

HOUSE BILL NO. 292

INTRODUCED BY T. MILLETT, J. REAVIS

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE UNIFORM PUBLIC EXPRESSION PROTECTION ACT; PROVIDING PROTECTIONS FOR CERTAIN ACTIONS INVOLVING FREEDOM OF SPEECH AND FREEDOM OF ASSEMBLY; PROVIDING FOR EXPEDITED RELIEF; PROVIDING FOR AN AWARD OF ATTORNEY FEES; PROVIDING DEFINITIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Short title. [Sections 1 through 12] may be cited as the "Uniform Public Expression Protection Act".

NEW SECTION. Section 2. Scope -- definitions. (1) Except as otherwise provided in subsection (2), [sections 1 through 12] apply to a claim for relief asserted in a civil action against a person based on the person's:

(a) communication in a legislative, executive, judicial, administrative, or other governmental proceeding;

(b) communication on an issue under consideration or review in a legislative, executive, judicial, administrative, or other governmental proceeding; or

(c) exercise of the right of freedom of speech or of the press, the right to assemble or petition, or the right of the association, guaranteed by the United States constitution or the Montana constitution, on a matter of public concern.

(2) [Sections 1 through 12] do not apply to a claim for relief asserted:

(a) against a governmental unit or an employee or agent of a governmental unit acting or purporting to act in an official capacity;

(b) by a governmental unit or an employee or agent of a governmental unit acting in an official

capacity to enforce a law to protect against an imminent threat to public health or safety; or

(c) against a person primarily engaged in the business of selling or leasing goods or services if the claim for relief arises out of a communication related to the person's sale or lease of the goods or services.

(3) As used in this section, the following definitions apply:

(a) "Goods or services" does not include the creation, dissemination, exhibition, or advertisement or similar promotion of a dramatic, literary, musical, political, journalistic, or artistic work.

(b) "Governmental unit" means a public corporation or government or governmental subdivision, agency, or instrumentality.

(c) "Person" means an individual, estate, trust, partnership, business or nonprofit entity, governmental unit, or other legal entity.

NEW SECTION. Section 3. Special motion for expedited relief. Not later than 60 days after a party is served with a complaint, crossclaim, counterclaim, third-party complaint, or other pleading that asserts a civil action to which [sections 1 through 12] applies, or at a later time on a showing of good cause, the party may file a special motion for expedited relief to dismiss the civil action or part of the civil action.

NEW SECTION. Section 4. Stay. (1) Except as otherwise provided in subsections (4) through ~~(7)~~ (8), on the filing of a motion under [section 3]:

(a) all other proceedings between the moving party and responding party, including discovery and a pending hearing or motion, are stayed; and

(b) on motion by the moving party, the court may stay a hearing or motion involving another party, or discovery by another party, if the hearing or ruling on the motion would adjudicate, or the discovery would relate to, an issue material to the motion under [section 3].

(2) A stay under subsection (1) remains in effect until entry of an order ruling on the motion under [section 3] and expiration of the time under [section 9] for the moving party to appeal the order.

(3) Except as otherwise provided in subsections (5) through (7), if a party appeals from an order ruling on a motion under [section 3], all proceedings between all parties in the action are stayed. The stay remains in effect until the conclusion of the appeal.

(4) During a stay under subsection (1), the court may allow limited discovery if a party shows that specific information is necessary to establish whether a party has satisfied or failed to satisfy a burden under [section 7(1)] and the information is not reasonably available unless discovery is allowed.

(5) A motion under [section 10] for costs, attorney fees, and expenses is not subject to a stay under this section.

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

(7) During a stay under this section, the court for good cause may hear and rule on:

(a) a motion unrelated to the motion under [section 3]; and

(b) a motion seeking a special or preliminary injunction to protect against an imminent threat to public health or safety.

(8) THE STAY PROVIDED FOR IN THIS SECTION DOES NOT APPLY TO ACTIONS FOR A TEMPORARY OR PERMANENT ORDER OF PROTECTION AS SET FORTH IN TITLE 40, CHAPTER 15.

NEW SECTION. Section 5. Hearing. (1) The court shall hear a motion under [section 3] not later than 60 days after filing of the motion unless the court orders a later hearing:

(a) to allow discovery under [section 4(4)]; or

(b) for other good cause.

(2) If the court orders a later hearing under subsection (1)(a), the court shall hear the motion under [section 3] not later than 60 days after the court order allowing the discovery, unless the court orders a later hearing under subsection (1)(b).

NEW SECTION. Section 6. Proof. In ruling on a motion under [section 3], the court shall consider the pleadings, the motion, any reply or response to the motion, and any evidence that could be considered in ruling on a motion for summary judgment under Rule 56 of the Montana Rules of Civil Procedure.

NEW SECTION. Section 7. Dismissal of cause of action in whole or in part. (1) In ruling on a motion under [section 3], the court shall dismiss with prejudice a civil action, or part of a civil action, if:

(a) the moving party establishes under [section 2(1)] that the act applies;

(b) the responding party fails to establish under [section 2(2)] that [sections 1 through 12] do not apply; and

(c) either:

(i) the responding party fails to establish a prima facie case as to each essential element of the civil action; or

(ii) the moving party establishes that:

(A) the responding party failed to state a claim upon which relief can be granted; or

(B) there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the civil action or part of the civil action.

(2) A voluntary dismissal without prejudice of a responding party's civil action, or part of a civil action, that is the subject of a motion under [section 3] does not affect a moving party's right to obtain a ruling on the motion and seek costs, attorney fees, and expenses under [section 10].

(3) A voluntary dismissal with prejudice of a responding party's cause of action, or part of a cause of action, that is the subject of a motion under [section 3] establishes for the purpose of [section 10] that the moving party prevailed on the motion.

NEW SECTION. Section 8. Ruling. The court shall rule on a motion under [section 3] not later than 60 days after a hearing under [section 5].

NEW SECTION. Section 9. Appeal. A moving party may appeal as a matter of right from an order denying, in whole or in part, a motion under [section 3]. The appeal must be filed not later than 30 days after entry of the order in a civil action between private parties, and not later than 60 days after entry of the order in a civil action to which the United States or the state of Montana or a political subdivision is a party.

NEW SECTION. Section 10. Costs, attorney fees, and expenses. On a motion under [section 3], the court shall award court costs, reasonable attorney fees, and reasonable litigation expenses related to the motion:

(1) to the moving party if the moving party prevails on the motion; or

(2) to the responding party if the responding party prevails on the motion and the court finds that the motion was frivolous or filed solely with intent to delay the proceeding.

NEW SECTION. Section 11. Construction. [Sections 1 through 12] must be broadly construed and applied to protect the exercise of the right of freedom of speech and of the press, the right to assemble and petition, and the right of association guaranteed by the United States constitution or the Montana constitution.

NEW SECTION. Section 12. Uniformity of application and construction. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

NEW SECTION. Section 13. Codification instruction. [Sections 1 through 12] are intended to be codified as an integral part of Title 27, and the provisions of Title 27 apply to [sections 1 through 12].

NEW SECTION. Section 14. Saving clause. [This act] does not affect a cause of action asserted before [the effective date of this act] in a civil action.

NEW SECTION. Section 15. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 16. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 17. Applicability. [This act] applies to a civil action filed or cause of action asserted in a civil action on or after [the effective date of this act].

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