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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 3435

02/17/2020 Authored by Lesch, Quam, Runbeck, Davnie and Howard
The bill was read for the first time and referred to the Judiciary Finance and Civil Law Division

1.1 A bill for an act
1.2 relating to civil law; creating a cause of action to protect free speech in connection
1.3 with public issues; repealing the existing protection for citizens to participate in
1.4 government; proposing coding for new law in Minnesota Statutes, chapter 554;
1.5 repealing Minnesota Statutes 2018, sections 554.02; 554.045.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. [554.021] CAUSE OF ACTION FOR PROTECTION OF RIGHT TO
1.8 PARTICIPATE IN GOVERNMENT.

1.9 Subdivision 1. Cause of action. A cause of action against a person arising from any act
1.10 of that person in furtherance of the person's right of petition or free speech under the United
1.11 States Constitution or the Minnesota Constitution in connection with a public issue is subject
1.12 to a motion to dispose of a judicial claim, unless the court determines that the responding
1.13 party has established that there is a probability that the responding party will prevail on the
1.14 claim. In making its determination, the court shall consider the pleadings and supporting
1.15 and opposing affidavits stating the facts upon which the liability or defense is based. If the
1.16 court determines that the responding party has established a probability that the responding
1.17 party will prevail on the claim, neither that determination nor the fact of that determination
1.18 is admissible in evidence at any later stage of the case, or in any subsequent action, and no
1.19 burden of proof or degree of proof otherwise applicable shall be affected by that
1.20 determination in any later stage of the case or in any subsequent proceeding. This section
1.21 does not apply to any enforcement action brought in the name of the people of the state of
1.22 Minnesota by the attorney general, district attorney, or city attorney, acting as a public
1.23 prosecutor.

2.1 Subd. 2. Procedure. A motion filed under this section must be filed within 60 days of
2.2 the service of the complaint or, in the court's discretion, at any later time upon terms it deems
2.3 proper. The motion shall be scheduled by the clerk of the court for a hearing not more than
2.4 30 days after the service of the motion unless the docket conditions of the court require a
2.5 later hearing. All discovery proceedings in the action shall be stayed upon the filing of a
2.6 notice of motion made pursuant to this section. The stay of discovery remains in effect until
2.7 notice of entry of the order ruling on the motion. The court, on noticed motion and for good
2.8 cause shown, may order that specified discovery be conducted notwithstanding this
2.9 subdivision.

2.10 Sec. 2. **REPEALER.**

2.11 Minnesota Statutes 2018, sections 554.02; and 554.045, are repealed.

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.

554.045 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.