

1 **SENATE FLOOR VERSION**

2 April 1, 2014

3 ENGROSSED HOUSE
4 BILL NO. 2366

By: Trebilcock, Turner, Kern
and Nollan of the House

5 and

6 Brinkley of the Senate

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8
9 An Act relating to civil procedure; creating the
10 Oklahoma Citizens Participation Act; stating purpose
of act; defining terms; providing for motion to
11 dismiss certain actions; setting time limit for
filing motion; permitting exception if good cause
12 shown; suspending discovery; requiring hearing on
motion; setting timing for hearing; extending timing
of hearing if court allows limited discovery;
13 specifying time period for court to rule on motion;
directing dismissal if certain evidence is shown;
14 prohibiting dismissal if certain evidence is shown;
requiring court to consider pleadings and affidavits;
15 authorizing court to allow limited discovery;
directing court to issue findings if requested by the
16 party filing the motion; prescribing time period for
the findings; providing for appeal if court fails to
17 rule on motion; directing appellate court to expedite
appeal; mandating court to award costs, fees and
18 other expenses if dismissed; providing for sanctions;
permitting court to award costs and fees if motion is
19 frivolous; excluding certain actions from the act;
construing provisions of act; providing for
20 codification; and providing an effective date.

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23 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:
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1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1430 of Title 12, unless there
3 is created a duplication in numbering, reads as follows:

4 A. This act may be known and shall be cited as the "Oklahoma
5 Citizens Participation Act".

6 B. The purpose of the Oklahoma Citizens Participation Act is to
7 encourage and safeguard the constitutional rights of persons to
8 petition, speak freely, associate freely and otherwise participate
9 in government to the maximum extent permitted by law and, at the
10 same time, protect the rights of a person to file meritorious
11 lawsuits for demonstrable injury.

12 SECTION 2. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1431 of Title 12, unless there
14 is created a duplication in numbering, reads as follows:

15 As used in the Oklahoma Citizens Participation Act:

16 1. "Communication" means the making or submitting of a
17 statement or document in any form or medium, including oral, visual,
18 written, audiovisual or electronic;

19 2. "Exercise of the right of association" means a communication
20 between individuals who join together to collectively express,
21 promote, pursue or defend common interests;

22 3. "Exercise of the right of free speech" means a communication
23 made in connection with a matter of public concern;

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1 4. "Exercise of the right to petition" means any of the
2 following:

3 a. a communication in or pertaining to:

4 (1) a judicial proceeding,

5 (2) an official proceeding, other than a judicial
6 proceeding, to administer the law,

7 (3) an executive or other proceeding before a
8 department or agency of the state or federal
9 government or a political subdivision of the
10 state or federal government,

11 (4) a legislative proceeding, including a proceeding
12 of a legislative committee,

13 (5) a proceeding before an entity that requires by
14 rule that public notice be given before
15 proceedings of that entity,

16 (6) a proceeding in or before a managing board of an
17 educational or eleemosynary institution supported
18 directly or indirectly from public revenue,

19 (7) a proceeding of the governing body of any
20 political subdivision of this state,

21 (8) a report of or debate and statements made in a
22 proceeding described by division (3), (4), (5),
23 (6) or (7) of this subparagraph, or
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1 (9) a public meeting dealing with a public purpose,
2 including statements and discussions at the
3 meeting or other matters of public concern
4 occurring at the meeting,

5 b. a communication in connection with an issue under
6 consideration or review by a legislative, executive,
7 judicial or other governmental body or in another
8 governmental or official proceeding,

9 c. a communication that is reasonably likely to encourage
10 consideration or review of an issue by a legislative,
11 executive, judicial or other governmental body or in
12 another governmental or official proceeding,

13 d. a communication reasonably likely to enlist public
14 participation in an effort to effect consideration of
15 an issue by a legislative, executive, judicial or
16 other governmental body or in another governmental or
17 official proceeding, and

18 e. any other communication that falls within the
19 protection of the right to petition government under
20 the Constitution of the United States or the Oklahoma
21 Constitution;

22 5. "Governmental proceeding" means a proceeding, other than a
23 judicial proceeding, by an officer, official or body of this state
24 or a political subdivision of this state, including an agency, board

1 or commission, or by an officer, official or body of the federal
2 government;

3 6. "Legal action" means a lawsuit, cause of action, petition,
4 complaint, cross-claim, counterclaim or any other judicial pleading
5 or filing that requests legal or equitable relief;

6 7. "Matter of public concern" means an issue related to:

- 7 a. health or safety,
- 8 b. environmental, economic or community well-being,
- 9 c. the government,
- 10 d. a public official or public figure, or
- 11 e. a good, product or service in the marketplace;

12 8. "Official proceeding" means any type of administrative,
13 executive, legislative or judicial proceeding that may be conducted
14 before a public servant; and

15 9. "Public servant" means a person elected, selected,
16 appointed, employed or otherwise designated as one of the following,
17 even if the person has not yet qualified for office or assumed the
18 person's duties:

- 19 a. an officer, employee or agent of government,
- 20 b. a juror,
- 21 c. an arbitrator, referee or other person who is
22 authorized by law or private written agreement to hear
23 or determine a cause or controversy,

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- 1 d. an attorney or notary public when participating in the
2 performance of a governmental function, or
3 e. a person who is performing a governmental function
4 under a claim of right but is not legally qualified to
5 do so.

6 SECTION 3. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1432 of Title 12, unless there
8 is created a duplication in numbering, reads as follows:

9 A. If a legal action is based on, relates to or is in response
10 to a party's exercise of the right of free speech, right to petition
11 or right of association, that party may file a motion to dismiss the
12 legal action.

13 B. A motion to dismiss a legal action under this section shall
14 be filed no later than sixty (60) days after the date of service of
15 the legal action. The court may extend the time to file a motion
16 under this section on a showing of good cause.

17 C. Except as provided in Section 6 of the Oklahoma Citizens
18 Participation Act, on the filing of a motion under subsection A of
19 this section, all discovery in the legal action shall be suspended
20 until the court has ruled on the motion to dismiss.

21 SECTION 4. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1433 of Title 12, unless there
23 is created a duplication in numbering, reads as follows:

1 A. A hearing on a motion filed pursuant to Section 3 of the
2 Oklahoma Citizens Participation Act shall be set no later than sixty
3 (60) days after the date of service of the motion unless the docket
4 conditions of the court require a later hearing, upon a showing of
5 good cause, or by agreement of the parties, but in no event shall
6 the hearing occur more than ninety (90) days after service of the
7 motion to dismiss, except as provided by subsection C of this
8 section.

9 B. In the event that the court cannot hold a hearing in the
10 time required by subsection A of this section, the court may take
11 judicial notice that court docket conditions required a hearing at a
12 later date, but in no event shall the hearing occur more than ninety
13 (90) days after service of the motion to dismiss, except as provided
14 by subsection C of this section.

15 C. If the court allows discovery under subsection B of Section
16 6 of this act, the court may extend the hearing date to allow
17 discovery under that subsection, but in no event shall the hearing
18 occur more than one hundred twenty (120) days after the service of
19 the motion to dismiss.

20 SECTION 5. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 1434 of Title 12, unless there
22 is created a duplication in numbering, reads as follows:
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1 A. The court shall rule on a motion filed pursuant to Section 3
2 of the Oklahoma Citizens Participation Act no later than thirty (30)
3 days following the date of the hearing on the motion.

4 B. Except as provided by subsection C of this section, on the
5 motion of a party filed pursuant to Section 3 of this act, a court
6 shall dismiss a legal action against the moving party if the moving
7 party shows by a preponderance of the evidence that the legal action
8 is based on, relates to or is in response to the party's exercise
9 of:

- 10 1. The right of free speech;
- 11 2. The right to petition; or
- 12 3. The right of association.

13 C. The court shall not dismiss a legal action under this
14 section if the party filing the legal action establishes by clear
15 and specific evidence a prima facie case for each essential element
16 of the claim in question.

17 D. Notwithstanding the provisions of subsection C of this
18 section, the court shall dismiss a legal action against the moving
19 party if the moving party establishes by a preponderance of the
20 evidence each essential element of a valid defense to the
21 nonmovant's claim.

22 SECTION 6. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1435 of Title 12, unless there
24 is created a duplication in numbering, reads as follows:

1 A. In determining whether a legal action shall be dismissed
2 under the Oklahoma Citizens Participation Act, the court shall
3 consider the pleadings and supporting and opposing affidavits
4 stating the facts on which the liability or defense is based.

5 B. On a motion by a party or on the court's own motion and on a
6 showing of good cause, the court may allow specified and limited
7 discovery relevant to the motion to dismiss.

8 SECTION 7. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1436 of Title 12, unless there
10 is created a duplication in numbering, reads as follows:

11 A. At the request of a party making a motion filed pursuant to
12 Section 3 of the Oklahoma Citizens Participation Act, the court
13 shall issue findings regarding whether the legal action was brought
14 to deter or prevent the moving party from exercising constitutional
15 rights and is brought for an improper purpose, including to harass
16 or to cause unnecessary delay or to increase the cost of litigation.

17 B. The court shall issue findings under subsection A of this
18 section no later than thirty (30) days after the date a request is
19 made under subsection A of this section.

20 SECTION 8. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 1437 of Title 12, unless there
22 is created a duplication in numbering, reads as follows:

23 A. If a court does not rule on a motion to dismiss filed
24 pursuant to Section 3 of the Oklahoma Citizens Participation Act in

1 the time prescribed by Section 5 of the act, the motion shall be
2 considered denied by operation of law and the moving party may
3 appeal.

4 B. An appellate court shall expedite an appeal or other writ,
5 whether interlocutory or not, from a trial court order on a motion
6 to dismiss a legal action filed pursuant to Section 3 of this act or
7 from a trial court's failure to rule on that motion in the time
8 prescribed by Section 5 of this act.

9 SECTION 9. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1438 of Title 12, unless there
11 is created a duplication in numbering, reads as follows:

12 A. If the court orders dismissal of a legal action under the
13 Oklahoma Citizens Participation Act, the court shall award to the
14 moving party:

15 1. Court costs, reasonable attorney fees and other expenses
16 incurred in defending against the legal action as justice and equity
17 may require; and

18 2. Sanctions against the party who brought the legal action as
19 the court determines sufficient to deter the party who brought the
20 legal action from bringing similar actions described in the Oklahoma
21 Citizens Participation Act.

22 B. If the court finds that a motion to dismiss filed under the
23 Oklahoma Citizens Participation Act is frivolous or solely intended
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1 to delay, the court may award court costs and reasonable attorney
2 fees to the responding party.

3 SECTION 10. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1439 of Title 12, unless there
5 is created a duplication in numbering, reads as follows:

6 The Oklahoma Citizens Participation Act shall not apply to:

7 1. An enforcement action that is brought in the name of this
8 state or a political subdivision of this state by the Attorney
9 General or a district attorney;

10 2. A legal action brought against a person primarily engaged in
11 the business of selling or leasing goods or services, if the
12 statement or conduct the action is based upon arises out of the sale
13 or lease of goods, services, or an insurance product, insurance
14 services, or a commercial transaction in which the intended audience
15 is an actual or potential buyer or customer;

16 3. A legal action seeking recovery for bodily injury, wrongful
17 death or survival or to statements made regarding that legal action;
18 or

19 4. A legal action brought under the Oklahoma Insurance Code or
20 arising out of an insurance contract.

21 SECTION 11. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1440 of Title 12, unless there
23 is created a duplication in numbering, reads as follows:

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1 A. The Oklahoma Citizens Participation Act shall not abrogate
2 or lessen any other defense, remedy, immunity or privilege available
3 under other constitutional, statutory, case or common law or rule
4 provisions.

5 B. The Oklahoma Citizens Participation Act shall be construed
6 liberally to effectuate its purpose and intent fully.

7 SECTION 12. This act shall become effective November 1, 2014.

8 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
9 April 1, 2014 - DO PASS

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