

1 **PUBLIC PARTICIPATION PROTECTION ACT – STYLE COMMITTEE EDITS TO**
2 **POST-NOVEMBER MEETING DRAFT**

3
4 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Public Participation
5 Protection Act.

6 **Comments**
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8 The Committee will request that the name be changed to the Protecting Rights of Public
9 Participation Act. The Committee further recommends that it be a Uniform, rather than Model,
10 act.

11
12 **SECTION 2. APPLICABILITY SCOPE.**
13

14 (a) In this section, “person” means an individual, estate, business or nonprofit entity,
15 public corporation, government or governmental subdivision, agency, or instrumentality, or other
16 legal entity.

17 (b) This Except as otherwise provided in subsection (c), this [act] applies in a civil action
18 to a civil cause of action:

19 ~~(1) filed on or after [the effective date of this [act]]; and~~

20 ~~(2) brought against a party person based on the party’s person’s communication:~~

21 (1) in a legislative, executive, judicial, administrative, or other governmental
22 proceeding;

23 (2) on an issue under consideration or review in a legislative, executive, judicial,
24 administrative, or other governmental proceeding; or

25 (3) exercising the right of free speech, free association, or petition, guaranteed by
26 the United States Constitution or the [state] Constitution, on a matter of public concern.

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

28 (1) against a governmental entity, agent or instrumentality of a governmental

1 entity, or employee of a governmental entity acting in ~~his or her~~ the employee's official capacity;

2 (2) by a governmental entity to enforce a law or regulation and [delta] to protect
3 against an imminent threat to public health or safety;

4 (3) against a ~~party~~ person primarily engaged in the business of selling or leasing
5 goods or services if the ~~conduct or~~ communication on which the cause of action is based arises
6 out of the ~~party's~~ person's sale or lease of goods or services. ~~“Goods or services” does not~~
7 ~~include~~ unless the cause of action arises out of the creation, dissemination, ~~or~~ exhibition, or
8 advertisement or other similar promotion, of a dramatic, literary, musical, political, or artistic
9 work, including a motion picture, television program, or matter published on a an Internet
10 website or other electronic medium or in a newspaper or magazine;

11 (4) by a ~~party~~ person seeking recovery for bodily injury, wrongful death, or
12 survival, unless the cause of action arises out of the dissemination, ~~or~~ exhibition, or
13 advertisement or other similar promotion, of a dramatic, literary, musical, political, or artistic
14 work, including a motion picture, television program, or matter published on a an Internet
15 website or other electronic medium or in a newspaper or magazine; or

16 (5) by a ~~party~~ person seeking recovery under an insurance contract or [cite to the
17 state's insurance code].

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

23 **Legislative Note:** A state should use the term “complaint”, “petition”, or both, to describe any

1 *procedural means through which a cause of action may be brought.*

2
3 *A state should title its motion one to “dismiss” or “strike” ~~given in accordance with its customs~~*
4 *~~and procedures~~ and customs.*

5
6 **Comments**
7

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

10
11 Some states may choose to title their Special Motion one to “Dismiss”, while others may title it
12 one to “Strike”. The choice of title is not substantive in nature and should in no way affect
13 uniformity or construction of the statute.

14
15 **SECTION 4. STAY.**

16 (a) Except as otherwise provided in this section, all proceedings in an action, including
17 discovery and ~~a pending hearings or motions~~ hearing or motion, are stayed on the filing of a
18 motion under Section 3. The stay remains in effect until entry of an order ruling on the motion
19 and the conclusion of any appeal of the order or expiration of the time to appeal the order.

20 (b) During a stay under subsection (a), the court may allow limited discovery for the
21 purpose of obtaining specified information if a party shows ~~On a showing by a party that~~
22 ~~specified~~ the information is necessary to meet or oppose a burden imposed by Section 6 and is
23 not reasonably available without discovery, ~~the court may allow limited discovery for the~~
24 ~~purpose of obtaining the information.~~

25 (c) ~~The court for good cause may entertain a motion unrelated to a motion under Section~~
26 ~~3.~~

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

29 (d) ~~The~~ A stay under subsection (a) does not affect a party’s ability to voluntarily
30 [dismiss] [nonsuit] a cause of action or part of a cause of action, subject to Section 6(b) and (c).

1 (e) During a stay under subsection (a), the court for good cause may hear and rule on a
2 motion unrelated to a motion under Section 3.

3 **Legislative Note:** A state should use the term “dismiss” or “nonsuit” in accordance with its
4 procedures and customs.

5 **Comment**

6
7 This section should not be construed to affect a court’s ability to hear and rule, upon a finding of
8 good cause, on motions for prejudgment remedies.
9

10 **SECTION 5. EXPEDITED HEARING.**

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

13 (1) because of the condition of other matters on the court’s docket;

14 (2) to allow limited discovery under Section 4(b); or

15 (3) for other good cause.

16 (b) If the court orders a later hearing under subsection (a)(2), the court shall hear the
17 motion under Section 3 not later than [60] days after the court issues a ruling allowing for the
18 discovery.

19 **SECTION 6. [DISMISSAL OF] [STRIKING] CAUSE OF ACTION.** [Delta” Or
20 “EXPEDITED RELIEF – to tie into Sections 3 and 5 titles]

21 (a) The court shall [dismiss] [~~or-strike~~] with prejudice a cause of action or a ~~portion part~~
22 of a cause of action ~~with prejudice~~ if:

23 (1) ~~The~~ the moving party establishes that this [act] applies under Section 2 to the
24 cause of action ~~under Section 2~~; and

25 (2) either:

26 (A) the responding party fails to establish a prima facie case as to each
27 essential element of the cause of action; or

1 (B) the moving party establishes that there is no genuine issue as to any
2 material fact and the party is entitled to judgment as a matter of law.

3 (b) A voluntary [~~nonsuit~~] [dismissal] [nonsuit] without prejudice of a responding party's
4 cause of action does not affect a moving party's right to obtain a ruling on a motion filed under
5 Section 3 before the [~~nonsuit~~] [dismissal] [nonsuit].

6 (c) A voluntary [~~nonsuit~~] [dismissal] [nonsuit] with prejudice of a responding party's
7 cause of action entitles the moving party to relief under Section 9 on a motion filed under Section
8 3 before the [~~nonsuit~~] [dismissal] [nonsuit].

9 **Legislative Note:** *A state should use the term "~~nonsuit~~" or "dismissal" or "nonsuit" given in*
10 *accordance with its ~~customs and procedures~~ and customs.*

11
12 *A state should title the court's order one to "dismiss" or "strike" in accordance with its*
13 *procedures and customs.*

14
15 **Comment**

16
17 Once a motion under Section 3 has been filed, a voluntary [nonsuit] [dismissal] of the
18 responding party's cause of action does not deprive the court of jurisdiction.

19
20 **SECTION 7. RULING.** The court shall ~~decide~~ rule on a motion under Section 3 not
21 later than [60] days after the hearing under Section 5.

22 **SECTION 8. APPEAL.** A moving party may ~~immediately~~ appeal immediately from an
23 order denying, in whole or in part, a motion under Section 3 [under [the state's interlocutory-
24 appeal statute or rule]].

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

28
29 **Comment**

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31 This section should not be construed to foreclose an interlocutory appeal of an order granting, in
32 whole or in part, a motion under Section 3, if state law would otherwise permit such an appeal.

1 (b)

2 (c)

3 *Legislative Note: Section 8 may require amendment of a state's interlocutory appeal statute.*

4 **SECTION 14 15. EFFECTIVE DATE.** This [act] takes effect