**UNIFORM PUBLIC EXPRESSION PROTECTION ACT**

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT

IN ALL THE STATES

at its

ANNUAL CONFERENCE

MEETING IN ITS ONE-HUNDRED-AND-TWENTY-NINTH YEAR

JULY 10–15, 2020



*WITHOUT Prefatory Note and Comments*

Copyright © 2020

By

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

October 2, 2020

**UNIFORM PUBLIC EXPRESSION PROTECTION ACT**

SECTION 1. SHORT TITLE**.** This [act] may be cited as the Uniform Public Expression Protection Act.

SECTION 2. SCOPE**.**

(a) In this section:

(1) “Goods or services” does not include the creation, dissemination, exhibition, or advertisement or similar promotion of a dramatic, literary, musical, political, journalistic, or artistic work.

(2) “Governmental unit” means a public corporation or government or governmental subdivision, agency, or instrumentality.

(3) “Person” means an individual, estate, trust, partnership, business or nonprofit entity, governmental unit, or other legal entity.

(b) Except as otherwise provided in subsection (c), this [act] applies to a [cause of action] asserted in a civil action against a person based on the person’s:

(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 right of freedom of speech or of the press, the right to assemble or petition, or the right of association, guaranteed by the United States Constitution or [cite to the state’s constitution], on a matter of public concern.

(c) This [act] does 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 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 related to the person’s sale or lease of the goods or services.

***Legislative Note:*** *If a state does not use the term “cause of action”, the state should use its comparable term, such as “claim for relief” in subsections (b) and (c). The state also should substitute its comparable term for the term “[cause of action]” in Sections 3, 4(f), 7, 13, and 14.*

SECTION 3. SPECIAL MOTION FOR EXPEDITED RELIEF**.** Not later than [60] days after a party is served with a [complaint] [petition], crossclaim, counterclaim, third-party claim, or other pleading that asserts a [cause of action] to which this [act] applies, or at a later time on a showing of good cause, the party may file a special motion for expedited relief to [dismiss] [strike] the [cause of action] or part of the [cause of action].

***Legislative Note:*** *A state should use the term “complaint” or “petition”, or both, to describe any procedural means by which a cause of action may be asserted.*

*A state should title its motion one to “dismiss” or “strike” in accordance with its procedures and customs. The state also should substitute its term for the term “[dismiss] [strike]” in Section 7(a).*

*A state may need to amend its statutes or rules of civil procedure to prevent a motion under this section from being considered a first pleading or motion that waives a defense or precludes the filing of another pleading or motion.*

SECTION 4. STAY**.**

(a) Except as otherwise provided in subsections (d) through (g), on the filing of a motion under Section 3:

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

(2) on 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.

(b) A stay under subsection (a) remains in effect until entry of an order ruling on the motion under Section 3 and expiration of the time under Section 9 for the moving party to appeal the order.

(c) Except as otherwise provided in subsections (e), (f), and (g), if a party appeals from an order ruling on a motion under Section 3, all proceedings between all parties in the action are stayed. The stay remains in effect until the conclusion of the appeal.

(d) During a stay under subsection (a), the court may 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 7(a) and the information is not reasonably available unless discovery is allowed.

(e) A motion under Section 10 for costs, attorney’s fees, and expenses is not subject to a stay under this section.

(f) A stay under this section does not affect a party’s ability voluntarily to [dismiss] [nonsuit] a [cause of action] or part of a [cause of action] or move to [sever] a [cause of action].

(g) During a stay under this section, the court for good cause may hear and rule on:

(1) a motion unrelated to the motion under Section 3; and

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

***Legislative Note:*** *In subsection (f), a state should use the term “dismiss” or “nonsuit” in accordance with its procedures and customs. The state also should substitute its term for the term “[dismiss] [nonsuit]” in Section 7(b) and (c).*

*If a state does not use the term “sever” to describe a motion to sever, the state should use its comparable term in subsection (f).*

SECTION 5. HEARING**.**

(a) The court shall hear a motion under Section 3 not later than [60] days after filing of the motion, unless the court orders a later hearing:

(1) to allow discovery under Section 4(d); or

(2) for other good cause.

(b) If the court orders a later hearing under subsection (a)(1), the court shall hear the motion under Section 3 not later than [60] days after the court order allowing the discovery, unless the court orders a later hearing under subsection (a)(2).

SECTION 6. PROOF**.** In ruling on a motion under Section 3, 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 under [cite to the state’s statute or rule governing summary judgment].

SECTION 7. [DISMISSAL OF] [STRIKING] CAUSE OF ACTION IN WHOLE OR PART**.**

(a) In ruling on a motion under Section 3, the court shall [dismiss] [strike] with prejudice a [cause of action], or part of a [cause of action], if:

(1) the moving party establishes under Section 2(b) that this [act] applies;

(2) the responding party fails to establish under Section 2(c) that this [act] does 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:

(i) the responding party failed to state a [cause of action] upon which relief can be granted; or

(ii) 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 [cause of action].

(b) A voluntary [dismissal] [nonsuit] 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 does not affect a moving party’s right to obtain a ruling on the motion and seek costs, attorney’s fees, and expenses under Section 10.

(c) A voluntary [dismissal] [nonsuit] 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 establishes for the purpose of Section 10 that the moving party prevailed on the motion.

SECTION 8. RULING.The court shall rule on a motion under Section 3 not later than [60] days after a hearing under Section 5.

SECTION 9. APPEAL. A moving party may appeal as a matter of right from an order denying, in whole or in part, a motion under Section 3. The appeal must be filed not later than [21] days after entry of the order.

***Legislative Note:*** *A state should insert a time to appeal consistent with other interlocutory appeals.*

*This section may require amendment of a state’s interlocutory appeal statute or court rule.*

SECTION 10. COSTS, ATTORNEY’S FEES, AND EXPENSES**.** On a motion under Section 3, the court shall award court costs, reasonable attorney’s fees, and reasonable litigation expenses related to the motion:

(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 11. CONSTRUCTION. This [act] 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 or [cite to the state’s constitution].

SECTION 12. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 13. TRANSITIONAL PROVISION**.**  This [act] applies to a civil action filed or [cause of action] asserted in a civil action on or after [the effective date of this [act]].

[SECTION 14. SAVINGS CLAUSE**.** This [act] does not affect a [cause of action] asserted before [the effective date of this [act]] in a civil action or a motion under [cite to the state’s current anti-SLAPP law] regarding the [cause of action].]

***Legislative Note:*** A state should include this section if the state has an existing procedure for a special motion for expedited relief that is being repealed because this act replaces it.

[SECTION 15. SEVERABILITY. If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.]

***Legislative Note:*** *Include this section only if this state lacks a general severability statute or a decision by the highest court of this state stating a general rule of severability.*

[SECTION 16. REPEALS; CONFORMING AMENDMENTS.

(a) . . .

(b) . . .

(c) . . . ]

***Legislative Note:*** *Section 9 may require amendment of a state’s interlocutory appeal statute or court rule.*

*A state may need to amend its statutes or rules of civil procedure to prevent a motion under this act from being considered a first pleading or motion that waives a defense or precludes the filing of another pleading or motion.*

SECTION 17. EFFECTIVE DATE**.** This [act] takes effect . . . .