

House Study Bill 42 - Introduced

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

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, and including applicability
5 provisions.

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

16 a. Communication in a legislative, executive, judicial,
17 administrative, or other governmental proceeding.

18 b. Communication on an issue under consideration or review
19 in a legislative, executive, judicial, administrative, or other
20 governmental proceeding.

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

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

28 a. Against a governmental unit or an employee or agent of a
29 governmental unit acting or purporting to act in an official
30 capacity.

31 b. By a governmental unit or an employee or agent of a
32 governmental unit acting in an official capacity to enforce a
33 law to protect against an imminent threat to public health or
34 safety.

35 c. Against a person primarily engaged in the business of

1 selling or leasing goods or services if the cause of action
2 arises out of a communication related to the person's sale or
3 lease of the goods or services.

4 Sec. 3. NEW SECTION. **652.3 Special motion for expedited**
5 **relief.**

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

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

13 1. Except as otherwise provided in subsections 4 through
14 7, on the filing of a motion under section 652.3, all of the
15 following apply:

16 a. All other proceedings between the moving party and
17 responding party, including discovery and a pending hearing or
18 motion, are stayed.

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

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

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

33 4. During a stay under subsection 1, the court may allow
34 limited discovery if a party shows that specific information is
35 necessary to establish whether a party has satisfied or failed

1 to satisfy a burden under section 652.7, subsection 1, and the
2 information is not reasonably available unless discovery is
3 allowed.

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

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

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

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

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

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

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

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

19 b. For other good cause.

20 2. If the court orders a later hearing under subsection 1,
21 paragraph "a", the court shall hear the motion under section
22 652.3 not later than sixty days after the court order allowing
23 the discovery, unless the court orders a later hearing under
24 subsection 1, paragraph "b".

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

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

31 Sec. 7. NEW SECTION. **652.7 Dismissal of cause of action in**
32 **whole or part.**

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

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

3 *b.* The responding party fails to establish under section
4 652.2, subsection 3, that this chapter does not apply.

5 *c.* Any of the following are true:

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

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

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

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

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

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

24 Sec. 8. NEW SECTION. **652.8 Ruling.**

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

27 Sec. 9. NEW SECTION. **652.9 Appeal.**

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

32 Sec. 10. NEW SECTION. **652.10 Costs, attorney fees, and**
33 **expenses.**

34 On a motion under section 652.3, the court shall award court
35 costs, reasonable attorney fees, and reasonable litigation

1 expenses related to the motion in the following circumstances:

2 1. To the moving party if the moving party prevails on the
3 motion.

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

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

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

13 Sec. 12. NEW SECTION. 652.12 **Uniformity of application and**
14 **construction.**

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

18 Sec. 13. **APPLICABILITY.** This Act applies to a civil action
19 filed or cause of action asserted in a civil action on or after
20 the effective date of this Act.

21 **EXPLANATION**

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

24 This bill enacts the "Uniform Public Expression Protection
25 Act", which creates a special motion for expedited relief in
26 actions involving the exercise of the right of freedom of
27 speech and of the press, the right to assemble and petition,
28 and the right of association.

29 The bill applies to a cause of action asserted in a civil
30 action against a person based on the person's communication
31 in a legislative, executive, judicial, administrative, or
32 other governmental proceeding; communication on an issue under
33 consideration or review in a legislative, executive, judicial,
34 administrative, or other governmental proceeding; or exercise
35 of the person's first amendment right on a matter of public

1 concern.

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

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

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

1 cause, hear and rule on motions unrelated to the special motion
2 and a motion seeking an injunction. The bill provides that a
3 motion for costs, attorney fees, and expenses is not subject
4 to the special motion for expedited relief stay. The parties'
5 ability to voluntarily dismiss or move to sever is not affected
6 by the special motion for expedited relief stay.

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

19 The bill provides that the court may award court costs,
20 reasonable attorney fees, and reasonable litigation fees
21 relating to the special motion to the prevailing party.

22 The bill is a uniform Act drafted by the national conference
23 of commissioners on uniform state laws. The bill applies to
24 actions that are filed on or after the effective date of the
25 bill.