

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 19-0783.02 Jerry Barry x4341

HOUSE BILL 19-1324

HOUSE SPONSORSHIP

Cutter and Bird,

SENATE SPONSORSHIP

Foote,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING MOTIONS TO DISMISS CERTAIN CIVIL ACTIONS**
102 **INVOLVING CONSTITUTIONAL RIGHTS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill establishes an expedited process for a court to follow in a civil action in which a defendant files a motion to dismiss based upon the fact that the defendant was exercising the defendant's constitutional right to petition the government or of free speech. The bill also authorizes an interlocutory appeal of the granting or certain denials of the motion to dismiss.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
2nd Reading Unamended
April 25, 2019

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 11 to article
3 20 of title 13 as follows:

4 **PART 11**
5 **ACTIONS INVOLVING THE EXERCISE OF**
6 **CERTAIN CONSTITUTIONAL RIGHTS**

7 **13-20-1101. Action involving exercise of constitutional rights**
8 **- motion to dismiss - appeal - legislative declaration - definitions.**

9 (1) (a) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT IT IS IN THE
10 PUBLIC INTEREST TO ENCOURAGE CONTINUED PARTICIPATION IN MATTERS
11 OF PUBLIC SIGNIFICANCE AND THAT THIS PARTICIPATION SHOULD NOT BE
12 CHILLED THROUGH ABUSE OF THE JUDICIAL PROCESS.

13 (b) THE GENERAL ASSEMBLY FINDS THAT THE PURPOSE OF THIS
14 PART 11 IS TO ENCOURAGE AND SAFEGUARD THE CONSTITUTIONAL RIGHTS
15 OF PERSONS TO PETITION, SPEAK FREELY, ASSOCIATE FREELY, AND
16 OTHERWISE PARTICIPATE IN GOVERNMENT TO THE MAXIMUM EXTENT
17 PERMITTED BY LAW AND, AT THE SAME TIME, TO PROTECT THE RIGHTS OF
18 PERSONS TO FILE MERITORIOUS LAWSUITS FOR DEMONSTRABLE INJURY.

19 (2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
20 REQUIRES:

21 (a) "ACT IN FURTHERANCE OF A PERSON'S RIGHT OF PETITION OR
22 FREE SPEECH UNDER THE UNITED STATES CONSTITUTION OR THE STATE
23 CONSTITUTION IN CONNECTION WITH A PUBLIC ISSUE" INCLUDES:

24 (I) ANY WRITTEN OR ORAL STATEMENT OR WRITING MADE BEFORE
25 A LEGISLATIVE, EXECUTIVE, OR JUDICIAL PROCEEDING OR ANY OTHER
26 OFFICIAL PROCEEDING AUTHORIZED BY LAW;

1 (II) ANY WRITTEN OR ORAL STATEMENT OR WRITING MADE IN
2 CONNECTION WITH AN ISSUE UNDER CONSIDERATION OR REVIEW BY A
3 LEGISLATIVE, EXECUTIVE, OR JUDICIAL BODY OR ANY OTHER OFFICIAL
4 PROCEEDING AUTHORIZED BY LAW;

5 (III) ANY WRITTEN OR ORAL STATEMENT OR WRITING MADE IN A
6 PLACE OPEN TO THE PUBLIC OR A PUBLIC FORUM IN CONNECTION WITH AN
7 ISSUE OF PUBLIC INTEREST; OR

8 (IV) ANY OTHER CONDUCT OR COMMUNICATION IN FURTHERANCE
9 OF THE EXERCISE OF THE CONSTITUTIONAL RIGHT OF PETITION OR THE
10 CONSTITUTIONAL RIGHT OF FREE SPEECH IN CONNECTION WITH A PUBLIC
11 ISSUE OR AN ISSUE OF PUBLIC INTEREST.

12 (b) "COMPLAINT" INCLUDES A CROSS-COMPLAINT OR A PETITION.

13 (c) "DEFENDANT" INCLUDES A CROSS-DEFENDANT OR A
14 RESPONDENT.

15 (d) "PLAINTIFF" INCLUDES ACROSS-COMPLAINANT OR PETITIONER.

16 (3) (a) A CAUSE OF ACTION AGAINST A PERSON ARISING FROM ANY
17 ACT OF THAT PERSON IN FURTHERANCE OF THE PERSON'S RIGHT OF
18 PETITION OR FREE SPEECH UNDER THE UNITED STATES CONSTITUTION OR
19 THE STATE CONSTITUTION IN CONNECTION WITH A PUBLIC ISSUE IS SUBJECT
20 TO A SPECIAL MOTION TO DISMISS UNLESS THE COURT DETERMINES THAT
21 THE PLAINTIFF HAS ESTABLISHED THAT THERE IS A REASONABLE
22 LIKELIHOOD THAT THE PLAINTIFF WILL PREVAIL ON THE CLAIM.

23 (b) IN MAKING ITS DETERMINATION, THE COURT SHALL CONSIDER
24 THE PLEADINGS AND SUPPORTING AND OPPOSING AFFIDAVITS STATING THE
25 FACTS UPON WHICH THE LIABILITY OR DEFENSE IS BASED.

26 (c) IF THE COURT DETERMINES THAT THE PLAINTIFF HAS
27 ESTABLISHED A REASONABLE LIKELIHOOD THAT THE PLAINTIFF WILL

1 PREVAIL ON THE CLAIM, NEITHER THAT DETERMINATION NOR THE FACT OF
2 THAT DETERMINATION IS ADMISSIBLE IN EVIDENCE AT ANY LATER STAGE
3 OF THE CASE OR IN ANY SUBSEQUENT PROCEEDING, AND NO BURDEN OF
4 PROOF OR DEGREE OF PROOF OTHERWISE APPLICABLE IS AFFECTED BY
5 THAT DETERMINATION IN ANY LATER STAGE OF THE CASE OR IN ANY
6 SUBSEQUENT PROCEEDING.

7 (4) (a) EXCEPT AS PROVIDED IN SUBSECTION (4)(b) OF THIS
8 SECTION, IN ANY ACTION SUBJECT TO SUBSECTION (3) OF THIS SECTION, A
9 PREVAILING DEFENDANT ON A SPECIAL MOTION TO DISMISS IS ENTITLED TO
10 RECOVER THE DEFENDANT'S ATTORNEY FEES AND COSTS. IF THE COURT
11 FINDS THAT A SPECIAL MOTION TO DISMISS IS FRIVOLOUS OR IS SOLELY
12 INTENDED TO CAUSE UNNECESSARY DELAY, PURSUANT TO PART 1 OF
13 ARTICLE 17 OF THIS TITLE 13, THE COURT SHALL AWARD COSTS AND
14 REASONABLE ATTORNEY FEES TO A PLAINTIFF PREVAILING ON THE MOTION.

15 (b) A DEFENDANT WHO PREVAILS ON A SPECIAL MOTION TO
16 DISMISS IN AN ACTION SUBJECT TO SUBSECTION (4)(a) OF THIS SECTION IS
17 NOT ENTITLED TO ATTORNEY FEES AND COSTS IF THAT CAUSE OF ACTION
18 IS BROUGHT PURSUANT TO PART 4 OF ARTICLE 6 OF TITLE 24 OR THE
19 "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24;
20 EXCEPT THAT NOTHING IN THIS SUBSECTION (4)(b) PREVENTS A
21 PREVAILING DEFENDANT FROM RECOVERING ATTORNEY FEES AND COSTS
22 PURSUANT TO SECTION 24-6-402 (9)(b) OR 24-72-204.

23 (5) THE SPECIAL MOTION MUST BE FILED WITHIN SIXTY-THREE
24 DAYS AFTER THE SERVICE OF THE COMPLAINT OR, IN THE COURT'S
25 DISCRETION, AT ANY LATER TIME UPON TERMS IT DEEMS PROPER. THE
26 MOTION MUST BE SCHEDULED FOR A HEARING NOT MORE THAN
27 TWENTY-EIGHT DAYS AFTER THE SERVICE OF THE MOTION UNLESS THE

1 DOCKET CONDITIONS OF THE COURT REQUIRE A LATER HEARING.

2 (6) ALL DISCOVERY PROCEEDINGS IN THE ACTION ARE STAYED
3 UPON THE FILING OF A NOTICE OF MOTION MADE PURSUANT TO THIS
4 SECTION. THE STAY OF DISCOVERY REMAINS IN EFFECT UNTIL NOTICE OF
5 ENTRY OF THE ORDER RULING ON THE MOTION. THE COURT, ON NOTICED
6 MOTION AND FOR GOOD CAUSE SHOWN, MAY ORDER THAT SPECIFIED
7 DISCOVERY BE CONDUCTED NOTWITHSTANDING THIS SUBSECTION (6).

8 (7) EXCEPT AS PROVIDED IN SUBSECTION (9) OF THIS SECTION, AN
9 ORDER GRANTING OR DENYING A SPECIAL MOTION TO DISMISS IS
10 APPEALABLE TO THE COLORADO COURT OF APPEALS PURSUANT TO
11 SECTION 13-4-102.2.

12 (8) (a) THIS SECTION DOES NOT APPLY TO:

13 (I) AN ACTION BROUGHT BY OR ON BEHALF OF THE STATE OR ANY
14 SUBDIVISION OF THE STATE ENFORCING A LAW OR RULE OR SEEKING TO
15 PROTECT AGAINST AN IMMINENT THREAT TO HEALTH OR PUBLIC SAFETY;

16 (II) ANY ACTION BROUGHT SOLELY IN THE PUBLIC INTEREST OR ON
17 BEHALF OF THE GENERAL PUBLIC IF ALL OF THE FOLLOWING CONDITIONS
18 EXIST:

19 (A) THE PLAINTIFF DOES NOT SEEK ANY RELIEF GREATER THAN OR
20 DIFFERENT FROM THE RELIEF SOUGHT FOR THE GENERAL PUBLIC OR A
21 CLASS OF WHICH THE PLAINTIFF IS A MEMBER. A CLAIM FOR ATTORNEY
22 FEES, COSTS, OR PENALTIES DOES NOT CONSTITUTE GREATER OR DIFFERENT
23 RELIEF FOR PURPOSES OF THIS SUBSECTION (8)(a)(II)(A).

24 (B) THE ACTION, IF SUCCESSFUL, WOULD ENFORCE AN IMPORTANT
25 RIGHT AFFECTING THE PUBLIC INTEREST AND WOULD CONFER A
26 SIGNIFICANT BENEFIT, WHETHER PECUNIARY OR NONPECUNIARY, ON THE
27 GENERAL PUBLIC OR A LARGE CLASS OF PERSONS; AND

1 (C) PRIVATE ENFORCEMENT IS NECESSARY AND PLACES A
2 DISPROPORTIONATE FINANCIAL BURDEN ON THE PLAINTIFF IN RELATION TO
3 THE PLAINTIFF'S STAKE IN THE MATTER; OR

4 (III) ANY CAUSE OF ACTION BROUGHT AGAINST A PERSON
5 PRIMARILY ENGAGED IN THE BUSINESS OF SELLING OR LEASING GOODS OR
6 SERVICES, INCLUDING BUT NOT LIMITED TO INSURANCE, SECURITIES, OR
7 FINANCIAL INSTRUMENTS, ARISING FROM ANY STATEMENT OR CONDUCT BY
8 THAT PERSON IF BOTH OF THE FOLLOWING CONDITIONS EXIST:

9 (A) THE STATEMENT OR CONDUCT CONSISTS OF REPRESENTATIONS
10 OF FACT ABOUT THAT PERSON'S OR A BUSINESS COMPETITOR'S BUSINESS
11 OPERATIONS, GOODS, OR SERVICES THAT ARE MADE FOR THE PURPOSE OF
12 OBTAINING APPROVAL FOR, PROMOTING, OR SECURING SALES OR LEASES
13 OF, OR COMMERCIAL TRANSACTIONS IN, THE PERSON'S GOODS OR
14 SERVICES, OR THE STATEMENT OR CONDUCT WAS MADE IN THE COURSE OF
15 DELIVERING THE PERSON'S GOODS OR SERVICES; AND

16 (B) THE INTENDED AUDIENCE IS AN ACTUAL OR POTENTIAL BUYER
17 OR CUSTOMER, OR A PERSON LIKELY TO REPEAT THE STATEMENT TO, OR
18 OTHERWISE INFLUENCE, AN ACTUAL OR POTENTIAL BUYER OR CUSTOMER,
19 OR THE STATEMENT OR CONDUCT AROSE OUT OF OR WITHIN THE CONTEXT
20 OF A REGULATORY APPROVAL PROCESS, PROCEEDING, OR INVESTIGATION,
21 EXCEPT WHEN THE STATEMENT OR CONDUCT WAS MADE BY A TELEPHONE
22 CORPORATION IN THE COURSE OF A PROCEEDING BEFORE THE PUBLIC
23 UTILITIES COMMISSION AND IS THE SUBJECT OF A LAWSUIT BROUGHT BY A
24 COMPETITOR, NOTWITHSTANDING THAT THE CONDUCT OR STATEMENT
25 CONCERNS AN IMPORTANT PUBLIC ISSUE.

26 (b) SUBSECTIONS (8)(a)(II) AND (8)(a)(III) OF THIS SECTION DO
27 NOT APPLY TO ANY OF THE FOLLOWING:

1 (I) ANY PUBLISHER, EDITOR, REPORTER, OR OTHER PERSON
2 CONNECTED WITH OR EMPLOYED BY A NEWSPAPER, MAGAZINE, OR OTHER
3 PERIODICAL PUBLICATION, OR BY A PRESS ASSOCIATION OR WIRE SERVICE,
4 OR ANY PERSON WHO HAS BEEN SO CONNECTED OR EMPLOYED; OR A RADIO
5 OR TELEVISION NEWS REPORTER OR OTHER PERSON CONNECTED WITH OR
6 EMPLOYED BY A RADIO OR TELEVISION STATION, OR ANY PERSON WHO HAS
7 BEEN SO CONNECTED OR EMPLOYED; OR ANY PERSON ENGAGED IN THE
8 DISSEMINATION OF IDEAS OR EXPRESSION IN ANY BOOK OR ACADEMIC
9 JOURNAL WHILE ENGAGED IN THE GATHERING, RECEIVING, OR PROCESSING
10 OF INFORMATION FOR COMMUNICATION TO THE PUBLIC; OR

11 (II) ANY ACTION AGAINST ANY PERSON OR ENTITY BASED UPON
12 THE CREATION, DISSEMINATION, EXHIBITION, ADVERTISEMENT, OR OTHER
13 SIMILAR PROMOTION OF ANY DRAMATIC, LITERARY, MUSICAL, POLITICAL,
14 OR ARTISTIC WORK, INCLUDING BUT NOT LIMITED TO A MOTION PICTURE,
15 TELEVISION PROGRAM, OR AN ARTICLE PUBLISHED IN A NEWSPAPER OR
16 MAGAZINE OF GENERAL CIRCULATION.

17 (9) IF ANY TRIAL COURT DENIES A SPECIAL MOTION TO DISMISS ON
18 THE GROUNDS THAT THE ACTION OR CAUSE OF ACTION IS EXEMPT
19 PURSUANT TO SUBSECTION (8) OF THIS SECTION, THE APPEAL PROVISIONS
20 IN SUBSECTION (7) OF THIS SECTION DO NOT APPLY.

21 **SECTION 2.** In Colorado Revised Statutes, **add** 13-4-102.2 as
22 follows:

23 **13-4-102.2. Interlocutory appeals of motions to dismiss actions**
24 **involving constitutional rights.** THE COURT OF APPEALS HAS INITIAL
25 JURISDICTION OVER APPEALS FROM MOTIONS TO DISMISS ACTIONS
26 INVOLVING CONSTITUTIONAL RIGHTS PURSUANT TO SECTION 13-20-1101.

27 **SECTION 3. Effective date - applicability.** This act takes effect

1 July 1, 2019, and applies to actions filed on or after said date.

2 **SECTION 4. Safety clause.** The general assembly hereby finds,
3 determines, and declares that this act is necessary for the immediate
4 preservation of the public peace, health, and safety.