

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 490

By: Bergstrom

AS INTRODUCED

An Act relating to civil procedure; creating the Public Participation Protection Act; providing short title; allowing special motion to dismiss under certain conditions; setting filing deadlines; staying certain discovery; providing for expedited hearings; requiring certain considerations by court; authorizing certain appeal; providing for award of certain costs and fees; authorizing certain sanctions; prohibiting the granting of a special motion under certain situations; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 683.1 of Title 12, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Public Participation Protection Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 683.2 of Title 12, unless there is created a duplication in numbering, reads as follows:

1           A. A party, other than a government agency, entity, or employee  
2 acting in an official capacity, may file a special motion to dismiss  
3 a claim under this section if the claim infringes upon that party's  
4 exercise of the constitutional right of petition, free speech, or  
5 association under the United States Constitution or the Oklahoma  
6 Constitution in connection with a public issue, which includes:

7           1. The right of free speech, which means a communication that  
8 falls with the protection of the Constitution of the United States  
9 or the Oklahoma Constitution;

10           2. The right to petition the government through:

11           a. a communication in connection with an issue under  
12 consideration or review by a legislative, executive,  
13 administrative, judicial, or other official body,

14           b. a communication that is reasonably likely to encourage  
15 consideration or review of an issue by a legislative,  
16 executive, administrative, judicial, or other official  
17 body, or

18           c. a communication that is reasonably likely to enlist a  
19 public participation in an effort to effect  
20 consideration of an issue by a legislative, executive,  
21 administrative, judicial, or other official body; or

22           3. The right of association, meaning a communication between  
23 individuals who join together to collectively express, promote,  
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1 pursue, or defend common interests that fall within the Constitution  
2 of the United States or the Oklahoma Constitution.

3 B. A special motion to dismiss under this section shall be  
4 filed no later than sixty (60) days after the date of service of the  
5 legal action. The court may extend the time to file a motion under  
6 this section for good cause.

7 C. All discovery, except specified and limited discovery  
8 relevant to the motion, in the proceeding shall be stayed upon the  
9 filing of a special motion to dismiss under this section. The stay  
10 of discovery shall remain in effect until the entry of the order  
11 ruling on the motion and any interlocutory appeal thereof.

12 Notwithstanding the stay imposed by this section, the court, on  
13 motion by a party or the court's own motion and for good cause  
14 shown, may order specified and limited discovery relevant to the  
15 motion.

16 SECTION 3. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 683.3 of Title 12, unless there  
18 is created a duplication in numbering, reads as follows:

19 A. The court shall conduct an expedited hearing on the motion.  
20 A hearing on the motion shall be held no later than thirty (30) days  
21 after service of the motion, or thirty (30) days of ordering  
22 discovery, unless docket conditions of the court require a later  
23 hearing, upon a showing of good cause, or by agreement of the  
24 parties.

1 B. 1. If the moving party makes an initial showing by a  
2 preponderance of the evidence that the legal action infringes upon a  
3 party's exercise of the constitutional right to free speech, right  
4 to petition, or right of association, the court shall grant the  
5 motion to dismiss unless the party bringing the action can establish  
6 a prima facie case for the legal action.

7 2. Notwithstanding the provisions of this subsection, the court  
8 shall grant the motion to dismiss if the moving party establishes  
9 each element of a valid defense to the claim.

10 3. Notwithstanding the provisions of this subsection, if a  
11 party against whom a special motion to dismiss is brought under this  
12 title can show that the party's claim is a constitutionally  
13 protected public interest action and is used for effective political  
14 expression or injury, or as means of communicating useful  
15 information to the public, then the motion to dismiss shall be  
16 denied.

17 4. The court shall consider pleadings and supporting and  
18 opposing affidavits stating the facts upon which the liability or  
19 defense is based.

20 5. The court shall rule on a special motion to dismiss as soon  
21 as possible, but no later than thirty (30) days after hearing the  
22 motion. If the court does not rule on a motion to dismiss within  
23 such period, the motion is considered to have been denied by  
24 operation of law.

1 C. An order granting or denying a special motion to dismiss  
2 shall be appealable.

3 SECTION 4. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 683.4 of Title 12, unless there  
5 is created a duplication in numbering, reads as follows:

6 A. If the court orders dismissal of a legal action under this  
7 act, the court shall award to the moving party court costs and  
8 reasonable attorney fees including those incurred on the motion.

9 B. If the court finds that a special motion to dismiss is  
10 frivolous and solely intended to cause unnecessary delay, the court  
11 shall award court costs and reasonable attorney fees to the party  
12 opposing the motion.

13 SECTION 5. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 683.5 of Title 12, unless there  
15 is created a duplication in numbering, reads as follows:

16 A. The court shall not grant a special motion to dismiss under  
17 this act in any action brought to enforce an important  
18 constitutional or statutory right by the general public, or in an  
19 action seeking declaratory or injunctive relief against a government  
20 entity, agency, or employee acting in an official capacity.

21 B. This act shall not apply to proceedings under Title 10A or  
22 Title 43 of the Oklahoma Statutes, or an application for a  
23 protective order.

24 C. This act shall not:  
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1 1. Apply to an enforcement action, with the exception of an  
2 action directed against an individual or entity requesting  
3 information in accordance with the Oklahoma Open Records Act that is  
4 brought in the name of the state or a political subdivision of the  
5 state by the attorney general, a district attorney or county  
6 attorney;

7 2. Result in findings or determinations that are admissible  
8 into evidence at any later stage of the case or in any subsequent  
9 action;

10 3. Affect or limit the authority of a court to award sanctions,  
11 court costs, attorney fees or any other relief available under any  
12 statute, court rule, or other authority;

13 4. Affect, limit, or preclude the right of the moving party to  
14 any defense, remedy, immunity, or privilege otherwise authorized by  
15 law;

16 5. Affect the substantive law governing any asserted claim; or

17 6. Create a private cause of action.

18 SECTION 6. This act shall become effective November 1, 2023.

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