

SENATE BILL No. 319

AN ACT concerning civil procedure; enacting the public speech protection act; relating to habeas corpus; the protection from stalking act; venue under the small claims procedure act; amending K.S.A. 60-1507, 60-31a02 and 61-2708 and repealing the existing sections.

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

New Section 1. (a) This section shall be known and may be cited as the public speech protection act.

(b) The purpose of the public speech protection act is to encourage and safeguard the constitutional rights of a person to petition, and speak freely and associate freely, in connection with a public issue or issue of public interest to the maximum extent permitted by law while, at the same time, protecting the rights of a person to file meritorious lawsuits for demonstrable injury.

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

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

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

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

(4) “Exercise of the right of free speech” means a communication made in connection with a public issue or issue of public interest.

(5) “Exercise of the right to petition” means any of the following:

(A) A communication in or pertaining to:

(i) A judicial proceeding;

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

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

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

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

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

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

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

(ix) a public meeting dealing with a public purpose, including statements and discussions at the meeting or other public issues or issues of public interest occurring at the meeting;

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

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

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

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

(6) “Governmental proceeding” means a proceeding, other than a judicial proceeding, by an officer, official or body or political subdivision of this state, including a board or commission, or by an officer, official or body of the federal government.

(7) “Public issue or issue of public interest” includes an issue related to:

(A) Health or safety;

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

(C) the government;

(D) a public official or public figure; or

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

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

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

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

- (A) An officer, employee or agent of government;
- (B) a juror;
- (C) an arbitrator, mediator or other person who is authorized by law or private written agreement to hear or determine a cause or controversy;
- (D) an attorney or notary public when participating in the performance of a governmental function; or
- (E) a person who is performing a governmental function under a claim of right but is not legally qualified to do so.

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

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

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

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

(g) The court shall award the defending party, upon a determination that the moving party has prevailed on its motion to strike, without regard to any limits under state law: (1) Costs of litigation and reasonable attorney fees; and (2) such additional relief, including sanctions upon the responding party and its attorneys and law firms, as the court determines necessary to deter repetition of the conduct by others similarly situated. If the court finds that the motion to strike is frivolous or solely intended to cause delay, the court shall award to the responding party reasonable attorney fees and costs related to the motion.

(h) This section does not apply to:

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

(2) a claim brought against a person primarily engaged in the business of selling or leasing goods or services, if the statement or conduct arises out of the sale or lease of goods, services or an insurance product, insurance services or a commercial transaction in which the intended audience

is an actual or potential buyer or customer, except as provided in subsection (i); or

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

(i) Subsection (h)(2) shall not apply to any action against any person or entity based upon the creation, dissemination, exhibition, advertisement or other similar promotion of any dramatic, literary, musical, political or artistic work, including, but not limited to, a motion picture or television program, or an article published in a newspaper or magazine of general circulation.

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

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

Sec. 2. K.S.A. 60-1507 is hereby amended to read as follows: 60-1507.

(a) *Motion attacking sentence.* A prisoner in custody under sentence of a court of general jurisdiction claiming the right to be released upon the ground that the sentence was imposed in violation of the constitution or laws of the United States, or the constitution or laws of the state of Kansas, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may, pursuant to the time limitations imposed by subsection (f), move the court which imposed the sentence to vacate, set aside or correct the sentence.

(b) *Hearing and judgment.* Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the county attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. The court may entertain and determine such motion without requiring the production of the prisoner at the hearing. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or is otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence said prisoner or grant a new trial or correct the sentence as may appear appropriate.

(c) *Successive motions.* The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner.

(d) *Appeal.* An appeal may be taken to the appellate court as provided by law from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

(e) *Exclusiveness of remedy.* An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced said applicant, or that such court has denied said applicant relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of said applicant's detention.

(f) *Time limitations.* (1) Any action under this section must be brought within one year of:

~~(i)~~(A) The final order of the last appellate court in this state to exercise jurisdiction on a direct appeal or the termination of such appellate jurisdiction; or

~~(ii)~~(B) the denial of a petition for writ of certiorari to the United States supreme court or issuance of such court's final order following granting such petition.

(2) The time limitation herein may be extended by the court only to prevent a manifest injustice.

(A) *For purposes of finding manifest injustice under this section, the*

court's inquiry shall be limited to determining why the prisoner failed to file the motion within the one-year time limitation or whether the prisoner makes a colorable claim of actual innocence. As used herein, the term actual innocence requires the prisoner to show it is more likely than not that no reasonable juror would have convicted the prisoner in light of new evidence.

(B) If the court makes a manifest-injustice finding, it must state the factual and legal basis for such finding in writing with service to the parties.

(3) If the court, upon its own inspection of the motions, files and records of the case, determines the time limitations under this section have been exceeded and that the dismissal of the motion would not equate with manifest injustice, the district court must dismiss the motion as untimely filed.

Sec. 3. K.S.A. 60-31a02 is hereby amended to read as follows: 60-31a02. As used in the protection from stalking act:

(a) "Stalking" means an intentional harassment of another person that places the other person in reasonable fear for that person's safety.

(b) "Harassment" means a knowing and intentional course of conduct directed at a specific person that seriously alarms, annoys, torments or terrorizes the person, and that serves no legitimate purpose. "Harassment" shall include any course of conduct carried out through the use of an unmanned aerial system over or near any dwelling, occupied vehicle or other place where one may reasonably expect to be safe from uninvited intrusion or surveillance.

(c) "Course of conduct" means conduct consisting of two or more separate acts over a period of time, however short, evidencing a continuity of purpose which would cause a reasonable person to suffer substantial emotional distress. Constitutionally protected activity is not included within the meaning of "course of conduct."

(d) "Unmanned aerial system" means a powered, aerial vehicle that:

- (1) Does not carry a human operator;
- (2) uses aerodynamic forces to provide vehicle lift;
- (3) may fly autonomously or be piloted remotely;
- (4) may be expendable or recoverable; and
- (5) may carry a lethal or nonlethal payload.

Sec. 4. K.S.A. 61-2708 is hereby amended to read as follows: 61-2708. The venue of actions commenced under this act shall be as prescribed in article ~~19~~ 34 of chapter 61 of the Kansas Statutes Annotated, *and amendments thereto*, except that the county in which the cause of action arose shall be proper venue only where it is affirmatively shown that the defendant was a resident of the county where the cause of action arose at the time the cause of action arose.

Sec. 5. K.S.A. 60-1507, 60-31a02 and 61-2708 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.