

House File 456 - Introduced

HOUSE FILE 456
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 58)

A BILL FOR

1 An Act creating a special motion for expedited relief in
2 actions involving the exercise of the right of freedom of
3 speech and of the press, the right to assemble and petition,
4 and the right of association.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 652.1 Title.

2 This chapter may be cited as the "*Uniform Public Expression*
3 *Protection Act*".

4 Sec. 2. NEW SECTION. 652.2 Scope.

5 1. As used in this section:

6 a. "*Goods or services*" does not include the creation,
7 dissemination, exhibition, or advertisement or similar
8 promotion of a dramatic, literary, musical, political,
9 journalistic, or artistic work.

10 b. "*Governmental unit*" means a public corporation
11 or government or governmental subdivision, agency, or
12 instrumentality.

13 c. "*Person*" means an individual, estate, trust, partnership,
14 business or nonprofit entity, governmental unit, or other legal
15 entity.

16 2. Except as otherwise provided in subsection 3, this
17 chapter applies to a cause of action asserted in a civil action
18 against a person based on any of the following of the person:

19 a. Communication in a legislative, executive, judicial,
20 administrative, or other governmental proceeding.

21 b. Communication on an issue under consideration or review
22 in a legislative, executive, judicial, administrative, or other
23 governmental proceeding.

24 c. Exercise of the right of freedom of speech or of the
25 press, the right to assemble or petition, or the right of
26 association, guaranteed by the Constitution of the United
27 States or the Constitution of the State of Iowa, on a matter of
28 public concern.

29 3. This chapter does not apply to any of the following
30 causes of action asserted:

31 a. Against a governmental unit or an employee or agent of a
32 governmental unit acting or purporting to act in an official
33 capacity.

34 b. By a governmental unit or an employee or agent of a
35 governmental unit acting in an official capacity to enforce a

1 law to protect against an imminent threat to public health or
2 safety.

3 *c.* Against a person primarily engaged in the business of
4 selling or leasing goods or services if the cause of action
5 arises out of a communication related to the person's sale or
6 lease of the goods or services.

7 **Sec. 3. NEW SECTION. 652.3 Special motion for expedited**
8 **relief.**

9 Not later than sixty days after a party is served with a
10 petition, crossclaim, counterclaim, third-party claim, or other
11 pleading that asserts a cause of action to which this chapter
12 applies, or at a later time on a showing of good cause, the
13 party may file a special motion for expedited relief to dismiss
14 the cause of action or part of the cause of action.

15 **Sec. 4. NEW SECTION. 652.4 Stay.**

16 1. Except as otherwise provided in subsections 4 through
17 7, on the filing of a motion under section 652.3, all of the
18 following apply:

19 *a.* All other proceedings between the moving party and
20 responding party, including discovery and a pending hearing or
21 motion, are stayed.

22 *b.* On motion by the moving party, the court may stay a
23 hearing or motion involving another party, or discovery by
24 another party, if the hearing or ruling on the motion would
25 adjudicate, or the discovery would relate to, an issue material
26 to the motion under section 652.3.

27 2. A stay under subsection 1 remains in effect until entry
28 of an order ruling on the motion under section 652.3 and
29 expiration of the time under section 652.9 for the moving party
30 to appeal the order.

31 3. Except as otherwise provided in subsections 5, 6,
32 and 7, if a party appeals from an order ruling on a motion
33 under section 652.3, all proceedings between all parties in
34 the action are stayed. The stay remains in effect until the
35 conclusion of the appeal.

1 4. During a stay under subsection 1, the court may allow
2 limited discovery if a party shows that specific information is
3 necessary to establish whether a party has satisfied or failed
4 to satisfy a burden under section 652.7, subsection 1, and the
5 information is not reasonably available unless discovery is
6 allowed.

7 5. A motion under section 652.10 for costs, attorney fees,
8 and expenses is not subject to a stay under this section.

9 6. A stay under this section does not affect a party's
10 ability voluntarily to dismiss a cause of action or part of a
11 cause of action or move to sever a cause of action.

12 7. During a stay under this section, the court for good
13 cause may hear and rule on all of the following:

14 a. A motion unrelated to the motion under section 652.3.

15 b. A motion seeking a special or preliminary injunction to
16 protect against an imminent threat to public health or safety.

17 **Sec. 5. NEW SECTION. 652.5 Hearing.**

18 1. The court shall hear a motion under section 652.3 not
19 later than sixty days after filing of the motion, unless the
20 court orders a later hearing for any of the following:

21 a. To allow discovery under section 652.4, subsection 4.

22 b. For other good cause.

23 2. If the court orders a later hearing under subsection 1,
24 paragraph "a", the court shall hear the motion under section
25 652.3 not later than sixty days after the court order allowing
26 the discovery, unless the court orders a later hearing under
27 subsection 1, paragraph "b".

28 **Sec. 6. NEW SECTION. 652.6 Proof.**

29 In ruling on a motion under section 652.3, the court shall
30 consider the pleadings, the motion, any reply or response to
31 the motion, and any evidence that could be considered in ruling
32 on a motion for summary judgment under rule of civil procedure
33 1.981.

34 **Sec. 7. NEW SECTION. 652.7 Dismissal of cause of action in**
35 **whole or part.**

1 1. In ruling on a motion under section 652.3, the court
2 shall dismiss with prejudice a cause of action, or part of a
3 cause of action, if all of the following are true:

4 a. The moving party establishes under section 652.2,
5 subsection 2, that this chapter applies.

6 b. The responding party fails to establish under section
7 652.2, subsection 3, that this chapter does not apply.

8 c. Any of the following are true:

9 (1) The responding party fails to establish a prima facie
10 case as to each essential element of the cause of action.

11 (2) The moving party establishes that any of the following:

12 (a) The responding party failed to state a cause of action
13 upon which relief can be granted.

14 (b) There is no genuine issue as to any material fact and
15 the moving party is entitled to judgment as a matter of law on
16 the action or part of an action.

17 2. A voluntary dismissal without prejudice of a responding
18 party's cause of action, or part of a cause of action, that is
19 the subject of a motion under section 652.3 does not affect a
20 moving party's right to obtain a ruling on the motion and seek
21 costs, attorney fees, and expenses under section 652.10.

22 3. A voluntary dismissal with prejudice of a responding
23 party's cause of action, or part of a cause of action, that is
24 the subject of a motion under section 652.3 establishes for the
25 purpose of section 652.10 that the moving party prevailed on
26 the motion.

27 Sec. 8. NEW SECTION. 652.8 Ruling.

28 The court shall rule on a motion under section 652.3 not
29 later than sixty days after a hearing under section 652.5.

30 Sec. 9. NEW SECTION. 652.9 Appeal.

31 A moving party may appeal as a matter of right from an order
32 denying, in whole or in part, a motion under section 652.3.
33 The appeal must be filed not later than thirty days after
34 entry of the order.

35 Sec. 10. NEW SECTION. 652.10 Costs, attorney fees, and

1 **expenses.**

2 On a motion under section 652.3, the court shall award court
3 costs, reasonable attorney fees, and reasonable litigation
4 expenses related to the motion in the following circumstances:

5 1. To the moving party if the moving party prevails on the
6 motion.

7 2. To the responding party if the responding party prevails
8 on the motion and the court finds that the motion was frivolous
9 or filed solely with intent to delay the proceeding.

10 Sec. 11. NEW SECTION. **652.11 Construction.**

11 This chapter shall be broadly construed and applied to
12 protect the exercise of the right of freedom of speech and of
13 the press, the right to assemble and petition, and the right
14 of association, guaranteed by the Constitution of the United
15 States or the Constitution of the State of Iowa.

16 Sec. 12. NEW SECTION. **652.12 Uniformity of application and
17 construction.**

18 In applying and construing this chapter, consideration shall
19 be given to the need to promote uniformity of the law with
20 respect to its subject matter among states that enact it.

21 Sec. 13. NEW SECTION. **652.13 Transitional provision.**

22 This chapter applies to a civil action filed or cause of
23 action asserted in a civil action on or after the effective
24 date of this Act.

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 enacts the "Uniform Public Expression Protection
29 Act", which creates a special motion for expedited relief in
30 actions involving the exercise of the right of freedom of
31 speech and of the press, the right to assemble and petition,
32 and the right of association.

33 The bill establishes that the new Code chapter applies
34 to cause of action asserted in a civil action against a
35 person based on the person's communication in a legislative,

1 executive, judicial, administrative, or other governmental
2 proceeding; communication on an issue under consideration or
3 review in a legislative, executive, judicial, administrative,
4 or other governmental proceeding; or exercise of the person's
5 first amendment right on a matter of public concern.

6 The bill does not apply to causes of action against a
7 governmental unit, an employee or agent of a governmental unit
8 acting or purporting to act in an official capacity; by a
9 governmental unit, an employee or agent of a governmental unit
10 acting in an official capacity to enforce or protect against an
11 imminent threat to public health or safety, or against a person
12 engaged in the business of selling or leasing goods or services
13 if the cause of action arises out of a communication related to
14 a person's sale or lease of the goods or services.

15 The bill defines "goods or services" to not include the
16 creation, dissemination, exhibition, or advertisement or
17 similar promotion of a dramatic, literary, musical, political,
18 journalistic, or artistic work and defines "governmental unit"
19 to mean a public corporation or government or governmental
20 subdivision, agency, or instrumentality.

21 The bill provides that no later than 60 days after being
22 served with a cause of action to which the new Code chapter
23 applies, or at a later time upon showing of good cause, a party
24 may file a special motion for expedited relief to dismiss the
25 cause of action or part of the cause of action. The filing
26 of special motion stays all other proceedings between the
27 parties, and the court has discretion to stay a proceeding
28 involving another party if the hearing or ruling on motion
29 would adjudicate an issue material to the motion. A hearing
30 shall be held no later than 60 days after filing the motion,
31 unless the court orders a later hearing to allow discovery or
32 for good cause. A stay remains in effect until an order ruling
33 on the motion is entered and the 30-day appeal period following
34 the order has concluded. During a stay, the court may allow
35 limited discovery if a party shows the information is not

1 reasonably available and that specific information is necessary
2 to establish whether a party has satisfied the party's burden
3 under the new Code chapter. The court may also, for good
4 cause, hear and rule on motions unrelated to the special motion
5 and a motion seeking an injunction. The bill provides that a
6 motion for costs, attorney fees, and expenses is not subject
7 to the special motion for expedited relief stay. The parties'
8 ability to voluntarily dismiss or move to sever is not affected
9 by the special motion for expedited relief stay.

10 The bill provides that in ruling on a special motion for
11 expedited relief, the court shall dismiss with prejudice a
12 cause of action, or part of a cause of action, if the moving
13 party establishes that the new Code chapter applies, the
14 responding party fails to establish that the new Code chapter
15 does not apply, and either the responding party fails to
16 establish a prima facie case as to each essential element of
17 the cause of action or the moving party establishes that the
18 responding party failed to state a cause of action upon which
19 relief can be granted or there is no genuine issue as to any
20 material fact and the moving party is entitled to judgment as
21 a matter of law on the cause of action or part of the cause of
22 action.

23 The bill provides that the court may award court costs,
24 reasonable attorney fees, and reasonable litigation fees
25 relating to the special motion to the prevailing party.

26 The bill is a uniform Act drafted by the National Conference
27 of Commissioners on Uniform State Laws. The bill provides that
28 the Code chapter applies to actions that are filed on or after
29 the effective date of the bill.