

FOR APPROVAL

UNIFORM PUBLIC EXPRESSION PROTECTION ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

2020 JULY SESSIONS



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By
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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) “Governmental unit” means a public corporation or government or governmental subdivision, agency, or instrumentality, or Indian tribe recognized by the federal government [or [the] [a] state].

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

(3) “Goods or services” does not include a dramatic, literary, musical, political, journalistic, or artistic work.

(b) Except as otherwise provided in subsection (c), this [act] applies in a civil action to a [cause of action] asserted 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 the [state] 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 recognizes Indian tribes, or desires to include tribes recognized by other states, it may do so within the definition of "governmental unit."*

If the term "cause of action" is not a commonly used term in a state, the state should use its comparable term, such as "claim for relief." The state also should substitute its comparable term for the term "cause of action" in Sections 3, 4(f), 7, and 13.

SECTION 3. 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 to [dismiss] [strike] the cause of action or part of the cause of action.

Legislative Note: *A state should use the term "complaint", "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.*

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 precludes the filing of another pleading or motion or waives a defense.

A state is free to adopt a shorter or longer time in which the motion may be filed.

SECTION 4. STAY.

(a) Except as otherwise provided in this section:

(1) all other proceedings between the moving party and responding party in an action, including discovery and a pending hearing or motion, are stayed on the filing of a motion under Section 3; and

(2) on motion by the moving party, the court may stay:

(A) a hearing or motion involving another party if the ruling on the hearing or motion would adjudicate a legal or factual issue that is material to the motion under Section 3; or

(B) discovery by another party if the discovery relates to the issue.

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

(c) If a party appeals from an order ruling on a motion under Section 3, all proceedings between all parties in an 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 imposed by Section 7(a) and is not reasonably available without discovery.

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

(f) A stay under this section does not affect a party's ability to voluntarily [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: A state should use the term “dismiss” or “nonsuit” in accordance with its procedures and customs.

SECTION 5. EXPEDITED 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, subject to subsection (a)(2).

SECTION 6. PROOF. In ruling on a motion under Section 3, the court shall consider the parties’ pleadings, the motion, any replies and responses 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.

(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 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, reasonable attorney's fees, and reasonable litigation 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.

Legislative Note: A state should use the term "dismissal" or "nonsuit" in accordance with its procedures and customs. A state should title the court's order one to "dismiss" or "strike" in accordance with its procedures and customs.

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

SECTION 9. APPEAL. A moving party may appeal within [21] days as a matter of right from an order denying, in whole or in part, a motion under Section 3.

Legislative Note: A state should employ an appellate filing deadline consistent with other interlocutory appeals.

SECTION 10. COSTS, ATTORNEY'S FEES, AND EXPENSES. On a motion under Section 3, the court shall award 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 [state] 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. 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 15. REPEALS; CONFORMING AMENDMENTS.**

(a) . . .

(b) . . .

(c) . . .]

Legislative Note: Section 9 may require amendment of a state's interlocutory appeal statute.

SECTION 16. EFFECTIVE DATE. This [act] takes effect