

As Reported by the House Civil Justice Committee

135th General Assembly

Regular Session

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Sub. S. B. No. 237

Senators Gavarone, Manning

**Cosponsors: Senators Antonio, Blessing, Cirino, DeMora, Hackett, Hicks-Hudson,
Ingram, Landis, O'Brien, Reineke, Schaffer, Wilkin, Wilson**

Representatives Hillyer, Stewart

A BILL

To amend sections 1923.01, 1923.05, 1925.02, and 1
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. 9

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 1923.01, 1923.05, 1925.02, and 10
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: 12
13

Sec. 1923.01. (A) As provided in this chapter, any judge 14
of a county or municipal court or a court of common pleas, 15
within the judge's proper area of jurisdiction, may inquire 16
about persons who make unlawful and forcible entry into lands or 17

tenements and detain them, and about persons who make a lawful 18
and peaceable entry into lands or tenements and hold them 19
unlawfully and by force. If, upon the inquiry, it is found that 20
an unlawful and forcible entry has been made and the lands or 21
tenements are detained, or that, after a lawful entry, lands or 22
tenements are held unlawfully and by force, a judge shall cause 23
the plaintiff in an action under this chapter to have 24
restitution of the lands or tenements. 25

(B) An action shall be brought under this chapter within 26
two years after the cause of action accrues. 27

(C) As used in this chapter: 28

(1) "Tenant" means a person who is entitled under a rental 29
agreement to the use or occupancy of premises, other than 30
premises located in a manufactured home park, to the exclusion 31
of others, except that as used in division (A) (6) of section 32
1923.02 and section 1923.051 of the Revised Code, "tenant" 33
includes a manufactured home park resident. 34

(2) "Landlord" means the owner, lessor, or sublessor of 35
premises, or the agent or person the landlord authorizes to 36
manage premises or to receive rent from a tenant under a rental 37
agreement, except, if required by the facts of the action to 38
which the term is applied, "landlord" means a park operator. 39

(3) "Resident" has the same meaning as in section 4781.01 40
of the Revised Code. 41

(4) "Residential premises" has the same meaning as in 42
section 5321.01 of the Revised Code, except, if required by the 43
facts of the action to which the term is applied, "residential 44
premises" has the same meaning as in section 4781.01 of the 45
Revised Code. 46

(5) "Rental agreement" means any agreement or lease, 47
written or oral, that establishes or modifies the terms, 48
conditions, rules, or other provisions concerning the use or 49
occupancy of premises by one of the parties to the agreement or 50
lease, except that "rental agreement," as used in division (A) 51
(13) of section 1923.02 of the Revised Code and where the 52
context requires as used in this chapter, means a rental 53
agreement as defined in division (D) of section 5322.01 of the 54
Revised Code. 55

(6) "Controlled substance" has the same meaning as in 56
section 3719.01 of the Revised Code. 57

(7) "School premises" has the same meaning as in section 58
2925.01 of the Revised Code. 59

(8) "Sexually oriented offense" and "child-victim oriented 60
offense" have the same meanings as in section 2950.01 of the 61
Revised Code. 62

(9) "Recreational vehicle" and "mobile home" have the same 63
meanings as in section 4501.01 of the Revised Code. 64

(10) "Manufactured home" has the same meaning as in 65
section 3781.06 of the Revised Code. 66

(11) "Manufactured home park" has the same meaning as in 67
section 4781.01 of the Revised Code and also means any tract of 68
land upon which one or two manufactured or mobile homes used for 69
habitation are parked, either free of charge or for revenue 70
purposes, pursuant to rental agreements between the owners of 71
the manufactured or mobile homes and the owner of the tract of 72
land. 73

(12) "Park operator" has the same meaning as in section 74
4781.01 of the Revised Code and also means a landlord of 75

premises upon which one or two manufactured or mobile homes used 76
for habitation are parked, either free of charge or for revenue 77
purposes, pursuant to rental agreements between the owners of 78
the manufactured or mobile homes and a landlord who is not 79
licensed as a manufactured home park operator pursuant to 80
Chapter 4781. of the Revised Code. 81

(13) "Personal property" means tangible personal property 82
other than a manufactured home, mobile home, or recreational 83
vehicle that is the subject of an action under this chapter. 84

(14) "Preschool or child care center premises" has the 85
same meaning as in section 2950.034 of the Revised Code. 86

(15) "Minor tenant" means a tenant under eighteen years of 87
age who is not emancipated. 88

Sec. 1923.05. (A) The summons shall not issue in an action 89
under this chapter until the plaintiff files ~~his~~ a complaint in 90
writing with the court. The complaint shall particularly 91
describe the premises so entered upon and detained, and set 92
forth either an unlawful and forcible entry and detention, or an 93
unlawful and forcible detention after a peaceable or lawful entry 94
of the described premises. The complaint shall be copied into, 95
and made a part of the record. 96

(B) No person shall file an action under this chapter 97
listing a minor tenant as a defendant if a parent or adult 98
guardian is also listed as a defendant on the same complaint. 99

(C) The court shall dismiss without prejudice any action 100
filed in violation of division (B) of this section and order the 101
person that filed the action to pay the minor tenant's 102
reasonable attorneys' fees. 103

Sec. 1925.02. (A) (1) Except as provided in division (A) (2) 104

of this section, a small claims division established under 105
section 1925.01 of the Revised Code has jurisdiction in civil 106
actions for the recovery of taxes and money only, for amounts 107
not exceeding six thousand dollars, exclusive of interest and 108
costs. 109

(2) (a) A small claims division does not have jurisdiction 110
in any of the following: 111

(i) Libel, slander, replevin, malicious prosecution, and 112
abuse of process actions; 113

(ii) Actions on any claim brought by an assignee or agent, 114
except a claim to recover taxes that is filed by any authorized 115
employee of a political subdivision or any authorized officer or 116
employee of the state or a claim filed by a person designated 117
under section 1925.18 of the Revised Code to act as the 118
representative of a prosecuting attorney; 119

(iii) Actions for the recovery of punitive or exemplary 120
damages. 121

(b) Division (A) (2) (a) of this section does not exclude 122
actionseither of the following: 123

(i) Actions for the recovery of damages specifically 124
authorized by division (B) of either section 1345.09 or 1345.48 125
of the Revised Code from the jurisdiction of a small claims 126
division; 127

(ii) The filing or defense of an action by the holder of a 128
security agreement or retail installment contract, purchased by 129
the holder for the holder's portfolio of investments, provided 130
that the holder is not an assignee for the purpose of 131
collection. 132

(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,	191
affirmed, modified, or reversed, with or without retrial, when	192
it is one of the following:	193
(1) An order that affects a substantial right in an action	194
that in effect determines the action and prevents a judgment;	195
(2) An order that affects a substantial right made in a	196
special proceeding or upon a summary application in an action	197
after judgment;	198
(3) An order that vacates or sets aside a judgment or	199
grants a new trial;	200
(4) An order that grants or denies a provisional remedy	201
and to which both of the following apply:	202
(a) The order in effect determines the action with respect	203
to the provisional remedy and prevents a judgment in the action	204
in favor of the appealing party with respect to the provisional	205
remedy.	206
(b) The appealing party would not be afforded a meaningful	207
or effective remedy by an appeal following final judgment as to	208
all proceedings, issues, claims, and parties in the action.	209
(5) An order that determines that an action may or may not	210
be maintained as a class action;	211
(6) An order determining the constitutionality of any	212
changes to the Revised Code made by Am. Sub. S.B. 281 of the	213
124th general assembly, including the amendment of sections	214
1751.67, 2117.06, 2305.11, 2305.15, 2305.234, 2317.02, 2317.54,	215
2323.56, 2711.21, 2711.22, 2711.23, 2711.24, 2743.02, 2743.43,	216
2919.16, 3923.63, 3923.64, 4705.15, and 5111.018 (renumbered as	217
5164.07 by H.B. 59 of the 130th general assembly), and the	218

enactment of sections 2305.113, 2323.41, 2323.43, and 2323.55 of 219
the Revised Code or any changes made by Sub. S.B. 80 of the 220
125th general assembly, including the amendment of sections 221
2125.02, 2305.10, 2305.131, 2315.18, 2315.19, and 2315.21 of the 222
Revised Code; 223

(7) An order in an appropriation proceeding that may be 224
appealed pursuant to division (B)(3) of section 163.09 of the 225
Revised Code; 226

(8) An order that denies a motion for expedited relief 227
pursuant to section 2747.04 of the Revised Code. 228

(C) When a court issues an order that vacates or sets 229
aside a judgment or grants a new trial, the court, upon the 230
request of either party, shall state in the order the grounds 231
upon which the new trial is granted or the judgment vacated or 232
set aside. 233

(D) This section applies to and governs any action, 234
including an appeal, that is pending in any court on July 22, 235
1998, and all claims filed or actions commenced on or after July 236
22, 1998, notwithstanding any provision of any prior statute or 237
rule of law of this state. 238

Sec. 2747.01. (A) As used in this section: 239

(1) "Goods or services" does not include the creation, 240
dissemination, exhibition, or advertisement, or a similar 241
promotion, of a dramatic, literary, musical, political, 242
journalistic, or artistic work. 243

(2) "Governmental unit" means the government of the United 244
States, the state, a political subdivision of the state, or any 245
department, agency, board, commission, or other instrumentality 246
of the government of the United States, the state, or a 247

<u>political subdivision.</u>	248
<u>(3) "Person" includes an individual, estate, trust,</u>	249
<u>partnership, business or nonprofit entity, governmental unit, or</u>	250
<u>other legal entity.</u>	251
<u>(B) Except as provided in division (C) of this section,</u>	252
<u>this chapter applies to a cause of action asserted in a civil</u>	253
<u>action against a person based on any of the following:</u>	254
<u>(1) The person's communication in a legislative,</u>	255
<u>executive, judicial, administrative, or other governmental</u>	256
<u>proceeding;</u>	257
<u>(2) The person's communication on an issue under</u>	258
<u>consideration or review in a legislative, executive, judicial,</u>	259
<u>administrative, or other governmental proceeding;</u>	260
<u>(3) The person's exercise of the right of freedom of</u>	261
<u>speech and of the press, the right to assemble and petition, and</u>	262
<u>the right of association, guaranteed by the United States</u>	263
<u>Constitution or the Ohio Constitution, on a matter of public</u>	264
<u>concern.</u>	265
<u>(C) This chapter does not apply to any of the following:</u>	266
<u>(1) A legal action against a governmental unit or an</u>	267
<u>employee or agent of the governmental unit who was acting or</u>	268
<u>purporting to act in an official capacity;</u>	269
<u>(2) An enforcement action that is brought in the name of a</u>	270
<u>governmental unit to protect against an imminent threat to</u>	271
<u>public health or safety;</u>	272
<u>(3) A legal action brought against a person primarily</u>	273
<u>engaged in the business of selling or leasing goods or services,</u>	274
<u>if the cause of action arises out of communication related to</u>	275

<u>the person's sale or lease of the goods or services;</u>	276
<u>(4) A survivorship claim or a legal action seeking</u>	277
<u>recovery for bodily injury or wrongful death, or statements made</u>	278
<u>regarding that claim or legal action.</u>	279
<u>(D) Nothing in this chapter is intended to create any new</u>	280
<u>statutory cause of action.</u>	281
<u>(E) The general assembly, in enacting this chapter,</u>	282
<u>intends to confer substantive immunity from suit, and not merely</u>	283
<u>immunity from liability, for any cause of action described in</u>	284
<u>division (B) of this section.</u>	285
<u>Sec. 2747.02.</u> <u>Not later than sixty days after a party is</u>	286
<u>served with a complaint, cross-claim, counterclaim, third-party</u>	287
<u>claim, or other pleading that asserts a cause of action to which</u>	288
<u>this chapter applies, the party may file a motion for expedited</u>	289
<u>relief to dismiss the civil action or claim. The court may</u>	290
<u>extend the sixty-day period to file the motion for expedited</u>	291
<u>relief for good cause shown.</u>	292
<u>Sec. 2747.03.</u> <u>(A) (1) Except as otherwise provided in this</u>	293
<u>section, if a motion for expedited relief is filed under section</u>	294
<u>2747.02 of the Revised Code, the court shall stay all other</u>	295
<u>proceedings in the action between the moving party and</u>	296
<u>responding party, including discovery and any other pending</u>	297
<u>hearing or motion.</u>	298
<u>(2) Upon request by the moving party, the court may stay a</u>	299
<u>hearing or motion involving another party in the action, or</u>	300
<u>discovery by another party, if the hearing or ruling on the</u>	301
<u>motion would adjudicate, or the discovery would relate to, an</u>	302
<u>issue material to the motion for expedited relief.</u>	303
<u>(B) A stay under division (A) of this section remains in</u>	304

effect until thirty days after the entry of a ruling on the 305
motion for expedited relief or upon the conclusion of an appeal 306
of the ruling, whichever is later. During such an appeal, all 307
proceedings between all parties in the action are stayed. 308

(C) During a stay under division (A) of this section, the 309
court may allow limited discovery if the party seeking discovery 310
shows that specific information is necessary to establish 311
whether a party has satisfied a burden under section 2747.04 of 312
the Revised Code and the information cannot be obtained unless 313
discovery is allowed. 314

(D) A motion under section 2747.05 of the Revised Code for 315
attorney's fees, court costs, and other litigation expenses is 316
not subject to a stay under this section. 317

(E) A stay under this section does not affect a party's 318
ability to voluntarily dismiss a cause of action or move to 319
sever a cause of action for a separate trial. 320

(F) During a stay under this section, the court for good 321
cause may hear and rule on either of the following: 322

(1) A motion unrelated to the motion for expedited relief; 323

(2) A motion seeking a temporary or preliminary injunction 324
to protect against an imminent threat to public health or 325
safety. 326

Sec. 2747.04. (A) (1) The court shall conduct a hearing not 327
later than sixty days after the filing of a motion for expedited 328
relief, unless the court orders a later hearing to allow for 329
limited discovery under section 2747.03 of the Revised Code or 330
delays the hearing for other good cause. 331

(2) If the court orders a later hearing to allow for 332

limited discovery, the court shall conduct the hearing not later 333
than sixty days after the court order allowing discovery unless 334
the hearing is delayed for other good cause. 335

(B) In ruling on the motion for expedited relief, the 336
court shall consider the pleadings, the motion, any response to 337
the motion, and any evidence that could be considered in ruling 338
on a motion for summary judgment under Rule 56 of the Rules of 339
Civil Procedure. 340

(C) In ruling on the motion for expedited relief, the 341
court shall dismiss with prejudice a cause of action, or part of 342
a cause of action, if all of the following apply: 343

(1) The moving party establishes that the cause of action 344
is based on a communication or action described in division (B) 345
of section 2747.01 of the Revised Code. 346

(2) The responding party fails to establish that this 347
chapter does not apply to the cause of action due to an 348
exception in division (C) of section 2747.01 of the Revised 349
Code. 350

(3) Either the responding party fails to establish a 351
prima-facie case for each essential element of the cause of 352
action or the moving party establishes one of the following: 353

(a) The responding party failed to state a cause of action 354
upon which relief can be granted. 355

(b) There is no genuine issue as to any material fact and 356
the moving party is entitled to judgment as a matter of law on 357
the cause of action or part of the cause of action. 358

(D) The court shall rule on the motion for expedited 359
relief not later than sixty days after the hearing. 360

(E) (1) A voluntary dismissal without prejudice of a 361
responding party's cause of action, or part of a cause of 362
action, that is the subject of a motion for expedited relief 363
does not affect a moving party's right to obtain a ruling on the 364
motion for the purpose of obtaining attorney's fees, court 365
costs, and other litigation expenses under section 2747.05 of 366
the Revised Code. 367

(2) A voluntary dismissal with prejudice of a responding 368
party's cause of action, or part of a cause of action, that is 369
the subject of a motion for expedited relief establishes that 370
the moving party prevailed on the motion for the purpose of 371
awarding attorney's fees, court costs, and other litigation 372
expenses under section 2747.05 of the Revised Code. 373

Sec. 2747.05. (A) If the court grants a motion for 374
expedited relief under section 2747.04 of the Revised Code, the 375
court shall award reasonable attorney's fees, court costs, and 376
other reasonable litigation expenses to the moving party. The 377
court shall not fail to award, or reduce an award of, attorney's 378
fees, court costs, and other reasonable litigation expenses 379
under this division on the grounds that the representation of 380
the moving party was undertaken on a pro bono or contingent 381
basis. 382

(B) If the court denies a motion for expedited relief 383
under section 2747.04 of the Revised Code, and finds that the 384
motion was frivolous conduct as defined in section 2323.51 of 385
the Revised Code, the court, after the disposition of any appeal 386
affirming the court's ruling on the motion, shall award to the 387
responding party reasonable attorney's fees, court costs, and 388
other reasonable litigation expenses incurred in responding to 389
the motion. 390

(C) If the court denies a motion for expedited relief 391
under section 2747.04 of the Revised Code, the denial is a final 392
order under section 2505.02 of the Revised Code and the moving 393
party has an interlocutory right of appeal under that section. 394
The appeal must be filed within thirty days after entry of the 395
order. 396

Sec. 2747.06. (A) Sections 2747.01 to 2747.06 of the 397
Revised Code apply to a civil action filed or any claim asserted 398
in a civil action on or after the effective date of this 399
section. 400

(B) A court shall broadly construe and apply sections 401
2747.01 to 2747.06 of the Revised Code to protect the exercise 402
of the right of freedom of speech and of the press, the right to 403
assemble and petition, and the right of association, guaranteed 404
by the United States Constitution and the Ohio Constitution. 405

(C) In construing and applying sections 2747.01 to 2747.06 406
of the Revised Code, a court shall consider the need to promote 407
uniformity of the law with respect to its subject matter among 408
states that enact a substantially similar law. 409

Section 2. That existing sections 1923.01, 1923.05, 410
1925.02, and 2505.02 of the Revised Code are hereby repealed. 411

Section 3. Section 2505.02 of the Revised Code, as amended 412
by this act, and sections 2747.01, 2747.02, 2747.03, 2747.04, 413
2747.05, and 2747.06 of the Revised Code, as enacted by this 414
act, shall be known as the Uniform Public Expression Protection 415
Act. 416