

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.

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

As Engrossed: H3/11/05

A Bill

HOUSE BILL 1569

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

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

Subtitle

16 AN ACT TO PROTECT THE RIGHTS OF THE
17 CITIZENS OF THE STATE OF ARKANSAS TO
18 PARTICIPATE IN GOVERNMENT.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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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
36 the right to petition government for a redress of grievances;



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

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

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

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12 16-63-503. Definitions.

13 As used in this subchapter:

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

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

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

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

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

30 (ii) In the proper discharge of an official duty;

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

35 (iv) All expressions of opinion or criticisms in
36 regard to any legislative, executive, or judicial proceeding, or other

1 proceeding authorized by state, regional, county, or municipal governments;
2 (v) All criticisms of the official acts of any and
3 all public officers.

4 (B) "Privileged communication" does not include a
5 statement or report concerning an official act of a public officer that
6 knowingly and falsely imputes a crime to the public officer.

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8 16-63-504. Immunity from suit.

9 Any person making a privileged communication or performing an act in
10 furtherance of the right of free speech or the right to petition government
11 for a redress of grievances under the Constitution of the United States or
12 the Constitution of the State of Arkansas in connection with an issue of
13 public interest or concern shall be immune from civil liability.

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15 16-63-505. Verification requirement.

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

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

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

31 (3) The act forming the basis for the claim is not a privileged
32 communication; and

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

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2 16-63-506. Failure to properly verify.

3 (a) If a claim governed by § 16-63-505 is not verified as required by
4 § 16-63-505, the claim shall be stricken unless it is verified within ten
5 (10) days after the omission is called to the attention of the party
6 asserting the claim or his or her attorney of record.

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

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

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22 16-63-507. Procedure.

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

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

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

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33 16-63-508. Nothing in this subchapter shall affect or preclude the
34 right of any party to any recovery otherwise authorized by common law,
35 statute, or rule.

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/s/ L. Smith, et al