic or community well-being;

25 (C) the government;

26 (D) a public official or public figure; or

27 (E) a good, product or service in the marketplace.

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

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

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

36 (A) An officer, employee or agent of government;

37 (B) a juror;

38 (C) an arbitrator, mediator or other person who is authorized by law or
39 private written agreement to hear or determine a cause or controversy;

40 (D) an attorney or notary public when participating in the
41 performance of a governmental function; or

42 (E) a person who is performing a governmental function under a
43 claim of right but is not legally qualified to do so.

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

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

25 (2) Except as provided by subsection (e)(1), all discovery, motions or
26 other pending hearings shall be stayed upon the filing of the motion to
27 strike. The stay of discovery shall remain in effect until the entry of the
28 order ruling on the motion except that the court, on motion and for good
29 cause shown, may order that specified discovery, motions or other pending
30 hearings be conducted.

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

38 (g) The court shall award the defending party, upon a determination
39 that the moving party has prevailed on its motion to strike, without regard
40 to any limits under state law: (1) Costs of litigation and reasonable
41 attorney fees; and (2) such additional relief, including sanctions upon the
42 responding party and its attorneys and law firms, as the court determines
43 necessary to deter repetition of the conduct by others similarly situated. If

1 the court finds that the motion to strike is frivolous or solely intended to
2 cause delay, the court shall award to the responding party reasonable
3 attorney fees and costs related to the motion.

4 (h) This section does not apply to:

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

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

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

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

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

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