

As Introduced

133rd General Assembly

Regular Session

2019-2020

S. B. No. 215

Senator Huffman, M.

Cosponsors: Senators Brenner, Lehner, Schaffer, Johnson, Obhof

A BILL

To amend section 2505.02 and to enact sections 1
2305.61, 2305.62, 2305.63, 2305.64, 2305.65, and 2
2739.021 of the Revised Code to enact the Ohio 3
Citizen Participation Act to provide protections 4
to persons who engage in specified protected 5
communications. 6

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 2505.02 be amended and sections 7
2305.61, 2305.62, 2305.63, 2305.64, 2305.65, and 2739.021 of the 8
Revised Code be enacted to read as follows: 9

Sec. 2305.61. As used in sections 2305.61 to 2305.64 of 10
the Revised Code: 11

(A) "Defendant" means the person against whom a claim 12
based on a protected communication is made, regardless of 13
whether that claim appears in a complaint, counterclaim, cross- 14
claim, or third-party complaint. 15

(B) "Issue of public interest" means any issue of interest 16
to the public, including any issue related to the following: 17

<u>(1) Health and safety;</u>	18
<u>(2) Environmental, economic, or community well-being;</u>	19
<u>(3) The government;</u>	20
<u>(4) A public official or public figure;</u>	21
<u>(5) Goods, products, or services in the marketplace.</u>	22
<u>(C) "Plaintiff" means the person making a claim based on a</u>	23
<u>protected communication, regardless of whether that claim</u>	24
<u>appears in a complaint, counterclaim, cross-claim, or third-</u>	25
<u>party complaint.</u>	26
<u>(D) "Protected communication" means any written or oral</u>	27
<u>statement or communication for which a speaker may not be</u>	28
<u>subject to liability in a civil action under the First Amendment</u>	29
<u>to the United States Constitution, Section 11 of Article 1 of</u>	30
<u>the Ohio Constitution, or a similar provision in the applicable</u>	31
<u>constitution of the jurisprudence in which the statement or</u>	32
<u>communication was made. "Protected communication" includes the</u>	33
<u>following:</u>	34
<u>(1) A written or oral statement or communication that is</u>	35
<u>aimed at procuring any governmental or electoral action, result,</u>	36
<u>or outcome;</u>	37
<u>(2) Any written or oral statement or communication of</u>	38
<u>information or a complaint made to a member of the general</u>	39
<u>assembly or to any officer or employee of the government of the</u>	40
<u>United States, this state, or a political subdivision of this</u>	41
<u>state, regarding a matter reasonably of concern to the</u>	42
<u>governmental entity involved;</u>	43
<u>(3) Any written or oral statement or communication made in</u>	44
<u>direct connection with an issue under consideration by an</u>	45

executive, legislative, or judicial body of the United States, 46
this state, or a political subdivision of this state, or any 47
other official proceeding authorized by law; 48

(4) Any written or oral statement or communication made in 49
direct connection with an issue of public interest; 50

(5) Any written or oral statement or communication between 51
individuals who join together to collectively express, promote, 52
pursue, or defend common interests. 53

(E) "Written or oral statement or communication" includes 54
the making or submitting of a statement or document in any form 55
or medium, including oral, visual, written, audiovisual, and 56
electronic. An electronic statement or communication includes a 57
statement or communication made on an internet web site. 58

Sec. 2305.62. (A) Sections 2305.61 to 2305.65 of the 59
Revised Code shall be known as the "Ohio Citizen Participation 60
Act." 61

(B) (1) Any person who engages in a protected communication 62
is immune from suit in any civil action for a claim based on 63
that communication. 64

(2) Nothing in sections 2305.61 to 2305.65 of the Revised 65
Code shall be construed as limiting or abrogating any other 66
defense, remedy, immunity, or privilege available under other 67
constitutional, statutory, common law, or administrative 68
provisions or rules relating to claims based on protected 69
communications. 70

(C) Sections 2305.61 to 2305.65 of the Revised Code do not 71
apply to any of the following: 72

(1) An enforcement action that is brought in the name of 73

this state or a political subdivision of this state by the 74
attorney general or the chief legal officer of a political 75
subdivision of this state; 76

(2) (a) Except as provided in division (C) (2) (b) of this 77
section, a legal action brought against a person primarily 78
engaged in the business of selling or leasing goods or services, 79
if the action arises out of a statement or conduct made in 80
relation to the sale or lease of goods, services, or an 81
insurance product, insurance services, or a commercial 82
transaction in which the intended audience is an actual or 83
potential buyer or customer; 84

(b) Division (C) (2) (a) of this section does not apply to 85
any action against any person or entity based upon the creation, 86
dissemination, exhibition, or advertisement, or a similar 87
promotion, of any dramatic, literary, musical, political, or 88
artistic work, including, but not limited to, a motion picture 89
or television program, an art show or exhibit, an article 90
published in a newspaper or magazine of general circulation, or 91
a consumer review or commentary. 92

(3) A legal action seeking recovery for bodily injury, 93
wrongful death, or survival, or to statements made regarding 94
that legal action; 95

(4) A legal action brought under Chapters 3901-1 to 3901- 96
11 of the Ohio Administrative Code or arising out of an 97
insurance contract. 98

Sec. 2305.63. (A) If a claim is brought against a person 99
based upon a protected communication, the defendant may file a 100
special motion to strike the action. 101

(B) The special motion to strike the action shall be filed 102

not later than sixty days after the service of the complaint on 103
the moving defendant. The court may extend the sixty-day period 104
for good cause shown. 105

(C) If a special motion to strike is filed under this 106
section, the court shall do all of the following: 107

(1) Determine whether the defendant has established, by a 108
preponderance of the evidence, that the claim in the civil 109
action is based upon a protected communication; 110

(2) If the court determines that the defendant has met the 111
burden set by division (C) (1) of this section, determine whether 112
the plaintiff in the action has presented clear and convincing 113
evidence of a prima facie case for each essential element of the 114
plaintiff's claim; 115

(3) If the court determines that the plaintiff has 116
established a probability of prevailing on the claim pursuant to 117
division (C) (2) of this section, ensure all of the following: 118

(a) That the determination shall not be admitted into 119
evidence at any later stage of the underlying action or any 120
subsequent proceeding; 121

(b) That the determination will not affect the burden of 122
proof that is applied in the underlying action or any subsequent 123
proceeding; 124

(c) That filing a special motion to strike shall not 125
operate as a waiver of any defense based upon personal 126
jurisdiction. 127

(4) (a) Subject to division (C) (4) (b) of this section, stay 128
any discovery in the action until after both of the following: 129

(i) A ruling by the court on the special motion to strike; 130

<u>(ii) The disposition of any appeal from the court's ruling</u>	131
<u>on the special motion to strike.</u>	132
<u>(b) The court may allow discovery relevant to the special</u>	133
<u>motion to strike upon the court's own motion, or upon the motion</u>	134
<u>of a party to the special motion to strike, if the party seeking</u>	135
<u>discovery shows by affidavit good cause why the discovery is</u>	136
<u>necessary and why the party's burden under division (C) (1) or</u>	137
<u>(2) of this section cannot be discharged without the discovery.</u>	138
<u>(5) Issue a briefing schedule to the parties to the action</u>	139
<u>for the special motion to strike that does the following:</u>	140
<u>(a) Permits the plaintiff to file and serve a memorandum</u>	141
<u>in opposition to the defendant's special motion to strike:</u>	142
<u>(i) Within fourteen days after the motion is served on the</u>	143
<u>plaintiff;</u>	144
<u>(ii) Upon a showing of exceptional circumstances, within a</u>	145
<u>period of up to twenty-eight days as allowed by the court after</u>	146
<u>the motion is served on the plaintiff;</u>	147
<u>(iii) Within a period approved by the court to which the</u>	148
<u>plaintiff and defendant agree.</u>	149
<u>(b) Permits the defendant to file and serve a reply in</u>	150
<u>support of the defendant's special motion to strike, if any:</u>	151
<u>(i) Within fourteen days after the plaintiff's memorandum</u>	152
<u>in opposition is served on the defendant;</u>	153
<u>(ii) Upon a showing of good cause, within a period of up</u>	154
<u>to twenty-eight days as allowed by the court after the</u>	155
<u>plaintiff's memorandum in opposition is served on the defendant;</u>	156
<u>(iii) Within a period approved by the court to which the</u>	157

<u>plaintiff and defendant agree.</u>	158
<u>(c) If requested by any party or the court, provides for a hearing on the special motion to strike not later than thirty days after the defendant either files and serves the defendant's reply in support of the defendant's special motion to strike or notifies the court and the plaintiff that the defendant waives the defendant's right to file a reply brief.</u>	159 160 161 162 163 164
<u>(6) Rule on the special motion to strike within thirty days after any of the following:</u>	165 166
<u>(a) The hearing on the special motion to strike, if a hearing is requested by any party or the court;</u>	167 168
<u>(b) The defendant's reply in support of the motion is filed, served on the plaintiff, and provided to the court, or the defendant notifies the plaintiff and the court that the defendant waives the defendant's right to file a reply brief, if no hearing is requested by any party or the court.</u>	169 170 171 172 173
<u>(7) Dismiss the action, if the plaintiff fails to timely file a memorandum in opposition to the special motion to strike.</u>	174 175
<u>(D) In making its determinations under divisions (C) (1) and (2) of this section, the court shall consider the pleadings and admissible evidence in any supporting or opposing affidavits stating the facts on which the claim or defense is based. At the defendant's option, the defendant may present the defendant's evidence through testimony, subject to cross-examination by the plaintiff.</u>	176 177 178 179 180 181 182
<u>(E) If the court dismisses the claim pursuant to a special motion to strike filed under this section, the dismissal acts as an adjudication upon the merits.</u>	183 184 185

Sec. 2305.64. (A) If the court grants a special motion to 186
strike pursuant to section 2305.63 of the Revised Code, the 187
following apply: 188

(1) The court shall award reasonable attorney's fees and 189
court costs to the defendant. The court shall not fail to award, 190
or reduce an award of, attorney's fees and court costs under 191
this division on the grounds that the defense of the claim was 192
undertaken on a pro bono or contingent basis. 193

(2) The court may award, in addition to reasonable 194
attorney's fees and court costs awarded under division (A)(1) of 195
this section, such punitive or exemplary monetary sanctions as 196
the court finds sufficient to deter the filing of similar 197
actions in the future. 198

(3) The defendant may bring a separate claim or action, or 199
with leave of the court may bring a counterclaim, to recover the 200
following: 201

(a) Actual compensatory damages proximately caused by the 202
claim, or five hundred dollars, whichever is greater; 203

(b) Punitive damages as provided by section 2315.21 of the 204
Revised Code; 205

(c) Reasonable attorney's fees and court costs of bringing 206
the separate claim, action, or counterclaim. 207

(4) If all or any portion of any award made by the court 208
pursuant to division (A)(1) or (2) of this section remains 209
unpaid ninety days after being made, the court, upon motion of 210
the defendant, may in its discretion impose joint and several 211
liability for any unpaid amount of the award against the 212
attorney or attorneys who signed the pleading in which the claim 213
was raised, if the court finds that the attorney or attorneys 214

knew or should have known that the claim was based on a 215
protected communication. 216

(B) If the court denies a special motion to strike filed 217
under section 2305.63 of the Revised Code, and finds that the 218
motion was frivolous conduct as defined in section 2323.51 of 219
the Revised Code, the court, after the disposition of any appeal 220
affirming the court's ruling on the special motion, may award to 221
the plaintiff reasonable attorney's fees, court costs, and other 222
reasonable expenses incurred in responding to the special motion 223
to strike. The court shall follow the procedures set forth in 224
section 2323.51 of the Revised Code in making that award. 225

(C) If the court denies a special motion to strike filed 226
under section 2305.63 of the Revised Code, the denial is a final 227
order under section 2505.02 of the Revised Code and the 228
defendant has an interlocutory right of appeal under section 229
2505.02 of the Revised Code. 230

Sec. 2305.65. (A) As used in this section: 231

(1) "Foreign claim based on a protected communication" 232
means any claim in a civil action brought against a person based 233
on a protected communication, if such action was commenced in 234
any court outside of Ohio against a person who was a resident of 235
Ohio at one or more of the following times: 236

(a) The time the person made the protected communication; 237

(b) The time the action was commenced against the person; 238

(c) The time the person was served in the action. 239

(2) "Protected communication" has the same meaning as in 240
section 2305.61 of the Revised Code. 241

(B) Any person subject to a foreign claim based on a 242

protected communication may bring a claim in a civil action in 243
the courts of this state against the person filing the foreign 244
claim based on a protected communication. Such claim may be 245
filed at any time, but not later than one year after the 246
dismissal or final judgment of the foreign claim based on a 247
protected communication. 248

(C) If the court establishes by a preponderance of the 249
evidence in the action brought under division (B) of this 250
section that the person subject to the foreign claim based on a 251
protected communication would have prevailed on a special motion 252
to strike under section 2305.63 of the Revised Code if the 253
foreign claim based on a protected communication had been filed 254
in Ohio, the court: 255

(1) Shall award to the person reasonable attorney's fees 256
and costs for the defense of the foreign claim based on a 257
protected communication in the same manner provided for the 258
award of attorney's fees and court costs under division (A) (1) 259
of section 2305.64 of the Revised Code; 260

(2) Shall award to the person reasonable attorney's fees 261
and costs incurred in connection with the claim provided for by 262
this section; 263

(3) Shall award to the person either actual compensatory 264
damages proximately caused by the filing of the foreign claim 265
based on a protected communication or statutory damages of five 266
hundred dollars, whichever is greater; 267

(4) May award such punitive or exemplary monetary 268
sanctions as the court finds sufficient to deter the filing of 269
similar actions against Ohio residents. 270

(D) For purposes of section 2307.382 of the Revised Code 271

<u>and Civil Rule 4.3:</u>	272
<u>(1) The filing of a foreign claim based on a protected communication constitutes an act outside this state which causes tortious injury in this state and which is committed with the purpose of injuring persons.</u>	273 274 275 276
<u>(2) A person filing a foreign claim based on a protected communication may reasonably expect that injury would incur in this state to a person against whom a foreign claim based on a protected communication is filed.</u>	277 278 279 280
Sec. 2505.02. (A) As used in this section:	281
(1) "Substantial right" means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.	282 283 284 285
(2) "Special proceeding" means an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.	286 287 288
(3) "Provisional remedy" means a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, suppression of evidence, a prima-facie showing pursuant to section 2307.85 or 2307.86 of the Revised Code, a prima-facie showing pursuant to section 2307.92 of the Revised Code, or a finding made pursuant to division (A) (3) of section 2307.93 of the Revised Code.	289 290 291 292 293 294 295 296
(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:	297 298 299

(1) An order that affects a substantial right in an action	300
that in effect determines the action and prevents a judgment;	301
(2) An order that affects a substantial right made in a	302
special proceeding or upon a summary application in an action	303
after judgment;	304
(3) An order that vacates or sets aside a judgment or	305
grants a new trial;	306
(4) An order that grants or denies a provisional remedy	307
and to which both of the following apply:	308
(a) The order in effect determines the action with respect	309
to the provisional remedy and prevents a judgment in the action	310
in favor of the appealing party with respect to the provisional	311
remedy.	312
(b) The appealing party would not be afforded a meaningful	313
or effective remedy by an appeal following final judgment as to	314
all proceedings, issues, claims, and parties in the action.	315
(5) An order that determines that an action may or may not	316
be maintained as a class action;	317
(6) An order determining the constitutionality of any	318
changes to the Revised Code made by Am. Sub. S.B. 281 of the	319
124th general assembly, including the amendment of sections	320
1751.67, 2117.06, 2305.11, 2305.15, 2305.234, 2317.02, 2317.54,	321
2323.56, 2711.21, 2711.22, 2711.23, 2711.24, 2743.02, 2743.43,	322
2919.16, 3923.63, 3923.64, 4705.15, and 5111.018 (renumbered as	323
5164.07 by H.B. 59 of the 130th general assembly), and the	324
enactment of sections 2305.113, 2323.41, 2323.43, and 2323.55 of	325
the Revised Code or any changes made by Sub. S.B. 80 of the	326
125th general assembly, including the amendment of sections	327
2125.02, 2305.10, 2305.131, 2315.18, 2315.19, and 2315.21 of the	328

Revised Code;	329
(7) An order in an appropriation proceeding that may be appealed pursuant to division (B) (3) of section 163.09 of the Revised Code;	330 331 332
<u>(8) An order that denies a special motion to strike pursuant to section 2305.63 of the Revised Code.</u>	333 334
(C) When a court issues an order that vacates or sets aside a judgment or grants a new trial, the court, upon the request of either party, shall state in the order the grounds upon which the new trial is granted or the judgment vacated or set aside.	335 336 337 338 339
(D) This section applies to and governs any action, including an appeal, that is pending in any court on July 22, 1998, and all claims filed or actions commenced on or after July 22, 1998, notwithstanding any provision of any prior statute or rule of law of this state.	340 341 342 343 344
<u>Sec. 2739.021. Nothing in sections 2739.01 and 2739.02 of the Revised Code shall be construed as limiting or abrogating any other defense, remedy, immunity, or privilege available under other constitutional, statutory, common law, or administrative provisions or rules relating to claims based on protected communications brought under sections 2305.61 to 2305.64 of the Revised Code.</u>	345 346 347 348 349 350 351
Section 2. That existing section 2505.02 of the Revised Code is hereby repealed.	352 353
Section 3. The General Assembly hereby declares that its purposes in enacting sections 2305.61 to 2305.65 and section 2739.021 of the Revised Code and amending section 2505.02 of the Revised Code are: (1) to encourage and safeguard the	354 355 356 357

constitutional rights of persons to petition, speak freely, and 358
associate freely, (2) to encourage and safeguard the rights of 359
persons to participate in government to the maximum extent 360
permitted by law, (3) to protect the rights of persons to speak 361
and act with respect to issues of public concern, and, at the 362
same time, (4) to protect the rights of persons to file 363
meritorious lawsuits for demonstrable injury. The General 364
Assembly declares that sections 2305.61 to 2305.65, section 365
2739.021, and section 2505.02 of the Revised Code shall be 366
construed liberally to effectuate their purpose and intent 367
fully. 368