STATE OF NEW YORK

8121

2019-2020 Regular Sessions

IN ASSEMBLY

June 3, 2019

Introduced by M. of A. EPSTEIN -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil rights law, in relation to actions involving public petition and participation

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 76-a of the civil rights law, as added by chapter 767 of the laws of 1992, is amended to read as follows:

§ 76-a. Actions involving public petition and participation; when actual malice to be proven. 1. For purposes of this section:

(a) An "action involving public petition and participation" is an action, claim, cross claim or counterclaim for damages that is brought by a public applicant or permittee[~~, and is materially related to any efforts of the defendant to report on, comment on, rule on, challenge or oppose such application or permission~~].

(b) "Public applicant or permittee" shall mean any person who has applied for or obtained a permit, zoning change, lease, license, certificate or other entitlement for use or permission to act from any government body, **or the public,** or any person with an interest, connection or affiliation with such person [~~that is materially related to such application or permission~~].

(c) "Communication" shall mean any statement, claim, allegation in a proceeding, decision, protest, writing, argument, contention or other expression.

(d) "Government body" shall mean any municipality, the state, any other political subdivision or agency of such, the federal government, any public benefit corporation, or any public authority, board, or commission.

(e) "Public" shall mean the news media or any other individual material to the cause of action at issue.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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2. In an action involving public petition and participation, damages may only be recovered if the plaintiff, in addition to all other necessary elements, shall have established by clear and convincing evidence that any communication which gives rise to the action was made [~~with knowledge of its falsity or~~] with reckless disregard of whether it was false, where the truth or falsity of such communication is material to the cause of action at issue.

3. Nothing in this section shall be construed to limit any constitutional, statutory or common law protections of defendants to actions involving public petition and participation.

§ 2. This act shall take effect on the thirtieth day after it shall have become a law, and shall apply to all actions commenced on or after such date.