

FIRST REGULAR SESSION

SENATE BILL NO. 232

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATORS LOUDON, KENNEDY AND GIBBONS.

Read 1st time January 26, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

1121S.011

AN ACT

To repeal section 537.528, RSMo, and to enact in lieu thereof one new section relating to strategic litigation against public participation.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 537.528, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 537.528, to read as follows:

537.528. 1. [Any action seeking money damages against a person for] **The general assembly declares that it is the public policy of Missouri to protect the rights of its citizens to participate in quasi-judicial proceedings before local and state and governmental tribunals. Baseless civil lawsuits filed against persons for exercising their right to petition and to participate in quasi-judicial proceedings before governmental tribunals can be an abuse of the legal process and impose an undue financial burden on those having to respond to and defend such lawsuits. Such lawsuits also serve to chill and punish participation in public affairs and the institutions of democratic government. These lawsuits should be subject to prompt dismissal or judgment to prevent the abuse of the legal process and avoid the burden imposed by such baseless lawsuits. To this end, this section shall be construed broadly.**

2. All conduct [or], speech **or other petitioning activities** undertaken or made **at or** in connection with a public hearing or public meeting, in a quasi-judicial proceeding before a tribunal or decision-making body of the state or any political subdivision of the state [is] **shall be immune from civil**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

liability, regardless of intent or purpose, where such conduct, speech, or other petitioning activity is aimed at procuring any governmental action, result, or outcome. Any action or claim seeking monetary damages against a person for such conduct, speech, or other petitioning activities shall be subject to a special motion to dismiss, motion for judgment on the pleadings, or motion for summary judgment that shall be considered by the court on a priority or expedited basis to ensure the early consideration of the issues raised by the motion and to prevent the unnecessary expense of litigation. Upon the filing of any special motion described in this subsection, all discovery shall be suspended pending a decision on the motion by the court and the exhaustion of all appeals regarding the special motion.

[2. If the rights afforded by this section are raised as an affirmative defense and]

3. The court shall grant the special motion unless the responding party has produced clear and convincing evidence that the acts of the moving party are not immunized from liability. The court shall make its determination upon the facts contained in the pleadings and in any applicable affidavits. If a court grants a motion to dismiss, a motion for judgment on the pleadings or a motion for summary judgment [filed within ninety days of the filing of the moving party's answer], the court shall award reasonable attorney fees and costs incurred by the moving party in defending the action, **including those incurred in connection with any appeal. Once a special motion is filed, the court shall maintain jurisdiction to award attorney fees and costs and damages in all instances, including voluntary dismissal of the action prior to a ruling on a special motion.** If the court finds that a special motion to dismiss or motion for summary judgment is frivolous or solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney fees to the party prevailing on the motion.

[3.] **4.** Any party shall have the right to an expedited appeal from a trial court order on the special motions described in subsection 2 of this section or from a trial court's failure to rule on the motion on an expedited basis.

[4.] **5.** As used in this section, a "public meeting in a quasi-judicial proceeding" means and includes any meeting established and held by a state or local governmental entity, including without limitations meetings or presentations before state, county, city, town or village councils, planning commissions, review boards or commissions.

[5.] 6. Nothing in this section limits or prohibits the exercise of a right or remedy of a party granted pursuant to another constitutional, statutory, common law or administrative provision, including civil actions for defamation.

[6.] 7. If any provision of this section or the application of any provision of this section to a person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

[7.] 8. The provisions of this section shall apply to all causes of actions.

9. A moving party who prevails on a special motion filed under this section may petition the court for actual and punitive damages for abuse of process and malicious prosecution, either as part of the pending proceeding or in a separate action. The granting of the special motion shall be prima facie evidence that abuse of process and malicious prosecution has occurred.

10. Any provision of law to the contrary notwithstanding, no expense, disbursement, or other expenditure will qualify as a tax deductible business expense if made:

(1) For prosecution of any claim stricken under this section, or for any legal activity associated with such stricken claim, including but not limited to defense of a special motion to strike, proceedings for fees and costs, writs or appeals, or sanctions or damages therefore;

(2) For the unsuccessful defense of any tort action arising from such stricken claim, or any legal activity associated fees, costs, or damages or sanctions in connection therewith;

(3) Provided, that if some claims within an action are stricken and others are not, this subsection applies only to the stricken claims, and that stricken claims finally restored on appeal or by writ shall not be considered stricken for this purpose; and

(4) Provided further that if some tort actions are successfully defended and others are not, this subsection applies only to those unsuccessfully defended, pro rata.

For purposes of this subsection "unsuccessful defense" does not include settlement even if such settlement is reduced to judgment.

11. The attorney general shall be permitted to intervene and assume the costs of defending a suit which appears to be violating a

Missouri citizen's speech that is immune from civil liability as defined in this section. If the attorney general prevails on a special motion filed under this section, the attorney general shall be entitled to the costs of defending an action under this section.

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