

By: Senator(s) Carter

To: Judiciary, Division A

SENATE BILL NO. 2628

1 AN ACT TO CREATE THE PUBLIC SPEECH PROTECTION ACT; TO ENACT
2 DEFINITIONS; TO PROVIDE FOR MOTIONS TO STRIKE UNDER CERTAIN
3 CIRCUMSTANCES; TO PROVIDE FOR DISCOVERY; TO SET FORTH THE RIGHT OF
4 A MOVANT UNDER THE ACT; TO ALLOW RECOVERY OF ATTORNEY'S FEES; TO
5 ENACT EXCEPTIONS; AND FOR RELATED PURPOSES.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

7 **SECTION 1.** **Public speech protection act.** (1) This section
8 shall be known and may be cited as the Public Speech Protection
9 Act.

10 (2) The purpose of the Public Speech Protection Act is to
11 encourage and safeguard a person's constitutional rights to
12 petition, and speak freely and associate freely to the maximum
13 extent permitted by law, in connection with a public issue or
14 issue of public interest while, at the same time, protecting a
15 person's rights to file meritorious lawsuits for demonstrable
16 injury.

17 (3) As used in the Public Speech Protection Act:



18 (a) "Claim" means any lawsuit, cause of action, claim,
19 cross-claim, counterclaim or other judicial pleading or filing
20 requesting relief.

21 (b) "Communication" means the making or submitting of a
22 statement or document in any form or medium, including oral,
23 visual, written or electronic.

24 (c) "Exercise of the right of association" means a
25 communication between individuals who join together to
26 collectively express, promote, pursue or defend common interests.

27 (d) "Exercise of the right of free speech" means a
28 communication made in connection with a public issue or issue of
29 public interest.

30 (e) "Exercise of the right to petition" means any of
31 the following:

32 (i) A communication in or pertaining to:

33 1. A judicial proceeding;

34 2. An official proceeding, other than a
35 judicial proceeding, to administer the law;

36 3. An executive or other proceeding before a
37 department of the state, federal government, or other political
38 subdivision of the state;

39 4. A legislative proceeding, including a
40 proceeding of a legislative committee;



41 5. A proceeding before an entity that
42 requires by rule that public notice be given before proceedings of
43 such entity;

44 6. A proceeding in or before a managing board
45 of an educational institution supported directly or indirectly
46 from public revenue;

47 7. A proceeding of the governing body of any
48 political subdivision of this state;

49 8. A report of or debate and statements made
50 in a proceeding described by subsection (3)(e)(i) 3., 4., 5., 6.
51 or 7.; or

52 9. A public meeting dealing with a public
53 purpose, including statements and discussions at the meeting or
54 other public issues or issues of public interest occurring at the
55 meeting;

56 (ii) A communication in connection with an issue
57 under consideration or review by a legislative, executive,
58 judicial or other governmental or official proceeding;

59 (iii) A communication that is reasonably likely to
60 encourage consideration or review of an issue by a legislative,
61 executive, judicial or other governmental or official proceeding;

62 (iv) A communication reasonably likely to enlist
63 public participation in an effort to effect consideration of an
64 issue by a legislative, executive, judicial or other governmental
65 or official proceeding; and



66 (v) Any other communication or conduct that falls
67 within the protection of the right to petition the government
68 under the constitution of the United States or the Mississippi
69 Constitution of 1890.

70 (f) "Governmental proceeding" means a proceeding, other
71 than a judicial proceeding, by an officer, official or body or
72 political subdivision of this state, including a board or
73 commission, or by an officer, official or body of the federal
74 government.

75 (g) "Public issue or issue of public interest" includes
76 an issue related to:

77 (i) Health or safety;

78 (ii) Environmental, economic or community
79 well-being;

80 (iii) The government;

81 (iv) A public official or public figure; or

82 (v) A good, product or service in the marketplace.

83 (h) "Moving party" means any person on whose behalf the
84 motion to strike is filed seeking to strike a claim.

85 (i) "Official proceeding" means any type of
86 administrative, executive, legislative or judicial proceeding that
87 may be conducted before a public servant.

88 (j) "Public servant" means a person elected, selected,
89 appointed, employed or otherwise designated as one (1) of the



90 following, even if the person has not yet qualified for office or
91 assumed the person's duties:

92 (i) An officer, employee or agent of government;

93 (ii) A juror;

94 (iii) An arbitrator, mediator or other person who
95 is authorized by law or private written agreement to hear or
96 determine a cause or controversy;

97 (iv) An attorney or notary public when
98 participating in the performance of a governmental function; or

99 (v) A person who is performing a governmental
100 function under a claim of right but is not legally qualified to do
101 so.

102 (4) A party may bring a motion to strike the claim if a
103 claim is based on, relates to or is in response to a party's
104 exercise of the right of free speech, right to petition or right
105 of association. A party bringing the motion to strike has the
106 initial burden of making a prima facie case showing the claim
107 against which the motion is based concerns a party's exercise of
108 the right of free speech, right to petition or right of
109 association. If the moving party meets the burden, the burden
110 shifts to the responding party to establish a likelihood of
111 prevailing on the claim by presenting substantial competent
112 evidence to support a prima facie case. If the responding party
113 meets the burden, the court shall deny the motion. In making its
114 determination, the court shall consider pleadings and supporting



115 and opposing affidavits stating the facts upon which the liability
116 or defense is based. If the court determines the responding party
117 established a likelihood of prevailing on the claim: (a) the fact
118 that the court made that determination and the substance of the
119 determination may not be admitted into evidence later in the case;
120 and (b) the determination does not affect the burden or standard
121 of proof in the proceeding. The motion to strike made under this
122 subsection may be filed within sixty (60) days of the service of
123 the most recent complaint or, in the court's discretion, at any
124 later time upon terms it deems proper. A hearing shall be held on
125 the motion not more than thirty (30) days after the service of the
126 motion.

127 (5) (a) On a motion by a party or on the court's own motion
128 and on a showing of good cause, the court may allow specified and
129 limited discovery relevant to the motion.

130 (b) Except as provided by paragraph (a) of this
131 subsection, all discovery, motions or other pending hearings shall
132 be stayed upon the filing of the motion to strike. The stay of
133 discovery shall remain in effect until the entry of the order
134 ruling on the motion except that the court, on motion and for good
135 cause shown, may order that specified discovery, motions or other
136 pending hearings be conducted.

137 (6) The movant in a motion to strike has the right to: (a)
138 petition for a writ of mandamus if the trial court fails to rule
139 on the motion in an expedited fashion; or (b) file an



140 interlocutory appeal from a trial court order denying the motion
141 to strike, if notice of appeal is filed within fourteen (14) days
142 after entry of such order. However, under subsection (6), further
143 proceedings in the trial court shall be stayed pending
144 determination of the appeal.

145 (7) The court shall award the defending party, upon a
146 determination that the moving party has prevailed on its motion to
147 strike, without regard to any limits under state law: (a) costs
148 of litigation and reasonable attorney fees; and (b) such
149 additional relief, including sanctions upon the responding party
150 and its attorneys and law firms, as the court determines necessary
151 to deter repetition of the conduct by others similarly situated.
152 If the court finds that the motion to strike is frivolous or
153 solely intended to cause delay, the court shall award to the
154 responding party reasonable attorney fees and costs related to the
155 motion.

156 (8) This section does not apply to:

157 (a) An enforcement action that is brought in the name
158 of this state or a political subdivision of this state by the
159 attorney general or a district or county attorney;

160 (b) A claim brought against a person primarily engaged
161 in the business of selling or leasing goods or services, if the
162 statement or conduct arises out of the sale or lease of goods,
163 services or an insurance product, insurance services or a
164 commercial transaction in which the intended audience is an actual



165 or potential buyer or customer, except as provided by paragraph
166 (a) of this subsection; or

167 (c) A claim brought under the Mississippi insurance
168 laws or arising out of an insurance contract.

169 (9) Subsection (8)(b) shall not apply to any action against
170 any person or entity based upon the creation, dissemination,
171 exhibition, advertisement or other similar promotion of any
172 dramatic, literary, musical, political or artistic work,
173 including, but not limited to, a motion picture or television
174 program, or an article published in a newspaper or magazine of
175 general circulation.

176 (10) In any case filed by a government contractor that is
177 found by a court to be in violation of this section, the court
178 shall provide for its ruling to be sent to the head of the
179 relevant governmental entity doing business with the contractor.

180 (11) The provisions of the public speech protection act shall
181 be applied and construed liberally to effectuate its general
182 purposes. If any provision of the public speech protection act or
183 its application is held invalid, the invalidity does not affect
184 other provisions or applications that can be given effect without
185 the invalid provision or application.

186 **SECTION 2.** This act shall take effect and be in force from
187 and after July 1, 2022.

