

AN ACT

To amend sections 1923.01, 1923.05, 1925.02, and 2505.02 and to enact sections 2747.01, 2747.02, 2747.03, 2747.04, 2747.05, and 2747.06 of the Revised Code to enact the Uniform Public Expression Protection Act relating to legal actions concerning protected speech, to clarify small claims court jurisdiction, and to prohibit landlords from listing a minor as a defendant in a forcible entry and detainer action.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 1923.01, 1923.05, 1925.02, and 2505.02 be amended and sections 2747.01, 2747.02, 2747.03, 2747.04, 2747.05, and 2747.06 of the Revised Code be enacted to read as follows:

Sec. 1923.01. (A) As provided in this chapter, any judge of a county or municipal court or a court of common pleas, within the judge's proper area of jurisdiction, may inquire about persons who make unlawful and forcible entry into lands or tenements and detain them, and about persons who make a lawful and peaceable entry into lands or tenements and hold them unlawfully and by force. If, upon the inquiry, it is found that an unlawful and forcible entry has been made and the lands or tenements are detained, or that, after a lawful entry, lands or tenements are held unlawfully and by force, a judge shall cause the plaintiff in an action under this chapter to have restitution of the lands or tenements.

(B) An action shall be brought under this chapter within two years after the cause of action accrues.

(C) As used in this chapter:

(1) "Tenant" means a person who is entitled under a rental agreement to the use or occupancy of premises, other than premises located in a manufactured home park, to the exclusion of others, except that as used in division (A)(6) of section 1923.02 and section 1923.051 of the Revised Code, "tenant" includes a manufactured home park resident.

(2) "Landlord" means the owner, lessor, or sublessor of premises, or the agent or person the landlord authorizes to manage premises or to receive rent from a tenant under a rental agreement, except, if required by the facts of the action to which the term is applied, "landlord" means a park operator.

(3) "Resident" has the same meaning as in section 4781.01 of the Revised Code.

(4) "Residential premises" has the same meaning as in section 5321.01 of the Revised Code, except, if required by the facts of the action to which the term is applied, "residential premises" has

the same meaning as in section 4781.01 of the Revised Code.

(5) "Rental agreement" means any agreement or lease, written or oral, that establishes or modifies the terms, conditions, rules, or other provisions concerning the use or occupancy of premises by one of the parties to the agreement or lease, except that "rental agreement," as used in division (A)(13) of section 1923.02 of the Revised Code and where the context requires as used in this chapter, means a rental agreement as defined in division (D) of section 5322.01 of the Revised Code.

(6) "Controlled substance" has the same meaning as in section 3719.01 of the Revised Code.

(7) "School premises" has the same meaning as in section 2925.01 of the Revised Code.

(8) "Sexually oriented offense" and "child-victim oriented offense" have the same meanings as in section 2950.01 of the Revised Code.

(9) "Recreational vehicle" and "mobile home" have the same meanings as in section 4501.01 of the Revised Code.

(10) "Manufactured home" has the same meaning as in section 3781.06 of the Revised Code.

(11) "Manufactured home park" has the same meaning as in section 4781.01 of the Revised Code and also means any tract of land upon which one or two manufactured or mobile homes used for habitation are parked, either free of charge or for revenue purposes, pursuant to rental agreements between the owners of the manufactured or mobile homes and the owner of the tract of land.

(12) "Park operator" has the same meaning as in section 4781.01 of the Revised Code and also means a landlord of premises upon which one or two manufactured or mobile homes used for habitation are parked, either free of charge or for revenue purposes, pursuant to rental agreements between the owners of the manufactured or mobile homes and a landlord who is not licensed as a manufactured home park operator pursuant to Chapter 4781. of the Revised Code.

(13) "Personal property" means tangible personal property other than a manufactured home, mobile home, or recreational vehicle that is the subject of an action under this chapter.

(14) "Preschool or child care center premises" has the same meaning as in section 2950.034 of the Revised Code.

(15) "Minor tenant" means a tenant under eighteen years of age who is not emancipated.

Sec. 1923.05. (A) The summons shall not issue in an action under this chapter until the plaintiff files ~~his~~ a complaint in writing with the court. The complaint shall particularly describe the premises so entered upon and detained, and set forth either an unlawful and forcible entry and detention, or an unlawful and forcible detention after a peaceable or lawful entry of the described premises. The complaint shall be copied into, and made a part of the record.

(B) No person shall file an action under this chapter listing a minor tenant as a defendant if a parent or adult guardian is also listed as a defendant on the same complaint.

(C) The court shall dismiss without prejudice any action filed in violation of division (B) of this section and order the person that filed the action to pay the minor tenant's reasonable attorneys' fees.

Sec. 1925.02. (A)(1) Except as provided in division (A)(2) of this section, a small claims division established under section 1925.01 of the Revised Code has jurisdiction in civil actions for the recovery of taxes and money only, for amounts not exceeding six thousand dollars, exclusive of interest and costs.

(2)(a) A small claims division does not have jurisdiction in any of the following:

(i) Libel, slander, replevin, malicious prosecution, and abuse of process actions;

(ii) Actions on any claim brought by an assignee or agent, except a claim to recover taxes that is filed by any authorized employee of a political subdivision or any authorized officer or employee of the state or a claim filed by a person designated under section 1925.18 of the Revised Code to act as the representative of a prosecuting attorney;

(iii) Actions for the recovery of punitive or exemplary damages.

(b) Division (A)(2)(a) of this section does not exclude ~~actions~~either of the following:

(i) Actions for the recovery of damages specifically authorized by division (B) of either section 1345.09 or 1345.48 of the Revised Code from the jurisdiction of a small claims division;

(ii) 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, provided that the holder is not an assignee for the purpose of collection.

(3) The territorial jurisdiction and venue of a small claims division are concurrent with that of the respective court under its procedures in ordinary civil actions. Jurisdiction over the person of a defendant may not be obtained by any form of published or substituted service or warrant of attorney.

(B) A counterclaim or cross-claim of six thousand dollars or less does not affect the jurisdiction of a small claims division. If a counterclaim or cross-claim exceeds six thousand dollars and if the case is transferred to the regular docket of the court, the court, if it finds that the counterclaim or cross-claim was without substantial grounds, may award reasonable attorney's fees by special order to the party against whom the counterclaim or cross-claim is instituted, if that party prevails in the action on that claim.

(C) Any person who files a counterclaim or cross-claim shall file it with the small claims division and serve it on all other parties at least seven days prior to the date of the trial of the plaintiff's claim in the original action.

(D) It is the intent of the general assembly in enacting division (A)(2)(b)(ii) of this section to clarify that the filing of such an action in a small claims division established under section 1925.01 of the Revised Code was not prohibited prior to the effective date of this amendment, and is not prohibited, provided the holder is not an assignee for the purpose of collection.

(E) As used in this section:

(1) "Person" has the same meaning as in division (C) of section 1.59 of the Revised Code and also includes governmental entities.

(2) "Political subdivision" and "employee" of a political subdivision have the same meanings

as in section 2744.01 of the Revised Code.

(3) "State" has the same meaning as in section 109.36 of the Revised Code.

(4) "Officer or employee of the state" means any person who is serving in an elected or appointed office or position with the state or is employed by the state. "Officer or employee of the state" does not include any person elected, appointed, or employed by any political subdivision.

(5) "Retail installment contract" and "security agreement" have the same meanings as in section 1317.01 of the Revised Code.

Sec. 2505.02. (A) As used in this section:

(1) "Substantial right" means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.

(2) "Special proceeding" means an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.

(3) "Provisional remedy" means a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, suppression of evidence, a prima-facie showing pursuant to section 2307.85 or 2307.86 of the Revised Code, a prima-facie showing pursuant to section 2307.92 of the Revised Code, or a finding made pursuant to division (A)(3) of section 2307.93 of the Revised Code.

(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

(3) An order that vacates or sets aside a judgment or grants a new trial;

(4) An order that grants or denies a provisional remedy and to which both of the following apply:

(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

(5) An order that determines that an action may or may not be maintained as a class action;

(6) An order determining the constitutionality of any changes to the Revised Code made by Am. Sub. S.B. 281 of the 124th general assembly, including the amendment of sections 1751.67, 2117.06, 2305.11, 2305.15, 2305.234, 2317.02, 2317.54, 2323.56, 2711.21, 2711.22, 2711.23, 2711.24, 2743.02, 2743.43, 2919.16, 3923.63, 3923.64, 4705.15, and 5111.018 (renumbered as 5164.07 by H.B. 59 of the 130th general assembly), and the enactment of sections 2305.113, 2323.41, 2323.43, and 2323.55 of the Revised Code or any changes made by Sub. S.B. 80 of the

125th general assembly, including the amendment of sections 2125.02, 2305.10, 2305.131, 2315.18, 2315.19, and 2315.21 of the Revised Code;

(7) An order in an appropriation proceeding that may be appealed pursuant to division (B)(3) of section 163.09 of the Revised Code;

(8) An order that denies a motion for expedited relief pursuant to section 2747.04 of the Revised Code.

(C) When a court issues an order that vacates or sets aside a judgment or grants a new trial, the court, upon the request of either party, shall state in the order the grounds upon which the new trial is granted or the judgment vacated or set aside.

(D) This section applies to and governs any action, including an appeal, that is pending in any court on July 22, 1998, and all claims filed or actions commenced on or after July 22, 1998, notwithstanding any provision of any prior statute or rule of law of this state.

Sec. 2747.01. (A) As used in this section:

(1) "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.

(2) "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.

(3) "Person" includes an individual, estate, trust, partnership, business or nonprofit entity, governmental unit, or other legal entity.

(B) Except as provided in division (C) of this section, this chapter applies to a cause of action asserted in a civil action against a person based on any of the following:

(1) The person's communication in a legislative, executive, judicial, administrative, or other governmental proceeding;

(2) The person's communication on an issue under consideration or review in a legislative, executive, judicial, administrative, or other governmental proceeding;

(3) 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 United States Constitution or the Ohio Constitution, on a matter of public concern.

(C) This chapter does not apply to any of the following:

(1) A legal action against a governmental unit or an employee or agent of the governmental unit who was acting or purporting to act in an official capacity;

(2) An enforcement action that is brought in the name of a governmental unit to protect against an imminent threat to public health or safety;

(3) A legal action brought against a person primarily engaged in the business of selling or leasing goods or services, if the cause of action arises out of communication related to the person's sale or lease of the goods or services;

(4) A survivorship claim or a legal action seeking recovery for bodily injury or wrongful death, or statements made regarding that claim or legal action.

(D) Nothing in this chapter is intended to create any new statutory cause of action.

(E) The general assembly, in enacting this chapter, intends to confer substantive immunity from suit, and not merely immunity from liability, for any cause of action described in division (B) of this section.

Sec. 2747.02. Not later than sixty 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 this chapter applies, the party may file a motion for expedited relief to dismiss the civil action or claim. The court may extend the sixty-day period to file the motion for expedited relief for good cause shown.

Sec. 2747.03. (A)(1) Except as otherwise provided in this section, if a motion for expedited relief is filed under section 2747.02 of the Revised Code, the court shall stay all other proceedings in the action between the moving party and responding party, including discovery and any other pending hearing or motion.

(2) 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 would adjudicate, or the discovery would relate to, an issue material to the motion for expedited relief.

(B) A stay under division (A) of this section remains in effect until thirty 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 such an appeal, all proceedings between all parties in the action are stayed.

(C) During a stay under division (A) of this section, 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 under section 2747.04 of the Revised Code and the information cannot be obtained unless discovery is allowed.

(D) A motion under section 2747.05 of the Revised Code for attorney's fees, court costs, and other litigation expenses is not subject to a stay under this section.

(E) A stay under this section 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.

(F) During a stay under this section, the court for good cause may hear and rule on either of the following:

(1) A motion unrelated to the motion for expedited relief;

(2) A motion seeking a temporary or preliminary injunction to protect against an imminent threat to public health or safety.

Sec. 2747.04. (A)(1) The court shall conduct a hearing not later than sixty days after the filing of a motion for expedited relief, unless the court orders a later hearing to allow for limited discovery under section 2747.03 of the Revised Code or delays the hearing for other good cause.

(2) If the court orders a later hearing to allow for limited discovery, the court shall conduct the hearing not later than sixty days after the court order allowing discovery unless the hearing is delayed for other good cause.

(B) In ruling on the motion for expedited relief, the court shall 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 Rule 56 of the Rules of Civil Procedure.

(C) In ruling on the motion for expedited relief, the court shall dismiss with prejudice a cause of action, or part of a cause of action, if all of the following apply:

(1) The moving party establishes that the cause of action is based on a communication or action described in division (B) of section 2747.01 of the Revised Code.

(2) The responding party fails to establish that this chapter does not apply to the cause of action due to an exception in division (C) of section 2747.01 of the Revised Code.

(3) 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:

(a) The responding party failed to state a cause of action upon which relief can be granted.

(b) 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.

(D) The court shall rule on the motion for expedited relief not later than sixty days after the hearing.

(E)(1) 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 attorney's fees, court costs, and other litigation expenses under section 2747.05 of the Revised Code.

(2) 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 attorney's fees, court costs, and other litigation expenses under section 2747.05 of the Revised Code.

Sec. 2747.05. (A) If the court grants a motion for expedited relief under section 2747.04 of the Revised Code, the court shall award reasonable attorney's fees, court costs, and other reasonable litigation expenses to the moving party. The court shall not fail to award, or reduce an award of, attorney's fees, court costs, and other reasonable litigation expenses under this division on the grounds that the representation of the moving party was undertaken on a pro bono or contingent basis.

(B) If the court denies a motion for expedited relief under section 2747.04 of the Revised Code, and finds that the motion was frivolous conduct as defined in section 2323.51 of the Revised Code, the court, after the disposition of any appeal affirming the court's ruling on the motion, shall award to the responding party reasonable attorney's fees, court costs, and other reasonable litigation expenses incurred in responding to the motion.

(C) If the court denies a motion for expedited relief under section 2747.04 of the Revised Code, the denial is a final order under section 2505.02 of the Revised Code and the moving party has an interlocutory right of appeal under that section. The appeal must be filed within thirty days after entry of the order.

Sec. 2747.06. (A) Sections 2747.01 to 2747.06 of the Revised Code apply to a civil action filed or any claim asserted in a civil action on or after the effective date of this section.

(B) A court shall broadly construe and apply sections 2747.01 to 2747.06 of the Revised Code 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 United States Constitution and the Ohio Constitution.

(C) In construing and applying sections 2747.01 to 2747.06 of the Revised Code, a court shall consider the need to promote uniformity of the law with respect to its subject matter among states that enact a substantially similar law.

SECTION 2. That existing sections 1923.01, 1923.05, 1925.02, and 2505.02 of the Revised Code are hereby repealed.

SECTION 3. Section 2505.02 of the Revised Code, as amended by this act, and sections 2747.01, 2747.02, 2747.03, 2747.04, 2747.05, and 2747.06 of the Revised Code, as enacted by this act, shall be known as the Uniform Public Expression Protection Act.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. S. B. No. 237

135th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20 ____.

Secretary of State.

File No. _____ Effective Date _____