

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 620

Introduced by Larson, 40.

Read first time January 21, 2015

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to public petition and participation; to amend
- 2 sections 25-21,242, 25-21,243, 25-21,244, 25-21,245, and 25-21,246,
- 3 Reissue Revised Statutes of Nebraska; to define and redefine terms;
- 4 to change provisions relating to a motion to dismiss; and to repeal
- 5 the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 25-21,242, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 25-21,242 For purposes of sections 25-21,241 to 25-21,246:

4 (1) Action involving public ~~petition and participation~~ means shall
5 ~~mean~~ an action, claim, cross-claim, or counterclaim for damages that is
6 ~~brought by a public applicant or permittee and is~~ materially related to
7 any efforts of the defendant to exercise his or her right of free speech
8 ~~report on, comment on, rule on, challenge, or oppose the application or~~
9 ~~permission;~~

10 (2) Communication means shall ~~mean~~ any statement or document made or
11 submitted in any medium, including oral, visual, written, audiovisual, or
12 electronic, claim, allegation in a proceeding, decision, protest,
13 writing, argument, contention, or other expression; and

14 (3) Exercise the right of free speech means a communication in
15 connection with a matter of public concern. ~~Government body shall mean a~~
16 ~~city, a village, a political subdivision, a state agency, the state, the~~
17 ~~federal government, or a public authority, board, or commission; and~~

18 (4) ~~Public applicant or permittee shall mean any person who has~~
19 ~~applied for or obtained a permit, zoning change, lease, license,~~
20 ~~certificate, or other entitlement for use or permission to act from any~~
21 ~~government body or any person with an interest, connection, or~~
22 ~~affiliation with such person that is materially related to such~~
23 ~~application or permission.~~

24 Sec. 2. Section 25-21,243, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 25-21,243 (1) A defendant in an action involving public ~~petition and~~
27 participation may maintain an action, claim, cross-claim, or counterclaim
28 to recover damages, including costs and attorney's fees, from any person
29 who commenced or continued such action. Costs and attorney's fees may be
30 recovered upon a demonstration that the action involving public ~~petition~~
31 ~~and participation~~ was commenced or continued without a substantial basis

1 in fact and law and could not be supported by a substantial argument for
2 the extension, modification, or reversal of existing law. Other
3 compensatory damages may only be recovered upon an additional
4 demonstration that the action involving public ~~petition~~ and participation
5 was commenced or continued for the purpose of harassing, intimidating,
6 punishing, or otherwise maliciously inhibiting the free exercise of
7 petition, speech, or association rights.

8 (2) The right to bring an action, claim, cross-claim, or
9 counterclaim under this section may be waived only if it is waived
10 specifically.

11 (3) Nothing in this section shall affect or preclude the right of
12 any party to any recovery otherwise authorized by common law or by
13 statute, rule, or regulation.

14 Sec. 3. Section 25-21,244, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 25-21,244 (1) In an action involving public ~~petition~~ and
17 participation, the plaintiff may recover damages, including costs and
18 attorney's fees, only if he or she, in addition to all other necessary
19 elements, has established by clear and convincing evidence that any
20 communication which gives rise to the action was made with knowledge of
21 its falsity or with reckless disregard of whether it was false, if the
22 truth or falsity of such communication is material to the cause of action
23 at issue.

24 (2) Nothing in this section shall be construed to limit any
25 constitutional, statutory, or common-law protections of defendants to
26 actions involving public ~~petition~~ and participation.

27 Sec. 4. Section 25-21,245, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 25-21,245 (1) A motion to dismiss based on a failure to state a
30 cause of action shall be granted when the moving party demonstrates that
31 the action, claim, cross-claim, or counterclaim subject to the motion is

1 an action involving public ~~petition~~ and participation unless the party
2 responding to the motion demonstrates that the cause of action has a
3 substantial basis in law or is supported by a substantial argument for an
4 extension, modification, or reversal of existing law. ~~The court shall~~
5 ~~expedite and grant preference in the hearing of such motion.~~

6 (2) The court shall conduct an expedited hearing on the motion to
7 dismiss. A hearing on the motion shall be held not later than thirty days
8 after service of the motion or thirty days after ordering discovery,
9 unless docket conditions of the court require a later hearing, upon a
10 showing of good cause, or by agreement of the parties.

11 (3) The court shall rule on the motion to dismiss as soon as
12 possible, but no later than thirty days after hearing the motion. If the
13 court does not rule on a motion to dismiss within the thirty-day period,
14 the motion is considered to have been denied by operation of law.

15 Sec. 5. Section 25-21,246, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 25-21,246 A motion for summary judgment shall be granted when the
18 moving party has demonstrated that the action, claim, cross-claim, or
19 counterclaim subject to the motion is an action involving public ~~petition~~
20 ~~and~~ participation unless the party responding to the motion demonstrates
21 that the action, claim, cross-claim, or counterclaim has a substantial
22 basis in fact and law or is supported by a substantial argument for an
23 extension, modification, or reversal of existing law. The court shall
24 grant preference in the hearing of such motion.

25 Sec. 6. Original sections 25-21,242, 25-21,243, 25-21,244,
26 25-21,245, and 25-21,246, Reissue Revised Statutes of Nebraska, are
27 repealed.