

# HOUSE BILL No. 1459

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 34-7.

**Synopsis:** Strategic lawsuits against public participation. Repeals and replaces all provisions concerning special relief for certain civil actions pertaining to the exercise of certain constitutionally protected freedoms. Provides that a party may petition a court for expedited relief from certain civil causes of action based upon: (1) certain communications related to: (A) legislative; (B) executive; (C) judicial; (D) administrative; or (E) governmental; functioning; or (2) the right to: (A) freedom of speech; (B) freedom of the press; (C) assemble or petition; or (D) free association. Specifies certain exemptions. Requires the staying of all proceedings, including discovery, when a motion for expedited relief is filed. Specifies certain exemptions. Specifies certain time limits for the filing of certain motions and appeals and the issuance of certain court orders and rulings. Specifies certain exemptions. Allows limited discovery and consideration of specified topics during a stay of proceedings in certain instances. Requires a cause of action to be dismissed with prejudice when a court grants a motion for expedited relief. Allows parties to voluntarily: (1) withdraw; or (2) sever; causes of action subject to expedited relief. Permits the awarding of reasonable court costs, attorney's fees, and litigation expenses in certain instances.

**Effective:** July 1, 2021.

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## Borders

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January 14, 2021, read first time and referred to Committee on Judiciary.

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First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

## HOUSE BILL No. 1459

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 34-7-7 IS REPEALED [EFFECTIVE JULY 1,  
2       2021]. (Defense in Civil Actions Against Persons Who Act in  
3       Furtherance of the Person's Right of Petition or Free Speech Under the  
4       Constitution of the United States or the Constitution of the State of  
5       Indiana in Connection With a Public Issue).

6       SECTION 2. IC 34-7-7.5 IS ADDED TO THE INDIANA CODE  
7       AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
8       JULY 1, 2021]:

9       **Chapter 7.5. Defense of Public Expression**

10       **Sec. 1. This chapter does not apply to:**

11       **(1) goods or services concerning the:**

12       **(A) creation;**

13       **(B) dissemination;**

14       **(C) exhibition; or**

15       **(D) advertisement or similar promotion;**

16       **of a dramatic, literary, musical, political, journalistic, or**  
17       **artistic work;**



**(2) a cause of action 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 cause of action arises out of a communication related to the person's sale or lease of goods or services; or**

**(3) a civil cause of action initiated before July 1, 2021, or a motion filed under IC 34-7-7 before its repeal.**

**Sec. 2. This chapter applies to the following:**

**(1) A civil cause of action asserted against a person based upon 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 person's right to:**

**(i) freedom of speech;**

**(ii) freedom of the press;**

**(iii) assemble or petition; or**

**(iv) freedom of association;**

**as guaranteed by the Constitution of the United States.**

**(2) A civil cause of action that is:**

**(A) described in subdivision (1); and**

**(B) initiated on or after July 1, 2021.**

**Sec. 3. (a) Except as provided in subsection (b), and not later than sixty (60) days after a party is served with a complaint, petition, cross claim, counterclaim, third party claim, or other pleading that asserts a civil cause of action described in section 2 of this chapter, the served party may file a special motion for expedited relief to dismiss any:**

**(1) cause of action; or**

**(2) part of a cause of action;**

**described in section 2 of this chapter.**

**(b) Upon a showing of good cause to the court, a party may seek the expedited relief described in subsection (a) after the sixty (60)**



day period described in subsection (a).

**Sec. 4. (a)** Except as provided in subsections (d) through (g), upon the filing of the motion described in section 3 of this chapter:

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

(2) the court may stay, upon a motion by a moving party, a hearing or motion involving another party that concerns discovery by another party if a hearing or ruling on the motion filed under section 3 of this chapter would:

(A) adjudicate; or

(B) relate to discovery applicable to;

an issue material to the motion filed under section 3 of this chapter.

(b) A stay issued under subsection (a) remains in effect until:

(1) the entry of a court order that rules upon the motion filed under section 3 of this chapter; and

(2) the expiration of the twenty-one (21) day appeals period described in section 9 of this chapter.

(c) Except as provided in subsections (e) through (g), if a party appeals an order that rules on a motion filed under section 3 of this chapter, all proceedings between all parties in the action are stayed. The stay described in this subsection remains in effect until the conclusion of the appeal.

(d) During a stay described under subsection (a), 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 the burden specified under section 7 of this chapter and the information is not reasonably available unless discovery is allowed.

(e) A motion seeking reasonable court costs, attorney's fees, or litigation expenses under section 10 of this chapter is not subject to a stay described under this section.

(f) A stay issued under this section does not affect a party's ability to voluntarily:

(1) dismiss:

(A) a cause of action; or

(B) any part of a cause of action; or

(2) move to sever a cause of action from another cause of action.

(g) During a stay issued under this section, the court may, with good cause, hear and rule on a motion:

(1) unrelated to the motion filed under section 3 of this



chapter; and

(2) that seeks a special or preliminary injunction for the purpose of protecting against an imminent threat to public health or safety.

Sec. 5. (a) The court shall hear a motion filed under section 3 of this chapter not later than sixty (60) days after the filing of the motion unless the court orders a later hearing:

(1) to allow for discovery under section 4(d) of this chapter; or

(2) for other good cause.

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

Sec. 6. In ruling on a motion filed under section 3 of this chapter, the court shall consider the pleadings, the motion, any reply or response to the motion, and any other evidence eligible for consideration by the court when ruling on a motion for summary judgment under Trial Rule 56 of the Indiana Rules of Trial Procedure.

Sec. 7. (a) In ruling on a motion under section 3 of this chapter, the court shall dismiss, with prejudice, a cause of action or a part of a cause of action if:

(1) the moving party establishes that section 2 of this chapter applies;

(2) the responding party fails to establish that this chapter does not apply; and

(3) either:

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

(B) the moving party establishes that:

(i) the responding party has failed to state a cause of action upon which relief may be granted; or

(ii) 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 cause of action or a part of the cause of action.

(b) A voluntary dismissal without 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 of this chapter does not affect a moving party's right to obtain a ruling on the motion and seek reasonable court costs, attorney's fees, and litigation expenses as



1 permitted under section 10 of this chapter.

2 (c) A voluntary dismissal with prejudice of a responding party's  
3 cause of action or part of a cause of action that is the subject of a  
4 motion under section 3 of this chapter establishes, for purposes of  
5 section 10 of this chapter, that the moving party has prevailed on  
6 the motion.

7 Sec. 8. The court shall rule on a motion filed under section 3 of  
8 this chapter not later than sixty (60) days after a hearing under  
9 section 7 of this chapter. A ruling issued under this section shall be  
10 memorialized in a written court order.

11 Sec. 9. A moving party may appeal, as a matter of right, from an  
12 order denying, in whole or in part, a motion filed under section 3  
13 of this chapter. An appeal under this section must be filed not later  
14 than twenty-one (21) days after the entry of the order.

15 Sec. 10. Upon receipt of a motion filed under section 4(e) of this  
16 chapter, the court shall award reasonable court costs, attorney's  
17 fees, and litigation expenses related to the motion to the:

18 (1) moving party if the moving party prevails on the motion;

19 or

20 (2) responding party if the responding party prevails on the  
21 motion and the court finds that the motion was frivolous or  
22 filed solely for the purpose of delaying the proceeding.

23 Sec. 11. This chapter shall be broadly construed and applied to  
24 protect the exercise of the right of freedom of speech and of the  
25 press, the right to assemble and petition, and the right of  
26 association guaranteed by the Constitution of the United States.

27 Sec. 12. In applying and construing this chapter, consideration  
28 must be given to the need to promote uniformity of the law  
29 concerning its subject matter among the states that enact it.

30 Sec. 13. If any provision of this chapter or its application to any  
31 person or circumstance is held invalid, the invalidity does not affect  
32 other provisions or applications of this chapter that can be given  
33 effect without the invalid provision or application.

