

1-1 By: Leach, et al. (Senate Sponsor - Hughes) H.B. No. 2730  
 1-2 (In the Senate - Received from the House May 1, 2019;  
 1-3 May 1, 2019, read first time and referred to Committee on State  
 1-4 Affairs; May 14, 2019, reported favorably by the following vote:  
 1-5 Yeas 9, Nays 0; May 14, 2019, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED  
 1-18 AN ACT

1-19 relating to civil actions involving the exercise of certain  
 1-20 constitutional rights.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Sections 27.001(2), (6), and (7), Civil Practice  
 1-23 and Remedies Code, are amended to read as follows:

1-24 (2) "Exercise of the right of association" means to [a  
 1-25 ~~communication between individuals who]~~ join together to  
 1-26 collectively express, promote, pursue, or defend common interests  
 1-27 relating to a governmental proceeding or a matter of public  
 1-28 concern.

1-29 (6) "Legal action" means a lawsuit, cause of action,  
 1-30 petition, complaint, cross-claim, or counterclaim or any other  
 1-31 judicial pleading or filing that requests legal, declaratory, or  
 1-32 equitable relief. The term does not include:

1-33 (A) a procedural action taken or motion made in  
 1-34 an action that does not amend or add a claim for legal, equitable,  
 1-35 or declaratory relief;

1-36 (B) alternative dispute resolution proceedings;  
 1-37 or

1-38 (C) post-judgment enforcement actions.

1-39 (7) "Matter of public concern" means a statement or  
 1-40 activity regarding:

1-41 (A) a public official, public figure, or other  
 1-42 person who has drawn substantial public attention due to the  
 1-43 person's official acts, fame, notoriety, or celebrity;

1-44 (B) a matter of political, social, or other  
 1-45 interest to the community; or

1-46 (C) a subject of concern to the public [includes  
 1-47 an issue related to:

1-48 [(A) ~~health or safety;~~

1-49 [(B) ~~environmental, economic, or community~~  
 1-50 ~~well-being;~~

1-51 [(C) ~~the government;~~

1-52 [(D) ~~a public official or public figure; or~~

1-53 [(E) ~~a good, product, or service in the~~  
 1-54 ~~marketplace].~~

1-55 SECTION 2. Section 27.003, Civil Practice and Remedies  
 1-56 Code, is amended by amending Subsections (a) and (b) and adding  
 1-57 Subsections (d) and (e) to read as follows:

1-58 (a) If a legal action is based on~~[, relates to,]~~ or is in  
 1-59 response to a party's exercise of the right of free speech, right to  
 1-60 petition, or right of association or arises from any act of that  
 1-61 party in furtherance of the party's communication or conduct

2-1 described by Section 27.010(b), that party may file a motion to  
 2-2 dismiss the legal action. A party under this section does not  
 2-3 include a government entity, agency, or an official or employee  
 2-4 acting in an official capacity.

2-5 (b) A motion to dismiss a legal action under this section  
 2-6 must be filed not later than the 60th day after the date of service  
 2-7 of the legal action. The parties, upon mutual agreement, may  
 2-8 extend the time to file a motion under this section or the court may  
 2-9 extend the time to file a motion under this section on a showing of  
 2-10 good cause.

2-11 (d) The moving party shall provide written notice of the  
 2-12 date and time of the hearing under Section 27.004 not later than 21  
 2-13 days before the date of the hearing unless otherwise provided by  
 2-14 agreement of the parties or an order of the court.

2-15 (e) A party responding to the motion to dismiss shall file  
 2-16 the response, if any, not later than seven days before the date of  
 2-17 the hearing on the motion to dismiss unless otherwise provided by an  
 2-18 agreement of the parties or an order of the court.

2-19 SECTION 3. Sections 27.005(a), (b), and (d), Civil Practice  
 2-20 and Remedies Code, are amended to read as follows:

2-21 (a) The court must rule on a motion under Section 27.003 not  
 2-22 later than the 30th day following the date ~~[of]~~ the hearing on the  
 2-23 motion concludes.

2-24 (b) Except as provided by Subsection (c), on the motion of a  
 2-25 party under Section 27.003, a court shall dismiss a legal action  
 2-26 against the moving party if the moving party demonstrates ~~[shows by~~  
 2-27 ~~a preponderance of the evidence]~~ that the legal action is based on~~[~~  
 2-28 ~~relates to,~~ or is in response to:

- 2-29 (1) the party's exercise of:  
 2-30 (A) ~~[(1)]~~ the right of free speech;  
 2-31 (B) ~~[(2)]~~ the right to petition; or  
 2-32 (C) ~~[(3)]~~ the right of association; or  
 2-33 (2) the act of a party described by Section 27.010(b).

2-34 (d) Notwithstanding the provisions of Subsection (c), the  
 2-35 court shall dismiss a legal action against the moving party if the  
 2-36 moving party establishes an affirmative defense or other grounds on  
 2-37 which the moving party is entitled to judgment as a matter of law  
 2-38 ~~[by a preponderance of the evidence each essential element of a~~  
 2-39 ~~valid defense to the nonmovant's claim].~~

2-40 SECTION 4. The heading to Section 27.006, Civil Practice  
 2-41 and Remedies Code, is amended to read as follows:

2-42 Sec. 27.006. PROOF [EVIDENCE].

2-43 SECTION 5. Section 27.006(a), Civil Practice and Remedies  
 2-44 Code, is amended to read as follows:

2-45 (a) In determining whether a legal action is subject to or  
 2-46 should be dismissed under this chapter, the court shall consider  
 2-47 the pleadings, evidence a court could consider under Rule 166a,  
 2-48 Texas Rules of Civil Procedure, and supporting and opposing  
 2-49 affidavits stating the facts on which the liability or defense is  
 2-50 based.

2-51 SECTION 6. Section 27.007(a), Civil Practice and Remedies  
 2-52 Code, is amended to read as follows:

2-53 (a) If the court awards sanctions under Section 27.009(b)  
 2-54 ~~[At the request of a party making a motion under Section 27.003],~~  
 2-55 the court shall issue findings regarding whether the legal action  
 2-56 was brought to deter or prevent the moving party from exercising  
 2-57 constitutional rights and is brought for an improper purpose,  
 2-58 including to harass or to cause unnecessary delay or to increase the  
 2-59 cost of litigation.

2-60 SECTION 7. Chapter 27, Civil Practice and Remedies Code, is  
 2-61 amended by adding Section 27.0075 to read as follows:

2-62 Sec. 27.0075. EFFECT OF RULING. Neither the court's ruling  
 2-63 on the motion nor the fact that it made such a ruling shall be  
 2-64 admissible in evidence at any later stage of the case, and no burden  
 2-65 of proof or degree of proof otherwise applicable shall be affected  
 2-66 by the ruling.

2-67 SECTION 8. Section 27.009, Civil Practice and Remedies  
 2-68 Code, is amended by amending Subsection (a) and adding Subsection  
 2-69 (c) to read as follows:

3-1 (a) Except as provided by Subsection (c), if ~~[if]~~ the court  
3-2 orders dismissal of a legal action under this chapter, the court  
3-3 ~~[shall award to the moving party]:~~

3-4 (1) shall award to the moving party court costs and ~~[7]~~  
3-5 reasonable attorney's fees ~~[, and other expenses]~~ incurred in  
3-6 defending against the legal action ~~[as justice and equity may~~  
3-7 ~~require]; and~~

3-8 (2) may award to the moving party sanctions against  
3-9 the party who brought the legal action as the court determines  
3-10 sufficient to deter the party who brought the legal action from  
3-11 bringing similar actions described in this chapter.

3-12 (c) If the court orders dismissal of a compulsory  
3-13 counterclaim under this chapter, the court may award to the moving  
3-14 party reasonable attorney's fees incurred in defending against the  
3-15 counterclaim if the court finds that the counterclaim is frivolous  
3-16 or solely intended for delay.

3-17 SECTION 9. Section 27.010, Civil Practice and Remedies  
3-18 Code, is amended to read as follows:

3-19 Sec. 27.010. EXEMPTIONS. (a) This chapter does not apply  
3-20 to:

3-21 (1) an enforcement action that is brought in the name  
3-22 of this state or a political subdivision of this state by the  
3-23 attorney general, a district attorney, a criminal district  
3-24 attorney, or a county attorney;

3-25 (2) ~~[-~~  
3-26 ~~[(b) This chapter does not apply to]~~ a legal action brought  
3-27 against a person primarily engaged in the business of selling or  
3-28 leasing goods or services, if the statement or conduct arises out of  
3-29 the sale or lease of goods, services, or an insurance product,  
3-30 insurance services, or a commercial transaction in which the  
3-31 intended audience is an actual or potential buyer or customer;

3-32 (3) ~~[-~~  
3-33 ~~[(c) This chapter does not apply to]~~ a legal action seeking  
3-34 recovery for bodily injury, wrongful death, or survival or to  
3-35 statements made regarding that legal action;

3-36 (4) ~~[-~~  
3-37 ~~[(d) This chapter does not apply to]~~ a legal action brought  
3-38 under the Insurance Code or arising out of an insurance contract;

3-39 (5) a legal action arising from an officer-director,  
3-40 employee-employer, or independent contractor relationship that:

3-41 (A) seeks recovery for misappropriation of trade  
3-42 secrets or corporate opportunities; or

3-43 (B) seeks to enforce a non-disparagement  
3-44 agreement or a covenant not to compete;

3-45 (6) a legal action filed under Title 1, 2, 4, or 5,  
3-46 Family Code, or an application for a protective order under Chapter  
3-47 7A, Code of Criminal Procedure;

3-48 (7) a legal action brought under Chapter 17, Business  
3-49 & Commerce Code, other than an action governed by Section 17.49(a)  
3-50 of that chapter;

3-51 (8) a legal action in which a moving party raises a  
3-52 defense pursuant to Section 160.010, Occupations Code, Section  
3-53 161.033, Health and Safety Code, or the Health Care Quality  
3-54 Improvement Act of 1986 (42 U.S.C. 11101 et seq.);

3-55 (9) an eviction suit brought under Chapter 24,  
3-56 Property Code;

3-57 (10) a disciplinary action or disciplinary proceeding  
3-58 brought under Chapter 81, Government Code, or the Texas Rules of  
3-59 Disciplinary Procedure;

3-60 (11) a legal action brought under Chapter 554,  
3-61 Government Code; or

3-62 (12) a legal action based on a common law fraud claim.

3-63 (b) Notwithstanding Subsections (a)(2), (7), and (12), this  
3-64 chapter applies to:

3-65 (1) a legal action against a person arising from any  
3-66 act of that person, whether public or private, related to the  
3-67 gathering, receiving, posting, or processing of information for  
3-68 communication to the public, whether or not the information is  
3-69 actually communicated to the public, for the creation,

4-1 dissemination, exhibition, or advertisement or other similar  
4-2 promotion of a dramatic, literary, musical, political,  
4-3 journalistic, or otherwise artistic work, including audio-visual  
4-4 work regardless of the means of distribution, a motion picture, a  
4-5 television or radio program, or an article published in a  
4-6 newspaper, website, magazine, or other platform, no matter the  
4-7 method or extent of distribution; and

4-8 (2) a legal action against a person related to the  
4-9 communication, gathering, receiving, posting, or processing of  
4-10 consumer opinions or commentary, evaluations of consumer  
4-11 complaints, or reviews or ratings of businesses.

4-12 (c) This chapter applies to a legal action against a victim  
4-13 or alleged victim of family violence or dating violence as defined  
4-14 in Chapter 71, Family Code, or an offense under Chapter 20, 20A, 21,  
4-15 or 22, Penal Code, based on or in response to a public or private  
4-16 communication.

4-17 SECTION 10. If any provision of this Act or its application  
4-18 to any person or circumstance is held invalid, the invalidity does  
4-19 not affect other provisions or applications of this Act that can be  
4-20 given effect without the invalid provision or application, and to  
4-21 this end the provisions of this Act are declared to be severable.

4-22 SECTION 11. Chapter 27, Civil Practice and Remedies Code,  
4-23 as amended by this Act, applies only to an action filed on or after  
4-24 the effective date of this Act. An action filed before the  
4-25 effective date of this Act is governed by the law in effect  
4-26 immediately before that date, and that law is continued in effect  
4-27 for that purpose.

4-28 SECTION 12. This Act takes effect September 1, 2019.

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