

HOUSE BILL No. 4743

June 14, 2011, Introduced by Reps. Bledsoe, Stanley, Geiss, Kandrevas, Roy Schmidt, Santana, Barnett, Slavens, Lindberg, Byrum, Wayne Schmidt, Darany, Dillon, Townsend, McCann, Hovey-Wright, Liss, Oakes, Womack and Olumba and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
(MCL 600.101 to 600.9947) by adding section 2977.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 2977. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), ON MOTION
2 OF A DEFENDANT, A COURT SHALL DISMISS A CIVIL ACTION AGAINST THE
3 DEFENDANT IF EITHER OF THE FOLLOWING APPLIES:

4 (A) THE ACTION IS BASED ON THE DEFENDANT'S EXERCISE OF THE
5 RIGHT TO PETITION UNDER THE UNITED STATES CONSTITUTION OR THE
6 CONSTITUTION OF THIS STATE AND THE COMMUNICATION WAS AIMED AT
7 PROCURING A GOVERNMENTAL OR ELECTORAL ACTION, RESULT, OR OUTCOME.

8 (B) THE ACTION IS BASED ON THE DEFENDANT'S EXERCISE OF THE
9 RIGHT OF FREE SPEECH UNDER THE UNITED STATES CONSTITUTION OR THE
10 CONSTITUTION OF THIS STATE.

11 (2) AN ACTION SHALL NOT BE DISMISSED UNDER THIS SECTION IF THE

1 PLAINTIFF PRESENTS PRIMA FACIE EVIDENCE THAT THE ACTION WAS NOT
2 INITIATED WITH THE PURPOSE OF HARASSING OR INTIMIDATING THE
3 DEFENDANT OR OTHERWISE HINDERING THE DEFENDANT'S EXERCISE OF THE
4 RIGHT TO PETITION OR THE RIGHT OF FREE SPEECH AND 1 OR BOTH OF THE
5 FOLLOWING APPLY:

6 (A) THE DEFENDANT MADE THE COMMUNICATION THAT GAVE RISE TO THE
7 ACTION WITH KNOWLEDGE THAT IT WAS FALSE OR WITH RECKLESS DISREGARD
8 FOR WHETHER IT WAS FALSE AND THE COMMUNICATION WAS FALSE.

9 (B) THE COMMUNICATION THAT GAVE RISE TO THE ACTION INCLUDED
10 INFORMATION THAT THE DEFENDANT WAS PROHIBITED BY LAW FROM
11 DISSEMINATING.

12 (3) ON THE FILING OF A MOTION UNDER SUBSECTION (1), THE COURT
13 SHALL STAY ALL DISCOVERY PROCEEDINGS IN THE ACTION UNTIL AN ORDER
14 DISPOSING OF THE MOTION IS ENTERED. ON A MOTION BY A PARTY OR ON
15 THE COURT'S OWN MOTION AND ON A SHOWING OF GOOD CAUSE, THE COURT
16 MAY ALLOW SPECIFIED DISCOVERY.

17 (4) THE COURT SHALL AWARD ALL OF THE FOLLOWING TO A MOVING
18 DEFENDANT IN AN ACTION THAT IS DISMISSED UNDER THIS SECTION:

19 (A) THREE TIMES THE AMOUNT OF DAMAGES SUSTAINED BY THE
20 DEFENDANT AS A RESULT OF THE ACTION.

21 (B) COURT COSTS OF THE ACTION.

22 (C) REASONABLE ATTORNEY FEES AND OTHER EXPENSES INCURRED IN
23 DEFENDING AGAINST THE ACTION.

24 (D) IF THE AMOUNTS AWARDED UNDER SUBDIVISIONS (A) TO (C) TOTAL
25 LESS THAN \$5,000.00, THE DIFFERENCE BETWEEN THE TOTAL AND
26 \$5,000.00.

27 (E) ADDITIONAL SANCTIONS AGAINST THE PLAINTIFF AND THE

1 ATTORNEY OR LAW FIRM REPRESENTING THE PLAINTIFF AS THE COURT
2 DETERMINES ARE SUFFICIENT TO DETER THE PLAINTIFF AND THE ATTORNEY
3 OR LAW FIRM FROM FILING SIMILAR ACTIONS DESCRIBED IN SUBSECTION
4 (1) .

5 (5) A DEFENDANT IN AN ACTION THAT IS DISMISSED UNDER THIS
6 SECTION MAY BRING A SEPARATE ACTION, CROSS-CLAIM, OR COUNTERCLAIM
7 TO RECOVER ANY ITEM DESCRIBED IN SUBSECTION (4) . HOWEVER, THE
8 DEFENDANT IS NOT ENTITLED TO A DOUBLE RECOVERY OF THE SAME ITEM.

9 (6) THIS SECTION DOES NOT ABROGATE OR LESSEN ANY OTHER
10 DEFENSE, REMEDY, IMMUNITY, OR PRIVILEGE AVAILABLE UNDER LAW.

11 (7) AS USED IN THIS SECTION:

12 (A) "COMMUNICATION" INCLUDES MAKING OR SUBMITTING A STATEMENT
13 IN ANY FORM, INCLUDING AN ORAL OR WRITTEN STATEMENT AND A STATEMENT
14 IN ELECTRONIC FORM.

15 (B) "EXERCISE OF THE RIGHT OF FREE SPEECH" MEANS A
16 COMMUNICATION MADE IN A PLACE OPEN TO THE PUBLIC OR A PUBLIC FORUM
17 IN CONNECTION WITH AN ISSUE OF PUBLIC INTEREST.

18 (C) "EXERCISE OF THE RIGHT TO PETITION" MEANS ANY OF THE
19 FOLLOWING:

20 (i) COMMUNICATION WITH A LEGISLATIVE, EXECUTIVE, OR JUDICIAL
21 BODY OR IN ANOTHER GOVERNMENTAL PROCEEDING.

22 (ii) COMMUNICATION IN CONNECTION WITH AN ISSUE UNDER
23 CONSIDERATION OR REVIEW BY A LEGISLATIVE, EXECUTIVE, OR JUDICIAL
24 BODY OR IN ANOTHER GOVERNMENTAL PROCEEDING.

25 (iii) COMMUNICATION THAT IS REASONABLY LIKELY TO ENCOURAGE
26 CONSIDERATION OR REVIEW OF AN ISSUE BY A LEGISLATIVE, EXECUTIVE, OR
27 JUDICIAL BODY OR IN ANOTHER GOVERNMENTAL PROCEEDING.

1 (iv) COMMUNICATION REASONABLY LIKELY TO ENLIST PUBLIC
2 PARTICIPATION IN AN EFFORT TO EFFECT CONSIDERATION OF AN ISSUE BY A
3 LEGISLATIVE, EXECUTIVE, OR JUDICIAL BODY OR IN ANOTHER GOVERNMENTAL
4 PROCEEDING.

5 (v) ANY OTHER COMMUNICATION THAT FALLS WITHIN THE
6 CONSTITUTIONAL PROTECTION OF THE RIGHT TO PETITION GOVERNMENT.

7 (D) "ISSUE OF PUBLIC INTEREST" INCLUDES AN ISSUE RELATED TO
8 HEALTH OR SAFETY; ENVIRONMENTAL, ECONOMIC, OR COMMUNITY WELL-BEING;
9 THE GOVERNMENT; A PUBLIC FIGURE; OR A GOOD, PRODUCT, OR SERVICE IN
10 THE MARKETPLACE. ISSUE OF PUBLIC INTEREST DOES NOT INCLUDE A
11 PRIVATE INTEREST, SUCH AS COMMUNICATION DIRECTED PRIMARILY TOWARD
12 PROTECTING THE SPEAKER'S BUSINESS INTERESTS RATHER THAN TOWARD
13 COMMENTING ON OR SHARING INFORMATION ABOUT A MATTER OF PUBLIC
14 SIGNIFICANCE.

15 (E) "PUBLIC FORUM" INCLUDES A WEBSITE ON THE INTERNET.

16 (8) THIS SECTION MAY BE REFERRED TO AS THE "KATE EBELI LAW".