

House Study Bill 12 - 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 for a hearing not more than thirty days
32 after the service of the motion unless the docket conditions of
33 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. This section shall not apply to any enforcement action
9 brought by the attorney general, a district attorney, a
10 county attorney, a city attorney, or any attorney charged with
11 prosecuting violations of state or local laws.

12 EXPLANATION

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

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

17 The bill defines an "act in furtherance of the person's right
18 of petition or free speech under the Constitution of the United
19 States or the Constitution of the State of Iowa in connection
20 with a public issue" to include all of the following: any
21 written or oral statement or writing made before a legislative,
22 executive, or judicial proceeding, or any other official
23 proceeding authorized by law; any written or oral statement or
24 writing made in connection with an issue under consideration or
25 review by a legislative, executive, or judicial body, or any
26 other official proceeding authorized by law; any written or
27 oral statement or writing made in a place open to the public or
28 a public forum in connection with an issue of public interest;
29 and any other conduct in furtherance of the exercise of the
30 constitutional right of petition or the constitutional right
31 of free speech in connection with a public issue or an issue of
32 public interest.

33 The bill provides that causes of action against a person
34 arising from any act or omission of that person in furtherance
35 of the person's right of petition or free speech in connection

1 with a public issue shall be subject to a special motion to
2 strike. However, such causes of action shall not be subject
3 to a special motion to strike if the court determines the
4 plaintiff has established there is a probability the plaintiff
5 will prevail on the claim. In making this determination, the
6 court is to consider the pleadings and supporting and opposing
7 affidavits.

8 The bill provides that if the court determines the plaintiff
9 has established a probability that the plaintiff will prevail
10 on the claim, neither that determination nor the fact of that
11 determination shall be admissible in evidence at any later
12 stage of the case, or in any subsequent action. Further, such
13 findings are not to affect the burden of proof or degree of
14 proof otherwise applicable in any later stage of the case or
15 in any subsequent proceeding.

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

21 If the court finds that a special motion to strike is
22 frivolous or is solely intended to cause unnecessary delay,
23 the court must award costs and reasonable attorney fees to the
24 plaintiff prevailing on the motion for costs incurred to oppose
25 the motion.

26 The bill also describes when the special motion is to be
27 filed and when the hearing is to be held. Specifically, the
28 special motion may be filed within 60 days after the service
29 of the complaint or, in the court's discretion, at any later
30 time. The motion is to be scheduled for a hearing not more
31 than 30 days after the service of the motion unless the docket
32 conditions of the court require a later hearing.

33 All discovery proceedings in the action are to be stayed upon
34 the filing of a notice of motion. The stay of discovery is
35 to remain in effect until notice of entry of the order ruling

1 on the motion. However, the court may order that specified
2 discovery be conducted.

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

5 Finally, the provisions of the bill do not apply to any
6 enforcement action brought by the attorney general, a district
7 attorney, a county attorney, a city attorney, or any attorney
8 charged with prosecuting violations of state or local laws.