An Act

ENROLLED HOUSE
BILL NO. 2366

By: Trebilcock, Turner, Kern and Nollan of the House

and

Brinkley of the Senate

An Act relating to civil procedure; creating the Oklahoma Citizens Participation Act; stating purpose of act; defining terms; providing for motion to dismiss certain actions; setting time limit for filing motion; permitting exception if good cause shown; suspending discovery; requiring hearing on motion; setting timing for hearing; extending timing of hearing if court allows limited discovery; specifying time period for court to rule on motion; directing dismissal if certain evidence is shown; prohibiting dismissal if certain evidence is shown; requiring court to consider pleadings and affidavits; authorizing court to allow limited discovery; directing court to issue findings if requested by the party filing the motion; prescribing time period for the findings; providing for appeal if court fails to rule on motion; directing appellate court to expedite appeal; mandating court to award costs, fees and other expenses if dismissed; providing for sanctions; permitting court to award costs and fees if motion is frivolous; excluding certain actions from the act; construing provisions of act; providing for codification; and providing an effective date.

SUBJECT: Oklahoma Citizens Participation Act

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1430 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. This act may be known and shall be cited as the "Oklahoma Citizens Participation Act".

B. The purpose of the Oklahoma Citizens Participation Act is to encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely and otherwise participate in government to the maximum extent permitted by law and, at the same time, protect the rights of a person to file meritorious lawsuits for demonstrable injury.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1431 of Title 12, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Citizens Participation Act:

1. "Communication" means the making or submitting of a statement or document in any form or medium, including oral, visual, written, audiovisual or electronic;

2. "Exercise of the right of association" means a communication between individuals who join together to collectively express, promote, pursue or defend common interests;

3. "Exercise of the right of free speech" means a communication made in connection with a matter of public concern;

4. "Exercise of the right to petition" means any of the following:

a. a communication in or pertaining to:

(1) a judicial proceeding,

(2) an official proceeding, other than a judicial proceeding, to administer the law,

(3) an executive or other proceeding before a department or agency of the state or federal government or a political subdivision of the state or federal government,

(4) a legislative proceeding, including a proceeding of a legislative committee,

(5) a proceeding before an entity that requires by rule that public notice be given before proceedings of that entity,

(6) a proceeding in or before a managing board of an educational or eleemosynary institution supported directly or indirectly from public revenue,

(7) a proceeding of the governing body of any political subdivision of this state,

(8) a report of or debate and statements made in a proceeding described by division (3), (4), (5), (6) or (7) of this subparagraph, or

(9) a public meeting dealing with a public purpose, including statements and discussions at the meeting or other matters of public concern occurring at the meeting,

b. a communication in connection with an issue under consideration or review by a legislative, executive, judicial or other governmental body or in another governmental or official proceeding,

c. a communication that is reasonably likely to encourage consideration or review of an issue by a legislative, executive, judicial or other governmental body or in another governmental or official proceeding,

d. a communication reasonably likely to enlist public participation in an effort to effect consideration of an issue by a legislative, executive, judicial or other governmental body or in another governmental or official proceeding, and

e. any other communication that falls within the protection of the right to petition government under the Constitution of the United States or the Oklahoma Constitution;

5. "Governmental proceeding" means a proceeding, other than a judicial proceeding, by an officer, official or body of this state or a political subdivision of this state, including an agency, board

or commission, or by an officer, official or body of the federal government;

6. "Legal action" means a lawsuit, cause of action, petition, complaint, cross-claim, counterclaim or any other judicial pleading or filing that requests legal or equitable relief;

7. "Matter of public concern" means an issue related to:

a. health or safety,

b. environmental, economic or community well-being,

c. the government,

d. a public official or public figure, or

e. a good, product or service in the marketplace;

8. "Official proceeding" means any type of administrative, executive, legislative or judicial proceeding that may be conducted before a public servant; and

9. "Public servant" means a person elected, selected, appointed, employed or otherwise designated as one of the following, even if the person has not yet qualified for office or assumed the person's duties:

a. an officer, employee or agent of government,

b. a juror,

c. an arbitrator, referee or other person who is authorized by law or private written agreement to hear or determine a cause or controversy,

d. an attorney or notary public when participating in the performance of a governmental function, or

e. a person who is performing a governmental function under a claim of right but is not legally qualified to do so.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1432 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. If a legal action is based on, relates to or is in response to a party's exercise of the right of free speech, right to petition or right of association, that party may file a motion to dismiss the legal action.

B. A motion to dismiss a legal action under this section shall be filed no later than sixty (60) days after the date of service of the legal action. The court may extend the time to file a motion under this section on a showing of good cause.

C. Except as provided in Section 6 of the Oklahoma Citizens Participation Act, on the filing of a motion under subsection A of this section, all discovery in the legal action shall be suspended until the court has ruled on the motion to dismiss.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1433 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. A hearing on a motion filed pursuant to Section 3 of the Oklahoma Citizens Participation Act shall be set no later than sixty (60) days after the date of service of the motion unless the docket conditions of the court require a later hearing, upon a showing of good cause, or by agreement of the parties, but in no event shall the hearing occur more than ninety (90) days after service of the motion to dismiss, except as provided by subsection C of this section.

B. In the event that the court cannot hold a hearing in the time required by subsection A of this section, the court may take judicial notice that court docket conditions required a hearing at a later date, but in no event shall the hearing occur more than ninety (90) days after service of the motion to dismiss, except as provided by subsection C of this section.

C. If the court allows discovery under subsection B of Section 6 of this act, the court may extend the hearing date to allow discovery under that subsection, but in no event shall the hearing occur more than one hundred twenty (120) days after the service of the motion to dismiss.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1434 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. The court shall rule on a motion filed pursuant to Section 3 of the Oklahoma Citizens Participation Act no later than thirty (30) days following the date of the hearing on the motion.

B. Except as provided by subsection C of this section, on the motion of a party filed pursuant to Section 3 of this act, a court shall dismiss a legal action against the moving party if the moving party shows by a preponderance of the evidence that the legal action is based on, relates to or is in response to the party's exercise of:

1. The right of free speech;

2. The right to petition; or

3. The right of association.

C. The court shall not dismiss a legal action under this section if the party filing the legal action establishes by clear and specific evidence a prima facie case for each essential element of the claim in question.

D. Notwithstanding the provisions of subsection C of this section, the court shall dismiss a legal action against the moving party if the moving party establishes by a preponderance of the evidence each essential element of a valid defense to the nonmovant's claim.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1435 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. In determining whether a legal action shall be dismissed under the Oklahoma Citizens Participation Act, the court shall consider the pleadings and supporting and opposing affidavits stating the facts on which the liability or defense is based.

B. On a motion by a party or on the court's own motion and on a showing of good cause, the court may allow specified and limited discovery relevant to the motion to dismiss.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1436 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. At the request of a party making a motion filed pursuant to Section 3 of the Oklahoma Citizens Participation Act, the court shall issue findings regarding whether the legal action was brought to deter or prevent the moving party from exercising constitutional rights and is brought for an improper purpose, including to harass or to cause unnecessary delay or to increase the cost of litigation.

B. The court shall issue findings under subsection A of this section no later than thirty (30) days after the date a request is made under subsection A of this section.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1437 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. If a court does not rule on a motion to dismiss filed pursuant to Section 3 of the Oklahoma Citizens Participation Act in the time prescribed by Section 5 of the act, the motion shall be considered denied by operation of law and the moving party may appeal.

B. An appellate court shall expedite an appeal or other writ, whether interlocutory or not, from a trial court order on a motion to dismiss a legal action filed pursuant to Section 3 of this act or from a trial court's failure to rule on that motion in the time prescribed by Section 5 of this act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1438 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. If the court orders dismissal of a legal action under the Oklahoma Citizens Participation Act, the court shall award to the moving party:

1. Court costs, reasonable attorney fees and other expenses incurred in defending against the legal action as justice and equity may require; and

2. Sanctions against the party who brought the legal action as the court determines sufficient to deter the party who brought the

legal action from bringing similar actions described in the Oklahoma Citizens Participation Act.

B. If the court finds that a motion to dismiss filed under the Oklahoma Citizens Participation Act is frivolous or solely intended to delay, the court may award court costs and reasonable attorney fees to the responding party.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1439 of Title 12, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Citizens Participation Act shall not apply to:

1. An enforcement action that is brought in the name of this state or a political subdivision of this state by the Attorney General or a district attorney;

2. A legal action brought against a person primarily engaged in the business of selling or leasing goods or services, if the statement or conduct the action is based upon arises out of the sale or lease of goods, services, or an insurance product, insurance services, or a commercial transaction in which the intended audience is an actual or potential buyer or customer;

3. A legal action seeking recovery for bodily injury, wrongful death or survival or to statements made regarding that legal action; or

4. A legal action brought under the Oklahoma Insurance Code or arising out of an insurance contract.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1440 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Citizens Participation Act shall not abrogate or lessen any other defense, remedy, immunity or privilege available under other constitutional, statutory, case or common law or rule provisions.

B. The Oklahoma Citizens Participation Act shall be construed liberally to effectuate its purpose and intent fully.

SECTION 12. This act shall become effective November 1, 2014.

Passed the House of Representatives the 12th day of March, 2014.

Presiding Officer of the House of Representatives

Passed the Senate the 15th day of April, 2014.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 16th day of April, 2014, at 3:20 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 22nd day of April, 2014, at 2:52 o'clock P M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 22nd day of April, 2014, at 4:17 o'clock P. M.

By: Chris Benge