

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 1843 of the Regular Session

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: H3/11/05 H3/23/05

A Bill

HOUSE BILL 1569

5 By: Representatives L. Smith, Blair, Elliott, Chesterfield, Blount, W. Lewellen, Davis, T. Hutchinson
6 By: Senator Madison
7
8

9 **For An Act To Be Entitled**

10 AN ACT TO AMEND ARKANSAS CODE TITLE 16, CHAPTER
11 63 TO ADD AN ADDITIONAL SUBCHAPTER 5 TO PROTECT
12 THE RIGHTS OF THE CITIZENS OF THE STATE OF
13 ARKANSAS TO PARTICIPATE IN GOVERNMENT ACTIONS AND
14 DECISIONS; AND FOR OTHER PURPOSES.
15

16 **Subtitle**

17 AN ACT TO PROTECT THE RIGHTS OF THE
18 CITIZENS OF THE STATE OF ARKANSAS TO
19 PARTICIPATE IN GOVERNMENT.
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21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code Title 16, Chapter 63 is amended to add an
25 additional subchapter to read as follows:

26 Subchapter 5. Citizen Participation in Government Act.

27 16-63-501. Title.

28 This subchapter shall be known as and may be cited as the "Citizen
29 Participation in Government Act".
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31 16-63-502. Legislative findings.

32 The General Assembly finds and declares that:

33 (1) It is in the public interest to encourage participation by
34 the citizens of the state of Arkansas in matters of public significance
35 through the exercise of their constitutional rights of freedom of speech and



1 the right to petition government for a redress of grievances;

2 (2) The valid exercise of the constitutional rights of freedom
3 of speech and the right to petition government for a redress of grievances
4 should not be chilled through abuse of the judicial process;

5 (3) The threat of a civil action for damages in the form of a
6 strategic lawsuit against political participation and the possibility of
7 considerable legal costs can act as a deterrent to citizens who wish to
8 report information to federal, state, or local agencies; and

9 (4) Strategic lawsuits against political participation can
10 effectively punish concerned citizens for exercising the constitutional right
11 to speak and petition the government for redress of grievances.

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13 16-63-503. Definitions.

14 As used in this subchapter:

15 (1) "An act in furtherance of the right of free speech or the
16 right to petition government for a redress of grievances under the
17 Constitution of the United States or the Constitution of the State of
18 Arkansas in connection with an issue of public interest or concern" includes,
19 but is not limited to, any written or oral statement, writing, or petition
20 made:

21 (A) Before or to a legislative, executive, or judicial
22 proceeding, or other proceeding authorized by state, regional, county, or
23 municipal governments; or

24 (B) In connection with an issue under consideration or
25 review by a legislative, executive, or judicial body, or other body
26 authorized by state, regional, county, or municipal government; and

27 (2)(A) "Privileged communication" means a communication made:

28 (i) In, to, or about an issue of public concern
29 related to any legislative, executive, or judicial proceeding, or other
30 proceeding authorized by state, regional, county, or municipal governments;

31 (ii) In the proper discharge of an official duty;
32 and

33 (iii) By a fair and true report of any legislative,
34 executive, or judicial proceeding, or other proceeding authorized by state,
35 regional, county, or municipal governments or anything said in the course of
36 the proceeding.

1 (B) "Privileged communication" also includes:

2 (i) All expressions of opinion or criticisms in
3 regard to any legislative, executive, or judicial proceeding, or other
4 proceeding authorized by state, regional, county, or municipal governments;
5 and

6 (ii) All criticisms of the official acts of any and
7 all public officers.

8 (C) "Privileged communication" does not include a
9 statement or report made with knowledge that it was false or with reckless
10 disregard of whether it was false.

11 16-63-504. Immunity from suit.

12 Any person making a privileged communication or performing an act in
13 furtherance of the right of free speech or the right to petition government
14 for a redress of grievances under the Constitution of the United States or
15 the Constitution of the State of Arkansas in connection with an issue of
16 public interest or concern shall be immune from civil liability, unless a
17 statement or report was made with knowledge that it was false or with
18 reckless disregard of whether it was false.

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20 16-63-505. Verification requirement.

21 For any claim asserted against a person or entity arising from possible
22 privileged communication or an act by that person or entity that could
23 reasonably be construed as an act in furtherance of the right of free speech
24 or the right to petition government for a redress of grievances under the
25 Constitution of the United States or the Constitution of the State of
26 Arkansas in connection with an issue of public interest or concern, the party
27 asserting the claim and the party's attorney of record, if any, shall be
28 required to file, contemporaneously with the pleading containing the claim, a
29 written verification under oath certifying that:

30 (1) The party and his or her attorney of record, if any, have
31 read the claim;

32 (2) To the best of the party's or his or her attorney's
33 knowledge, information, and belief formed after reasonable inquiry the claim
34 is well grounded in fact and is warranted by existing law or a good faith
35 argument for the extension, modification, or reversal of existing law;

36 (3) The act forming the basis for the claim is not a privileged

1 communication; and

2 (4) The claim is not asserted for any improper purpose such as
3 to suppress a person's or entity's right of free speech or right to petition
4 government, to harass, or to cause unnecessary delay or needless increase in
5 the cost of litigation.

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7 16-63-506. Failure to properly verify.

8 (a) If a claim governed by § 16-63-505 is not verified as required by
9 § 16-63-505, the claim shall be stricken unless it is verified within ten
10 (10) days after the omission is called to the attention of the party
11 asserting the claim or his or her attorney of record.

12 (b)(1) If a claim is verified in violation of § 16-63-505, the court
13 upon motion or upon its own initiative shall impose upon the persons who
14 signed the verification, a represented party, or both an appropriate
15 sanction, which may include dismissal of the claim and an order to pay to the
16 other party or parties the amount of the reasonable expenses incurred because
17 of the filing of the claim, including a reasonable attorney's fee.

18 (2) Other compensatory damages may only be recovered upon the
19 demonstration that the claim was commenced or continued for the purpose of
20 harassing, intimidating, punishing, or maliciously inhibiting a person or
21 entity from making a privileged communication or performing an act in
22 furtherance of the right of free speech or the right to petition government
23 for a redress of grievances under the Constitution of the United States or
24 the Constitution of the State of Arkansas in connection with an issue of
25 public interest or concern.

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27 16-63-507. Procedure.

28 (a)(1) All discovery and any pending hearings or motions in an action
29 for a claim governed by § 16-63-505 shall be stayed upon the filing of a
30 motion to dismiss or a motion to strike under § 16-63-506.

31 (2) A hearing on a motion filed under § 16-63-506 shall be
32 conducted not more than thirty (30) days after service unless emergency
33 matters before the court require a later hearing.

34 (b) The court, upon motion and for good cause shown, may order that
35 specified discovery or other hearings or motions be conducted notwithstanding
36 the provisions of subsection (a) of this section.

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16-63-508. Nothing in this subchapter shall affect or preclude the right of any party to any recovery otherwise authorized by common law, statute, or rule.

/s/ L. Smith, et al

APPROVED: 04/08/2005

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