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H.B. No. 2730

A BILL TO BE ENTITLED

AN ACT

relating to civil actions involving the exercise of certain constitutional rights.

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

SECTION 1. Sections 27.001(2), (6), and (7), Civil Practice and Remedies Code, are amended to read as follows:

(2) "Exercise of the right of association" means to [~~a communication between individuals who~~] join together to collectively express, promote, pursue, or defend common interests relating to a governmental proceeding or a matter of public concern.

(6) "Legal action" means a lawsuit, cause of action, petition, complaint, cross-claim, or counterclaim or any other judicial pleading or filing that requests legal, declaratory, or equitable relief. The term does not include:

(A) a procedural action taken or motion made in an action that does not amend or add a claim for legal, equitable, or declaratory relief;

(B) alternative dispute resolution proceedings;
or

(C) post-judgment enforcement actions.

(7) "Matter of public concern" means a statement or activity regarding:

(A) a public official, public figure, or other

1 person who has drawn substantial public attention due to the
2 person's official acts, fame, notoriety, or celebrity;

3 (B) a matter of political, social, or other
4 interest to the community; or

5 (C) a subject of concern to the public [~~includes~~
6 ~~an issue related to:~~

7 [~~(A) health or safety;~~

8 [~~(B) environmental, economic, or community~~
9 ~~well-being;~~

10 [~~(C) the government;~~

11 [~~(D) a public official or public figure; or~~

12 [~~(E) a good, product, or service in the~~
13 ~~marketplace].~~

14 SECTION 2. Section 27.003, Civil Practice and Remedies
15 Code, is amended by amending Subsections (a) and (b) and adding
16 Subsections (d) and (e) to read as follows:

17 (a) If a legal action is based on~~[, relates to,]~~ or is in
18 response to a party's exercise of the right of free speech, right to
19 petition, or right of association or arises from any act of that
20 party in furtherance of the party's communication or conduct
21 described by Section 27.010(b), that party may file a motion to
22 dismiss the legal action. A party under this section does not
23 include a government entity, agency, or an official or employee
24 acting in an official capacity.

25 (b) A motion to dismiss a legal action under this section
26 must be filed not later than the 60th day after the date of service
27 of the legal action. The parties, upon mutual agreement, may

1 extend the time to file a motion under this section or the court may
2 extend the time to file a motion under this section on a showing of
3 good cause.

4 (d) The moving party shall provide written notice of the
5 date and time of the hearing under Section 27.004 not later than 21
6 days before the date of the hearing unless otherwise provided by
7 agreement of the parties or an order of the court.

8 (e) A party responding to the motion to dismiss shall file
9 the response, if any, not later than seven days before the date of
10 the hearing on the motion to dismiss unless otherwise provided by an
11 agreement of the parties or an order of the court.

12 SECTION 3. Sections 27.005(a), (b), and (d), Civil Practice
13 and Remedies Code, are amended to read as follows:

14 (a) The court must rule on a motion under Section 27.003 not
15 later than the 30th day following the date ~~[of]~~ the hearing on the
16 motion concludes.

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 demonstrates ~~[shows by~~
20 ~~a preponderance of the evidence]~~ that the legal action is based on~~]~~
21 ~~relates to,~~ or is in response to:

- 22 (1) the party's exercise of:
23 (A) ~~[(1)]~~ the right of free speech;
24 (B) ~~[(2)]~~ the right to petition; or
25 (C) ~~[(3)]~~ the right of association; or
26 (2) the act of a party described by Section 27.010(b).

27 (d) Notwithstanding the provisions of Subsection (c), the

1 court shall dismiss a legal action against the moving party if the
2 moving party establishes an affirmative defense or other grounds on
3 which the moving party is entitled to judgment as a matter of law
4 ~~[by a preponderance of the evidence each essential element of a~~
5 ~~valid defense to the nonmovant's claim].~~

6 SECTION 4. The heading to Section 27.006, Civil Practice
7 and Remedies Code, is amended to read as follows:

8 Sec. 27.006. PROOF ~~[EVIDENCE]~~.

9 SECTION 5. Section 27.006(a), Civil Practice and Remedies
10 Code, is amended to read as follows:

11 (a) In determining whether a legal action is subject to or
12 should be dismissed under this chapter, the court shall consider
13 the pleadings, evidence a court could consider under Rule 166a,
14 Texas Rules of Civil Procedure, and supporting and opposing
15 affidavits stating the facts on which the liability or defense is
16 based.

17 SECTION 6. Section 27.007(a), Civil Practice and Remedies
18 Code, is amended to read as follows:

19 (a) If the court awards sanctions under Section 27.009(b)
20 ~~[At the request of a party making a motion under Section 27.003],~~
21 the court shall issue findings regarding whether the legal action
22 was brought to deter or prevent the moving party from exercising
23 constitutional rights and is brought for an improper purpose,
24 including to harass or to cause unnecessary delay or to increase the
25 cost of litigation.

26 SECTION 7. Chapter 27, Civil Practice and Remedies Code, is
27 amended by adding Section 27.0075 to read as follows:

1 Sec. 27.0075. EFFECT OF RULING. Neither the court's ruling
2 on the motion nor the fact that it made such a ruling shall be
3 admissible in evidence at any later stage of the case, and no burden
4 of proof or degree of proof otherwise applicable shall be affected
5 by the ruling.

6 SECTION 8. Section 27.009, Civil Practice and Remedies
7 Code, is amended by amending Subsection (a) and adding Subsection
8 (c) to read as follows:

9 (a) Except as provided by Subsection (c), if [~~If~~] the court
10 orders dismissal of a legal action under this chapter, the court
11 [~~shall award to the moving party~~]:

12 (1) shall award to the moving party court costs and [~~7~~]
13 reasonable attorney's fees [~~, and other expenses~~] incurred in
14 defending against the legal action [~~as justice and equity may~~
15 ~~require~~]; and

16 (2) may award to the moving party sanctions against
17 the party who brought the legal action as the court determines
18 sufficient to deter the party who brought the legal action from
19 bringing similar actions described in this chapter.

20 (c) If the court orders dismissal of a compulsory
21 counterclaim under this chapter, the court may award to the moving
22 party reasonable attorney's fees incurred in defending against the
23 counterclaim if the court finds that the counterclaim is frivolous
24 or solely intended for delay.

25 SECTION 9. Section 27.010, Civil Practice and Remedies
26 Code, is amended to read as follows:

27 Sec. 27.010. EXEMPTIONS. (a) This chapter does not apply

1 to:

2 (1) an enforcement action that is brought in the name
3 of this state or a political subdivision of this state by the
4 attorney general, a district attorney, a criminal district
5 attorney, or a county attorney;

6 (2) ~~[-~~

7 ~~[(b) This chapter does not apply to]~~ a legal action brought
8 against a person primarily engaged in the business of selling or
9 leasing goods or services, if the statement or conduct arises out of
10 the sale or lease of goods, services, or an insurance product,
11 insurance services, or a commercial transaction in which the
12 intended audience is an actual or potential buyer or customer;

13 (3) ~~[-~~

14 ~~[(c) This chapter does not apply to]~~ a legal action seeking
15 recovery for bodily injury, wrongful death, or survival or to
16 statements made regarding that legal action;

17 (4) ~~[-~~

18 ~~[(d) This chapter does not apply to]~~ a legal action brought
19 under the Insurance Code or arising out of an insurance contract;

20 (5) a legal action arising from an officer-director,
21 employee-employer, or independent contractor relationship that:

22 (A) seeks recovery for misappropriation of trade
23 secrets or corporate opportunities; or

24 (B) seeks to enforce a non-disparagement
25 agreement or a covenant not to compete;

26 (6) a legal action filed under Title 1, 2, 4, or 5,
27 Family Code, or an application for a protective order under Chapter

1 7A, Code of Criminal Procedure;

2 (7) a legal action brought under Chapter 17, Business
3 & Commerce Code, other than an action governed by Section 17.49(a)
4 of that chapter;

5 (8) a legal action in which a moving party raises a
6 defense pursuant to Section 160.010, Occupations Code, Section
7 161.033, Health and Safety Code, or the Health Care Quality
8 Improvement Act of 1986 (42 U.S.C. 11101 et seq.);

9 (9) an eviction suit brought under Chapter 24,
10 Property Code;

11 (10) a disciplinary action or disciplinary proceeding
12 brought under Chapter 81, Government Code, or the Texas Rules of
13 Disciplinary Procedure;

14 (11) a legal action brought under Chapter 554,
15 Government Code; or

16 (12) a legal action based on a common law fraud claim.

17 (b) Notwithstanding Subsections (a)(2), (7), and (12), this
18 chapter applies to:

19 (1) a legal action against a person arising from any
20 act of that person, whether public or private, related to the
21 gathering, receiving, posting, or processing of information for
22 communication to the public, whether or not the information is
23 actually communicated to the public, for the creation,
24 dissemination, exhibition, or advertisement or other similar
25 promotion of a dramatic, literary, musical, political,
26 journalistic, or otherwise artistic work, including audio-visual
27 work regardless of the means of distribution, a motion picture, a

1 television or radio program, or an article published in a
2 newspaper, website, magazine, or other platform, no matter the
3 method or extent of distribution; and

4 (2) a legal action against a person related to the
5 communication, gathering, receiving, posting, or processing of
6 consumer opinions or commentary, evaluations of consumer
7 complaints, or reviews or ratings of businesses.

8 (c) This chapter applies to a legal action against a victim
9 or alleged victim of family violence or dating violence as defined
10 in Chapter 71, Family Code, or an offense under Chapter 20, 20A, 21,
11 or 22, Penal Code, based on or in response to a public or private
12 communication.

13 SECTION 10. If any provision of this Act or its application
14 to any person or circumstance is held invalid, the invalidity does
15 not affect other provisions or applications of this Act that can be
16 given effect without the invalid provision or application, and to
17 this end the provisions of this Act are declared to be severable.

18 SECTION 11. Chapter 27, Civil Practice and Remedies Code,
19 as amended by this Act, applies only to an action filed on or after
20 the effective date of this Act. An action filed before the
21 effective date of this Act is governed by the law in effect
22 immediately before that date, and that law is continued in effect
23 for that purpose.

24 SECTION 12. This Act takes effect September 1, 2019.