



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB2141

Introduced 2/10/2011, by Sen. Don Harmon

SYNOPSIS AS INTRODUCED:

735 ILCS 5/2-701 from Ch. 110, par. 2-701
735 ILCS 5/2-701.5 new
735 ILCS 110/15
735 ILCS 110/21 new

Amends the Code of Civil Procedure. Provides for a declaratory judgment in an action concerning defamation, slander, or libel. Makes findings concerning defamation, slander, and libel. Defines: "mass media" to include newspapers and periodicals and radio, television, satellite, and Internet broadcast media; and "person" to mean a natural person. Provides that a person alleging defamation may bring a declaratory judgment action by showing that: the defendant's statement damaged the plaintiff's reputation, was published, and was false. Provides that in these actions: (i) the court must find a compelling need for any discovery; and (ii) the plaintiff must prove his or her case by clear and convincing evidence. Provides that no damages may be awarded to a plaintiff. Provides that a plaintiff who prevails shall be awarded attorney's fees, not to exceed \$10,000, but only after the court considers: plaintiff's endeavors to obtain a retraction; the information supplied by the plaintiff to the defendant; defendant's timely steps to provide a retraction; plaintiff's reasonable belief that the statement damaged his or her reputation; and the complexity of the litigation. Provides that if the defendant prevails and the court finds that it was a frivolous action, the defendant is entitled to recover reasonable attorney's fees in an amount not to exceed \$10,000. Bars any other action based on the same allegations. Sets a one-year statute of limitations. Makes other changes. Amends the Citizen Participation Act. Provides that although the Act applies to a motion to dispose of a claim on the grounds that the claim is based on a party's First Amendment rights, the Act does not apply to a declaratory judgment action for defamation, slander, or libel. Provides that if a party files a motion to dispose of a claim on the grounds that the claim is based on a party's First Amendment rights and in response a declaratory judgment action concerning defamation, slander, or libel is filed, there must be a dismissal of that party's action brought under the Act. Makes other changes. Effective immediately.

LRB097 10174 AJO 50363 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Civil Procedure is amended by
5 changing Section 2-701 and by adding Section 2-701.5 as
6 follows:

7 (735 ILCS 5/2-701) (from Ch. 110, par. 2-701)

8 Sec. 2-701. Declaratory judgments. (a) No action or
9 proceeding is open to objection on the ground that a merely
10 declaratory judgment or order is sought thereby. The court may,
11 in cases of actual controversy, make binding declarations of
12 rights, having the force of final judgments, whether or not any
13 consequential relief is or could be claimed, including the
14 determination, at the instance of anyone interested in the
15 controversy, of the construction of any statute, municipal
16 ordinance, or other governmental regulation, or of any deed,
17 will, contract or other written instrument, and a declaration
18 of the rights of the parties interested. The foregoing
19 enumeration does not exclude other cases of actual controversy.
20 Except as provided for in Section 2-701.5, the ~~The~~ court shall
21 refuse to enter a declaratory judgment or order, if it appears
22 that the judgment or order, would not terminate the controversy
23 or some part thereof, giving rise to the proceeding. In no

1 event shall the court entertain any action or proceeding for a
2 declaratory judgment or order involving any political question
3 where the defendant is a State officer whose election is
4 provided for by the Constitution; however, nothing herein shall
5 prevent the court from entertaining any such action or
6 proceeding for a declaratory judgment or order if such question
7 also involves a constitutional convention or the construction
8 of a statute involving a constitutional convention.

9 (b) Declarations of rights, as herein provided for, may be
10 obtained by means of a pleading seeking that relief alone, or
11 as incident to or part of a complaint, counterclaim or other
12 pleading seeking other relief as well, and if a declaration of
13 rights is the only relief asked, the case may be set for early
14 hearing as in the case of a motion.

15 (c) If further relief based upon a declaration of right
16 becomes necessary or proper after the declaration has been
17 made, application may be made by petition to any court having
18 jurisdiction for an order directed to any party or parties
19 whose rights have been determined by the declaration to show
20 cause why the further relief should not be granted forthwith,
21 upon reasonable notice prescribed by the court in its order.

22 (d) If a proceeding under this Section involves the
23 determination of issues of fact triable by a jury, they shall
24 be tried and determined in the same manner as issues of fact
25 are tried and determined in other civil actions in the court in
26 which the proceeding is pending.

1 (e) Unless the parties agree by stipulation as to the
2 allowance thereof, costs in proceedings authorized by this
3 Section shall be allowed in accordance with rules. In the
4 absence of rules the practice in other civil actions shall be
5 followed if applicable, and if not applicable, the costs may be
6 taxed as to the court seems just.

7 (Source: P.A. 82-280.)

8 (735 ILCS 5/2-701.5 new)

9 Sec. 2-701.5. Declaratory judgment in an action involving
10 defamation, slander, or libel.

11 (a) Findings. The General Assembly finds that defamation,
12 slander, and libel can seriously damage a person's reputation
13 and significantly distort the integrity of the democratic
14 process. Defamatory, slanderous, and libelous statements
15 against a person expose the person to ridicule, contempt, or
16 reproach, and otherwise injure the person in the person's
17 business or occupation. The General Assembly further finds that
18 there are significant expenses and obstacles involved in
19 actions seeking to restore a person's reputation. It is the
20 intent of the General Assembly to expedite the process of
21 restoring a person's reputation following a defamatory,
22 slanderous, or libelous statement and to minimize the
23 litigation expenses of all parties.

24 (b) Legislative intent. The cause of action for declaratory
25 judgment is hereby provided in this Section as an alternative

1 to a defamation action for damages for any person who believes
2 that his or her reputation has been damaged by a published
3 false statement of fact. This alternative action is intended
4 for the expeditious resolution with minimal costs of litigation
5 due to the elimination of issues unrelated to the question of
6 the truth or falsity of the statement at issue.

7 (c) Definitions. For purposes of this Section,
8 "Mass media" means, but is not limited to, a newspaper or
9 periodical, or any broadcast, cable, or satellite means of mass
10 communication, including an Internet website.

11 "Person" means a natural person.

12 (d) Action. Any person who has been defamed, slandered, or
13 libeled may bring an action for declaratory judgment pursuant
14 to Section 2-701. If an adverse party files a motion pursuant
15 to Section 15 of the Citizen Participation Act in an action,
16 then any person who is a party to the action may bring an
17 action for declaratory judgment alleging defamation, slander,
18 or libel pursuant to Section 2-701. An action for declaratory
19 judgment alleging defamation, slander, or libel shall be
20 brought by filing a verified complaint or other pleading
21 setting forth facts showing the following:

22 (1) that the defendant made a statement referring to
23 the plaintiff that is damaging to the plaintiff's
24 reputation;

25 (2) that the statement was published; and

26 (3) that the statement was false.

1 If the statement at issue was published in writing, a copy of
2 the published statement must be attached to the complaint.

3 (e) Pre-trial proceedings.

4 (1) Except for limitations on discovery as provided in
5 this Section, pre-trial proceedings are governed by the
6 Code of Civil Procedure and the Supreme Court Rules.

7 (2) A plaintiff shall be furnished, upon his or her
8 request, from a defendant that is a mass media entity with
9 a copy of each tape, film, or digital file of the alleged
10 defamatory, slanderous, or libelous statement, or if a
11 tape, film, or digital file is not available, any available
12 transcript of the alleged statement. A defendant that is a
13 mass media entity that has been served with a complaint
14 under this Section identifying the statement at issue must
15 preserve any tape, film, digital file, or transcript which
16 contains that statement.

17 (3) Discovery is severely restricted. No discovery may
18 take place without specific prior approval by the court in
19 writing, after a hearing in which the party requesting
20 discovery is able to demonstrate by clear and convincing
21 evidence to the court's satisfaction that there is a
22 compelling need for the particular information sought.
23 Discovery is specifically prohibited with regard to the
24 following matters due to their irrelevance:

25 (A) the status of the plaintiff;

26 (B) any malice, intention, knowledge,

1 recklessness, or other mental state of the defendant,
2 any agent of the defendant, or any employee of the
3 defendant pertaining to the publication of the
4 statement at issue.

5 (f) Affirmative defense. In addition to other common law
6 defenses which may be applicable, it is an affirmative defense
7 to an action for declaratory judgment alleging defamation,
8 slander, or libel that the allegedly false statement referring
9 to the plaintiff:

10 (1) appeared in a report of an official action or
11 proceeding or of a meeting open to the public that dealt
12 with a matter of public concern, if the report is accurate
13 and complete or a fair abridgment of the occurrence
14 reported; or

15 (2) was taken from remarks made by an identified
16 governmental official or by an identified candidate for
17 public office who has already filed his or her petitions of
18 candidacy, if the published statement is an accurate and
19 complete rendition of those remarks or a fair abridgment of
20 the statement.

21 (g) Trial proceedings. Trial proceedings are governed by
22 the Code of Civil Procedure and the Supreme Court Rules. The
23 plaintiff has the burden of proving by clear and convincing
24 evidence each of the allegations required to be pled in this
25 Section. No damages may be awarded to a plaintiff who is
26 granted a declaratory judgment that finds that the defendant

1 made a defamatory, slanderous, or libelous statement against
2 the plaintiff.

3 (h) Attorney's fees. The court shall award reasonable
4 attorney's fees, when requested, in an amount not to exceed
5 \$10,000 to counsel for the plaintiff if the plaintiff is the
6 prevailing party. In exercising its discretion to determine the
7 amount of attorney's fees, the court shall consider, among
8 other factors, the following:

9 (1) any action taken by the plaintiff prior to filing
10 the action to obtain a retraction or other appropriate
11 response from the defendant, and the timeliness of that
12 action;

13 (2) the nature, extent, and quality of information
14 supplied by the plaintiff to the defendant prior to filing
15 the action when the plaintiff took the action described in
16 paragraph (1);

17 (3) any action taken by the defendant, and the
18 timeliness of that action, to provide the plaintiff with a
19 retraction or other appropriate response;

20 (4) the extent to which the plaintiff reasonably
21 believed that the statement found to be false was damaging
22 to his or her reputation; and

23 (5) the complexity of the litigation.

24 (i) Declaratory judgment; judicial declaration of falsity.
25 The judgment to be entered on behalf of a plaintiff who
26 prevails on his or her complaint alleging defamation, slander,

1 or libel shall be entitled to a "Judicial Declaration of
2 Falsity".

3 (j) Publication of a notice of a judicial declaration of
4 falsity.

5 (1) A plaintiff who prevails on his or her action filed
6 pursuant to this Section may petition the court for the
7 publication of a Notice of Judicial Declaration of Falsity
8 by a court-supervised method.

9 (2) Whether a Notice of Judicial Declaration of Falsity
10 shall be published, and if published the contents of the
11 notice, shall be determined by the court after a hearing
12 that considers the following matters:

13 (A) if the nature of the statement, parties, and
14 circumstances warrant, in the court's discretion, a
15 Notice being published;

16 (B) a notice shall contain only factual statements
17 which must pertain to the proceedings in which the
18 Judicial Declaration of Falsity is sought;

19 (C) a notice may refer to the statement found to be
20 false;

21 (D) a notice, consistent with the other criteria
22 under this paragraph (2), it shall be as brief as
23 possible;

24 (E) a notice shall be published at a time and in a
25 manner so that the greatest number of people who saw or
26 heard the false statement are likely to see or hear it;

1 (F) if requested by the plaintiff, the notice shall
2 indicate that it is a compulsory statement; otherwise,
3 that indication shall be left to the court's
4 discretion; and

5 (G) the notice may be ordered to be published more
6 than once if the statement found to be false was
7 published more than once.

8 (3) The court may determine that the Notice of a
9 Judicial Declaration of Falsity shall be published by a
10 medium of mass communication by purchase of time or space,
11 as for advertising. The medium shall be selected by the
12 court after a hearing in which the parties may present
13 their proposed choices. The court additionally shall
14 attempt to choose a medium as close in form to the medium
15 used by the defendant as possible.

16 (4) All expenses arising from the publication of a
17 Notice of a Judicial Declaration of Falsity ordered under
18 this Section shall be reviewed and approved by the court
19 and taxed against the defendant.

20 (5) Any order entered under this subsection (j) may be
21 enforced through the court's contempt powers.

22 (k) If the defendant is the prevailing party and the court
23 finds the plaintiff brought or maintained a frivolous
24 declaratory judgment action alleging defamation, slander, or
25 libel, the defendant upon request is entitled to recover
26 reasonable attorney's fees in an amount not to exceed \$10,000.

1 In determining the amount of attorney's fees, the court may
2 consider the actions of plaintiff and plaintiff's counsel under
3 the factors identified in paragraphs (1) through (5) in
4 subsection (h).

5 (l) Bar on actions for damages. A plaintiff who files a
6 complaint for declaratory judgment action alleging defamation,
7 slander, or libel is thereafter barred from ever asserting any
8 other cause of action of any kind and from ever seeking damages
9 based upon the statements or conduct of the defendant which are
10 the subject of the action. No action for damages no matter how
11 designated may be filed concurrently or joined with an action
12 for declaratory judgment action alleging defamation, slander,
13 or libel.

14 (m) Statute of limitations. An action for declaratory
15 judgment action alleging defamation, slander, or libel shall be
16 commenced within one year next after the cause of action
17 accrued or within 30 days after a motion is filed pursuant to
18 Section 15 of the Citizen Participation Act, whichever is
19 later.

20 Section 10. The Citizen Participation Act is amended by
21 changing Section 15 and by adding Section 21 as follows:

22 (735 ILCS 110/15)

23 Sec. 15. Applicability.

24 This Act applies to any motion to dispose of a claim in a

1 judicial proceeding on the grounds that the claim is based on,
2 relates to, or is in response to any act or acts of the moving
3 party in furtherance of the moving party's rights of petition,
4 speech, association, or to otherwise participate in
5 government. However, this Act does not apply to any pleading
6 filed in accordance with Section 2-701.5 of the Code of Civil
7 Procedure.

8 Acts in furtherance of the constitutional rights to
9 petition, speech, association, and participation in government
10 are immune from liability, regardless of intent or purpose,
11 except when not genuinely aimed at procuring favorable
12 government action, result, or outcome.

13 (Source: P.A. 95-506, eff. 8-28-07.)

14 (735 ILCS 110/21 new)

15 Sec. 21. Motion for declaratory judgment.

16 A natural person who is a party to an action in which an
17 adverse party filed a motion pursuant to Section 15 may file a
18 declaratory judgment action alleging defamation, slander, or
19 libel, in accordance with Section 2-701.5 of the Code of Civil
20 Procedure, so long as the person files the declaratory judgment
21 action within 30 days after the moving party filed the Section
22 15 motion.

23 A party who files a declaratory judgment action pursuant to
24 this Section and Section 2-701.5 shall voluntarily dismiss all
25 claims that are the subject of the motion filed pursuant to

1 Section 15. The court shall also dismiss any motions filed
2 pursuant to Section 15 against the party who filed the action
3 for a declaratory judgment under this Section.

4 Section 99. Effective date. This Act takes effect upon
5 becoming law.