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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

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

## Bill Analysis

[Click here for S.B. 237's Fiscal Note](#)

**Version:** As Reported by House Civil Justice

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

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### SUMMARY

#### Uniform Public Expression Protection Act

- Names the chapter proposed to be enacted by the act the “Uniform Public Expression Protection Act.”
- States that the chapter proposed to be enacted is intended to confer substantive immunity from suit, and not merely immunity from liability, for any cause of action concerning protected speech under the proposed chapter.
- Specifies the types of civil actions to which the proposed chapter applies.
- Exempts certain actions and claims from the provisions of the proposed chapter.
- Clarifies that no new statutory causes of action are created by the proposed chapter.
- Establishes procedures for a motion for expedited relief from a civil action type specified in the proposed chapter.
- 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.

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\* This analysis was prepared before the report of the House Civil Justice Committee appeared in the House Journal. Note that the legislative history may be incomplete.

- 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.
- Provides that the court must not fail to award, or reduce an award of, attorney's fees, court costs, and other reasonable litigation expenses on the grounds that the representation of the moving party was undertaken on a pro bono or contingent basis.
- 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.

### **Small claims court jurisdiction**

- Provides that the filing or defense of an action by the holder of a security agreement or retail installment contract, purchased by the holder for the holder's portfolio of investments, was not and is not prohibited in the small claims division of a municipal or county court, provided that the holder is not an assignee for the purpose of collection.

### **Eviction actions**

- Prohibits any person from filing a forcible entry and detainer action listing a minor tenant as a defendant if a parent or adult guardian is also listed as a defendant on the same complaint.
- Requires the court to dismiss without prejudice any action filed in violation of the prohibition in the preceding dot point and order the person that filed the action to pay the minor tenant's reasonable attorneys' fees.

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## DETAILED ANALYSIS

### Uniform Public Expression Protection Act

The bill names the chapter proposed to be enacted by 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;
- 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;
- A survivorship claim or a legal action seeking recovery for bodily injury or wrongful death, or statements made regarding that claim or legal action.

#### Intent

The bill states that the General Assembly, in enacting this proposed chapter, intends to confer substantive immunity from suit, and not merely immunity from liability, for any cause of action described in the first three dot points under “**Application and exceptions**,” above.<sup>4</sup>

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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).

<sup>4</sup> R.C. 2747.01(E).

The bill provides that nothing in the proposed chapter is intended to create any new statutory cause of action.<sup>5</sup>

### **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>6</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>7</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>8</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>9</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>10</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>11</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>5</sup> R.C. 2747.01(D).

<sup>6</sup> R.C. 2747.02.

<sup>7</sup> R.C. 2747.03(A)(1).

<sup>8</sup> R.C. 2747.03(B).

<sup>9</sup> R.C. 2747.03(A)(2).

<sup>10</sup> R.C. 2474.04(B).

<sup>11</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>12</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>13</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>14</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>15</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>16</sup> The court must rule on the motion for expedited relief not later than 60 days after the hearing.<sup>17</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>12</sup> R.C. 2747.03(C).

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

<sup>14</sup> R.C. 2747.03(F).

<sup>15</sup> R.C. 2747.03(D).

<sup>16</sup> R.C. 2747.04(A).

<sup>17</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>18</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>19</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. The court must not fail to award, or reduce an award of, attorney's fees, court costs, and other reasonable litigation expenses on the grounds that the representation of the moving party was undertaken on a pro bono or contingent basis.<sup>20</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>21</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>22</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>23</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>24</sup>

### **Definitions**

The bill defines the following terms for the purposes of its provisions described above:<sup>25</sup>

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<sup>18</sup> R.C. 2502.02(B)(8) and 2747.05(C).

<sup>19</sup> R.C. 2747.04(E).

<sup>20</sup> R.C. 2747.05(A).

<sup>21</sup> R.C. 2747.05(B).

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

<sup>23</sup> R.C. 2747.06(B).

<sup>24</sup> R.C. 2747.06(C).

<sup>25</sup> R.C. 2747.01(A).

- “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;
- “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.

## **Small claims court jurisdiction**

The bill provides that the filing or defense of an action by the holder of a security agreement or retail installment contract, purchased by the holder for the holder’s portfolio of investments, is not prohibited in the small claims division of a municipal or county court, provided that the holder is not an assignee for the purpose of collection.<sup>26</sup>

The bill states that it is the intent of the General Assembly in enacting the provision described in the previous paragraph to clarify that the filing of such an action in a small claims division of a municipal or county court was not prohibited prior to the effective date of the bill, and is not prohibited, provided the holder is not an assignee for the purpose of collection.<sup>27</sup>

The bill defines a “retail installment contract” as any written instrument that is executed in connection with any retail installment sale and is required or authorized under Ohio’s Retail Installment Sales Law, and includes all such instruments executed in connection with any retail installment sale.<sup>28</sup> A “security agreement” means an agreement that creates or provides for a security interest.<sup>29</sup>

## **Eviction actions**

The bill prohibits any person from filing a forcible entry and detainer action listing a “minor tenant” as a defendant if a parent or adult guardian is also listed as a defendant on the same complaint. The court must dismiss without prejudice any action filed in violation of the prohibition and order the person that filed the action to pay the minor tenant’s reasonable attorneys’ fees.<sup>30</sup> The bill defines “minor tenant” as a tenant under 18 years of age who is not emancipated.<sup>31</sup>

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<sup>26</sup> R.C. 1925.02(A)(2)(b)(ii).

<sup>27</sup> R.C. 1925.02(D).

<sup>28</sup> R.C. 1925.02(E)(5), by reference to R.C. 1317.01(L), not in the bill.

<sup>29</sup> R.C. 1925.02(E)(5), by reference to R.C. 1309.102(A)(74), not in the bill.

<sup>30</sup> R.C. 1923.05(B) and (C).

<sup>31</sup> R.C. 1923.01(C)(15).

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## HISTORY

Action	Date
Introduced	03-26-24
Reported, S. Judiciary	05-22-24
Passed Senate (32-0)	06-12-24
Reported, H. Civil Justice	---

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