

1-1 By: Ellis, Eltife S.B. No. 1565  
1-2 (In the Senate - Filed March 10, 2011; March 23, 2011, read  
1-3 first time and referred to Committee on State Affairs;  
1-4 April 13, 2011, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 8, Nays 0; April 13, 2011,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1565 By: Ellis

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to encouraging public participation by citizens by  
1-11 protecting a person's right to petition, right of free speech, and  
1-12 right of association from meritless lawsuits arising from actions  
1-13 taken in furtherance of those rights.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. This Act may be cited as the Citizens  
1-16 Participation Act.

1-17 SECTION 2. Subtitle B, Title 2, Civil Practice and Remedies  
1-18 Code, is amended by adding Chapter 27 to read as follows:

1-19 CHAPTER 27. ACTIONS INVOLVING THE EXERCISE OF CERTAIN  
1-20 CONSTITUTIONAL RIGHTS

1-21 Sec. 27.001. DEFINITIONS. In this chapter:

1-22 (1) "Communication" includes the making or submitting  
1-23 of a statement or document in any form or medium, including oral,  
1-24 visual, written, audiovisual, or electronic.

1-25 (2) "Exercise of the right of association" means a  
1-26 communication between individuals who join together to  
1-27 collectively express, promote, pursue, or defend common interests.

1-28 (3) "Exercise of the right of free speech" means a  
1-29 communication made in connection with a matter of public concern.

1-30 (4) "Exercise of the right to petition" means any of  
1-31 the following:

1-32 (A) a communication in or pertaining to:

1-33 (i) a judicial proceeding;

1-34 (ii) an official proceeding, other than a  
1-35 judicial proceeding, to administer the law;

1-36 (iii) an executive or other proceeding  
1-37 before a department of the state or federal government or a  
1-38 subdivision of the state or federal government;

1-39 (iv) a legislative proceeding, including a  
1-40 proceeding of a legislative committee;

1-41 (v) a proceeding before an entity that  
1-42 requires by rule that public notice be given before proceedings of  
1-43 that entity;

1-44 (vi) a proceeding in or before a managing  
1-45 board of an educational or eleemosynary institution supported  
1-46 directly or indirectly from public revenue;

1-47 (vii) a proceeding of the governing body of  
1-48 any political subdivision of this state;

1-49 (viii) a report of or debate and statements  
1-50 made in a proceeding described by Subparagraph (iii), (iv), (v),  
1-51 (vi), or (vii); or

1-52 (ix) a public meeting dealing with a public  
1-53 purpose, including statements and discussions at the meeting or  
1-54 other matters of public concern occurring at the meeting;

1-55 (B) a communication in connection with an issue  
1-56 under consideration or review by a legislative, executive,  
1-57 judicial, or other governmental body or in another governmental or  
1-58 official proceeding;

1-59 (C) a communication that is reasonably likely to  
1-60 encourage consideration or review of an issue by a legislative,  
1-61 executive, judicial, or other governmental body or in another  
1-62 governmental or official proceeding;

1-63 (D) a communication reasonably likely to enlist

2-1 public participation in an effort to effect consideration of an  
2-2 issue by a legislative, executive, judicial, or other governmental  
2-3 body or in another governmental or official proceeding; and

2-4 (E) any other communication that falls within the  
2-5 protection of the right to petition government under the  
2-6 Constitution of the United States or the constitution of this  
2-7 state.

2-8 (5) "Governmental proceeding" means a proceeding,  
2-9 other than a judicial proceeding, by an officer, official, or body  
2-10 of this state or a political subdivision of this state, including a  
2-11 board or commission, or by an officer, official, or body of the  
2-12 federal government.

2-13 (6) "Legal action" means a lawsuit, cause of action,  
2-14 petition, complaint, cross-claim, or counterclaim or any other  
2-15 judicial pleading or filing that requests legal or equitable  
2-16 relief.

2-17 (7) "Matter of public concern" includes an issue  
2-18 related to:

2-19 (A) health or safety;

2-20 (B) environmental, economic, or community  
2-21 well-being;

2-22 (C) the government;

2-23 (D) a public official or public figure; or

2-24 (E) a good, product, or service in the  
2-25 marketplace.

2-26 (8) "Official proceeding" means any type of  
2-27 administrative, executive, legislative, or judicial proceeding  
2-28 that may be conducted before a public servant.

2-29 (9) "Public servant" means a person elected, selected,  
2-30 appointed, employed, or otherwise designated as one of the  
2-31 following, even if the person has not yet qualified for office or  
2-32 assumed the person's duties:

2-33 (A) an officer, employee, or agent of government;

2-34 (B) a juror;

2-35 (C) an arbitrator, referee, or other person who  
2-36 is authorized by law or private written agreement to hear or  
2-37 determine a cause or controversy;

2-38 (D) an attorney or notary public when  
2-39 participating in the performance of a governmental function; or

2-40 (E) a person who is performing a governmental  
2-41 function under a claim of right but is not legally qualified to do  
2-42 so.

2-43 Sec. 27.002. PURPOSE. The purpose of this chapter is to  
2-44 encourage and safeguard the constitutional rights of persons to  
2-45 petition, speak freely, associate freely, and otherwise  
2-46 participate in government to the maximum extent permitted by law  
2-47 and, at the same time, protect the rights of a person to file  
2-48 meritorious lawsuits for demonstrable injury.

2-49 Sec. 27.003. MOTION TO DISMISS. (a) If a legal action is  
2-50 based on, relates to, or is in response to a party's exercise of the  
2-51 right of free speech, right to petition, or right of association,  
2-52 that party may file a motion to dismiss the legal action.

2-53 (b) A motion to dismiss a legal action under this section  
2-54 must be filed not later than the 60th day after the date of service  
2-55 of the legal action. The court may extend the time to file a motion  
2-56 under this section on a showing of good cause.

2-57 (c) Except as provided by Section 27.006(b), on the filing  
2-58 of a motion under this section, all discovery in the legal action is  
2-59 suspended until the court has ruled on the motion to dismiss.

2-60 Sec. 27.004. HEARING. A hearing on a motion under Section  
2-61 27.003 must be set not later than the 30th day after the date of  
2-62 service of the motion unless the docket conditions of the court  
2-63 require a later hearing.

2-64 Sec. 27.005. RULING. (a) The court must rule on a motion  
2-65 under Section 27.003 not later than the 30th day following the date  
2-66 of the hearing on the motion.

2-67 (b) Except as provided by Subsection (c), on the motion of a  
2-68 party under Section 27.003, a court shall dismiss a legal action  
2-69 against the moving party if the moving party shows by a

3-1 preponderance of the evidence that the legal action is based on,  
3-2 relates to, or is in response to the party's exercise of:

- 3-3 (1) the right of free speech;
- 3-4 (2) the right to petition; or
- 3-5 (3) the right of association.

3-6 (c) The court may not dismiss a legal action under this  
3-7 section if the party bringing the legal action establishes by clear  
3-8 and specific evidence a prima facie case for each essential element  
3-9 of the claim in question.

3-10 Sec. 27.006. EVIDENCE. (a) In determining whether a legal  
3-11 action should be dismissed under this chapter, the court shall  
3-12 consider the pleadings and supporting and opposing affidavits  
3-13 stating the facts on which the liability or defense is based.

3-14 (b) On a motion by a party or on the court's own motion and  
3-15 on a showing of good cause, the court may allow specified and  
3-16 limited discovery relevant to the motion.

3-17 Sec. 27.007. ADDITIONAL FINDINGS. (a) At the request of a  
3-18 party making a motion under Section 27.003, the court shall issue  
3-19 findings regarding whether the legal action was brought to deter or  
3-20 prevent the moving party from exercising constitutional rights and  
3-21 is brought for an improper purpose, including to harass or to cause  
3-22 unnecessary delay or to increase the cost of litigation.

3-23 (b) The court must issue findings under Subsection (a) not  
3-24 later than the 30th day after the date a request under that  
3-25 subsection is made.

3-26 Sec. 27.008. APPEAL. (a) If a court does not rule on a  
3-27 motion to dismiss under Section 27.003 in the time prescribed by  
3-28 Section 27.005, the motion is considered to have been denied by  
3-29 operation of law and the moving party may appeal.

3-30 (b) An appellate court shall expedite an appeal or other  
3-31 writ, whether interlocutory or not, from a trial court order on a  
3-32 motion to dismiss a legal action under Section 27.003 or from a  
3-33 trial court's failure to rule on that motion in the time prescribed  
3-34 by Section 27.005.

3-35 (c) An appeal or other writ under this section must be filed  
3-36 on or before the 60th day after the date the trial court's order is  
3-37 signed or the time prescribed by Section 27.005 expires, as  
3-38 applicable.

3-39 Sec. 27.009. DAMAGES AND COSTS. (a) If the court orders  
3-40 dismissal of a legal action under this chapter, the court shall  
3-41 award to the moving party:

3-42 (1) court costs, reasonable attorney's fees, and other  
3-43 expenses incurred in defending against the legal action as justice  
3-44 and equity may require; and

3-45 (2) sanctions against the party who brought the legal  
3-46 action as the court determines sufficient to deter the party who  
3-47 brought the legal action from bringing similar actions described in  
3-48 this chapter.

3-49 (b) If the court finds that a motion to dismiss filed under  
3-50 this chapter is frivolous or solely intended to delay, the court may  
3-51 award court costs and reasonable attorney's fees to the responding  
3-52 party.

3-53 Sec. 27.010. EXEMPTIONS. (a) This chapter does not apply  
3-54 to an enforcement action that is brought in the name of this state  
3-55 or a political subdivision of this state by the attorney general, a  
3-56 district attorney, a criminal district attorney, or a county  
3-57 attorney.

3-58 (b) This chapter does not apply to a legal action brought  
3-59 against a person primarily engaged in the business of selling or  
3-60 leasing goods or services, if the statement or conduct arises out of  
3-61 the sale or lease of goods, services, or an insurance product or a  
3-62 commercial transaction in which the intended audience is an actual  
3-63 or potential buyer or customer.

3-64 (c) This chapter does not apply to a legal action seeking  
3-65 recovery for bodily injury, wrongful death, or survival or to  
3-66 statements made regarding that legal action.

3-67 Sec. 27.011. CONSTRUCTION. (a) This chapter does not  
3-68 abrogate or lessen any other defense, remedy, immunity, or  
3-69 privilege available under other constitutional, statutory, case,

4-1 or common law or rule provisions.

4-2 (b) This chapter shall be construed liberally to effectuate  
4-3 its purpose and intent fully.

4-4 SECTION 3. The change in law made by this Act applies only  
4-5 to a legal action filed on or after the effective date of this Act.  
4-6 A legal action filed before the effective date of this Act is  
4-7 governed by the law in effect immediately before that date, and that  
4-8 law is continued in effect for that purpose.

4-9 SECTION 4. This Act takes effect immediately if it receives  
4-10 a vote of two-thirds of all the members elected to each house, as  
4-11 provided by Section 39, Article III, Texas Constitution. If this  
4-12 Act does not receive the vote necessary for immediate effect, this  
4-13 Act takes effect September 1, 2011.

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