

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 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

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:
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
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.

11
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 and

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

36 (B) "Privileged communication" also includes:

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

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

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

10 16-63-504. Immunity from suit.

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

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19 16-63-505. Verification requirement.

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

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

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

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

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

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6 16-63-506. Failure to properly verify.

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

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

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

25
26 16-63-507. Procedure.

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

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

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

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