

As Reported by the Senate Judiciary Committee

135th General Assembly

Regular Session

2023-2024

S. B. No. 237

Senators Gavarone, Manning

A BILL

To amend section 2505.02 and to enact sections 1
2747.01, 2747.02, 2747.03, 2747.04, 2747.05, and 2
2747.06 of the Revised Code to enact the Uniform 3
Public Expression Protection Act relating to 4
legal actions concerning protected speech. 5

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

Section 1. That section 2505.02 be amended and sections 6
2747.01, 2747.02, 2747.03, 2747.04, 2747.05, and 2747.06 of the 7
Revised Code be enacted to read as follows: 8

Sec. 2505.02. (A) As used in this section: 9

(1) "Substantial right" means a right that the United 10
States Constitution, the Ohio Constitution, a statute, the 11
common law, or a rule of procedure entitles a person to enforce 12
or protect. 13

(2) "Special proceeding" means an action or proceeding 14
that is specially created by statute and that prior to 1853 was 15
not denoted as an action at law or a suit in equity. 16

(3) "Provisional remedy" means a proceeding ancillary to 17
an action, including, but not limited to, a proceeding for a 18

preliminary injunction, attachment, discovery of privileged matter, suppression of evidence, a prima-facie showing pursuant to section 2307.85 or 2307.86 of the Revised Code, a prima-facie showing pursuant to section 2307.92 of the Revised Code, or a finding made pursuant to division (A) (3) of section 2307.93 of the Revised Code.

(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

(3) An order that vacates or sets aside a judgment or grants a new trial;

(4) An order that grants or denies a provisional remedy and to which both of the following apply:

(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

(5) An order that determines that an action may or may not be maintained as a class action;

(6) An order determining the constitutionality of any

changes to the Revised Code made by Am. Sub. S.B. 281 of the 47
124th general assembly, including the amendment of sections 48
1751.67, 2117.06, 2305.11, 2305.15, 2305.234, 2317.02, 2317.54, 49
2323.56, 2711.21, 2711.22, 2711.23, 2711.24, 2743.02, 2743.43, 50
2919.16, 3923.63, 3923.64, 4705.15, and 5111.018 (renumbered as 51
5164.07 by H.B. 59 of the 130th general assembly), and the 52
enactment of sections 2305.113, 2323.41, 2323.43, and 2323.55 of 53
the Revised Code or any changes made by Sub. S.B. 80 of the 54
125th general assembly, including the amendment of sections 55
2125.02, 2305.10, 2305.131, 2315.18, 2315.19, and 2315.21 of the 56
Revised Code; 57

(7) An order in an appropriation proceeding that may be 58
appealed pursuant to division (B)(3) of section 163.09 of the 59
Revised Code; 60

(8) An order that denies a motion for expedited relief 61
pursuant to section 2747.04 of the Revised Code. 62

(C) When a court issues an order that vacates or sets 63
aside a judgment or grants a new trial, the court, upon the 64
request of either party, shall state in the order the grounds 65
upon which the new trial is granted or the judgment vacated or 66
set aside. 67

(D) This section applies to and governs any action, 68
including an appeal, that is pending in any court on July 22, 69
1998, and all claims filed or actions commenced on or after July 70
22, 1998, notwithstanding any provision of any prior statute or 71
rule of law of this state. 72

Sec. 2747.01. (A) As used in this section: 73

(1) "Goods or services" does not include the creation, 74
dissemination, exhibition, or advertisement, or a similar 75

promotion, of a dramatic, literary, musical, political, 76
journalistic, or artistic work. 77

(2) "Governmental unit" means the government of the United 78
States, the state, a political subdivision of the state, or any 79
department, agency, board, commission, or other instrumentality 80
of the government of the United States, the state, or a 81
political subdivision. 82

(3) "Person" includes an individual, estate, trust, 83
partnership, business or nonprofit entity, governmental unit, or 84
other legal entity. 85

(B) Except as provided in division (C) of this section, 86
this chapter applies to a cause of action asserted in a civil 87
action against a person based on any of the following: 88

(1) The person's communication in a legislative, 89
executive, judicial, administrative, or other governmental 90
proceeding; 91

(2) The person's communication on an issue under 92
consideration or review in a legislative, executive, judicial, 93
administrative, or other governmental proceeding; 94

(3) The person's exercise of the right of freedom of 95
speech and of the press, the right to assemble and petition, and 96
the right of association, guaranteed by the United States 97
Constitution or the Ohio Constitution, on a matter of public 98
concern. 99

(C) This chapter does not apply to any of the following: 100

(1) A legal action against a governmental unit or an 101
employee or agent of the governmental unit who was acting or 102
purporting to act in an official capacity; 103

(2) An enforcement action that is brought in the name of a governmental unit to protect against an imminent threat to public health or safety; 104
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(3) A legal action brought against a person primarily engaged in the business of selling or leasing goods or services, if the cause of action arises out of communication related to the person's sale or lease of the goods or service. 107
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Sec. 2747.02. Not later than sixty days after a party is served with a complaint, cross-claim, counterclaim, third-party claim, or other pleading that asserts a cause of action to which this chapter applies, the party may file a motion for expedited relief to dismiss the civil action or claim. The court may extend the sixty-day period to file the motion for expedited relief for good cause shown. 111
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Sec. 2747.03. (A) (1) Except as otherwise provided in this section, if a motion for expedited relief is filed under section 2747.02 of the Revised Code, the court shall stay all other proceedings in the action between the moving party and responding party, including discovery and any other pending hearing or motion. 118
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(2) Upon request by the moving party, the court may stay a hearing or motion involving another party in the action, 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 for expedited relief. 124
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(B) A stay under division (A) of this section remains in effect until thirty days after the entry of a ruling on the motion for expedited relief or upon the conclusion of an appeal of the ruling, whichever is later. During such an appeal, all 129
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proceedings between all parties in the action are stayed. 133

(C) During a stay under division (A) of this section, the 134
court may allow limited discovery if the party seeking discovery 135
shows that specific information is necessary to establish 136
whether a party has satisfied a burden under section 2747.04 of 137
the Revised Code and the information cannot be obtained unless 138
discovery is allowed. 139

(D) A motion under section 2747.05 of the Revised Code for 140
attorney's fees, court costs, and other litigation expenses is 141
not subject to a stay under this section. 142

(E) A stay under this section does not affect a party's 143
ability to voluntarily dismiss a cause of action or move to 144
sever a cause of action for a separate trial. 145

(F) During a stay under this section, the court for good 146
cause may hear and rule on either of the following: 147

(1) A motion unrelated to the motion for expedited relief; 148

(2) A motion seeking a temporary or preliminary injunction 149
to protect against an imminent threat to public health or 150
safety. 151

Sec. 2747.04. (A) (1) The court shall conduct a hearing not 152
later than sixty days after the filing of a motion for expedited 153
relief, unless the court orders a later hearing to allow for 154
limited discovery under section 2747.03 of the Revised Code or 155
delays the hearing for other good cause. 156

(2) If the court orders a later hearing to allow for 157
limited discovery, the court shall conduct the hearing not later 158
than sixty days after the court order allowing discovery unless 159
the hearing is delayed for other good cause. 160

(B) In ruling on the motion for expedited relief, the 161
court shall consider the pleadings, the motion, any response to 162
the motion, and any evidence that could be considered in ruling 163
on a motion for summary judgment under Rule 56 of the Rules of 164
Civil Procedure. 165

(C) In ruling on the motion for expedited relief, the 166
court shall dismiss with prejudice a cause of action, or part of 167
a cause of action, if all of the following apply: 168

(1) The moving party establishes that the cause of action 169
is based on a communication or action described in division (B) 170
of section 2747.01 of the Revised Code. 171

(2) The responding party fails to establish that this 172
chapter does not apply to the cause of action due to an 173
exception in division (C) of section 2747.01 of the Revised 174
Code. 175

(3) Either the responding party fails to establish a 176
prima-facie case for each essential element of the cause of 177
action or the moving party establishes one of the following: 178

(a) The responding party failed to state a cause of action 179
upon which relief can be granted. 180

(b) There is no genuine issue as to any material fact and 181
the moving party is entitled to judgment as a matter of law on 182
the cause of action or part of the cause of action. 183

(D) The court shall rule on the motion for expedited 184
relief not later than sixty days after the hearing. 185

(E) (1) A voluntary dismissal without prejudice of a 186
responding party's cause of action, or part of a cause of 187
action, that is the subject of a motion for expedited relief 188

does not affect a moving party's right to obtain a ruling on the 189
motion for the purpose of obtaining attorney's fees, court 190
costs, and other litigation expenses under section 2747.05 of 191
the Revised Code. 192

(2) A voluntary dismissal with prejudice of a responding 193
party's cause of action, or part of a cause of action, that is 194
the subject of a motion for expedited relief establishes that 195
the moving party prevailed on the motion for the purpose of 196
awarding attorney's fees, court costs, and other litigation 197
expenses under section 2747.05 of the Revised Code. 198

Sec. 2747.05. (A) If the court grants a motion for 199
expedited relief under section 2747.04 of the Revised Code, the 200
court shall award reasonable attorney's fees, court costs, and 201
other reasonable litigation expenses to the moving party. 202

(B) If the court denies a motion for expedited relief 203
under section 2747.04 of the Revised Code, and finds that the 204
motion was frivolous conduct as defined in section 2323.51 of 205
the Revised Code, the court, after the disposition of any appeal 206
affirming the court's ruling on the motion, shall award to the 207
responding party reasonable attorney's fees, court costs, and 208
other reasonable litigation expenses incurred in responding to 209
the motion. 210

(C) If the court denies a motion for expedited relief 211
under section 2747.04 of the Revised Code, the denial is a final 212
order under section 2505.02 of the Revised Code and the moving 213
party has an interlocutory right of appeal under that section. 214
The appeal must be filed within thirty days after entry of the 215
order. 216

Sec. 2747.06. (A) Sections 2747.01 to 2747.06 of the 217

Revised Code apply to a civil action filed or any claim asserted 218
in a civil action on or after the effective date of this 219
section. 220

(B) A court shall broadly construe and apply sections 221
2747.01 to 2747.06 of the Revised Code to protect the exercise 222
of the right of freedom of speech and of the press, the right to 223
assemble and petition, and the right of association, guaranteed 224
by the United States Constitution and the Ohio Constitution. 225

(C) In construing and applying sections 2747.01 to 2747.06 226
of the Revised Code, a court shall consider the need to promote 227
uniformity of the law with respect to its subject matter among 228
states that enact a substantially similar law. 229

Section 2. That existing section 2505.02 of the Revised 230
Code is hereby repealed. 231

Section 3. This act shall be known as the Uniform Public 232
Expression Protection Act. 233