

D R A F T

FOR DISCUSSION ONLY

PUBLIC PARTICIPATION PROTECTION ACT

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ON UNIFORM STATE LAWS

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June 5, 2019

PUBLIC PARTICIPATION PROTECTION ACT

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PUBLIC PARTICIPATION PROTECTION ACT

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1 **PUBLIC PARTICIPATION PROTECTION ACT**

2 **Prefatory Note**

3 “Strategic lawsuit against public participation,” or SLAPP, is a term used to describe a
4 specific kind of civil action brought by a plaintiff whose real aim is to silence or intimidate the
5 defendant, or punish the defendant by subjecting it to costly and lengthy litigation. SLAPPs defy
6 simple definition. They can be brought by and against individuals, corporate entities, or
7 government officials across all points of the political or social spectrum. They can address a
8 wide variety of issues from zoning to the environment to politics to education. They are often
9 cloaked as otherwise standard claims of defamation, civil conspiracy, tortious interference,
10 nuisance, and invasion of privacy, just to name a few. But for all the ways in which SLAPPs
11 may clothe themselves, their unifying features make them a dangerous force: They are brought
12 not to remedy civil wrongs, but rather to ensnare their targets in costly litigation that will deter
13 them and others from engaging in constitutionally protected activity such as free speech and
14 petition.

15
16 To limit the detrimental effects these lawsuits can have, 31 states, as well as the District
17 of Columbia and the Territory of Guam, have enacted laws that establish special and expedited
18 procedures to aid defendants in seeking early dismissal of SLAPPs. Though grouped under the
19 “anti-SLAPP” moniker, these statutes vary widely in scope, form, and procedure. For example,
20 some anti-SLAPP laws are triggered by any claim that implicates free speech on a public issue,
21 while others apply only to speech in specific settings or concerning specific subjects. Some
22 statutes provide for special motions to dismiss, while others employ traditional summary
23 judgment procedures. Some stay the discovery process and provide for attorney’s fees and
24 sanctions, while others do not. Two state supreme courts have struck down their states’ laws
25 over concerns that they infringe upon the right to a civil jury trial.

26
27 This degree of variance from state to state—and an absence of protection in at least 19
28 states—leads to confusion and disorder among plaintiffs, defendants, and courts. It also
29 contributes to what can be labeled as “litigation tourism,” that is, a type of forum shopping by
30 which a plaintiff who has choices among the states in which to bring a lawsuit will do so in a
31 state that lacks strong and clear anti-SLAPP protections.

32
33 The Public Participation Protection Act seeks to harmonize these varying approaches by
34 enunciating a clear process through which SLAPPs can be challenged and their merits fairly
35 evaluated in an expedited manner. In doing so, the Act serves the dual purposes of protecting
36 individuals’ rights to petition and speak freely on issues of public interest while, at the same
37 time, protecting the rights of people and entities to file meritorious lawsuits for real injuries.

1 (B) on an issue under consideration or review in an official proceeding; or
2 (C) exercising the right of free speech, free association, or petition,
3 guaranteed by the United States Constitution or the [state] Constitution, on a matter of public
4 concern.

5 (c) This [act] does not apply to a cause of action brought:

6 (1) by a governmental entity to enforce a law or regulation to protect against an
7 imminent threat to public health or safety; or

8 (2) by a person primarily engaged in the business of selling or leasing goods or
9 services against a person primarily engaged in the business of selling or leasing goods or
10 services, if the conduct or communication on which the cause of action is based arises out of the
11 sale or lease of goods or services.

12 **SECTION 5. SPECIAL MOTION TO [DISMISS] [STRIKE].** Not later than [60]
13 days after being served with a [complaint] [petition], crossclaim, counterclaim, or third-party
14 claim that asserts a cause of action to which this [act] applies, or at a later time on a showing of
15 good cause, the person served may file a special motion to [dismiss] [strike] the cause of action.

16 *Legislative Note:* A state should use the term “complaint”, “petition”, or both, to describe any
17 procedural means through which a cause of action may be brought. A state should title its
18 motion one to “dismiss” or “strike” given its customs and procedures.

19
20 **Comments**

21 The terms “complaint” and “petition” are intended to include any amended pleadings that
22 assert a cause of action for the first time in a case.

23
24 Some states may choose to title their Special Motion one to “Dismiss”, while others may
25 title it one to “Strike”. The choice of title is not substantive in nature and should in no way affect
26 uniformity or construction of the statute.

27
28 **SECTION 6. STAY.**

29 (a) Except as otherwise provided in this section, all proceedings in an action, including

1 discovery and pending hearings or motions, are stayed on the filing of a motion under Section 5.
2 The stay remains in effect until entry of an order ruling on the motion and the conclusion of any
3 appeal of the order or expiration of the time to appeal the order.

4 (b) On a showing by a party that specified information necessary to meet or oppose a
5 burden imposed by Section 9 is not reasonably available without discovery, the court may allow
6 limited discovery for the purpose of obtaining the information.

7 (c) The court for good cause may entertain a motion unrelated to a motion under Section
8 5.

9 (d) A motion for relief under Section 13 or 14 is not subject to the stay under subsection
10 (a).

11 **Comment**

12 This section should not be construed to affect a court's ability to hear and rule, upon a
13 finding of good cause, on motions for prejudgment remedies.

14 **SECTION 7. EXPEDITED HEARING.**

15 (a) The court shall hear a motion under Section 5 not later than [60] days after service of
16 the motion, unless the court orders a later hearing:

17 (1) because of the condition of the court's docket;

18 (2) by agreement of the parties;

19 (3) to allow limited discovery under Section 6(b); or

20 (4) for other good cause.

21 (b) If the court orders a later hearing under subsection (a)(3), the court shall hear the
22 motion under Section 5 not later than [60] days after the court issues a ruling allowing for the
23 discovery.
24

1 (b) An appellate court shall expedite an appeal, whether interlocutory or not, from a trial
2 court ruling on a motion under Section 5 or [an original action] [a writ] involving the ruling.

3 *Legislative Note: If a state has a statute specifying instances in which an interlocutory appeal is*
4 *permitted, it should cite the statute in this section. This section may require amendment of a*
5 *state's interlocutory appeal statute.*

6
7 **Comment**

8 This section should not be construed to foreclose an interlocutory appeal of an order
9 granting, in whole or in part, a motion under Section 5, if state law would otherwise permit such
10 an appeal.

11
12 **SECTION 13. RELIEF FOR SUCCESSFUL MOVING PARTY.** If the moving
13 party prevails on a motion under Section 5, the court shall award the moving party court costs,
14 reasonable attorney's fees, and other reasonable expenses related to the motion.

15 **Comment**

16 The relief provided for by this section includes any court costs, reasonable attorney's
17 fees, and any other reasonable expenses associated with filing a motion under this section.

18
19 **SECTION 14. RELIEF FOR SUCCESSFUL RESPONDING PARTY.** If the
20 responding party prevails on a motion under Section 5 and the court finds that the motion was
21 frivolous or filed solely with the intent to delay the proceedings, the court shall award the
22 responding party court costs, reasonable attorney's fees, and any other reasonable expenses
23 related to the motion.

24 **SECTION 15. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
25 applying and construing this uniform act, consideration must be given to the need to promote
26 uniformity of the law with respect to its subject matter among states that enact it.

27 **[SECTION 16. SEVERABILITY.** If any provision of this [act] or its application to
28 any person or circumstance is held invalid, the invalidity does not affect other provisions or
29 applications of this [act] which can be given effect without the invalid provision or application,

1 and to this end the provisions of this [act] are severable.]

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

4

5 **[SECTION 17. REPEALS; CONFORMING AMENDMENTS.**

6 (a)

7 (b)

8 (c)

9 **SECTION 18. EFFECTIVE DATE.** This [act] takes effect