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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. **3309**

05/08/2023

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The bill was read for the first time and referred to the Committee on Judiciary Finance and Civil Law

- 1.1 A bill for an act
- 1.2 relating to civil actions; enacting the Uniform Public Expression Protection Act
- 1.3 proposed for adoption by the National Conference of Commissioners on Uniform
- 1.4 State Laws; proposing coding for new law in Minnesota Statutes, chapter 554;
- 1.5 repealing Minnesota Statutes 2022, sections 554.01; 554.02; 554.03; 554.04;
- 1.6 554.045; 554.05; 554.06.
- 1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.8 Section 1. **[554.07] SHORT TITLE.**
- 1.9 Sections 554.07 to 554.19 may be cited as the "Uniform Public Expression Protection
- 1.10 Act."
- 1.11 Sec. 2. **[554.08] SCOPE.**
- 1.12 (a) For the purposes of sections 554.07 to 554.19, the terms in this section have the
- 1.13 meanings given them.
- 1.14 (1) "Goods or services" does not include the creation, dissemination, exhibition, or
- 1.15 advertisement or similar promotion of a dramatic, literary, musical, political, journalistic,
- 1.16 or artistic work.
- 1.17 (2) "Governmental unit" means a public corporation or government or governmental
- 1.18 subdivision, agency, or instrumentality.
- 1.19 (3) "Person" means an individual, estate, trust, partnership, business or nonprofit entity,
- 1.20 governmental unit, or other legal entity.
- 1.21 (b) Except as otherwise provided in paragraph (c), sections 554.07 to 554.19 apply to a
- 1.22 cause of action asserted in a civil action against a person based on the person's:

(1) communication in a legislative, executive, judicial, administrative, or other governmental proceeding;

(2) communication on an issue under consideration or review in a legislative, executive, judicial, administrative, or other governmental proceeding; or

(3) exercise of the right of freedom of speech or of the press, the right to assemble or petition, or the right of association, guaranteed by the United States Constitution or the Minnesota Constitution on a matter of public concern.

(c) Sections 554.07 to 554.19 do not apply to a cause of action asserted:

(1) against a governmental unit or an employee or agent of a governmental unit acting or purporting to act in an official capacity;

(2) 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

(3) 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 the goods or services.

Sec. 3. **[554.09] SPECIAL MOTION FOR EXPEDITED RELIEF.**

Not later than 60 days after a party is served with a complaint, crossclaim, counterclaim, third-party claim, or other pleading that asserts a cause of action to which sections 554.07 to 554.19 apply, or at a later time on a showing of good cause, the party may file a special motion for expedited relief to dismiss the cause of action or part of the cause of action.

Sec. 4. **[554.10] STAY.**

(a) Except as otherwise provided in paragraphs (d) to (g), on the filing of a motion under section 554.09:

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

(2) on motion by the moving party, the court may stay a hearing or motion involving another party, 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 under section 554.09.

(b) A stay under paragraph (a) remains in effect until entry of an order ruling on the motion under section 554.09 and expiration of the time under section 554.15 for the moving party to appeal the order.

(c) Except as otherwise provided in paragraphs (e), (f), and (g), if a party appeals from an order ruling on a motion under section 554.09, all proceedings between all parties in the action are stayed. The stay remains in effect until the conclusion of the appeal.

(d) During a stay under paragraph (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 a burden under section 554.13, paragraph (a), and the information is not reasonably available unless discovery is allowed.

(e) A motion under section 554.16 for costs, attorney fees, and expenses is not subject to a stay under this section.

(f) A stay under this section does not affect a party's ability voluntarily to dismiss a cause of action or part of a cause of action or move to sever a cause of action.

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

(1) a motion unrelated to the motion under section 554.09; and

(2) a motion seeking a special or preliminary injunction to protect against an imminent threat to public health or safety.

Sec. 5. **[554.11] HEARING.**

(a) The court shall hear a motion under section 554.09 not later than 60 days after filing of the motion, unless the court orders a later hearing:

(1) to allow discovery under section 554.10, paragraph (d); or

(2) for other good cause.

(b) If the court orders a later hearing under paragraph (a), clause (1), the court shall hear the motion under section 554.09 not later than 60 days after the court order allowing the discovery, unless the court orders a later hearing under paragraph (a), clause (2).

Sec. 6. **[554.12] PROOF.**

In ruling on a motion under section 554.09, the court shall consider the pleadings, the motion, any reply or response to the motion, and any evidence that could be considered in ruling on a motion for summary judgment under Minnesota Rules of Civil Procedure 56.03.

4.1 Sec. 7. **[554.13] DISMISSAL OF CAUSE OF ACTION IN WHOLE OR PART.**

4.2 (a) In ruling on a motion under section 554.09, the court shall dismiss with prejudice a
4.3 cause of action, or part of a cause of action, if:

4.4 (1) the moving party establishes under section 554.08, paragraph (b), that sections 554.07
4.5 to 554.19 apply;

4.6 (2) the responding party fails to establish under section 554.08, paragraph (c), that
4.7 sections 554.07 to 554.19 do not apply; and

4.8 (3) either:

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

4.11 (ii) the moving party establishes that:

4.12 (A) the responding party failed to state a cause of action upon which relief can be granted;
4.13 or

4.14 (B) there is no genuine issue as to any material fact and the moving party is entitled to
4.15 judgment as a matter of law on the cause of action or part of the cause of action.

4.16 (b) A voluntary dismissal without prejudice of a responding party's cause of action, or
4.17 part of a cause of action, that is the subject of a motion under section 554.09 does not affect
4.18 a moving party's right to obtain a ruling on the motion and seek costs, attorney fees, and
4.19 expenses under section 554.16.

4.20 (c) A voluntary dismissal with prejudice of a responding party's cause of action, or part
4.21 of a cause of action, that is the subject of a motion under section 554.09 establishes for the
4.22 purpose of section 554.16 that the moving party prevailed on the motion.

4.23 Sec. 8. **[554.14] RULING.**

4.24 The court shall rule on a motion under section 554.09 not later than 60 days after a
4.25 hearing under section 554.11.

4.26 Sec. 9. **[554.15] APPEAL.**

4.27 A moving party may appeal as a matter of right from an order denying, in whole or in
4.28 part, a motion under section 554.09. The appeal must be filed not later than 30 days after
4.29 entry of the order.

5.1 Sec. 10. **[554.16] COSTS, ATTORNEY FEES, AND EXPENSES.**

5.2 On a motion under section 554.09, the court shall award court costs, reasonable attorney
5.3 fees, and reasonable litigation expenses related to the motion:

5.4 (1) to the moving party if the moving party prevails on the motion; or

5.5 (2) to the responding party if the responding party prevails on the motion and the court
5.6 finds that the motion was frivolous or filed solely with intent to delay the proceeding.

5.7 Sec. 11. **[554.17] CONSTRUCTION.**

5.8 Sections 554.07 to 554.19 must be broadly construed and applied to protect the exercise
5.9 of the right of freedom of speech and of the press, the right to assemble and petition, and
5.10 the right of association, guaranteed by the United States Constitution or Minnesota
5.11 Constitution.

5.12 Sec. 12. **[554.18] UNIFORMITY OF APPLICATION AND CONSTRUCTION.**

5.13 In applying and construing this uniform act, consideration must be given to the need to
5.14 promote uniformity of the law with respect to its subject matter among states that enact it.

5.15 Sec. 13. **[554.19] SAVINGS CLAUSE.**

5.16 Sections 554.07 to 554.19 do not affect a cause of action asserted before the effective
5.17 date of sections 554.07 to 554.19 in a civil action or a motion under Minnesota Statutes
5.18 2022, sections 554.01 to 554.06, regarding the cause of action.

5.19 Sec. 14. **[554.20] NO WAIVER OF OTHER PLEADINGS OR DEFENSES.**

5.20 A special motion for expedited relief under sections 554.07 to 554.19 is not meant to
5.21 waive a defense or preclude the filing of another pleading or motion regarding the cause of
5.22 action.

5.23 Sec. 15. **REVISOR INSTRUCTION.**

5.24 The revisor of statutes shall prepare legislation for the 2024 legislative session making
5.25 any additional conforming changes arising out of this act.

5.26 Sec. 16. **REPEALER.**

5.27 Minnesota Statutes 2022, sections 554.01; 554.02; 554.03; 554.04; 554.045; 554.05;
5.28 and 554.06, are repealed.

6.1 Sec. 17. **EFFECTIVE DATE.**

6.2 This act is effective the day following final enactment and applies to a civil action
6.3 pending on or commenced on or after that date.

554.01 DEFINITIONS.

Subdivision 1. **Scope.** The definitions in this section apply to this chapter.

Subd. 2. **Government.** "Government" includes a branch, department, agency, official, employee, agent, or other person with authority to act on behalf of the federal government, this state, or any political subdivision of this state, including municipalities and their boards, commissions, and departments, or other public authority.

Subd. 3. **Judicial claim; claim.** "Judicial claim" or "claim" includes any civil lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing seeking damages for an alleged injury. "Judicial claim" does not include a claim solely for injunctive relief.

Subd. 4. **Motion.** "Motion" includes any motion to dismiss, motion for summary judgment, or any other judicial pleading filed to dispose of a judicial claim.

Subd. 5. **Moving party.** "Moving party" means any person on whose behalf the motion described in section 554.02, subdivision 1, is filed seeking dismissal of an action under this chapter.

Subd. 6. **Public participation.** "Public participation" means speech or lawful conduct that is genuinely aimed in whole or in part at procuring favorable government action, including but not limited to:

- (1) seeking assistance from, or reporting suspected unlawful conduct to, law enforcement;
- (2) speaking before a zoning board regarding a real estate development project;
- (3) communicating with an elected official concerning a change in law;
- (4) demonstrating peacefully for or against a government action; and
- (5) filing a complaint with a government entity regarding safety, sexual harassment, civil rights, or equal employment rights.

Subd. 7. **Responding party.** "Responding party" means any person against whom a motion described in section 554.02, subdivision 1, is filed.

554.02 PROTECTION OF CITIZENS TO PARTICIPATE IN GOVERNMENT.

Subdivision 1. **Applicability.** This section applies to any motion in a judicial proceeding to dispose of a judicial claim on the grounds that the claim materially relates to an act of the moving party that involves public participation.

Subd. 2. **Procedure.** On the filing of any motion described in subdivision 1:

- (1) discovery must be suspended pending the final disposition of the motion, including any appeal; provided that the court may, on motion and after a hearing and for good cause shown, order that specified and limited discovery be conducted;
- (2) the responding party has the burden of proof, of going forward with the evidence, and of persuasion on the motion;
- (3) the court shall grant the motion and dismiss the judicial claim unless the court finds that the responding party has produced clear and convincing evidence that the acts of the moving party are not immunized from liability under section 554.03; and
- (4) any governmental body to which the moving party's acts were directed or the attorney general's office may intervene in, defend, or otherwise support the moving party.

554.03 IMMUNITY.

Lawful conduct or speech that is genuinely aimed in whole or in part at procuring favorable government action is immune from liability, unless the conduct or speech constitutes a tort or a violation of a person's constitutional rights.

554.04 FEES AND DAMAGES.

Subdivision 1. **Attorney fees and costs.** The court shall award a moving party who prevails in a motion under this chapter reasonable attorney fees and costs associated with the bringing of the motion.

Subd. 2. **Damages.** (a) A moving party may petition the court for damages under this section in conjunction with a motion under this chapter.

(b) If a motion under this chapter is granted and the moving party demonstrates that the respondent brought the cause of action in the underlying lawsuit for the purpose of harassment, to inhibit the moving party's public participation, to interfere with the moving party's exercise of protected constitutional rights, or otherwise wrongfully injure the moving party, the court shall award the moving party actual damages. The court may award the moving party punitive damages under section 549.20. A motion to amend the pleadings under section 549.191 is not required under this section, but the claim for punitive damages must meet all other requirements of section 549.191.

554.045 ACTION IN DISTRICT COURT.

A person may bring an action under this section in state district court against a respondent who has brought a claim in federal court that materially relates to public participation by the person. If the person demonstrates that the respondent's action in federal court was brought for the purpose of harassment, to inhibit the person's public participation, to interfere with the person's exercise of protected constitutional rights, or otherwise wrongfully injure the person, the court shall award the person actual damages and reasonable attorney fees and costs. The court may award the person punitive damages under section 549.20.

554.05 RELATIONSHIPS TO OTHER LAW.

Nothing in this chapter limits or precludes any rights the moving party or responding party may have under any other constitutional, statutory, case, or common law, or rule. Nothing in this chapter exempts individuals from their professional obligations of confidentiality.

554.06 RULE OF CONSTRUCTION.

This chapter shall be construed liberally to effectuate its purposes and intent.