

By: Ellis, Eltife

S.B. No. 1565

A BILL TO BE ENTITLED

1 AN ACT

2 relating to encouraging public participation by citizens by
3 protecting a person's right to petition, right of free speech, and
4 right of association from meritless lawsuits arising from actions
5 taken in furtherance of those rights.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. This Act may be cited as the Citizens
8 Participation Act.

9 SECTION 2. Subtitle B, Title 2, Civil Practice and Remedies
10 Code, is amended by adding Chapter 27 to read as follows:

11 CHAPTER 27. ACTIONS INVOLVING THE EXERCISE OF CERTAIN
12 CONSTITUTIONAL RIGHTS

13 Sec. 27.001. DEFINITIONS. In this chapter:

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

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

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

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

24 (A) a communication in or pertaining to:

- 1 (i) a judicial proceeding;
2 (ii) an official proceeding, other than a
3 judicial proceeding, to administer the law;
4 (iii) an executive proceeding before a
5 department of the state or federal government or a subdivision of
6 the state or federal government;
7 (iv) a legislative proceeding, including a
8 proceeding of a legislative committee;
9 (v) a proceeding before an entity that
10 requires by rule that public notice be given before proceedings of
11 that entity;
12 (vi) a proceeding in or before a managing
13 board of an educational or eleemosynary institution supported
14 directly or indirectly from public revenue;
15 (vii) a proceeding of the governing body of
16 any political subdivision of this state;
17 (viii) a report of or debate and statements
18 made in a proceeding described by Subparagraph (iii), (iv), (v),
19 (vi), or (vii); or
20 (ix) a public meeting dealing with a public
21 purpose, including statements and discussions at the meeting or
22 other matters of public concern occurring at the meeting;
23 (B) a communication in connection with an issue
24 under consideration or review by a legislative, executive,
25 judicial, or other governmental body or in another governmental or
26 official proceeding;
27 (C) a communication that is reasonably likely to

1 encourage consideration or review of an issue by a legislative,
2 executive, judicial, or other governmental body or in another
3 governmental or official proceeding;

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

8 (E) any other communication that falls within the
9 protection of the right to petition government under the
10 Constitution of the United States or the constitution of this
11 state.

12 (5) "Governmental proceeding" means a proceeding,
13 other than a judicial proceeding, by an officer, official, or body
14 of this state or a political subdivision of this state, including a
15 board or commission, or by an officer, official, or body of the
16 federal government.

17 (6) "Legal action" means a lawsuit, cause of action,
18 petition, complaint, cross-claim, or counterclaim or any other
19 judicial pleading or filing that requests legal or equitable
20 relief.

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

23 (A) health or safety;

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

26 (C) the government;

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

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

3 (8) "Official proceeding" means any type of
4 administrative, executive, legislative, or judicial proceeding
5 that may be conducted before a public servant.

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

10 (A) an officer, employee, or agent of government;

11 (B) a juror;

12 (C) an arbitrator, referee, or other person who
13 is authorized by law or private written agreement to hear or
14 determine a cause or controversy;

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

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

20 Sec. 27.002. PURPOSE. The purpose of this chapter is to
21 encourage and safeguard the constitutional rights of persons to
22 petition, speak freely, associate freely, and otherwise
23 participate in government to the maximum extent permitted by law
24 and, at the same time, protect the rights of a person to file
25 meritorious lawsuits for demonstrable injury.

26 Sec. 27.003. MOTION TO DISMISS. (a) If a legal action is
27 based on, relates to, or is in response to a party's exercise of the

1 right of free speech, right to petition, or right of association,
2 that party may file a motion to dismiss the legal action.

3 (b) A motion to dismiss a legal action under this section
4 must be filed not later than the 60th day after the date of service
5 of the legal action. The court may extend the time to file a motion
6 under this section on a showing of good cause.

7 (c) Except as provided by Section 27.006(b), on the filing
8 of a motion under this section, all discovery in the legal action is
9 suspended until the court has ruled on the motion to dismiss.

10 Sec. 27.004. HEARING. A hearing on a motion under Section
11 27.003 must be set not later than the 30th day after the date of
12 service of the motion unless the docket conditions of the court
13 require a later hearing.

14 Sec. 27.005. RULING. (a) The court must rule on a motion
15 under Section 27.003 not later than the 30th day following the date
16 of the hearing on the motion.

17 (b) Except as provided by Subsection (c), on the motion of a
18 party under Section 27.003, a court shall dismiss a legal action
19 against the moving party if the moving party shows by a
20 preponderance of the evidence that the legal action is based on,
21 relates to, or is in response to the party's exercise of:

22 (1) the right of free speech;

23 (2) the right to petition; or

24 (3) the right of association.

25 (c) The court may not dismiss a legal action under this
26 section if the party bringing the legal action establishes by clear
27 and specific evidence a prima facie case for each essential element

1 of the claim in question.

2 Sec. 27.006. EVIDENCE. (a) In determining whether a legal
3 action should be dismissed under this chapter, the court shall
4 consider the pleadings and supporting and opposing affidavits
5 stating the facts on which the liability or defense is based.

6 (b) On a motion by a party or on the court's own motion and
7 on a showing of good cause, the court may allow specified and
8 limited discovery relevant to the motion.

9 Sec. 27.007. ADDITIONAL FINDINGS. (a) At the request of a
10 party making a motion under Section 27.003, the court shall issue
11 findings regarding whether the legal action was brought to deter or
12 prevent the moving party from exercising constitutional rights and
13 is brought for an improper purpose, including to harass or to cause
14 unnecessary delay or to increase the cost of litigation.

15 (b) The court must issue findings under Subsection (a) not
16 later than the 30th day after the date a request under that
17 subsection is made.

18 Sec. 27.008. APPEAL. (a) If a court does not rule on a
19 motion to dismiss under Section 27.003 in the time prescribed by
20 Section 27.005, the motion is considered to have been denied by
21 operation of law and the moving party may appeal.

22 (b) An appellate court shall expedite an appeal or other
23 writ, whether interlocutory or not, from a trial court order on a
24 motion to dismiss a legal action under Section 27.003 or from a
25 trial court's failure to rule on that motion in the time prescribed
26 by Section 27.005.

27 (c) An appeal or other writ under this section must be filed

1 on or before the 60th day after the date the trial court's order is
2 signed or the time prescribed by Section 27.005 expires, as
3 applicable.

4 Sec. 27.009. DAMAGES AND COSTS. (a) If the court orders
5 dismissal of a legal action under this chapter, the court shall
6 award to the moving party:

7 (1) court costs, reasonable attorney's fees, and other
8 expenses incurred in defending against the legal action; and

9 (2) sanctions against the party who brought the legal
10 action and the attorney representing the party who brought the
11 legal action as the court determines sufficient to deter the party
12 who brought the legal action and the attorney from bringing similar
13 actions described in this chapter.

14 (b) If the court finds that a motion to dismiss filed under
15 this chapter is frivolous or solely intended to delay, the court may
16 award court costs and reasonable attorney's fees to the responding
17 party.

18 Sec. 27.010. EXEMPTIONS. (a) This chapter does not apply
19 to an enforcement action that is brought in the name of this state
20 or a political subdivision of this state by the attorney general, a
21 district attorney, a criminal district attorney, or a county
22 attorney.

23 (b) This chapter does not apply to a legal action brought
24 against a person primarily engaged in the business of selling or
25 leasing goods or services, if the statement or conduct from which
26 the claim arises is a representation of fact made for the purpose of
27 promoting, securing, or completing the sale or lease of, or a

1 commercial transaction in, the person's goods or services, and the
2 intended audience is an actual or potential buyer or customer.

3 Sec. 27.011. CONSTRUCTION. (a) This chapter does not
4 abrogate or lessen any other defense, remedy, immunity, or
5 privilege available under other constitutional, statutory, case,
6 or common law or rule provisions.

7 (b) This chapter shall be construed liberally to effectuate
8 its purpose and intent fully.

9 SECTION 3. The change in law made by this Act applies only
10 to a legal action filed on or after the effective date of this Act.
11 A legal action filed before the effective date of this Act is
12 governed by the law in effect immediately before that date, and that
13 law is continued in effect for that purpose.

14 SECTION 4. This Act takes effect immediately if it receives
15 a vote of two-thirds of all the members elected to each house, as
16 provided by Section 39, Article III, Texas Constitution. If this
17 Act does not receive the vote necessary for immediate effect, this
18 Act takes effect September 1, 2011.