2026 South Dakota Legislature

Senate Bill 137

ENROLLED

AN ACT

ENTITLED An Act to establish procedures for anti-SLAPP actions to protect the exercise of a person's constitutional rights, including freedom of speech.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That a NEW SECTION be added to a NEW CHAPTER in title 15:

Except as otherwise provided in section 2 of this Act, the provisions of this chapter apply to a cause of action against a person based on the person's protected public expression. For purposes of this chapter, "protected public expression" includes:

(1) Communication in a legislative, executive, judicial, administrative, or other governmental proceeding;

(2) Communication on an issue under consideration or review in a legislative, executive, judicial, administrative, or other governmental proceeding; or

(3) Exercise of the person's right of freedom of speech or of the press, the right to assemble or petition, or the right of association, as guaranteed by the United States Constitution or South Dakota Constitution, on a matter of public concern.

Section 2. That a NEW SECTION be added to a NEW CHAPTER in title 15:

The provisions of this chapter do not apply to a cause of action asserted:

(1) Against a governmental unit or an employee or agent of a governmental unit acting or purporting to act in an official capacity;

(2) By a governmental unit or an employee or agent of a governmental unit acting in an official capacity to enforce a law, rule, regulation, or ordinance to protect against an imminent threat to public health or safety; or

(3) Against a person primarily engaged in the business of selling or leasing goods or services, if the cause of action arises out of a communication or lack of communication related to the person's sale or lease of the goods or services.

For purposes of this section, "goods or services" does not include the advertisement, creation, dissemination, exhibition or similar promotion of an artistic, dramatic, journalistic, literary, musical, or political work.

Section 3. That a NEW SECTION be added to a NEW CHAPTER in title 15:

No later than sixty days after a party is served with a complaint, crossclaim, counterclaim, third-party complaint, or other pleading that asserts a cause of action to which the provisions of this chapter apply, or at a later time upon a showing of good cause, the party may file a special motion for expedited relief to dismiss the cause of action or part of the cause of action.

Section 4. That a NEW SECTION be added to a NEW CHAPTER in title 15:

Except as otherwise provided in sections 5 and 6 of this Act, upon the filing of a motion under section 3 of this Act:

(1) All other proceedings between the moving party and responding party, including discovery and a pending hearing or motion, are stayed; and

(2) On further motion by the moving party, the court may stay a hearing or motion involving another party, 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 under section 3 of this Act.

A stay under this section remains in effect until entry of an order ruling on the motion under section 3 of this Act and expiration of the time under section 11 of this Act for the moving party to appeal the order.

During a stay under this section, the court must allow limited discovery if a party shows that specific information is necessary to establish whether a party has satisfied or failed to satisfy a burden under section 9 of this Act and the information is not reasonably available unless discovery is allowed.

Except as otherwise provided in sections 5 and 6 of this Act, if a party appeals from an order ruling on a motion under section 3 of this Act, all proceedings between all parties to the action must be stayed. The stay must remain in effect until the conclusion of the appeal.

Section 5. That a NEW SECTION be added to a NEW CHAPTER in title 15:

During a stay under section 4 of this Act, the court may hear and rule on:

(1) A motion unrelated to the motion under section 3 of this Act; and

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

Section 6. That a NEW SECTION be added to a NEW CHAPTER in title 15:

A stay under section 4 of this Act does not apply to:

(1) A motion under section 12 of this Act for costs, attorney fees, and expenses; or

(2) A party's ability to voluntarily dismiss a cause of action or part of a cause of action, or a motion to sever a cause of action.

Section 7. That a NEW SECTION be added to a NEW CHAPTER in title 15:

The court shall hear a motion under section 3 of this Act no later than sixty days after the filing of the motion, unless the court orders a later hearing:

(1) To allow limited discovery under section 4 of this Act; or

(2) For other good cause.

If the court orders a later hearing under subdivision (1), the court must hear the motion under section 3 of this Act no later than sixty days after the court order allowing limited discovery, unless the court orders a later hearing under subsection (2), in which case the hearing must be held in an expedited manner.

Section 8. That a NEW SECTION be added to a NEW CHAPTER in title 15:

In ruling on a motion under section 3 of this Act, the court shall consider the pleadings, the motion, any reply or response to the motion, and any evidence that could be considered in ruling on a motion for summary judgment.

Section 9. That a NEW SECTION be added to a NEW CHAPTER in title 15:

In ruling on a motion under section 3 of this Act, the court shall dismiss with prejudice a cause of action, or part of a cause of action, if:

(1) The moving party establishes under section 1 of this Act that the provisions of this chapter apply;

(2) The responding party fails to establish under section 2 of this Act that the provisions of this chapter do not apply; and

(3) Either:

(a) The responding party fails to establish a prima facie case as to each essential element of the cause of action; or

(b) The moving party establishes that the responding party failed to state a cause of action upon which relief can be granted, or 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 action.

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 under section 3 of this Act, does not affect a moving party's right to obtain a ruling on the motion and seek costs, attorney fees, and expenses under section 12 of this Act.

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 under section 3 of this Act establishes, for the purpose of section 12 of this Act, that the moving party prevailed on the motion.

Section 10. That a NEW SECTION be added to a NEW CHAPTER in title 15:

The court shall rule on a motion under section 3 of this Act no later than sixty days after a hearing under section 7 of this Act.

Section 11. That a NEW SECTION be added to a NEW CHAPTER in title 15:

A moving party may appeal as a matter of right from an order denying, in whole or in part, a motion under section 3 of this Act. The appeal must be filed no later than thirty days after entry of the order.

Section 12. That a NEW SECTION be added to a NEW CHAPTER in title 15:

The court shall award court costs, reasonable attorney fees, and reasonable litigation expenses related to a motion filed under section 3 of this Act:

(1) To the moving party, if the moving party prevails on the motion; or

(2) To the responding party, if the responding party prevails on the motion and the court finds that the motion was frivolous or filed solely with intent to delay the proceeding.

Section 13. That a NEW SECTION be added to a NEW CHAPTER in title 15:

The provisions of this chapter must be broadly construed and applied 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 South Dakota Constitution.

An Act to establish procedures for anti-SLAPP actions to protect the exercise of a person's constitutional rights, including freedom of speech.

I certify that the attached Act originated in the:

Senate as Bill No. 137

_____
Secretary of the Senate

_____
President of the Senate

Attest:

_____
Secretary of the Senate

_____
Speaker of the House

Attest:

_____
Chief Clerk of the House

Senate Bill No. 137
File No. _____
Chapter No. _____

Received at this Executive Office
this _____ day of _____,

2026 at _____M.

By _____
for the Governor

The attached Act is hereby
approved this _____ day of
_____, A.D., 2026

_____
Governor

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 2026
at _____ o'clock __M.

_____
Secretary of State

By _____
Asst. Secretary of State