

FIRST REGULAR SESSION

HOUSE BILL NO. 460

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BIVINS (Sponsor), LEMBKE,
PORTWOOD AND SCHOEMEHL (Co-sponsors).

Read 1st time February 3, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1275L.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Section A. Section 537.528, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 537.528, to read as follows: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 liability, regardless of intent or purpose, where such conduct, speech,**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

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

38 [3.] **4.** Any party shall have the right to an expedited appeal from a trial court order on
39 the special motions described in subsection 2 of this section or from a trial court's failure to rule
40 on the motion on an expedited basis.

41 [4.] **5.** As used in this section, a "public meeting in a quasi-judicial proceeding" means
42 and includes any meeting established and held by a state or local governmental entity, including
43 without limitations meetings or presentations before state, county, city, town or village councils,
44 planning commissions, review boards or commissions.

45 [5.] **6.** Nothing in this section limits or prohibits the exercise of a right or remedy of a
46 party granted pursuant to another constitutional, statutory, common law or administrative
47 provision, including civil actions for defamation.

48 [6.] **7.** If any provision of this section or the application of any provision of this section
49 to a person or circumstance is held invalid, the invalidity shall not affect other provisions or
50 applications of this section that can be given effect without the invalid provision or application,
51 and to this end the provisions of this section are severable.

52 [7.] **8.** The provisions of this section shall apply to all causes of actions.

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

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

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

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

67

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

71 **provided further that if some tort actions are successfully defended and others are not, this**
72 **subsection applies only to those unsuccessfully defended, pro rata.**

73

74 **11.** For purposes of subsection 10 of this section "unsuccessful defense" does not
75 include settlement even if such settlement is reduced to judgment.

76 **12.** The attorney general shall be permitted to intervene and assume the costs of
77 defending a suit which appears to be violating a Missouri citizens speech that is immune
78 from civil liability as defined in this section. If the attorney general prevails on a special
79 motion filed under this section, the attorney general shall be entitled to the costs of
80 defending an action under this section.