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# OHIO LEGISLATIVE SERVICE COMMISSION

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S.B. 237  
135<sup>th</sup> General Assembly

## Bill Analysis

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**Version:** As Reported by Senate Judiciary

**Primary Sponsors:** Sens. Gavarone and Manning

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### SUMMARY

- Names the act the “Uniform Public Expression Protection Act.”
- Specifies the types of civil actions to which the bill applies.
- Exempts certain actions against governmental units, against a person primarily engaged in the business of selling or leasing goods or services, and enforcement actions brought in the name of a governmental unit.
- Establishes procedures for a motion for expedited relief from a civil action type specified in the bill.
- Requires a stay of proceedings in the action prior to a ruling on the motion for expedited relief, other than for a motion for attorney’s fees, court costs, and other litigation expenses.
- Permits a court to, upon request, stay a hearing or motion involving another party in the action, if the hearing or ruling on the motion for expedited relief would adjudicate an issue material to the issue of the hearing or the motion.
- Specifies that the court will consider the pleadings, the motion, any response to the motion, and any evidence that could be considered in ruling on a motion for summary judgment under Civil Rule 56 of the Ohio Rules of Civil Procedure in ruling on the motion for expedited relief.
- Specifies on what grounds the court will dismiss a cause of action, or part of a cause of action, with prejudice.
- Permits a court to allow discovery during a stay if the party seeking discovery shows that specific information is necessary to establish whether a party has satisfied a burden to prove that the party’s cause of action should not be dismissed.

- Permits a court to hear and rule on a motion unrelated to the motion for expedited relief or a motion seeking a temporary or preliminary injunction to protect against an imminent threat to public health or safety during the stay for a motion for expedited relief.
- Specifies that an order denying a motion for expedited relief is a final appealable order.
- Establishes the burden of costs for a prevailing party on a successful motion for expedited relief, or for frivolous conduct if the motion is denied.
- Requires the court to broadly construe and apply the provisions of the bill and to consider the need to promote uniformity of the law with respect to its subject matter among states that enact a substantially similar law.

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## DETAILED ANALYSIS

### Uniform Public Expression Protection Act

The bill names the act the “Uniform Public Expression Protection Act.”<sup>1</sup>

#### Application and exceptions

The bill’s provisions apply to a cause of action asserted in a civil action against a “person” (see “**Definitions**,” below) based on any of the following:<sup>2</sup>

- The person’s communication in a legislative, executive, judicial, administrative, or other governmental proceeding;
- The person’s communication on an issue under consideration or review in a legislative, executive, judicial, administrative, or other governmental proceeding;
- The person’s exercise of the right of freedom of speech and of the press, the right to assemble and petition, and the right of association, guaranteed by the U.S. Constitution or the Ohio Constitution, on a matter of public concern.

The bill’s provisions do not apply to any of the following:<sup>3</sup>

- A legal action against a “governmental unit” (see “**Definitions**,” below) or an employee or agent of the governmental unit who was acting or purporting to act in an official capacity;
- An enforcement action that is brought in the name of a governmental unit to protect against an imminent threat to public health or safety;

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<sup>1</sup> Section 3.

<sup>2</sup> R.C. 2747.01(B).

<sup>3</sup> R.C. 2747.01(C).

- A legal action brought against a person primarily engaged in the business of selling or leasing “goods or services” (see “**Definitions**,” below), if the cause of action arises out of communication related to the person’s sale or lease of the goods or service.

### **Motion for expedited relief**

Not later than 60 days after a party is served with a complaint, cross-claim, counterclaim, third-party claim, or other pleading that asserts a cause of action to which the provisions of the bill apply, the party may file a motion for expedited relief to dismiss the civil action or claim. The court may extend the 60-day period to file the motion for expedited relief for a showing of good cause.<sup>4</sup>

If a motion for expedited relief is filed, the court must stay all other proceedings in the action between the moving party and responding party, including discovery and any other pending hearing or motion.<sup>5</sup> A stay issued pursuant to the motion for expedited relief remains in effect until 30 days after the entry of a ruling on the motion for expedited relief or upon the conclusion of an appeal of the ruling, whichever is later. During an appeal, all proceedings between all parties in the action are stayed.<sup>6</sup>

Upon request by the moving party, the court may stay a hearing or motion involving another party in the action, or discovery by another party, if the hearing or ruling on the motion for expedited relief would adjudicate, or the discovery would relate to, an issue material to the motion for expedited relief.<sup>7</sup>

In ruling on the motion for expedited relief, the court must consider the pleadings, the motion, any response to the motion, and any evidence that could be considered in ruling on a motion for summary judgment under Civil Rule 56 of the Ohio Rules of Civil Procedure.<sup>8</sup>

In ruling on the motion for expedited relief, the court must dismiss with prejudice a cause of action, or part of a cause of action, if all of the following apply:<sup>9</sup>

- The moving party establishes that the cause of action is based on a communication or action in, or on an issue under consideration or review in, a legislative, executive, judicial, administrative, or other governmental proceeding, or an exercise of the right of freedom of speech and of the press, the right to assemble and petition, and the right of association, guaranteed by the U.S. Constitution or the Ohio Constitution, on a matter of public concern;

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<sup>4</sup> R.C. 2747.02.

<sup>5</sup> R.C. 2747.03(A)(1).

<sup>6</sup> R.C. 2747.03(B).

<sup>7</sup> R.C. 2747.03(A)(2).

<sup>8</sup> R.C. 2474.04(B).

<sup>9</sup> R.C. 2747.04(C).

- The responding party fails to establish that the provisions of the bill do not apply to the cause of action due to an exception;
- Either the responding party fails to establish a prima-facie case for each essential element of the cause of action or the moving party establishes one of the following:
  - The responding party failed to state a cause of action upon which relief can be granted;
  - There is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the cause of action or part of the cause of action.

During a stay due to a motion for expedited relief, the court may allow limited discovery if the party seeking discovery shows that specific information is necessary to establish whether a party has satisfied a burden to prove that the party's cause of action should not be dismissed for the above-listed reasons, and the information cannot be obtained unless discovery is allowed.<sup>10</sup> A stay for these purposes does not affect a party's ability to voluntarily dismiss a cause of action or move to sever a cause of action for a separate trial.<sup>11</sup>

A court may also hear and rule on either of the following during a stay due to a motion for expedited relief where good cause is shown:<sup>12</sup>

- A motion unrelated to the motion for expedited relief;
- A motion seeking a temporary or preliminary injunction to protect against an imminent threat to public health or safety.

A motion for attorney's fees, court costs, and other litigation expenses due to a motion for expedited relief is not subject to the related stay.<sup>13</sup>

The bill requires the court to conduct a hearing not later than 60 days after the filing of a motion for expedited relief, unless the court orders a later hearing to allow for limited discovery or delays the hearing for other good cause. If the court orders a later hearing to allow for limited discovery, the court must conduct the hearing not later than 60 days after the court order allowing discovery unless the hearing is delayed for other good cause.<sup>14</sup> The court must rule on the motion for expedited relief not later than 60 days after the hearing.<sup>15</sup>

An order that denies a motion for expedited relief is a final appealable order that may be reviewed, affirmed, modified, or reversed, with or without retrial. The moving party has an

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<sup>10</sup> R.C. 2747.03(C).

<sup>11</sup> R.C. 2747.03(E).

<sup>12</sup> R.C. 2747.03(F).

<sup>13</sup> R.C. 2747.03(D).

<sup>14</sup> R.C. 2747.04(A).

<sup>15</sup> R.C. 2747.04(D).

interlocutory right of appeal and the appeal must be filed within 30 days after entry of the order.<sup>16</sup>

A voluntary dismissal without prejudice of a responding party's cause of action, or part of a cause of action, that is the subject of a motion for expedited relief does not affect a moving party's right to obtain a ruling on the motion for the purpose of obtaining court costs, attorney's fees, and other litigation expenses. A voluntary dismissal with prejudice of a responding party's cause of action, or part of a cause of action, that is the subject of a motion for expedited relief establishes that the moving party prevailed on the motion for the purpose of awarding court costs, attorney's fees, and other litigation expenses.<sup>17</sup>

If the court grants a motion for expedited relief, the court must award reasonable attorney's fees, court costs, and other reasonable litigation expenses to the moving party.<sup>18</sup> If the court denies a motion for expedited relief, and finds that the motion was frivolous conduct, the court, after the disposition of any appeal affirming the court's ruling on the motion, must award to the responding party reasonable attorney's fees, court costs, and other reasonable litigation expenses incurred in responding to the motion.<sup>19</sup>

### **Timing and interpretation**

The provisions of the bill are applicable to civil actions or any claim asserted in a civil action on or after the effective date of the bill.<sup>20</sup> A court must broadly construe and apply these provisions to protect the exercise of the right of freedom of speech and of the press, the right to assemble and petition, and the right of association, guaranteed by the U.S. Constitution and the Ohio Constitution.<sup>21</sup> In construing and applying these provisions, a court must consider the need to promote uniformity of the law with respect to its subject matter among states that enact a substantially similar law.<sup>22</sup>

### **Definitions**

The bill defines the following terms for the purposes of its provisions described above:<sup>23</sup>

- "Goods or services" does not include the creation, dissemination, exhibition, or advertisement, or a similar promotion, of a dramatic, literary, musical, political, journalistic, or artistic work;

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<sup>16</sup> R.C. 2502.02(B)(8) and 2747.05(C).

<sup>17</sup> R.C. 2747.04(E).

<sup>18</sup> R.C. 2747.05(A).

<sup>19</sup> R.C. 2747.05(B).

<sup>20</sup> R.C. 2747.06(A).

<sup>21</sup> R.C. 2747.06(B).

<sup>22</sup> R.C. 2747.06(C).

<sup>23</sup> R.C. 2747.01(A).

- “Governmental unit” means the government of the United States, the state, a political subdivision of the state, or any department, agency, board, commission, or other instrumentality of the government of the United States, the state, or a political subdivision;
- “Person” includes an individual, estate, trust, partnership, business or nonprofit entity, governmental unit, or other legal entity.

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## HISTORY

Action	Date
Introduced	03-26-24
Reported, S. Judiciary	05-22-24

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