

SENATE BILL 1097

By Dickerson

AN ACT to amend Tennessee Code Annotated, Title 20,
relative to the protection of persons exercising
their constitutional rights of expression on matters
of public concern.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 20, is amended by adding the following
new chapter:

20-17-101. This chapter shall be known and may be cited as the "Tennessee
Public Participation Act."

20-17-102. The purpose of this chapter is to encourage and safeguard the
constitutional rights of persons to petition, to speak freely, to associate freely, and to
participate in government to the fullest extent permitted by law and, at the same time,
protect the rights of persons to file meritorious lawsuits for demonstrable injury. This
chapter is consistent with and necessary to implement the rights protected by Article I,
§§ 19 and 23, of the Constitution of Tennessee, as well as by the First Amendment to
the United States Constitution, and shall be construed broadly to effectuate its purposes
and intent.

20-17-103. As used in this chapter:

(1) "Communication" means the making or submitting of a statement or
document in any form or medium, including oral, written, audiovisual, or
electronic;

(2) "Exercise of the right of association" means exercise of the
constitutional right to join together to take collective action on a matter of public

concern that falls within the protection of the United States Constitution or the Tennessee Constitution;

(3) "Exercise of the right of free speech" means a communication made in connection with a matter of public concern or religious expression that falls within the protection of the United States Constitution or the Tennessee Constitution;

(4) "Exercise of the right to petition" means a communication that falls within the protection of the United States Constitution or the Tennessee Constitution and:

(A) Is intended to encourage consideration or review of an issue by a federal, state, or local legislative, executive, judicial, or other governmental body; or

(B) Is intended to enlist public participation in an effort to effect consideration of an issue by a federal, state, or local legislative, executive, judicial, or other governmental body;

(5) "Legal action" means a claim, cause of action, petition, cross-claim, or counterclaim or any request for legal or equitable relief initiated against a private party;

(6) "Matter of public concern" includes an issue related to:

(A) Health or safety;

(B) Environmental, economic, or community well-being;

(C) The government;

(D) A public official or public figure;

(E) A good, product, or service in the marketplace;

(F) A literary, musical, artistic, political, theatrical, or audiovisual

work; or

(G) Any other matter deemed by a court to involve a matter of public concern; and

(7) "Party" does not include a governmental entity, agency, or employee.

20-17-104.

(a) If a legal action is filed in response to a party's exercise of the right of free speech, right to petition, or right of association, that party may petition the court to dismiss the legal action.

(b) Such a petition may be filed within sixty (60) calendar days from the date of service of the legal action or, in the court's discretion, at any later time that the court deems proper.

(c) A response to the petition, including any opposing affidavits, may be served and filed by the opposing party no less than five (5) days before the hearing or, in the court's discretion, at any earlier time that the court deems proper.

(d) All discovery in the legal action is stayed upon the filing of a petition under this section. The stay of discovery remains in effect until the entry of an order ruling on the petition. The court may allow specified and limited discovery relevant to the petition upon a showing of good cause.

20-17-105.

(a) The petitioning party has the burden of making a prima facie case that a legal action against the petitioning party is based on, relates to, or is in response to that party's exercise of the right to free speech, right to petition, or right of association.

(b) If the petitioning party meets this burden, the court shall dismiss the legal action unless the responding party establishes a prima facie case for each essential element of the claim in the legal action.

(c) Notwithstanding subsection (b), the court shall dismiss the legal action if the petitioning party establishes a valid defense to the claims in the legal action.

(d) The court may base its decision on supporting and opposing sworn affidavits stating admissible evidence upon which the liability or defense is based and on other admissible evidence presented by the parties.

(e) If the court dismisses a legal action pursuant to a petition filed under this chapter, the legal action or the challenged claim is dismissed with prejudice.

(f) If the court determines the responding party established a likelihood of prevailing on a claim:

(1) The fact that the court made that determination and the substance of the determination may not be admitted into evidence later in the case; and

(2) The determination does not affect the burden or standard of proof in the proceeding.

20-17-106. The court's order dismissing or refusing to dismiss a legal action pursuant to a petition filed under this chapter is immediately appealable as a matter of right to the court of appeals. The Tennessee Rules of Appellate Procedure applicable to appeals as a matter of right governs such appeals.

20-17-107.

(a) If the court dismisses a legal action pursuant to a petition filed under this chapter, the court shall award to the petitioning party:

(1) Court costs, reasonable attorney's fees, discretionary costs, and other expenses incurred in filing and prevailing upon the petition; and

(2) Any additional relief, including sanctions, that the court determines necessary to deter repetition of the conduct by the party who brought the legal action or by others similarly situated.

(b) If the court finds that a petition filed under this chapter was frivolous or was filed solely for the purpose of unnecessary delay, and makes specific written findings and conclusions establishing such finding, the court may award to the responding party court costs and reasonable attorney's fees incurred in opposing the petition.

20-17-108. Nothing in this chapter:

(1) Applies to an enforcement action that is brought in the name of the state or a political subdivision of this state by the attorney general, a district attorney general, or a county or municipal attorney;

(2) Can result in findings or determinations that are admissible in evidence at any later stage of the underlying legal action or in any subsequent legal action;

(3) Affects or limits the authority of a court to award sanctions, costs, attorney's fees, or any other relief available under any other statute, court rule, or other authority;

(4) Affects, limits, or precludes the right of any party to assert any defense, remedy, immunity, or privilege otherwise authorized by law;

(5) Affects the substantive law governing any asserted claim;

(6) Creates a private right of action; or

(7) Creates any cause of action for any government entity, agency, or employee.

20-17-109. This chapter is intended to provide an additional substantive remedy to protect the constitutional rights of parties and to supplement any remedies which are otherwise available to those parties under common law, statutory law, or constitutional law or under the Tennessee Rules of Civil Procedure.

20-17-110. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 2. This act shall take effect July 1, 2019, the public welfare requiring it, and shall apply to any legal action commenced on or after the effective date of this act.