

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. The State of Illinois
24 agrees with the U.S. Supreme Court's finding that "[t]he right
25 of a man to the protection of his own reputation from

1 unjustified invasion and wrongful hurt reflects no more than
2 our basic concept of the essential dignity and worth of every
3 human being - a concept at the root of any decent system of
4 ordered liberty." Rosenblatt v. Baer, 383 U.S. 75, 92 (1966).
5 There is a compelling state interest in (i) deterring the harm
6 caused to innocent persons by false statements, (ii) promoting
7 the vindication and protection of personal reputation, and
8 (iii) minimizing the judicial resources and costs that are
9 associated with restoring a person's reputation. The General
10 Assembly seeks to protect the constitutionally recognized
11 interest of a person in his or her reputation, as was discussed
12 by the Illinois Supreme Court in Troman v. Wood, which stated
13 that "[f]rom the outset it has been recognized that an
14 individual is entitled to a remedy 'for all injuries and wrongs
15 that he may receive in his person, property or character.'
16 (Const. of 1818, art. VIII, sec. 12; Const. of 1848, art. XIII,
17 sec. 12.) (In the most recent constitutions the word
18 'reputation' is substituted for 'character.' Const. of 1870,
19 art. II, sec. 19; Const. of 1970, art. I, sec. 12.) The freedom
20 of speech provisions of both our former and present
21 constitutions (Const. of 1870, art. II, sec. 4; Const. of 1970,
22 art. I, sec. 4) recognize the interest of the individual in the
23 protection of his reputation, for they provide that the
24 exercise of the right to speak freely shall not relieve the
25 speaker from responsibility for his abuse of that right. The
26 constitutionally recognized interest of the individual in his

1 reputation is not and can not be measured solely in terms of
2 monetary compensation. At the least, the individual has an
3 interest in preserving and restoring his reputation through an
4 authoritative and publicly known determination that an
5 injurious statement about him is in fact false. To foreclose or
6 restrict the availability of the judicial process as a means of
7 securing such a determination prevents the individual from
8 obtaining the effective vindication to which he is entitled."
9 Troman v. Wood, 62 Ill.2d 184, 194-195 (1975).

10 (b) Legislative intent. The cause of action for declaratory
11 judgment is hereby provided in this Section as an alternative
12 to a defamation action for damages for any person who believes
13 that his or her reputation has been damaged by a published
14 false statement of fact. This alternative action is intended
15 for the expeditious resolution with minimal costs of litigation
16 due to the elimination of issues unrelated to the question of
17 the truth or falsity of the statement at issue.

18 (c) Definitions. For purposes of this Section,

19 "Mass media" means, but is not limited to, a newspaper or
20 periodical, or any broadcast, cable, or satellite means of mass
21 communication, including an Internet website.

22 "Person" means a natural person.

23 (d) Action. Any person who has been defamed, slandered, or
24 libeled may bring an action for declaratory judgment pursuant
25 to Section 2-701. If an adverse party files a motion pursuant
26 to Section 15 of the Citizen Participation Act in an action,

1 then any person who is a party to the action may bring an
2 action for declaratory judgment alleging defamation, slander,
3 or libel pursuant to Section 2-701. An action for declaratory
4 judgment alleging defamation, slander, or libel shall be
5 brought by filing a verified complaint or other pleading
6 setting forth facts showing the following:

7 (1) that the defendant made a statement of fact
8 referring to the plaintiff that is damaging to the
9 plaintiff's reputation;

10 (2) that the statement was published; and

11 (3) that the statement was false.

12 If the statement at issue was published in writing, a copy of
13 the published statement must be attached to the complaint. The
14 provisions of this Section are in derogation of the common law.

15 (e) Pre-trial proceedings.

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

19 (2) A plaintiff shall be furnished, upon his or her
20 request, from a defendant that is a mass media entity with
21 a copy of each tape, film, or digital file of the alleged
22 defamatory, slanderous, or libelous statement, or if a
23 tape, film, or digital file is not available, any available
24 transcript of the alleged statement. A defendant that is a
25 mass media entity that has been served with a complaint
26 under this Section identifying the statement at issue must

1 preserve any tape, film, digital file, or transcript which
2 contains that statement.

3 (3) Discovery is severely restricted. No discovery may
4 take place without specific prior approval by the court in
5 writing, after a hearing in which the party requesting
6 discovery is able to demonstrate by clear and convincing
7 evidence to the court's satisfaction that there is a
8 compelling need for the particular information sought.
9 Discovery is specifically prohibited with regard to the
10 following matters due to their irrelevance:

11 (A) the status of the plaintiff;

12 (B) any malice, intention, knowledge,
13 recklessness, or other mental state of the defendant,
14 any agent of the defendant, or any employee of the
15 defendant pertaining to the publication of the
16 statement at issue.

17 (f) Affirmative defense. In addition to other common law
18 defenses which may be applicable, it is an affirmative defense
19 to an action for declaratory judgment alleging defamation,
20 slander, or libel that the allegedly false statement referring
21 to the plaintiff:

22 (1) appeared in a report of an official action or
23 proceeding or of a meeting open to the public that dealt
24 with a matter of public concern, if the report is accurate
25 and complete or a fair abridgment of the occurrence
26 reported; or

1 (2) was taken from remarks made by an identified
2 governmental official or by an identified candidate for
3 public office who has already filed his or her petitions of
4 candidacy, if the published statement is an accurate and
5 complete rendition of those remarks or a fair abridgment of
6 the statement.

7 (g) Trial proceedings. Trial proceedings are governed by
8 the Code of Civil Procedure and the Supreme Court Rules. The
9 plaintiff has the burden of proving by clear and convincing
10 evidence each of the allegations required to be pled in this
11 Section. No damages may be awarded to a plaintiff who is
12 granted a declaratory judgment that finds that the defendant
13 made a defamatory, slanderous, or libelous statement against
14 the plaintiff.

15 (h) Declaratory judgment; judicial declaration of falsity.
16 The judgment to be entered on behalf of a plaintiff who
17 prevails on his or her complaint alleging defamation, slander,
18 or libel shall be entitled to a "Judicial Declaration of
19 Falsity".

20 (i) Publication of a notice of a judicial declaration of
21 falsity.

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

26 (2) Whether a Notice of Judicial Declaration of Falsity

1 shall be published, and if published the contents of the
2 notice, shall be determined by the court after a hearing
3 that considers the following matters:

4 (A) if the nature of the statement, parties, and
5 circumstances warrant, in the court's discretion, a
6 Notice being published;

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

10 (C) a notice may refer to the statement found to be
11 false;

12 (D) a notice, consistent with the other criteria
13 under this paragraph (2), it shall be as brief as
14 possible;

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

18 (F) if requested by the plaintiff, the notice shall
19 indicate that it is a compulsory statement; otherwise,
20 that indication shall be left to the court's
21 discretion; and

22 (G) the notice may be ordered to be published more
23 than once if the statement found to be false was
24 published more than once.

25 (3) The court may determine that the Notice of a
26 Judicial Declaration of Falsity shall be published by a

1 medium of mass communication by purchase of time or space,
2 as for advertising. The medium shall be selected by the
3 court after a hearing in which the parties may present
4 their proposed choices. The court additionally shall
5 attempt to choose a medium as close in form to the medium
6 used by the defendant as possible. A court may order a mass
7 media defendant to publish the Notice of a Judicial
8 Declaration of Falsity in the defendant's own medium of
9 mass communication only if the mass media defendant
10 mutually agrees to such publication. In determining the
11 method or form of publishing the Notice of a Judicial
12 Declaration of Falsity, the court may, among other things,
13 take into account case law and stare decisis of the United
14 States Supreme Court and the Illinois Supreme Court dealing
15 with freedom of speech and freedom of the press.

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 (i) may be
21 enforced through the court's contempt powers.

22 (j) Bar on actions for damages. A plaintiff who files a
23 complaint for declaratory judgment action alleging defamation,
24 slander, or libel is thereafter barred from ever asserting any
25 other cause of action of any kind and from ever seeking damages
26 based upon the statements or conduct of the defendant which are

1 the subject of the action. No action for damages no matter how
2 designated may be filed concurrently or joined with an action
3 for declaratory judgment action alleging defamation, slander,
4 or libel.

5 (k) Statute of limitations. An action for declaratory
6 judgment action alleging defamation, slander, or libel shall be
7 commenced within one year next after the cause of action
8 accrued or within 30 days after a motion is filed pursuant to
9 Section 15 of the Citizen Participation Act, whichever is
10 later.

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

13 (735 ILCS 110/15)

14 Sec. 15. Applicability.

15 This Act applies to any motion to dispose of a claim in a
16 judicial proceeding on the grounds that the claim is based on,
17 relates to, or is in response to any act or acts of the moving
18 party in furtherance of the moving party's rights of petition,
19 speech, association, or to otherwise participate in
20 government. However, this Act does not apply to any pleading
21 filed in accordance with Section 2-701.5 of the Code of Civil
22 Procedure.

23 Acts in furtherance of the constitutional rights to
24 petition, speech, association, and participation in government

1 are immune from liability, regardless of intent or purpose,
2 except when not genuinely aimed at procuring favorable
3 government action, result, or outcome.

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

5 (735 ILCS 110/21 new)

6 Sec. 21. Motion for declaratory judgment.

7 A natural person who is a party to an action in which an
8 adverse party filed a motion pursuant to Section 15 may file a
9 declaratory judgment action alleging defamation, slander, or
10 libel, in accordance with Section 2-701.5 of the Code of Civil
11 Procedure, so long as the person files the declaratory judgment
12 action within 30 days after the moving party filed the Section
13 15 motion.

14 A party who files a declaratory judgment action pursuant to
15 this Section and Section 2-701.5 shall voluntarily dismiss all
16 claims that are the subject of the motion filed pursuant to
17 Section 15. The court shall also dismiss any motions filed
18 pursuant to Section 15 against the party who filed the action
19 for a declaratory judgment under this Section.

20 Section 99. Effective date. This Act takes effect upon
21 becoming law.