

House Study Bill 537 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON HOLT)

A BILL FOR

1 An Act relating to judicial motions and causes of action
2 arising from a person's participation in matters of public
3 significance.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 619.20 Protection of public
2 participation — special motion to strike.

3 1. The general assembly finds and declares that it is in the
4 public interest to encourage continued participation in matters
5 of public significance, and that this participation should not
6 be chilled through abuse of the judicial process. To this end,
7 this section shall be construed broadly.

8 2. As used in this section, unless the context otherwise
9 requires:

10 a. *“Act in furtherance of the person’s right of petition or*
11 *free speech under the Constitution of the United States or the*
12 *Constitution of the State of Iowa in connection with a public*
13 *issue”* includes all of the following:

14 (1) Any written or oral statement or writing made before a
15 legislative, executive, or judicial proceeding, or any other
16 official proceeding authorized by law.

17 (2) Any written or oral statement or writing made in
18 connection with an issue under consideration or review by a
19 legislative, executive, or judicial body, or any other official
20 proceeding authorized by law.

21 (3) Any written or oral statement or writing made in a place
22 open to the public or a public forum in connection with an
23 issue of public interest.

24 (4) Any other conduct in furtherance of the exercise of the
25 constitutional right of petition or the constitutional right
26 of free speech in connection with a public issue or an issue of
27 public interest.

28 b. *“Complaint”* includes a cross-complaint and a petition.

29 c. *“Defendant”* includes a cross-defendant and a respondent.

30 d. *“Plaintiff”* includes a cross-complainant and a
31 petitioner.

32 3. a. A cause of action against a person arising from any
33 act or omission of that person in furtherance of the person’s
34 right of petition or free speech under the Constitution of
35 the United States or the Constitution of the State of Iowa in

1 connection with a public issue shall be subject to a special
2 motion to strike, unless the court determines the plaintiff has
3 established there is a probability the plaintiff will prevail
4 on the claim.

5 *b.* In making its determination, the court shall consider the
6 pleadings and supporting and opposing affidavits stating the
7 facts upon which the liability or defense is based.

8 *c.* If the court determines the plaintiff has established
9 a probability that the plaintiff will prevail on the claim,
10 neither that determination nor the fact of that determination
11 shall be admissible in evidence at any later stage of the
12 case, or in any subsequent action, and no burden of proof
13 or degree of proof otherwise applicable shall be affected by
14 that determination in any later stage of the case or in any
15 subsequent proceeding.

16 4. *a.* Except as provided in paragraph "b", in any action
17 subject to subsection 3, a prevailing defendant on a special
18 motion to strike shall be entitled to recover costs and
19 reasonable attorney fees. If the court finds that a special
20 motion to strike is frivolous or is solely intended to cause
21 unnecessary delay, the court shall award costs and reasonable
22 attorney fees incurred in opposing the motion to a plaintiff
23 prevailing on the motion.

24 *b.* A defendant who prevails on a special motion to strike
25 in an action subject to paragraph "a" shall not be entitled
26 to costs and attorney fees if that cause of action is brought
27 pursuant to chapter 21, 22, or 23.

28 5. The special motion may be filed within sixty days after
29 the service of the complaint or, in the court's discretion, at
30 any later time upon terms the court deems proper. The motion
31 shall be scheduled by the clerk of the court for a hearing not
32 more than thirty days after the service of the motion unless
33 the docket conditions of the court require a later hearing.

34 6. All discovery proceedings in the action shall be stayed
35 upon the filing of a notice of motion made pursuant to this

1 section. The stay of discovery shall remain in effect until
2 notice of entry of the order ruling on the motion. The
3 court, on noticed motion and for good cause shown, may order
4 that specified discovery be conducted notwithstanding this
5 subsection.

6 7. An order granting or denying a special motion to strike
7 shall be appealable under the rules of appellate procedure.

8 8. *a.* Any party who files a special motion to strike
9 pursuant to this section, and any party who files an opposition
10 to a special motion to strike, shall, promptly upon so
11 filing, transmit to the judicial branch, by electronic mail or
12 facsimile, a copy of the endorsed, filed caption page of the
13 motion or opposition, a copy of any related notice of appeal or
14 petition for a writ, and a conformed copy of any order issued
15 pursuant to this section, including any order granting or
16 denying a special motion to strike, discovery, or fees.

17 *b.* The judicial branch shall maintain a public record of
18 information transmitted pursuant to this subsection for at
19 least three years, and may store the information on appropriate
20 electronic media.

21 9. This section shall not apply to any enforcement action
22 brought by the attorney general, a district attorney, a
23 county attorney, a city attorney, or any attorney charged with
24 prosecuting violations of state or local laws.

25 EXPLANATION

26 The inclusion of this explanation does not constitute agreement with
27 the explanation's substance by the members of the general assembly.

28 This bill relates to causes of action arising from a person's
29 participation in matters of public significance.

30 The bill defines an "act in furtherance of the person's right
31 of petition or free speech under the Constitution of the United
32 States or the Constitution of the State of Iowa in connection
33 with a public issue" to include all of the following: any
34 written or oral statement or writing made before a legislative,
35 executive, or judicial proceeding, or any other official

1 proceeding authorized by law; any written or oral statement or
2 writing made in connection with an issue under consideration or
3 review by a legislative, executive, or judicial body, or any
4 other official proceeding authorized by law; any written or
5 oral statement or writing made in a place open to the public or
6 a public forum in connection with an issue of public interest;
7 and any other conduct in furtherance of the exercise of the
8 constitutional right of petition or the constitutional right
9 of free speech in connection with a public issue or an issue of
10 public interest.

11 The bill provides that causes of action against a person
12 arising from any act or omission of that person in furtherance
13 of the person's right of petition or free speech in connection
14 with a public issue shall be subject to a special motion to
15 strike. However, such causes of action shall not be subject
16 to a special motion to strike if the court determines the
17 plaintiff has established there is a probability the plaintiff
18 will prevail on the claim. In making this determination, the
19 the court is to consider the pleadings and supporting and
20 opposing affidavits.

21 The bill provides that if the court determines the plaintiff
22 has established a probability that the plaintiff will prevail
23 on the claim, neither that determination nor the fact of that
24 determination shall be admissible in evidence at any later
25 stage of the case, or in any subsequent action. Further, such
26 findings are not to affect the burden of proof or degree of
27 proof otherwise applicable in any later stage of the case or
28 in any subsequent proceeding.

29 The bill provides that a defendant who prevails on a special
30 motion to strike is entitled to recover costs and reasonable
31 attorney fees, unless the cause of action was brought pursuant
32 to Code chapter 21 (open meetings), 22 (open records), or 23
33 (public information board).

34 If the court finds that a special motion to strike is
35 frivolous or is solely intended to cause unnecessary delay,

1 the court must award costs and reasonable attorney fees to the
2 plaintiff prevailing on the motion for costs incurred to oppose
3 the motion.

4 The bill also describes when the special motion is to be
5 filed and when the hearing is to be held. Specifically, the
6 special motion may be filed within 60 days after the service
7 of the complaint or, in the court's discretion, at any later
8 time. The motion is to be scheduled by the clerk of the court
9 for a hearing not more than 30 days after the service of the
10 motion unless the docket conditions of the court require a
11 later hearing.

12 All discovery proceedings in the action are to be stayed upon
13 the filing of a notice of motion. The stay of discovery is
14 to remain in effect until notice of entry of the order ruling
15 on the motion. However, the court may order that specified
16 discovery be conducted.

17 An order granting or denying a special motion to strike is
18 appealable under the rules of appellate procedure.

19 Information related to these special motions to strike is to
20 be maintained by the judicial branch. Any party who files a
21 special motion to strike and any party who files an opposition
22 to a special motion to strike is required to transmit to the
23 judicial branch information related to the special motion or
24 opposition. The judicial branch is to maintain a public record
25 of such information for at least three years.

26 Finally, the provisions of the bill do not apply to any
27 enforcement action brought by the attorney general, a district
28 attorney, a county attorney, a city attorney, or any attorney
29 charged with prosecuting violations of state or local laws.