

## REPORT OF STUDY COMMITTEE ON AN ANTI-SLAPP ACT

Date: May 15, 2017

To: Commissioner Carl Lisman, Chair  
Committee on Scope and Program

From: Lane Shetterly, Chair  
Study Committee on an Anti-SLAPP Act

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### I. Summary

The Study Committee on an Anti-SLAPP Act was appointed by the Executive Committee to study the feasibility and appropriateness of a drafting project on an Anti-SLAPP Act. A roster of the committee membership is attached as Exhibit 1. The committee met three times by telephone conference and reviewed substantial written materials on the subject. The committee recommends that a drafting committee be appointed to draft an Anti-SLAPP Act, giving due consideration to the issues identified in this report.

### II. Background

As stated in the project proposal submitted by Jay Adkisson, in his letter dated November 2, 2015:

"The acronym SLAPP stands for *Strategic Lawsuit Against Public Participation*, meaning a lawsuit of dubious merit brought for the purpose of silencing, intimidating, or retaliating against a defendant who has done nothing more than exercise their lawful rights to free speech and freedom to petition, etc.

"An Anti-SLAPP Act is legislation that seeks to protect such rights by allowing such a defendant to make a motion at the outset of the litigation or an expedited review by the Court, with the burden shifted to the plaintiff to show that the lawsuit is meritorious and that the plaintiff will likely prevail at trial.

"Effectively, the goal of such legislation is to allow, typically in free speech or freedom of petition cases only, a court more leeway than would

normally be available on a Motion to Dismiss or Motion for Summary Judgment to determine up front that a lawsuit is not meritorious, and thus protect the defendant from bearing the cost of defense or otherwise being harassed by the plaintiff through the vehicle of litigation."

Twenty-eight states have adopted Anti-SLAPP laws.<sup>1</sup> While there is variation among the states, Anti-SLAPP laws generally follow the outline of the California Act:<sup>2</sup>

- (1) Upon the filing of an Anti-SLAPP motion against a claim, the litigation comes to a halt, other than to resolve the motion.
- (2) The defendant must establish that the claim falls within the scope of claims covered by the state's Anti-SLAPP law.
- (3) If the defendant meets the burden above, then the burden passes to the plaintiff to demonstrate that the action is meritorious and that the plaintiff is likely to prevail at trial.
- (4) If the defendant prevails on the motion, the defendant is entitled to recover attorney fees and costs. If the plaintiff is successful in resisting the motion, the plaintiff can recover costs and attorney fees if the plaintiff can establish that the defendant brought the motion only for the purpose of delay.
- (5) If the defendant prevails on the motion, the case is dismissed. If the defendant loses on the motion, the defendant may appeal the ruling on the motion, in which case the underlying case is stayed pending the appeal.

As noted by Mr. Adkisson in his proposal, "While most Anti-SLAPP Acts follow this same template, there are variations between the states as to sundry important issues, not the least being the applicable burdens of proof assigned to the parties, and whether the parties should be allowed limited discovery as to the factual issues presented by the Anti-SLAPP Motion."

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<sup>1</sup> Two, in Washington and Minnesota, have been found unconstitutional based on a defect in the Acts that is addressed in Section III.C., below.

<sup>2</sup> Cal. Civil Code of Procedure, Section 425.16.

### III. The National Picture

As noted above, 28 states have adopted Anti-SLAPP laws. Attached to this report as Exhibit 2 is a Survey of Anti-SLAPP Laws, prepared for the committee by the ULC staff, that ably summarizes the main elements of each state's statute, and highlights the similarities and differences among the statutes.

The principal points of divergence among the current state Anti-SLAPP laws are:

A. Scope. Some state Anti-SLAPP laws apply broadly, to protect broad rights of free speech or the right to petition, and extend to communications to the public at large on matters of general public concern.

The California Anti-SLAPP statute is one of the broadest of the state laws, in terms of those actions to which it applies, and the rights that it protects. California Civil Code of Procedure Sec. 425.16(b)(1) provides that a special motion to strike may be filed in any action against a person "arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue."

Maryland's is another statute with particularly broad scope. It covers actions "Brought in bad faith against a party who has communicated with a federal, State, or local government body or the public at large to report on, comment on, rule on, challenge, oppose, or in any other way exercise rights under the First Amendment of the U.S. Constitution or Article 10, Article 13, or Article 40 of the Maryland Declaration of Rights regarding any matter within the authority of a government body or any issue of public concern." Maryland Code Annotated, Courts & Judicial Procedure Sec. 5-807b)(1).

Conversely, the Delaware statute is an example of a narrower scope. Delaware limits the applicability of its Anti-SLAPP law to "an action involving public petition and participation," meaning "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, rule on, challenge or oppose such application or permission." Delaware Code Annotated Title 10, Sec. 8136(1). "Public applicant or permittee" is defined to 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 any person with an interest, connection or affiliation with such person that is materially related to such application or permission." Title 10, Sec. 8136(4).

The scope of the Missouri law is likewise narrow. It applies only to an "action against a person for conduct or speech undertaken or made in connection with a public hearing or public meeting, in a quasi-judicial proceeding before a tribunal or decision-making body of the state or any political subdivision of the state." Missouri Annotated Statutes Section 537.528.

B. Discovery. Another area of difference among the states is the extent to which discovery in the case may continue after a special motion to strike has been filed. Some states provide that discovery may not proceed after a motion has been filed. Other states allow discovery for limited purposes, often subject to court approval. Other states' statutes are silent on the subject.

Hawaii's Anti-SLAPP law expressly states that "Discovery shall be suspended, pending decision on the motion and appeals." Hawaii Rev. Statutes Sec. 634F-2(3). Missouri provides the same halt to discovery upon filing an Anti-SLAPP motion to strike. Missouri Ann. Statutes Section 537.528.

More commonly, state laws give the court authority to allow at least some limited discovery to go forward after the filing of an Anti-SLAPP motion to strike. Massachusetts, for example, provides that discovery is halted on the filing of a motion except that "the court, on motion and after a hearing and for good cause shown may order that specified discovery be conducted." Massachusetts Gen. Laws Ann Ch. 231, Sec. 59H. Among the states that address the issue of discovery in their Anti-SLAPP laws, the Massachusetts approach is the most common, having been adopted by a plurality of 12 states.

Indiana's statute stays all discovery except discovery related to the motion to dismiss. Indiana Code 34-7-7-6. Nevada and Washington, D.C. take similar approaches to Indiana's.

Nine other state laws are silent as to the effect on discovery of the filing of an Anti-SLAPP motion to strike.

C. Standard of Court Review. One of the most critical elements of an Anti-SLAPP law is the manner in which the court is directed to review the case on the filing of a special motion to strike.

California's approach represents one of the more common approaches. Its statute provides that the claim against which a special motion to strike is made will be stricken "unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." California Civil Code of Procedure, Section 425.16. That is, the plaintiff need only show by a

preponderance of the evidence that it will likely prevail at trial. This "probability" standard has been adopted by at least a plurality of the states.

Some states require an arguably lesser showing by the non-moving party to defeat a motion to strike. In Delaware, an anti-SLAPP motion will be granted "unless the party responding to the motion demonstrates that the cause of action has a substantial basis in law or is supported by a substantial argument for an extension, modification or reversal of existing law." Delaware Code Ann. Title 10, Section 8137.

Other states have adopted a higher burden that the non-moving party must meet. In Illinois, the non-moving party must produce "clear and convincing evidence that the acts of the moving party are not immunized from, or are not in furtherance of acts immunized from, liability by this Act." 735 Illinois Comp. Statutes 110/20(c). In two states, Washington and Minnesota, the clear and convincing standard has been held to violate the state constitutions' guarantees of a right to a jury trial, resulting in those states' Anti-SLAPP laws being struck down.

D. Right to Immediate Appeal if Motion Denied. In 11 states, the law provides for a right to immediate appeal if a special motion to strike is denied, holding the underlying case in abeyance until the appeal has been determined. The rest of the state statutes are silent on the right of immediate appeal in those circumstances.

E. Attorney Fees and Costs. Nineteen states provide the moving party with the right to recover attorney fees if a special motion to strike is granted. The other states either do not provide for recovery of attorney fees or make recovery permissive.

#### IV. The Case for a Uniform Act.

The committee concurs with the proposed findings of Mr. Adkisson in his proposal to the Scope and Program Committee in support of appointing a drafting committee for an Anti-SLAPP Act. This section generally addresses the criteria for a Uniform Act set forth in the Guidelines and Suggestions for ULC Study Committees.

A. The subject matter is appropriate for state legislation. There is no question as to the appropriateness of an Anti-SLAPP Act as a matter of state procedural law. There has been Anti-SLAPP legislation introduced in Congress, but the committee is of the opinion that it is not likely to advance in the near-term, and

that, if it does, there will still likely be room for state laws affecting actions in state courts.

B. The subject matter is consistent with Article 1.2 of the ULC Constitution, "to promote uniformity in the law among the several states where uniformity is desirable and practicable."

1. Uniformity of state Anti-SLAPP laws is desirable and realistic. As noted above, while 28 states have adopted some version of an Anti-SLAPP statute, there is a substantial lack of uniformity among the states as to several key elements of the law. In some cases, states have made choices that at least put at risk the viability of their laws, such as those states that have adopted the burden of clear and convincing evidence that a non-moving party must meet in order to defeat a special motion to strike, as Washington and Minnesota did. A carefully drafted Uniform Law would provide an opportunity for those states to repair their statutes before they risk being struck down as well.

Observers on the committee who are particularly knowledgeable about activity in the states with respect to Anti-SLAPP laws and actions commented on the emergence of what they describe as "libel tourism;" that is, a type of forum shopping by which a plaintiff who has choices among the states in which to bring a libel action will do so in a state that does not have an Anti-SLAPP law, or that has a "weak" or narrow one. While the extent of such forum shopping has not been established to any degree of certainty, the committee's observers were firm in their conviction, based on observation, that it is happening and will continue to expand. The adoption of a Uniform Law among the states will reduce the incidence of and the motivation for such forum shopping.

As to the question of how realistic is the likelihood of uniformity, that was a question the committee considered carefully, particularly in light of the fact that 28 states have already adopted some version of an Anti-SLAPP law. On the one hand, such broad adoption of state laws already could be an impediment to broad enactment, which would be necessary to achieving substantial uniformity. On the other hand, it was the consensus of the committee that experience and the development of substantial case law in the states has highlighted the strengths and weaknesses of various aspects of existing state laws (including the overturning of the Washington and Minnesota laws), such that states may be receptive to an examination of their current laws to incorporate "best practices" that could be modeled in a Uniform Act.

2. There is a reasonable probability of passage of a Uniform Act by a substantial number of states. As noted above, the sense of the committee was that many of the 28 states that have adopted some form of an Anti-SLAPP law

should be open to amending their laws to incorporate best practices and lessons learned from the experience in other states. And with 28 states having adopted an Anti-SLAPP law already, that leaves 22 states, plus Puerto Rico and the U.S. Virgin Islands that have not. The observers on the committee were of the opinion that the fact that some states have not adopted their own Anti-SLAPP laws to this point does not necessarily reflect a conscious policy position against Anti-SLAPP laws; there is generally no organized opposition to an Anti-SLAPP law. The observers believe (and the committee concurs) that, if presented with the opportunity to enact a well-drafted Uniform Act, many states that have not adopted an Anti-SLAPP law up to this point could be persuaded to do so.

3. A Uniform Act will produce significant benefits to the public through improvements in the law.

(a) As noted above, our committee observers reported the emergence of forum shopping by plaintiffs in actions that would be covered by state Anti-SLAPP laws, to bring such actions in states with weak a Anti-SLAPP law, or that lack them entirely. The growth in web-based journalism and publishing, not to mention social media, makes it possible for plaintiffs to bring libel actions in any number of states, thereby increasing the likelihood of forum shopping for the most favorable jurisdiction. Broad adoption of a Uniform Anti-SLAPP Act will remove the perceived advantage of such forum shopping.

(b) As also noted above, it is generally felt that in states that have not already adopted their own Anti-SLAPP law, such non-action does not necessarily indicate political opposition to Anti-SLAPP law protections. As such, the creation of a Uniform Anti-SLAPP Act that incorporates the best practices and learned wisdom from the states that have adopted Anti-SLAPP laws will encourage states that have not adopted their own laws to enact a Uniform Act. States that have adopted their own laws will have the benefit of the Uniform Act to be able to amend their laws to incorporate the best practices reflected in the Act, thereby making the state laws more uniform, and minimizing conflicts.

4. A Uniform Anti-SLAPP Act will maintain the integrity of well-balanced and well-settled law in areas traditionally governed by the states. As noted by Jay Adkisson in his proposal, Anti-SLAPP legislation, when thoughtfully drafted, "is well-balanced legislation that addresses both the needs of defendants to be free from harassing litigation, and the needs of plaintiffs with meritorious lawsuits to advance their litigation to conclusion.

"Many aspects of Anti-SLAPP law are now well-settled, and [a] Uniform Anti-SLAPP Act will help to preserve and make further uniform such aspects throughout the states."

5. Past experience and the following factors suggest that a well-drafted Anti-SLAPP Act, will be enacted in a number of states:

(a) Media, entertainment entities and First Amendment advocacy organizations are natural supporters of a Uniform Anti-SLAPP Act, as are bar organizations that represent them. State laws have been supported by a variety of organizations that support citizen action and involvement, and they could be expected to support a Uniform Act as well. Several of the observers on the study committee are advocates for Anti-SLAPP laws who have established multi-state networks with whom they are connected, and could be expected to work to support enactment.<sup>3</sup>

(b) There is no identified organization or entity that opposes Anti-SLAPP laws.

(c) Anti-SLAPP laws are not long and complex. Certainly, there are substantial policy choices to be made in drafting, but the drafting itself is not complicated.

(d) As noted above, 28 states have adopted some version of an Anti-SLAPP law, but with a good deal of variety among them. The committee felt that a well-drafted Uniform Anti-SLAPP Act that takes into account the experiences and lessons learned in the states and incorporates best practices would be successful even in those states that have already adopted an Anti-SLAPP Act. And there are still 22 states, plus Puerto Rico and the U. S. Virgin Islands, that have not adopted their own Anti-SLAPP law.

(e) Federal Anti-SLAPP legislation has been introduced in Congress, but it has not been enacted, does not appear to be going anywhere, and the prevailing sense of the committee was that, under the current administration and in the current Congress, the probability that Congress would enact a federal law is remote. Even at that, a federal Anti-SLAPP law might extend Anti-SLAPP law to actions in the federal courts, but would almost certainly not preempt state Anti-SLAPP laws with respect to actions in state courts.

(f) This committee's work represents the only time an Anti-SLAPP law by the Uniform Law Commission has been under study.

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<sup>3</sup> Consideration should also be given to including a member or members from the Uniform Law Conference of Canada. Jay Adkisson reports he has received expressions of interest in the project from members of the Conference.



(g) An Anti-SLAPP Act is unlikely to have an appreciable fiscal impact in the states.

(h) Adoption of a Uniform Anti-SLAPP Act would not require any changes in federal law or regulations.

V. Conclusion

The Study Committee on an Anti-SLAPP Act respectfully recommends that a drafting committee be appointed to draft an Anti-SLAPP Act.

## Observer Biographies

Jay D. Adkisson is a partner of Riser Adkisson LLP with offices in Nevada and California, and has served as an ABA Adviser to the Uniform Voidable Transactions Act and the proposed Uniform Limited Liability Company Protected Series Act. Jay is a published book author and a regular contributor on legal issues to Forbes.com. As a writer, Jay has had to defend spurious defamation lawsuits through the use of Anti-SLAPP motions, and as a litigator has frequently had to bring Anti-SLAPP motions to protect his clients.

Eric Rayman is with the firm of Miller Korzenik Sommers, LLP in New York. Mr. Rayman has served as counsel to *The New Yorker* magazine, Simon & Schuster, and Studio and Network Operations at Home Box Office. Mr. Rayman teaches media and entertainment law at Cardozo School of Law, where he is an adjunct professor.

Wendy Murphy is an adjunct professor of sexual violence law at New England Law in Boston. As a litigator in state and federal courts, she has advocated for women and children's rights, and she has developed and directs several projects in conjunction with the school's Center for Law and Social Responsibility.

Thomas Burke is a partner with Davis Wright Tremaine, LLP in San Francisco, where he practices media law, intellectual property, and First Amendment law. He co-chairs the firm's national media law practice, representing clients in libel, invasion of privacy, right of publicity and IP litigation. Mr. Burke also teaches media law at the University of California, Berkley, and is an author of *Anti-SLAPP Litigation*, a comprehensive analysis of California's Anti-SLAPP law and the cases that have interpreted it.

Laura Prather practices law in Austin, Texas, and was involved in getting Texas's Anti-SLAPP law passed. She has advised on passage of Anti-SLAPP laws in other states, including Oklahoma, Florida, Ohio and New York, and is co-chair of Media Law Resource Center's Anti-SLAPP Task Force, which includes reviews of adopted Anti-SLAPP laws around the country, and efforts at passage.

Dale Whitman is a retired law professor, having taught at several law schools around the country during his career, including UNC, BYU, University of Washington and University of Missouri-Columbia. Prof. Whitman was appointed on behalf of the Permanent Joint Editorial Board on Uniform Real Property Acts.

Stanley Lamport is an attorney in Los Angeles, with a land use practice that involves representing clients in the entitlement process and litigating land use issues in California. He has been on both sides of the issues that come up in the policy discussion about Anti-SLAPP motions and the corresponding immunities related to communicating with government. Mr. Lamport teaches courses on land use law and the California Environmental Quality Act to government agency planners, environmental professionals, lawyers and developers throughout California. For the past 29 years, Mr. Lamport has been active in the field of lawyer ethics. He is a former chair of the California State Bar's Committee on Professional Responsibility and Conduct and the Los Angeles County Bar Association's Professional Responsibility and Ethics Committee. He spent nine years on California's first Rules Revision Commission. and is currently acting as an observer to the second Commission at the State Bar's request.

**Exhibit 1  
Committee Roster**

<b>Last Name</b>	<b>First Name</b>	<b>Name</b>	<b>Position</b>	<b>Affiliation</b>	<b>Company</b>
Adkisson	Jay	Jay D. Adkisson	Observer	ABA, Business Law Section	Riser Adkisson LLP
Burke	Thomas	Thomas R. Burke	Observer		
Callow	W. Grant	W. Grant Callow	Vice Chair	ULC	Law Offices of William Grant Callow
Cassidy	Richard	Richard T. Cassidy	President Ex Officio	ULC	Rich Cassidy Law
Dohse	Kaitlin	Kaitlin A. Dohse	Staff Liaison	ULC	Uniform Law Commission
Efros	Ellen	Ellen A. Efros	Member	ULC	DC Council
Freeman	George	George Freeman	ABA Section Advisor	ABA, Litigation Section	
Hayes	Robert	Robert W. Hayes	Member	ULC	
Karsai	Liza	Liza Karsai	Executive Director	ULC	
Lamport	Stanley	Stanley W. Lamport	Observer		Cox, Castle & Nicholson LLP
Lisman	Carl	Carl H. Lisman	Chair, Scope & Program Committee	ULC	Lisman Leckerling, P.C.
Murphy	Wendy	Wendy Murphy	Observer		
Nichols	Susan	Susan K. Nichols	Member	ULC	
Perlman	Harvey	Harvey S. Perlman	Member	ULC	University of Nebraska College of Law
Prather	Laura	Laura L. Prather	Observer		Haynes and Boone LLP
Quinlan	William	William J. Quinlan	Member	ULC	The Quinlan Law Firm
Radosevich	Michele	Michele Radosevich	Member	ULC	Davis Wright Tremaine LLP
Ramasastry	Anita	Anita Ramasastry	Chair Exec. Committee	ULC	University of Washington School of Law
Rayman	Eric	Eric Rayman	Observer		
Robbins	Daniel	Daniel Robbins	Member	ULC	Motion Picture Assn of America, Inc.
Shetterly	Lane	Lane Shetterly	Chair	ULC	Shetterly Irick & Ozias
Tackett	Paula	Paula Tackett	Member	ULC	
Walker	H. Clayton	H. Clayton Walker	Member	ULC	Walker & Reibold, LLC
Whitman	Dale	Dale Whitman	Observer	ACREL	University of Missouri School of Law
Willis	D. Joe	D. Joe Willis	Member	ULC	Schwabe, Williamson & Wyatt
Winkelman	Nora	Nora Winkelman	Division D Chair Member	ULC	Office of Chief Counsel, House Democratic Caucus

**Exhibit 2**

**Survey of Anti-SLAPP Laws**

*Current as of January 6, 2017*

State	Statute?	Speech made in any forum (not just before gov. body)?	Speech on any public issue (not just in connection with issue under consideration with governmental body)?	Discovery allowed after motion is filed?	Standard of proof for motion to dismiss?	Immediate appeal if anti-SLAPP motion denied?	Mandatory attorneys' fees/costs?
<b>Alabama</b>	No						
<b>Alaska</b>	No						
<b>Arizona</b>	Yes	Yes. Ariz. Rev. Stat. Ann. § 12-751.	No. Ariz. Rev. Stat. Ann. § 12-751.	Statute is silent.	The court will grant the motion unless the party against whom the motion is made shows that the moving party's exercise of the right of petition did not contain any reasonable factual support or any arguable basis in law and that the moving party's acts caused actual compensable injury to the responding party. Ariz. Rev. Stat. Ann. § 12-752	Statute is silent.	Yes. Ariz. Rev. Stat. Ann. § 12-752.
<b>Arkansas</b>	Yes	Yes. Ark. Code Ann. § 16-63-503.	No. Ark. Code Ann. § 16-63-503.	No, but court may permit limited discovery "upon motion and for good cause shown." Ark. Code Ann. § 16-63-507.	Claim will be stricken within 10 days unless the plaintiff files a written verification that meets all requirements of § 16-63-505. Ark. Code Ann. § 16-63-506.	Statute is silent.	Yes. Ark. Code Ann. § 16-63-506.

State	Statute?	Speech made in any forum (not just before gov. body)?	Speech on any public issue (not just in connection with issue under consideration with governmental body)?	Discovery allowed after motion is filed?	Standard of proof for motion to dismiss?	Immediate appeal if anti-SLAPP motion denied?	Mandatory attorneys' fees/costs?
California	Yes	Yes. Cal. Civ. Proc. Code § 425.16.	Yes. Cal. Civ. Proc. Code § 425.16.	No, but court may permit specified discovery upon "noticed motion and for good cause shown.." Cal. Civ. Proc. Code § 425.16.	Claim will be stricken "unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." Cal. Civ. Proc. Code § 425.16.	Yes. Cal. Civ. Proc. Code § 425.16.	Yes. Cal. Civ. Proc. Code § 425.16.
Colorado	No						
Connecticut	No						
Delaware	Yes	Yes. Del. Code Ann. tit. 10, § 8136.	No, must be related to an application for, or grant of, a permit, zoning change, lease, license, certificate or other entitlement for use or permission to act from any government body. Del. Code Ann. tit. 10, § 8136.	Statute is silent.	Anti-SLAPP motion will be granted "unless the party responding to the motion demonstrates that the cause of action has a substantial basis in law or is supported by a substantial argument for an extension, modification or reversal of existing law." Del. Code Ann. tit. 10, § 8137.	Statute is silent.	No. Plaintiff must prove by clear and convincing evidence that the communication giving rise to the action was made with knowledge of its falsity or with reckless disregard as to its falsity. Del. Code Ann. tit. 10, § 8138
Florida	Yes	No. Fla. Stat. Ann. §§ 720.304, 768.295.	No. Fla. Stat. Ann. §§ 720.304, 768.295.	Statute is silent.	Statute is silent.	Statute is silent.	Yes. Fla. Stat. Ann. §§ 720.304, 768.295.
Georgia	Yes	Yes. Ga. Code Ann., § 9-11-11.1.	No. Ga. Code Ann., § 9-11-11.1.	No, but court may permit discovery "on noticed motion and for good cause shown." Ga. Code Ann., § 9-11-11.1.	The nonmoving party must establish that there is a probability that the nonmoving party will prevail on the claim. Ga. Code Ann., § 9-11-11.1.	Yes. Ga. Code Ann., § 9-11-11.1.	Yes. Ga. Code Ann., § 9-11-11.1.

State	Statute?	Speech made in any forum (not just before gov. body)?	Speech on any public issue (not just in connection with issue under consideration with governmental body)?	Discovery allowed after motion is filed?	Standard of proof for motion to dismiss?	Immediate appeal if anti-SLAPP motion denied?	Mandatory attorneys' fees/costs?
Hawaii	Yes	No. Haw. Rev. Stat. § 634F-1.	No. Haw. Rev. Stat. § 634F-1.	No. Haw. Rev. Stat. § 634F-2.	The court must grant the motion to dismiss unless "the responding party has demonstrated that more likely than not, the respondent's allegations do not constitute a SLAPP lawsuit as defined in section 634F-1." Haw. Rev. Stat. § 634F-2.	Yes. Haw. Rev. Stat. § 634F-2.	Yes. Haw. Rev. Stat. § 634F-2.
Idaho	No						
Illinois	Yes	Yes. 735 Ill. Comp. Stat. 110/15.	Yes. 735 Ill. Comp. Stat. 110/15.	No, but court may permit discovery for good cause shown. 735 Ill. Comp. Stat. 110/20.	Motion will be granted unless responding party must show clear and convincing evidence that the acts of the moving party are not immunized from, or are not in furtherance of acts immunized from, liability by this Act. 735 Ill. Comp. Stat. 110/20.	Yes. Appellate court "shall expedite" appeal. Has 90 days from date of trial court order or failure to rule. 735 Ill. Comp. Stat. 110/20.	Yes. 735 Ill. Comp. Stat. 110/25.
Indiana	Yes	Yes. Ind. Code 34-7-7-2.	Yes. Ind. Code 34-7-7-2.	All discovery in the action is stayed, except discovery related to the motion to dismiss. Ind. Code 34-7-7-6.	The person filing the motion must prove by a preponderance of the evidence that the act upon which the claim is based is a lawful act in furtherance of the person's right of petition or free speech under the U.S. Constitution or the Indiana state constitution. Ind. Code 34-7-7-9	Not stated. But statute does provide for appeal if the court fails to rule on the motion. Ind. Code 34-7-7-9.	Yes. Ind. Code 34-7-7-7.

State	Statute?	Speech made in any forum (not just before gov. body)?	Speech on any public issue (not just in connection with issue under consideration with governmental body)?	Discovery allowed after motion is filed?	Standard of proof for motion to dismiss?	Immediate appeal if anti-SLAPP motion denied?	Mandatory attorneys' fees/costs?
Iowa	No						
Kansas	No						
Kentucky	No						
Louisiana	Yes	Yes. La. Code Civ. Pro. Ann. art. 971.	Yes. La. Code Civ. Pro. Ann. art. 971.	No, except the court may permit specified discovery "on noticed motion and for good cause shown." La. Code Civ. Pro. Ann. art. 971.	The motion to strike the claim will be granted unless "the plaintiff has established a probability of success on the claim." La. Code Civ. Pro. Ann. art. 971.	Statute is silent.	Yes. La. Code Civ. Pro. Ann. art. 971.
Maine	Yes	Yes. Me. Rev. Stat. tit. 14, § 556.	Yes. Me. Rev. Stat. tit. 14, § 556.	No, except the court may permit specified discovery "on motion and after a hearing and for good cause shown." Me. Rev. Stat. tit. 14, § 556.	"The court shall grant the special motion, unless the party against whom the special motion is made shows that the moving party's exercise of its right of petition was devoid of any reasonable factual support or any arguable basis in law and that the moving party's acts caused actual injury to the responding party." Me. Rev. Stat. tit. 14, § 556.	Statute is silent.	Permissive; the court "may" award attorneys' fees and costs. Me. Rev. Stat. tit. 14, § 556.
Maryland	Yes	Yes. Md. Code Ann. Cts. & Jud. Proc. § 5-807.	Yes. Md. Code Ann. Cts. & Jud. Proc. § 5-807.	Statute is silent.	Statute is silent.	Statute is silent.	Statute is silent.



State	Statute?	Speech made in any forum (not just before gov. body)?	Speech on any public issue (not just in connection with issue under consideration with governmental body)?	Discovery allowed after motion is filed?	Standard of proof for motion to dismiss?	Immediate appeal if anti-SLAPP motion denied?	Mandatory attorneys' fees/costs?
Massachusetts	Yes	Yes. Mass. Gen. Laws Ann. ch. 231, § 59H.	No. Mass. Gen. Laws Ann. ch. 231, § 59H.	No, except that "the court, on motion and after a hearing and for good cause shown, may order that specified discovery be conducted." Mass. Gen. Laws Ann. ch. 231, § 59H.	The court will grant the motion unless the party against whom the motion is made shows: "(1) the moving party's exercise of its right to petition was devoid of any reasonable factual support or any arguable basis in law and (2) the moving party's acts caused actual injury to the responding party." Mass. Gen. Laws Ann. ch. 231, § 59H.	Statute is silent.	Yes. Mass. Gen. Laws Ann. ch. 231, § 59H.
Michigan	No						
Minnesota	Held unconstitutional in <i>Mobile Diagnostic Imaging, Inc. vs. Racheal L. Hooten f/k/a Racheal L. Jones, et al.</i> , File No. 27-CV-14-7349	Yes. Minn. Stat. Ann. § 554.01.	No. Minn. Stat. Ann. § 554.01.	No, but the court may order limited discovery "on motion and after a hearing and for good cause shown." Minn. Stat. Ann. § 554.02.	"The responding party has the burden of proof, of going forward with the evidence, and of persuasion on the motion." Minn. Stat. Ann. § 554.02.	Statute is silent.	Yes. Minn. Stat. Ann. § 554.04.
Mississippi	No						
Missouri	Yes	No. Mo. Ann. Stat. § 537.528.	No. Mo. Ann. Stat. § 537.528.	No. Mo. Ann. Stat. § 537.528.	Statute is silent.	Yes. Mo. Ann. Stat. § 537.528.	Yes. Mo. Ann. Stat. § 537.528.
Montana	No						

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Nebraska	Yes	Yes. Neb. Rev. Stat. § 25-21,242.	No. Neb. Rev. Stat. § 25-21,242.	Statute is silent.	Motion to dismiss shall be granted "when the moving party demonstrates that the action, claim, cross-claim, or counterclaim subject to the motion is an action involving public petition and participation unless the party responding to the motion demonstrates that the cause of action has a substantial basis in law or is supported by a substantial argument for an extension, modification, or reversal of existing law." Neb. Rev. Stat. § 25-21,245.	Statute is silent.	Permissive. Neb. Rev. Stat. § 25-21,243.

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<b>Nevada</b>	Yes	Yes. Nev. Rev. Stat. § 41.637.	Yes. Nev. Rev. Stat. § 41.637.	No discovery allowed unless the court determines it is necessary to meet the party's burden of proof. Nev. Rev. Stat. § 41.660.	Moving party must establish by a preponderance of the evidence that the claim is based upon a good faith communication in furtherance of the right to petition/right to free speech in direct connection with an issue of public concern. If moving party meets burden, then plaintiff must show probability of prevailing on the claim. Nev. Rev. Stat. § 41.660.	Yes. Nev. Rev. Stat. § 41.670.	Yes. Nev. Rev. Stat. § 41.670.
<b>New Hampshire</b>	No						
<b>New Jersey</b>	No						
<b>New Mexico</b>	Yes	No. N.M. Stat. Ann. § 38-2-9.1.	No. N.M. Stat. Ann. § 38-2-9.1.	Statute is silent.	Statute is silent.	Yes. N.M. Stat. Ann. § 38-2-9.1.	Yes. N.M. Stat. Ann. § 38-2-9.1.

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<b>New York</b>	Yes	Yes. N.Y. Civ. Rights Law § 76-a.	No. N.Y. Civ. Rights Law § 76-a.	Statute is silent.	Plaintiff gets damages if 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." N.Y. Civ. Rights Law § 76-a.	Statute is silent.	Permissive. N.Y. Civ. Rights Law § 70-a.
<b>North Carolina</b>	No						
<b>North Dakota</b>	No						
<b>Ohio</b>	No						
<b>Oklahoma</b>	No						

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Oregon	Yes	Yes. Or. Rev. Stat. § 31.150.	Yes. Or. Rev. Stat. § 31.150.	No, but the court may order specified discovery "on motion and for good cause shown." Or. Rev. Stat. § 31.152.	Moving party "has the initial burden of making a prima facie showing that the claim against which the motion is made arises out of a statement, document or conduct described in subsection (2) of this section. If the defendant meets this burden, the burden shifts to the plaintiff in the action to establish that there is a probability that the plaintiff will prevail on the claim by presenting substantial evidence to support a prima facie case. If the plaintiff meets this burden, the court shall deny the motion." Or. Rev. Stat. § 31.152.	Statute is silent.	Yes. Or. Rev. Stat. § 31.152.
Pennsylvania	Yes	No. 27 Pa. Cons. Stat. Ann. § 8302.	No, only applies to environmental laws and regulations. 27 Pa. Cons. Stat. Ann. § 8302.	Not specified. Only states that discovery is stayed if the moving party appeals denial of the motion. 27 Pa. Cons. Stat. Ann. § 8303.	Statute is silent.	Yes. 27 Pa. Cons. Stat. Ann. § 8303.	No.

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Rhode Island	Yes	Yes. R.I. Gen. Laws § 9-33-2.	Yes. R.I. Gen. Laws § 9-33-2.	No, but the court may order specified discovery "on motion and after a hearing and for good cause shown." R.I. Gen. Laws § 9-33-2.	Statute is silent.	Statute is silent.	Yes. R.I. Gen. Laws § 9-33-2.
South Carolina	No						
South Dakota	No						
Tennessee	Yes	No. Tenn. Code Ann. § 4-21-1003.	No. Tenn. Code Ann. § 4-21-1003.	Statute is silent.	Statute is silent.	Statute is silent.	Yes. Tenn. Code Ann. § 4-21-1003.
Texas	Yes	Yes. Tex. Civ. Prac. & Rem. Code Ann. § 27.001.	Yes. Tex. Civ. Prac. & Rem. Code Ann. § 27.001.	No, but the court may allow specified discovery on "motion and on a showing of good cause." Tex. Civ. Prac. & Rem. Code Ann. § 27.006.	Motion will be granted if moving party shows by preponderance of the evidence that the legal action is based on, relates to, or is in response to the party's exercise of: (1) the right of free speech; (2) the right to petition; or (3) the right of association. The court may NOT dismiss the legal action if the party bringing the action establishes by clear and specific evidence a prima facie case for each essential element of the claim in question. Tex. Civ. Prac. & Rem. Code Ann. § 27.005.	Yes. Tex. Civ. Prac. & Rem. Code Ann. § 27.008.	Yes. Tex. Civ. Prac. & Rem. Code Ann. § 27.009.

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<b>Utah</b>	Yes	Yes. Utah Code Ann. § 78B-6-1403.	No. Utah Code Ann. § 78B-6-1403.	No, unless court orders otherwise. Utah Code Ann. § 78B-6-1404.	Moving party must provide clear and convincing evidence that the primary reason for filing the legal complaint was to interfere with the defendant's First Amendment rights. Utah Code Ann. § 78B-6-1404.	Yes. Utah Code Ann. § 78B-6-1404.	No. Utah Code Ann. § 78B-6-1405.
<b>Vermont</b>	Yes	Yes. Vt. Stat. Ann. tit. 12, § 1041.	Yes. Vt. Stat. Ann. tit. 12, § 1041.	No, but the court may order limited discovery "on motion and for good cause shown." Vt. Stat. Ann. tit. 12, § 1041.	Motion shall be granted unless the plaintiff shows: (1) moving party's exercise of his/her right to freedom of speech and to petition was devoid of any reasonable factual support and any arguable basis in law; and (2) the moving party's acts caused actual injury to the plaintiff. Vt. Stat. Ann. tit. 12, § 1041.	Yes. Vt. Stat. Ann. tit. 12, § 1041.	Yes. Vt. Stat. Ann. tit. 12, § 1041.
<b>Virginia</b>	No						
<b>Washington</b>	No						
<b>West Virginia</b>	No						
<b>Wisconsin</b>	No						
<b>Wyoming</b>	No						

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Washington, DC	Yes	Yes. D.C. Code § 16-5501.	Yes. D.C. Code § 16-5501.	No, except court may permit targeted discovery if "it appears likely that targeted discovery will enable the plaintiff to defeat the motion and that the discovery will not be unduly burdensome." D.C. Code § 16-5502.	"If a party filing a special motion to dismiss under this section makes a prima facie showing that the claim at issue arises from an act in furtherance of the right of advocacy on issues of public interest, then the motion shall be granted unless the responding party demonstrates that the claim is likely to succeed on the merits, in which case the motion shall be denied." D.C. Code § 16-5502	Statute is silent.	No, permissive. D.C. Code § 16-5504.
Puerto Rico	No						
U.S. Virgin Islands	No						