

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 742

By: Adelson

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5
6 AS INTRODUCED

7 An Act relating to civil procedure; defining term;
8 establishing certain cause of action; requiring court
9 to consider certain documents; establishing certain
10 evidentiary requirements; providing for payment of
11 certain fees and costs; establishing procedures for
12 certain motion; stating exceptions; providing for
13 codification; and providing an effective date.

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

15 SECTION 1. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1450 of Title 12, unless there
17 is created a duplication in numbering, reads as follows:

18 A. As used in this section, "act in furtherance of a person's
19 right of petition or free speech under the United States or Oklahoma
20 Constitution in connection with a public issue" shall include, but
21 not be limited to:

22 1. Any written or oral statement or writing made before a
23 legislative, executive, or judicial proceeding, or any other
24 official proceeding authorized by law;

1 2. Any written or oral statement or writing made in connection
2 with an issue under consideration or review by a legislative,
3 executive, or judicial body, or any other official proceeding
4 authorized by law;

5 3. Any written or oral statement or writing made in a place
6 open to the public or a public forum in connection with an issue of
7 public interest; or

8 4. Any other conduct in furtherance of the exercise of the
9 constitutional right of petition or the constitutional right of free
10 speech in connection with a public issue or an issue of public
11 interest.

12 B. A cause of action against a person arising from any act of
13 that person in furtherance of the person's right of petition or free
14 speech under the United States or Oklahoma Constitution in
15 connection with a public issue shall be subject to a special motion
16 to strike, unless the court determines that the plaintiff has
17 established that there is a probability that the plaintiff will
18 prevail on the claim. In making its determination, the court shall
19 consider the pleadings, and supporting and opposing affidavits
20 stating the facts upon which the liability or defense is based. If
21 the court determines that the plaintiff has established a
22 probability that he or she will prevail on the claim, neither that
23 determination nor the fact of that determination shall be admissible
24 in evidence at any later stage of the case, or in any subsequent

1 action, and no burden of proof or degree of proof otherwise
2 applicable shall be affected by that determination in any later
3 stage of the case or in any subsequent proceeding. A prevailing
4 defendant on a special motion to strike shall be entitled to recover
5 his or her attorney's fees and costs. If the court finds that a
6 special motion to strike is frivolous or is solely intended to cause
7 unnecessary delay, the court shall award costs and reasonable
8 attorney fees to a plaintiff prevailing on the motion.

9 C. The special motion may be filed within sixty (60) days of
10 the service of the complaint or, in the court's discretion, at any
11 later time upon terms it deems proper. The motion shall be
12 scheduled by the clerk of the court for a hearing not more than
13 thirty (30) days after the service of the motion. All discovery
14 proceedings in the action shall be stayed upon the filing of a
15 notice of motion made pursuant to this section. The stay of
16 discovery shall remain in effect until notice of entry of the order
17 ruling on the motion. The court, on noticed motion and for good
18 cause shown, may order that specified discovery be conducted
19 notwithstanding this subsection.

20 D. This section shall not apply to any enforcement action
21 brought by the Attorney General or a district attorney or city
22 attorney acting as a public prosecutor. This section shall not
23 apply to any action brought solely in the public interest or on
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1 behalf of the general public if all of the following conditions
2 exist:

3 1. The plaintiff does not seek any relief greater than or
4 different from the relief sought for the general public or a class
5 of which the plaintiff is a member. A claim for attorney's fees,
6 costs, or penalties does not constitute greater or different relief
7 for purposes of this subdivision;

8 2. The action, if successful, would enforce an important right
9 affecting the public interest, and would confer a significant
10 benefit, whether pecuniary or nonpecuniary, on the general public or
11 a large class of persons; and

12 3. Private enforcement is necessary and places a
13 disproportionate financial burden on the plaintiff in relation to
14 the plaintiff's stake in the matter.

15 E. This section shall not apply to any cause of action brought
16 against a person primarily engaged in the business of selling or
17 leasing goods or services, including, but not limited to, insurance,
18 securities, or financial instruments, arising from any statement or
19 conduct by that person if both of the following conditions exist:

20 1. The statement or conduct consists of representations of fact
21 about that person's or a business competitor's business operations,
22 goods, or services, that is made for the purpose of obtaining
23 approval for, promoting, or securing sales or leases of, or
24 commercial transactions in, the person's goods or services, or the

1 statement or conduct was made in the course of delivering the
2 person's goods or services; and

3 2. The intended audience is an actual or potential buyer or
4 customer, or a person likely to repeat the statement to, or
5 otherwise influence, an actual or potential buyer or customer, or
6 the statement or conduct arose out of or within the context of a
7 regulatory approval process, proceeding, or investigation.

8 SECTION 2. This act shall become effective November 1, 2009.

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