

FIRST REGULAR SESSION

HOUSE BILL NO. 163

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BIVINS (Sponsor) AND SATER (Co-sponsor).

Pre-filed December 18, 2006 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

0345L.01I

AN ACT

To repeal section 537.528, RSMo, and to enact in lieu thereof one new section relating to strategic litigation against public participation.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 537.528, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 537.528, to read as follows:

537.528. 1. [Any action seeking money damages against a person for] **All conduct [or]**
, speech or other petitioning activities undertaken or made **at or** in connection with a public
hearing or public meeting, in a quasi-judicial proceeding before a tribunal or decision-making
body of the state or any political subdivision of the state [is] **shall be immune from civil**
liability, regardless of intent or purpose and shall possess a qualified privilege against
liability for slander or libel, where such conduct, speech, or other petitioning activity is
aimed at procuring any governmental action, result, or outcome. Any action or claim
seeking monetary damages against a person for such conduct, speech, or other petitioning
activities shall be subject to a special motion to dismiss, motion for judgment on the pleadings,
or motion for summary judgment that shall be considered by the court on a priority or expedited
basis to ensure the early consideration of the issues raised by the motion and to prevent the
unnecessary expense of litigation. Upon the filing of any special motion described in this
subsection, all discovery shall be suspended pending a decision on the motion by the court and
the exhaustion of all appeals regarding the special motion.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 2. [If the rights afforded by this section are raised as an affirmative defense and] **The**
16 **court shall grant the special motion unless the responding party has shown by a**
17 **preponderance of the evidence that the acts of the moving party are not immunized from**
18 **liability. The court shall make its determination upon the facts contained in the pleadings**
19 **and in any applicable affidavits.** If a court grants a motion to dismiss, a motion for judgment
20 on the pleadings or a motion for summary judgment [filed within ninety days of the filing of the
21 moving party's answer] , the court shall award reasonable attorney fees and costs incurred by the
22 moving party in defending the action, **including those incurred in connection with any appeal.**
23 **Once a special motion is filed, the court shall maintain jurisdiction to award attorney fees**
24 **and costs and damages in all instances, including voluntary dismissal of the action prior**
25 **to a ruling on a special motion.** If the court finds that a special motion to dismiss or motion
26 for summary judgment is frivolous or solely intended to cause unnecessary delay, the court shall
27 award costs and reasonable attorney fees to the party prevailing on the motion.

28 3. Any party shall have the right to an expedited appeal from a trial court order on the
29 special motions described in subsection 2 of this section or from a trial court's failure to rule on
30 the motion on an expedited basis.

31 4. As used in this section, a "public meeting in a quasi-judicial proceeding" means and
32 includes any meeting established and held by a state or local governmental entity, including
33 without limitations meetings or presentations before state, county, city, town or village councils,
34 planning commissions, review boards or commissions.

35 5. Nothing in this section limits or prohibits the exercise of a right or remedy of a party
36 granted pursuant to another constitutional, statutory, common law or administrative provision,
37 including civil actions for defamation.

38 6. If any provision of this section or the application of any provision of this section to
39 a person or circumstance is held invalid, the invalidity shall not affect other provisions or
40 applications of this section that can be given effect without the invalid provision or application,
41 and to this end the provisions of this section are severable.

42 7. The provisions of this section shall apply to all causes of actions.

43 **8. A moving party who prevails on a special motion filed under this section may**
44 **petition the court for actual and punitive damages for abuse of process and malicious**
45 **prosecution, either as part of the pending proceeding or in a separate action. The granting**
46 **of the special motion shall be prima facie evidence that abuse of process and malicious**
47 **prosecution has occurred.**

48 **9. The attorney general shall be permitted to intervene and assume the costs of**
49 **defending a suit which appears to be violating a Missouri citizen's speech that is immune**
50 **from civil liability as defined in this section. If the attorney general prevails on a special**

51 motion filed under this section, the attorney general shall be entitled to the costs of
52 defending an action under this section.

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