

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1267

Introduced by Conrad, 46.

Read first time January 16, 2024

Committee: Judiciary

1 A BILL FOR AN ACT relating to civil procedure; to adopt the Uniform
2 Public Expression Protection Act; to eliminate provisions relating
3 to actions involving public petition and participation; to provide
4 severability; to outright repeal sections 25-21,241, 25-21,242,
5 25-21,243, 25-21,244, 25-21,245, and 25-21,246, Reissue Revised
6 Statutes of Nebraska; and to declare an emergency.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 14 of this act shall be known and may be
2 cited as the Uniform Public Expression Protection Act.

3 Sec. 2. (a) In this section:

4 (1) Goods or services does not include the creation, dissemination,
5 exhibition, or advertisement or similar promotion of a dramatic,
6 literary, musical, political, journalistic, or artistic work.

7 (2) Governmental unit means a public corporation or government or
8 governmental subdivision, agency, or instrumentality.

9 (3) Person means an individual, estate, trust, partnership, business
10 or nonprofit entity, governmental unit, or other legal entity.

11 (b) Except as otherwise provided in subsection (c), the Uniform
12 Public Expression Protection Act applies to a cause of action asserted in
13 a civil action against a person based on the person's:

14 (1) communication in a legislative, executive, judicial,
15 administrative, or other governmental proceeding;

16 (2) communication on an issue under consideration or review in a
17 legislative, executive, judicial, administrative, or other governmental
18 proceeding; or

19 (3) exercise of the right of freedom of speech or of the press, the
20 right to assemble or petition, or the right of association, guaranteed by
21 the United States Constitution or the Constitution of Nebraska, on a
22 matter of public concern.

23 (c) The Uniform Public Expression Protection Act does not apply to a
24 cause of action asserted:

25 (1) against a governmental unit or an employee or agent of a
26 governmental unit acting or purporting to act in an official capacity;

27 (2) by a governmental unit or an employee or agent of a governmental
28 unit acting in an official capacity to enforce a law to protect against
29 an imminent threat to public health or safety; or

30 (3) against a person primarily engaged in the business of selling or
31 leasing goods or services if the cause of action arises out of a

1 communication related to the person's sale or lease of the goods or
2 services.

3 Sec. 3. Not later than sixty days after a party is served with a
4 complaint, petition, crossclaim, counterclaim, third-party claim, or
5 other pleading that asserts a cause of action to which the Uniform Public
6 Expression Protection Act applies, or at a later time on a showing of
7 good cause, the party may file a special motion for expedited relief to
8 dismiss the cause of action or part of the cause of action.

9 Sec. 4. (a) Except as otherwise provided in subsections (d) through
10 (g), on the filing of a motion under section 3 of this act:

11 (1) all other proceedings between the moving party and responding
12 party, including discovery and a pending hearing or motion, are stayed;
13 and

14 (2) on motion by the moving party, the court may stay a hearing or
15 motion involving another party, or discovery by another party, if the
16 hearing or ruling on the motion would adjudicate, or the discovery would
17 relate to, an issue material to the motion under section 3 of this act.

18 (b) A stay under subsection (a) remains in effect until entry of an
19 order ruling on the motion under section 3 of this act and expiration of
20 the time under section 9 of this act for the moving party to appeal the
21 order.

22 (c) Except as otherwise provided in subsections (e), (f), and (g),
23 if a party appeals from an order ruling on a motion under section 3 of
24 this act, all proceedings between all parties in the action are stayed.
25 The stay remains in effect until the conclusion of the appeal.

26 (d) During a stay under subsection (a), the court may allow limited
27 discovery if a party shows that specific information is necessary to
28 establish whether a party has satisfied or failed to satisfy a burden
29 under subsection (a) of section 7 of this act and the information is not
30 reasonably available unless discovery is allowed.

31 (e) A motion under section 10 of this act for costs, attorney's

1 fees, and expenses is not subject to a stay under this section.

2 (f) A stay under this section does not affect a party's ability
3 voluntarily to dismiss a cause of action or part of a cause of action or
4 move to sever a cause of action.

5 (g) During a stay under this section, the court for good cause may
6 hear and rule on:

7 (1) a motion unrelated to the motion under section 3 of this act;
8 and

9 (2) a motion seeking a special or preliminary injunction to protect
10 against an imminent threat to public health or safety.

11 Sec. 5. (a) The court shall hear a motion under section 3 of this
12 act not later than sixty days after filing of the motion, unless the
13 court orders a later hearing:

14 (1) to allow discovery under subsection (d) of section 4 of this
15 act; or

16 (2) for other good cause.

17 (b) If the court orders a later hearing under subsection (a)(1), the
18 court shall hear the motion under section 3 of this act not later than
19 sixty days after the court order allowing the discovery, unless the court
20 orders a later hearing under subsection (a)(2).

21 Sec. 6. In ruling on a motion under section 3 of this act, the
22 court shall consider the pleadings, the motion, any reply or response to
23 the motion, and any evidence that could be considered in ruling on a
24 motion for summary judgment.

25 Sec. 7. (a) In ruling on a motion under section 3 of this act, the
26 court shall dismiss with prejudice a cause of action, or part of a cause
27 of action, if:

28 (1) the moving party establishes under subsection (b) of section 2
29 of this act that the Uniform Public Expression Protection Act applies;

30 (2) the responding party fails to establish under subsection (c) of
31 section 2 of this act that the Uniform Public Expression Protection Act

1 does not apply; and

2 (3) either:

3 (A) the responding party fails to establish a prima facie case as to
4 each essential element of the cause of action; or

5 (B) the moving party establishes that:

6 (i) the responding party failed to state a cause of action upon
7 which relief can be granted; or

8 (ii) there is no genuine issue as to any material fact and the
9 moving party is entitled to judgment as a matter of law on the cause of
10 action or part of the cause of action.

11 (b) A voluntary dismissal without prejudice of a responding party's
12 cause of action, or part of a cause of action, that is the subject of a
13 motion under section 3 of this act does not affect a moving party's right
14 to obtain a ruling on the motion and seek costs, attorney's fees, and
15 expenses under section 10 of this act.

16 (c) A voluntary dismissal with prejudice of a responding party's
17 cause of action, or part of a cause of action, that is the subject of a
18 motion under section 3 of this act establishes for the purpose of section
19 10 of this act that the moving party prevailed on the motion.

20 Sec. 8. The court shall rule on a motion under section 3 of this
21 act not later than sixty days after a hearing under section 5 of this
22 act.

23 Sec. 9. A moving party may appeal as a matter of right from an
24 order denying, in whole or in part, a motion under section 3 of this act.
25 The appeal must be filed not later than twenty-one days after entry of
26 the order.

27 Sec. 10. On a motion under section 3 of this act, the court shall
28 award court costs, reasonable attorney's fees, and reasonable litigation
29 expenses related to the motion:

30 (1) to the moving party if the moving party prevails on the motion;
31 or

1 (2) to the responding party if the responding party prevails on the
2 motion and the court finds that the motion was frivolous or filed solely
3 with intent to delay the proceeding.

4 Sec. 11. The Uniform Public Expression Protection Act must be
5 broadly construed and applied to protect the exercise of the right of
6 freedom of speech and of the press, the right to assemble and petition,
7 and the right of association, guaranteed by the United States
8 Constitution or the Constitution of Nebraska.

9 Sec. 12. In applying and construing the Uniform Public Expression
10 Protection Act, consideration must be given to the need to promote
11 uniformity of the law with respect to its subject matter among states
12 that enact it.

13 Sec. 13. The Uniform Public Expression Protection Act applies to a
14 civil action filed or cause of action asserted in a civil action on or
15 after the effective date of this act.

16 Sec. 14. The Uniform Public Expression Protection Act does not
17 affect a cause of action asserted before the effective date of this act
18 in a civil action or a motion under sections 25-21,241 to 25-21,246
19 regarding the cause of action.

20 Sec. 15. If any section in this act or any part of any section is
21 declared invalid or unconstitutional, the declaration shall not affect
22 the validity or constitutionality of the remaining portions.

23 Sec. 16. The following sections are outright repealed: Sections
24 25-21,241, 25-21,242, 25-21,243, 25-21,244, 25-21,245, and 25-21,246,
25 Reissue Revised Statutes of Nebraska.

26 Sec. 17. Since an emergency exists, this act takes effect when
27 passed and approved according to law.