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November 2, 2015

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RE: Proposal for Uniform Anti-SLAPP Act

Dear Ms. Karsai and Mr. Lisman:

Please see the following proposal for a Uniform Anti-SLAPP Act.

I. Description of the Project

The project concerns what would be the Uniform Anti-SLAPP Act. 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 for 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.

Anti-SLAPP Acts are relatively novel, purportedly dating to only the 1980s when the unfortunate concept of "litigation as war" became prevalent within our judicial system, and leading to the adoption of similar safeguards for litigation generally, such as Rule 11 sanctions (adopted into the FRCP in 1983). Like Rule 11 sanctions, Anti-SLAPP Acts have proven to be popular, and now at least 28 states, plus the District of Columbia and Guam, have adopted such legislation.

While there is a lack of uniformity on such issues as the burden of proof, thus leading to forum-shopping by litigants, the California model, as found at California Code of Civil Procedure § 425.16, seems to be gaining traction:

- (1) Upon the filing of an Anti-SLAPP Motion, which can only be made soon after the litigation is commenced, the litigation comes to a complete halt other than to resolve the Motion.
- (2) The defendant must prove that the plaintiff's case implicates an important constitutional right of the defendant to free speech or freedom to petition, or some like compelling public interest.
- (3) If the defendant successfully meets her burden, 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 is successful on the motion, then the defendant recovers costs and attorney's fees. If the plaintiff is successful on the motion, then the plaintiff can recover the costs and attorney's fees to resist the motion, if and only if the plaintiff can satisfy the court that the Anti-SLAPP Motion was brought only for purposes of delay.
- (5) If the plaintiff loses the motion, then the plaintiff's case is dismissed and the plaintiff may immediately appeal. If the defendant loses the motion, then the defendant may also immediately appeal, and the case below is stayed pending the resolution of the appeal.

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.

Notably, Anti-SLAPP Acts currently apply only to actions in the state court, although some U.S. Court of Appeals (most notably the oversized Ninth Circuit) have applied state Anti-SLAPP laws to diversity cases arising from states within their circuits; while other circuits have deemed Anti-SLAPP Acts to be essentially procedural in nature and so have declined to reach that result.

Federal Anti-SLAPP legislation, which of course would be applicable only to cases arising in the federal courts or by removal jurisdiction, has been proposed in the 114th Congress (2015-6) as H.R. 2304 - SPEAK FREE Act of 2015. If the federal legislation passes (which is far from certain under the current political climate), there will likely arise additional pressure on the remaining states to conform their own Anti-SLAPP legislation, and for which a Uniform Anti-SLAPP Act would provide an easy template. By contrast, if a Uniform Anti-SLAPP Act is passed, that will create additional pressure to conform federal law (or perhaps more appropriately, the Federal Rules of Civil Procedure) accordingly.

The growth of so-called "social media" seems to be fueling a substantial nationwide increase in defamation litigation, and Anti-SLAPP motions in the states that authorize them allow the courts to much more efficiently weed out the meritorious lawsuits from the non-meritorious. Thus, the present time to consider a Uniform Anti-SLAPP Act to provide a framework for those states which have not yet adopted such laws, could hardly be more propitious.

II. Committee on Scope and Program Criteria

A. The subject matter is appropriate for state legislation in view of the powers granted by the Constitution of the United States to Congress.

The power of the states to pass their own procedural rules for their own courts is a retained right under the Tenth Amendment.

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. Is uniformity of state law for the proposed subject matter desirable and realistic?

Yes. The primary goal of the Uniform Anti-SLAPP Act would to promote uniformity of such legislation among the states, the practicality of which is evidenced by *inter alia* that 28 states and two additional jurisdictions have enacted substantially similar, though not uniform, Anti-SLAPP Acts on their own.

2. Is there a reasonable probability of passage of a Uniform Act by a substantial number of states?

Yes, a Uniform Anti-SLAPP Act is quite likely to be adopted by the majority of, if not all, of the state which already have substantially similar legislation, or will be considering such legislation in the future.

3. Will a Uniform Act produce significant benefits to the public through improvements in the law?

(a) Avoid conflict of laws and forum-shopping when the laws of more than one state may apply

A key benefit of a Uniform Anti-SLAPP Act would be to render the laws among all the participating states to be uniform, thus negating conflicts of interests which may exist between the states on issues such as burdens of proof, or whether limited discovery may be allowed to the parties on an Anti-SLAPP motion, etc., and also discourage forum-shopping by litigants who might otherwise attempt to gain an advantage by filing litigation, or changing the venue of litigation, to a state perceived to have a more advantageous Anti-SLAPP Act.

(b) Make Anti-SLAPP Acts more widely and easily understood

Although Anti-SLAPP legislation has proven to be popular in the states that adopted it, as an inherently state-specific procedure little is known of the vehicle outside of those states. The passage of a Uniform Anti-SLAPP Act would help to inform persons in other states who might be benefitted by such legislation of its existence and benefits.

(c) Fill emergent needs

Anti-SLAPP legislation inherently implicates certain legal tensions, such as balancing the rights of aggrieved litigants to a jury trial against the desirability of protecting the free speech and freedom to petition rights of defendants against the threats of retaliatory or harassing litigation. However, not all states have the legal resources in the form of interested legal academics and others who are available to adequately guide this legislation. Thus, a substantial benefit of the Uniform Law Commission is that it can bring to bear on the subject its tremendous academic and organizational resources to resolve these tensions for the benefit of all participating states.

4. What have the states already done with regard to this subject?

As of the date of this proposal, some 28 states, plus the District of Columbia and Guam, have adopted Anti-SLAPP statutes: Arizona,

Arkansas, California, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, Nevada, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, and Washington.

(a) The act will maintain the integrity of well-balanced and well-settled law in areas traditionally governed by the states

Anti-SLAPP legislation 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 the Uniform Anti-SLAPP Act will help to preserve and make further uniform such aspects throughout the states.

5. Whether the act advances the law on a subject that the ULC has already addressed?

Yes. While the specific subject matter of the Uniform Anti-SLAPP Act has not yet been treated by the Uniform Law Commission, the ULC has quite frequently adopted Uniform or Model legislation on matters of state civil procedure, such as the Audio-Visual Deposition Act, the Certification of Question of Law Act, the Class Actions Act, the Declaratory Judgments Act, etc. As to free speech issues, the ULC has adopted the Correction or Clarification of Defamation Act.

6. Does the proposed project require changes in federal laws or regulations?

No. As mentioned above, federal Anti-SLAPP legislation has been introduced as H.R. 2304 - SPEAK FREE Act of 2015. If that or similar federal legislation passes before the Uniform Anti-SLAPP Act is adopted, then the federal legislation would provide an additional guide to draft the Uniform Anti-SLAPP Act. However, if the Uniform Anti-SLAPP Act is adopted before federal legislation is adopted, quite likely the drafters of the federal law (or, in the opinion of this writer, more likely as-yet unproposed changes to the Federal Rules of Civil Procedure) would conform the federal variant to approach that which is uniformly adopted by the states.

However, as a strictly technical matter of course, any federal law changes or changes to the FRCP would not directly affect any state Anti-SLAPP Act or vice versa, and any potential conflict between federal and state law would be limited to the relatively few cases where there is overlapping state or federal jurisdiction which would create the potential for forum-shopping between federal and state courts.

7. What organizations or interest groups are likely to have an interest in the subject matter of the proposed project and are they likely to support or oppose a uniform or model act in this area?

The American Bar Association would likely have an interest in and support a Uniform Anti-SLAPP Act, and provide experienced Advisors on the subject. It is likely that many of the state bar associations would also have an interest in and support such legislation.

8. Are there resources available to support the development of the proposed project?

The project would have immediately available the existing Anti-SLAPP Acts of 28 states, plus two additional jurisdictions, and literally thousands of case law decisions (a Westlaw search on October 5, 2015 yielded 4,274 opinion which addressed the term "Anti-SLAPP" in both state and federal courts), plus hundreds of article in legal academia on the subject (962 articles addressing the term "Anti-SLAPP" were found in a Google scholar search on October 5, 2015).

9. Is an act on the proposed topic likely to have any substantial fiscal impact on an enacting state - positive or negative?

Yes, Anti-SLAPP legislation is meant to have a positive fiscal impact on the state courts by dismissing at an initial stage in the proceeding lawsuits that are retaliatory or harassing, thus freeing up the limited judicial resources of the state courts at no cost to the state other than the bare cost of enactment by the state legislature.

I thank you in advance for your attention to this matter. Please feel free to contact me by e-mail to jay@risad.com or by phone to 949-200-7773 if you have any questions or comments whatsoever.

Yours truly,
RISER ADKISSON LLP, by:

Jay D. Adkisson

ANTI-SLAPP: WHO HAS IT AND WHO DOESN'T

HAVE ADOPTED

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1. Arizona	1
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NO ACT

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12. New Hampshire
13. New Jersey
14. North Carolina
15. North Dakota
16. Ohio
17. South Carolina
18. South Dakota
19. Virginia
20. West Virginia
21. Wisconsin
22. Wyoming

TERRITORIES

1. American Samoa
2. Northern Mariana Islands
3. Puerto Rico
4. U.S. Virgin Islands

Arizona Revised Statutes Annotated
Title 12. Courts and Civil Proceedings
Chapter 6. Special Actions and Proceedings by Individual Persons
Article 15. Public Participation in Government (Refs & Annos)

A.R.S. § 12-751

§ 12-751. Definitions

Effective: April 28, 2006
Currentness

In this article, unless the context otherwise requires:

1. “Exercise of the right of petition” means any written or oral statement that falls within the constitutional protection of free speech and that is made as part of an initiative, referendum or recall effort or that is all of the following:

(a) Made before or submitted to a legislative or executive body or any other governmental proceeding.

(b) Made in connection with an issue that is under consideration or review by a legislative or executive body or any other governmental proceeding.

(c) Made for the purpose of influencing a governmental action, decision or result.

2. “Governmental proceeding” means any proceeding, other than a judicial proceeding, by an officer, official or body of this state and any political subdivision of this state, including boards and commissions, or by an officer, official or body of the federal government.

3. “Legal action” means any action, claim, cross-claim or counterclaim for damages that is based on the defendant's exercise of the right of petition.

Credits

Added by Laws 2006, Ch. 234, § 1, eff. April 28, 2006.

A. R. S. § 12-751, AZ ST § 12-751

Current through legislation effective February 17, 2016 of the Second Regular Session of the Fifty-Second Legislature (2016)

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Arizona Revised Statutes Annotated

Title 12. Courts and Civil Proceedings

Chapter 6. Special Actions and Proceedings by Individual Persons

Article 15. Public Participation in Government (Refs & Annos)

A.R.S. § 12-752

§ 12-752. Strategic lawsuits against public participation; motion to dismiss

Effective: April 28, 2006

Currentness

A. In any legal action that involves a party's exercise of the right of petition, the defending party may file a motion to dismiss the action under this section. When possible, the court shall give calendar preference to an action that is brought under this subsection and shall conduct an expedited hearing after the motion is filed with the court and notice of the motion has been served as provided by court rule.

B. The court shall 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. In making its determination, the court shall consider the pleadings and supporting and opposing affidavits stating facts on which the liability or defense is based. At the request of the moving party, the court shall make findings whether the lawsuit was brought to deter or prevent the moving party from exercising constitutional rights and is thereby brought for an improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation. If the court finds that the lawsuit was brought to deter or prevent the exercise of constitutional rights or otherwise brought for an improper purpose, the moving party is encouraged to pursue additional sanctions as provided by court rule.

C. The motion to dismiss may be filed within ninety days after the service of the complaint or, in the court's discretion, at any later time on terms that the court deems proper.

D. If the court grants the motion to dismiss, the court shall award the moving party costs and reasonable attorney fees, including those incurred for the motion. If the court finds that a motion to dismiss is frivolous or solely intended to delay, the court shall award costs and reasonable attorney fees to the prevailing party on the motion. For the purposes of this subsection, "costs" means all

costs that are reasonably incurred in connection with a motion to dismiss pursuant to this section and includes filing fees, record preparation and document copying fees, documented time away from employment to confer with counsel or attend case related proceedings, expert witness fees, travel expenses and any other costs that the court deems appropriate.

E. This article does not:

1. Affect, limit or preclude the right of the moving party to any remedy otherwise authorized by law.
2. Apply to an enforcement action that is brought in the name of this state or a political subdivision of this state.
3. Create any privileges or immunities or otherwise affect, limit or preclude any privileges or immunities authorized by law.
4. Limit or preclude a legislative or executive body or a public agency from enforcing the rules of procedure and rules of order of the body or agency.

Credits

Added by Laws 2006, Ch. 234, § 1, eff. April 28, 2006.

Notes of Decisions (5)

A. R. S. § 12-752, AZ ST § 12-752

Current through legislation effective February 17, 2016 of the Second Regular Session of the Fifty-Second Legislature (2016)

West's Arkansas Code Annotated

Title 16. Practice, Procedure, and Courts

Subtitle 5. Civil Procedure Generally (Chapters 55 to 79)

Chapter 63. Pleadings and Pretrial Proceedings

Subchapter 5. Citizen Participation in Government Act

A.C.A. § 16-63-501

§ 16-63-501. Title

Currentness

This subchapter shall be known as and may be cited as the “Citizen Participation in Government Act”.

Credits

Acts of 2005, Act 1843, § 1, eff. Aug. 12, 2005.

A.C.A. § 16-63-501, AR ST § 16-63-501

Current through 2015 Reg. Sess. and 2015 1st Ex. Sess. of the 90th Arkansas General Assembly., including changes made by the Ark. Code Rev. Comm. received through 11/1/2015.

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West's Arkansas Code Annotated**Title 16. Practice, Procedure, and Courts****Subtitle 5. Civil Procedure Generally (Chapters 55 to 79)****Chapter 63. Pleadings and Pretrial Proceedings****Subchapter 5. Citizen Participation in Government Act****A.C.A. § 16-63-502****§ 16-63-502. Legislative findings****Currentness**

The General Assembly finds and declares that:

- (1) It is in the public interest to encourage participation by the citizens of the State of Arkansas in matters of public significance through the exercise of their constitutional rights of freedom of speech and the right to petition government for a redress of grievances;
- (2) The valid exercise of the constitutional rights of freedom of speech and the right to petition government for a redress of grievances should not be chilled through abuse of the judicial process;
- (3) The threat of a civil action for damages in the form of a strategic lawsuit against political participation and the possibility of considerable legal costs can act as a deterrent to citizens who wish to report information to federal, state, or local agencies; and
- (4) Strategic lawsuits against political participation can effectively punish concerned citizens for exercising the constitutional right to speak and petition the government for a redress of grievances.

Credits

Acts of 2005, Act 1843, § 1, eff. Aug. 12, 2005.

A.C.A. § 16-63-502, AR ST § 16-63-502

Current through 2015 Reg. Sess. and 2015 1st Ex. Sess. of the 90th Arkansas General Assembly., including changes made by the Ark. Code Rev. Comm. received through 11/1/2015.

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West's Arkansas Code Annotated

Title 16. Practice, Procedure, and Courts

Subtitle 5. Civil Procedure Generally (Chapters 55 to 79)

Chapter 63. Pleadings and Pretrial Proceedings

Subchapter 5. Citizen Participation in Government Act

A.C.A. § 16-63-503

§ 16-63-503. Definitions

Currentness

As used in this subchapter:

(1) “An act in furtherance of the right of free speech or the right to petition government for a redress of grievances under the United States Constitution or the Arkansas Constitution in connection with an issue of public interest or concern” includes, but is not limited to, any written or oral statement, writing, or petition made:

(A) Before or to a legislative, executive, or judicial proceeding, or other proceeding authorized by a state, regional, county, or municipal government; or

(B) In connection with an issue under consideration or review by a legislative, executive, or judicial body, or other body authorized by a state, regional, county, or municipal government; and

(2)(A) “Privileged communication” means a communication made:

(i) In, to, or about an issue of public concern related to any legislative, executive, or judicial proceeding, or other proceeding authorized by a state, regional, county, or municipal government;

(ii) In the proper discharge of an official duty; and

(iii) By a fair and true report of any legislative, executive, or judicial proceeding, or other proceeding authorized by a state, regional, county, or municipal government, or anything said in the course of the proceeding.

(B) “Privileged communication” also includes:

(i) All expressions of opinion or criticisms in regard to any legislative, executive, or judicial proceeding, or other proceeding authorized by a state, regional, county, or municipal government; and

(ii) All criticisms of the official acts of any and all public officers.

(C) “Privileged communication” does not include a statement or report made with knowledge that it was false or with reckless disregard of whether it was false.

Credits

Acts of 2005, Act 1843, § 1, eff. Aug. 12, 2005.

A.C.A. § 16-63-503, AR ST § 16-63-503

Current through 2015 Reg. Sess. and 2015 1st Ex. Sess. of the 90th Arkansas General Assembly., including changes made by the Ark. Code Rev. Comm. received through 11/1/2015.

West's Arkansas Code Annotated**Title 16. Practice, Procedure, and Courts****Subtitle 5. Civil Procedure Generally (Chapters 55 to 79)****Chapter 63. Pleadings and Pretrial Proceedings****Subchapter 5. Citizen Participation in Government Act****A.C.A. § 16-63-504****§ 16-63-504. Immunity from suit****Currentness**

Any person making a privileged communication or performing an act in furtherance of the right of free speech or the right to petition government for a redress of grievances under the United States Constitution or the Arkansas Constitution in connection with an issue of public interest or concern shall be immune from civil liability, unless a statement or report was made with knowledge that it was false or with reckless disregard of whether it was false.

Credits

Acts of 2005, Act 1843, § 1, eff. Aug. 12, 2005.

A.C.A. § 16-63-504, AR ST § 16-63-504

Current through 2015 Reg. Sess. and 2015 1st Ex. Sess. of the 90th Arkansas General Assembly., including changes made by the Ark. Code Rev. Comm. received through 11/1/2015.

West's Arkansas Code Annotated**Title 16. Practice, Procedure, and Courts****Subtitle 5. Civil Procedure Generally (Chapters 55 to 79)****Chapter 63. Pleadings and Pretrial Proceedings****Subchapter 5. Citizen Participation in Government Act****A.C.A. § 16-63-505****§ 16-63-505. Verification requirement****Currentness**

For any claim asserted against a person or entity arising from possible privileged communication or an act by that person or entity that could reasonably be construed as an act in furtherance of the right of free speech or the right to petition government for a redress of grievances under the United States Constitution or the Arkansas Constitution in connection with an issue of public interest or concern, the party asserting the claim and the party's attorney of record, if any, shall be required to file contemporaneously with the pleading containing the claim a written verification under oath certifying that:

- (1) The party and his or her attorney of record, if any, have read the claim;
- (2) To the best of the knowledge, information, and belief formed after reasonable inquiry of the party or his or her attorney, the claim is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;
- (3) The act forming the basis for the claim is not a privileged communication; and
- (4) The claim is not asserted for any improper purpose such as to suppress the right of free speech or right to petition government of a person or entity, to harass, or to cause unnecessary delay or needless increase in the cost of litigation.

Credits

Acts of 2005, Act 1843, § 1, eff. Aug. 12, 2005.

A.C.A. § 16-63-505, AR ST § 16-63-505

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West's Arkansas Code Annotated**Title 16. Practice, Procedure, and Courts****Subtitle 5. Civil Procedure Generally (Chapters 55 to 79)****Chapter 63. Pleadings and Pretrial Proceedings****Subchapter 5. Citizen Participation in Government Act****A.C.A. § 16-63-506****§ 16-63-506. Failure to properly verify****Currentness**

(a) If a claim governed by § 16-63-505 is not verified as required by § 16-63-505, the claim shall be stricken unless it is verified within ten (10) days after the omission is called to the attention of the party asserting the claim or his or her attorney of record.

(b)(1) If a claim is verified in violation of § 16-63-505, the court, upon motion or upon its own initiative, shall impose upon the persons who signed the verification, a represented party, or both, an appropriate sanction, which may include dismissal of the claim and an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the claim, including a reasonable attorney's fee.

(2) Other compensatory damages may be recovered only upon the demonstration that the claim was commenced or continued for the purpose of harassing, intimidating, punishing, or maliciously inhibiting a person or entity from making a privileged communication or performing an act in furtherance of the right of free speech or the right to petition government for a redress of grievances under the United States Constitution or the Arkansas Constitution in connection with an issue of public interest or concern.

Credits

Acts of 2005, Act 1843, § 1, eff. Aug. 12, 2005.

A.C.A. § 16-63-506, AR ST § 16-63-506

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(a)(1) All discovery and any pending hearings or motions in an action for a claim governed by § 16-63-505 shall be stayed upon the filing of a motion to dismiss or a motion to strike under § 16-63-506.

(2) A hearing on a motion filed under § 16-63-506 shall be conducted not more than thirty (30) days after service unless emergency matters before the court require a later hearing.

(b) The court, upon motion and for good cause shown, may order that specified discovery or other hearings or motions be conducted notwithstanding the provisions of subsection (a) of this section.

Credits

Acts of 2005, Act 1843, § 1, eff. Aug. 12, 2005.

A.C.A. § 16-63-507, AR ST § 16-63-507

Current through 2015 Reg. Sess. and 2015 1st Ex. Sess. of the 90th Arkansas General Assembly., including changes made by the Ark. Code Rev. Comm. received through 11/1/2015.

West's Arkansas Code Annotated

Title 16. Practice, Procedure, and Courts

Subtitle 5. Civil Procedure Generally (Chapters 55 to 79)

Chapter 63. Pleadings and Pretrial Proceedings

Subchapter 5. Citizen Participation in Government Act

A.C.A. § 16-63-508

§ 16-63-508. Other remedies preserved

Currentness

Nothing in this subchapter shall affect or preclude the right of any party to any recovery otherwise authorized by common law, statute, or rule.

Credits

Acts of 2005, Act 1843, § 1, eff. Aug. 12, 2005.

A.C.A. § 16-63-508, AR ST § 16-63-508

Current through 2015 Reg. Sess. and 2015 1st Ex. Sess. of the 90th Arkansas General Assembly., including changes made by the Ark. Code Rev. Comm. received through 11/1/2015.

West's Annotated California Codes
Code of Civil Procedure (Refs & Annos)
Part 2. Of Civil Actions (Refs & Annos)
Title 6. Of the Pleadings in Civil Actions
Chapter 2. Pleadings Demanding Relief (Refs & Annos)
Article 1. General Provisions (Refs & Annos)

West's Ann.Cal.C.C.P. § 425.16

§ 425.16. Anti-SLAPP motion

Effective: January 1, 2015

Currentness

(a) The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly.

(b)(1) A cause of 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 shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

(2) In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(3) If the court determines that the plaintiff has established a probability that he or she will prevail on the claim, neither that determination nor the fact of that determination shall be admissible in evidence at any later stage of the case, or in any subsequent action, and no burden of proof or degree of proof otherwise applicable shall be affected by that determination in any later stage of the case or in any subsequent proceeding.

(c)(1) Except as provided in paragraph (2), in any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to Section 128.5.

(2) A defendant who prevails on a special motion to strike in an action subject to paragraph (1) shall not be entitled to attorney's fees and costs if that cause of action is brought pursuant to Section 6259, 11130, 11130.3, 54960, or 54960.1 of the Government Code. Nothing in this paragraph shall be construed to prevent a prevailing defendant from recovering attorney's fees and costs pursuant to subdivision (d) of Section 6259, or Section 11130.5 or 54960.5, of the Government Code.

(d) This section shall not apply to any enforcement action brought in the name of the people of the State of California by the Attorney General, district attorney, or city attorney, acting as a public prosecutor.

(e) As used in this section, "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue" includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

(f) The special motion may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper. The motion shall be scheduled by the clerk of the court for a hearing not more than 30 days after the service of the motion unless the docket conditions of the court require a later hearing.

(g) All discovery proceedings in the action shall be stayed upon the filing of a notice of motion made pursuant to this section. The stay of discovery shall remain in effect until notice of entry of the order ruling on the motion. The court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision.

(h) For purposes of this section, “complaint” includes “cross-complaint” and “petition,” “plaintiff” includes “cross-complainant” and “petitioner,” and “defendant” includes “cross-defendant” and “respondent.”

(i) An order granting or denying a special motion to strike shall be appealable under Section 904.1.

(j)(1) Any party who files a special motion to strike pursuant to this section, and any party who files an opposition to a special motion to strike, shall, promptly upon so filing, transmit to the Judicial Council, by e-mail or facsimile, a copy of the endorsed, filed caption page of the motion or opposition, a copy of any related notice of appeal or petition for a writ, and a conformed copy of any order issued pursuant to this section, including any order granting or denying a special motion to strike, discovery, or fees.

(2) The Judicial Council shall maintain a public record of information transmitted pursuant to this subdivision for at least three years, and may store the information on microfilm or other appropriate electronic media.

Credits

(Added by Stats.1992, c. 726 (S.B.1264), § 2. Amended by Stats.1993, c. 1239 (S.B.9), § 1; Stats.1997, c. 271 (S.B.1296), § 1; Stats.1999, c. 960 (A.B.1675), § 1, eff. Oct. 10, 1999; Stats.2005, c. 535 (A.B.1158), § 1, eff. Oct. 5, 2005; Stats.2009, c. 65 (S.B.786), § 1; Stats.2010, c. 328 (S.B.1330), § 34; Stats.2014, c. 71 (S.B.1304), § 17, eff. Jan. 1, 2015.)

Notes of Decisions (3617)

West's Ann. Cal. C.C.P. § 425.16, CA CIV PRO § 425.16

Current with urgency legislation through Ch. 1 of 2016 Reg.Sess. and Ch. 1 of 2015-2016 2nd Ex.Sess.

West's Annotated California Codes

Code of Civil Procedure (Refs & Annos)

Part 2. Of Civil Actions (Refs & Annos)

Title 6. Of the Pleadings in Civil Actions

Chapter 2. Pleadings Demanding Relief (Refs & Annos)

Article 1. General Provisions (Refs & Annos)

West's Ann.Cal.C.C.P. § 425.17

§ 425.17. Legislative findings and declarations regarding
California Anti-SLAPP Law; application of § 425.16

Effective: January 1, 2012

Currentness

(a) The Legislature finds and declares that there has been a disturbing abuse of Section 425.16, the California Anti-SLAPP Law, which has undermined the exercise of the constitutional rights of freedom of speech and petition for the redress of grievances, contrary to the purpose and intent of Section 425.16. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process or Section 425.16.

(b) Section 425.16 does not apply to any action brought solely in the public interest or on behalf of the general public if all of the following conditions exist:

(1) The plaintiff does not seek any relief greater than or different from the relief sought for the general public or a class of which the plaintiff is a member. A claim for attorney's fees, costs, or penalties does not constitute greater or different relief for purposes of this subdivision.

(2) The action, if successful, would enforce an important right affecting the public interest, and would confer a significant benefit, whether pecuniary or nonpecuniary, on the general public or a large class of persons.

(3) Private enforcement is necessary and places a disproportionate financial burden on the plaintiff in relation to the plaintiff's stake in the matter.

(c) Section 425.16 does not apply to any cause of action brought against a person primarily engaged in the business of selling or leasing goods or services, including, but not limited to, insurance, securities, or financial instruments, arising from any statement or conduct by that person if both of the following conditions exist:

(1) The statement or conduct consists of representations of fact about that person's or a business competitor's business operations, goods, or services, that is made for the purpose of obtaining approval for, promoting, or securing sales or leases of, or commercial transactions in, the person's goods or services, or the statement or conduct was made in the course of delivering the person's goods or services.

(2) The intended audience is an actual or potential buyer or customer, or a person likely to repeat the statement to, or otherwise influence, an actual or potential buyer or customer, or the statement or conduct arose out of or within the context of a regulatory approval process, proceeding, or investigation, except where the statement or conduct was made by a telephone corporation in the course of a proceeding before the California Public Utilities Commission and is the subject of a lawsuit brought by a competitor, notwithstanding that the conduct or statement concerns an important public issue.

(d) Subdivisions (b) and (c) do not apply to any of the following:

(1) Any person enumerated in subdivision (b) of Section 2 of Article I of the California Constitution or Section 1070 of the Evidence Code, or any person engaged in the dissemination of ideas or expression in any book or academic journal, while engaged in the gathering, receiving, or processing of information for communication to the public.

(2) Any action against any person or entity based upon the creation, dissemination, exhibition, advertisement, or other similar promotion of any dramatic, literary, musical, political, or artistic work, including, but not limited to, a motion picture or television program, or an article published in a newspaper or magazine of general circulation.

(3) Any nonprofit organization that receives more than 50 percent of its annual revenues from federal, state, or local government grants, awards, programs, or reimbursements for services rendered.

(e) If any trial court denies a special motion to strike on the grounds that the action or cause of action is exempt pursuant to this section, the appeal provisions in subdivision (i) of Section 425.16 and paragraph (13) of subdivision (a) of Section 904.1 do not apply to that action or cause of action.

Credits

(Added by Stats.2003, c. 338 (S.B.515), § 1. Amended by Stats.2011, c. 296 (A.B.1023), § 36.5.)

Notes of Decisions (110)

West's Ann. Cal. C.C.P. § 425.17, CA CIV PRO § 425.17

Current with urgency legislation through Ch. 1 of 2016 Reg.Sess. and Ch. 1 of 2015-2016 2nd Ex.Sess.

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West's Annotated California Codes

Code of Civil Procedure (Refs & Annos)

Part 2. Of Civil Actions (Refs & Annos)

Title 6. Of the Pleadings in Civil Actions

Chapter 2. Pleadings Demanding Relief (Refs & Annos)

Article 1. General Provisions (Refs & Annos)

West's Ann.Cal.C.C.P. § 425.18

§ 425.18. SLAPPback actions; motion to strike;
limitations periods; discovery; remedies

Effective: October 5, 2005

Currentness

(a) The Legislature finds and declares that a SLAPPback is distinguishable in character and origin from the ordinary malicious prosecution action. The Legislature further finds and declares that a SLAPPback cause of action should be treated differently, as provided in this section, from an ordinary malicious prosecution action because a SLAPPback is consistent with the Legislature's intent to protect the valid exercise of the constitutional rights of free speech and petition by its deterrent effect on SLAPP (strategic lawsuit against public participation) litigation and by its restoration of public confidence in participatory democracy.

(b) For purposes of this section, the following terms have the following meanings:

(1) "SLAPPback" means any cause of action for malicious prosecution or abuse of process arising from the filing or maintenance of a prior cause of action that has been dismissed pursuant to a special motion to strike under Section 425.16.

(2) "Special motion to strike" means a motion made pursuant to Section 425.16.

(c) The provisions of subdivisions (c), (f), (g), and (i) of Section 425.16, and paragraph (13) of subdivision (a) of Section 904.1, shall not apply to a special motion to strike a SLAPPback.

(d)(1) A special motion to strike a SLAPPback shall be filed within any one of the following periods of time, as follows:

(A) Within 120 days of the service of the complaint.

(B) At the court's discretion, within six months of the service of the complaint.

(C) At the court's discretion, at any later time in extraordinary cases due to no fault of the defendant and upon written findings of the court stating the extraordinary case and circumstance.

(2) The motion shall be scheduled by the clerk of the court for a hearing not more than 30 days after the service of the motion unless the docket conditions of the court require a later hearing.

(e) A party opposing a special motion to strike a SLAPPback may file an ex parte application for a continuance to obtain necessary discovery. If it appears that facts essential to justify opposition to that motion may exist, but cannot then be presented, the court shall grant a reasonable continuance to permit the party to obtain affidavits or conduct discovery or may make any other order as may be just.

(f) If the court finds that a special motion to strike a SLAPPback is frivolous or solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to Section 128.5.

(g) Upon entry of an order denying a special motion to strike a SLAPPback claim, or granting the special motion to strike as to some but less than all causes of action alleged in a complaint containing a SLAPPback claim, an aggrieved party may, within 20 days after service of a written notice of the entry of the order, petition an appropriate reviewing court for a peremptory writ.

(h) A special motion to strike may not be filed against a SLAPPback by a party whose filing or maintenance of the prior cause of action from which the SLAPPback arises was illegal as a matter of law.

(i) This section does not apply to a SLAPPback filed by a public entity.

Credits

(Added by Stats.2005, c. 535 (A.B.1158), § 2, eff. Oct. 5, 2005.)

Notes of Decisions (22)

West's Ann. Cal. C.C.P. § 425.18, CA CIV PRO § 425.18

Current with urgency legislation through Ch. 1 of 2016 Reg.Sess. and Ch. 1 of 2015-2016 2nd Ex.Sess.

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West's Delaware Code Annotated
Title 10. Courts and Judicial Procedure
Part V. Limitation of Actions
Chapter 81. Personal Actions

10 Del.C. § 8136

§ 8136. Actions involving public petition and participation

Currentness

(a) For purposes of this section, the following terms shall have the meaning ascribed herein:

(1) An “action involving public petition and participation” is 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.

(2) “Communication” shall mean any statement, claim or allegation in a proceeding, decision, protest, writing, argument, contention or other expression.

(3) “Government body” shall mean the State and any county, city, town, village or any other political subdivision of the State; any public improvement or special district, public authority, commission, agency or public benefit corporation; any other separate corporate instrumentality or unit of State or local government; or the federal government.

(4) “Public applicant or permittee” shall 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.

(b) In an action involving public petition and participation, damages may only be recovered if the 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.

(c) Nothing in this section shall be construed to limit any constitutional, statutory or common-law protection of defendants to actions involving public petition and participation.

Credits

68 Laws 1992, ch. 391, § 1.

10 Del.C. § 8136, DE ST TI 10 § 8136

The statutes and constitution are current through 80 Laws 2015, ch. 194. and technical revisions from the Delaware Code Revisors for 2015 Acts.

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West's Delaware Code Annotated
Title 10. Courts and Judicial Procedure
Part V. Limitation of Actions
Chapter 81. Personal Actions

10 Del.C. § 8137

§ 8137. Standards for motion to dismiss and summary judgment
in certain cases involving public petition and participation

Currentness

(a) A motion to dismiss in which the moving party has demonstrated that the action, claim, cross-claim or counterclaim subject to the motion is an action involving public petition and participation as defined in § 8136 of this title shall 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. The court shall grant preference in the hearing of such motion.

(b) A motion for summary judgment in which the moving party has demonstrated that the action, claim, cross-claim or counterclaim subject to the action is an action involving public petition and participation as defined in § 8136 of this title shall be granted unless the party responding to the motion demonstrates that the cause of action has a substantial basis in fact and law or is supported by a substantial argument for an extension, modification or reversal of existing law. The court shall grant preference in the hearing of such motion.

Credits

68 Laws 1992, ch. 391, § 1.

10 Del.C. § 8137, DE ST TI 10 § 8137

The statutes and constitution are current through 80 Laws 2015, ch. 194. and technical revisions from the Delaware Code Revisors for 2015 Acts.

West's Delaware Code Annotated
Title 10. Courts and Judicial Procedure
Part V. Limitation of Actions
Chapter 81. Personal Actions

10 Del.C. § 8138

§ 8138. Recovery of damages in actions involving public petition and participation

Currentness

(a) A defendant in an action involving public petition and participation, as defined in § 8136 of this title, may maintain an action, claim, cross-claim or counter-claim to recover damages, including costs and attorney's fees, from any person who commenced or continued such action; provided that:

(1) Costs, attorney's fees and other compensatory damages may be recovered upon a demonstration that the action involving public petition and participation was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification or reversal of existing law; and

(2) Punitive damages may only be recovered upon an additional demonstration that the action involving public petition and participation was commenced or continued for the purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of speech, petition or association rights.

(b) The right to bring an action under this section can be waived only if it is waived specifically.

(c) Nothing in this section shall affect or preclude the right of any party to any recovery otherwise authorized by law.

Credits

68 Laws 1992, ch. 391, § 1.

10 Del.C. § 8138, DE ST TI 10 § 8138

The statutes and constitution are current through 80 Laws 2015, ch. 194. and technical revisions from the Delaware Code Revisors for 2015 Acts.

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West's Florida Statutes Annotated
Title XLV. Torts (Chapters 766-774) (Refs & Annos)
Chapter 768. Negligence (Refs & Annos)
Part I. General Provisions

West's F.S.A. § 768.295

768.295. Strategic Lawsuits Against Public Participation (SLAPP) prohibited

Effective: July 1, 2015
Currentness

(1) It is the intent of the Legislature to protect the right in Florida to exercise the rights of free speech in connection with public issues, and the rights to peacefully assemble, instruct representatives, and petition for redress of grievances before the various governmental entities of this state as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution. It is the public policy of this state that a person or governmental entity not engage in SLAPP suits because such actions are inconsistent with the right of persons to exercise such constitutional rights of free speech in connection with public issues. Therefore, the Legislature finds and declares that prohibiting such lawsuits as herein described will preserve this fundamental state policy, preserve the constitutional rights of persons in Florida, and assure the continuation of representative government in this state. It is the intent of the Legislature that such lawsuits be expeditiously disposed of by the courts.

(2) As used in this section, the phrase or term:

(a) “Free speech in connection with public issues” means any written or oral statement that is protected under applicable law and is made before a governmental entity in connection with an issue under consideration or review by a governmental entity, or is made in or in connection with a play, movie, television program, radio broadcast, audiovisual work, book, magazine article, musical work, news report, or other similar work.

(b) “Governmental entity” or “government entity” means the state, including the executive, legislative, and the judicial branches of government and the independent establishments of the state, counties, municipalities, corporations primarily acting as instrumentalities of the state, counties, or municipalities, districts, authorities, boards, commissions, or any agencies thereof.

(3) A person or governmental entity in this state may not file or cause to be filed, through its employees or agents, any lawsuit, cause of action, claim, cross-claim, or counterclaim against another person or entity without merit and primarily because such person or entity has exercised the constitutional right of free speech in connection with a public issue, or right to peacefully assemble, to instruct representatives of government, or to petition for redress of grievances before the various governmental entities of this state, as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.

(4) A person or entity sued by a governmental entity or another person in violation of this section has a right to an expeditious resolution of a claim that the suit is in violation of this section. A person or entity may move the court for an order dismissing the action or granting final judgment in favor of that person or entity. The person or entity may file a motion for summary judgment, together with supplemental affidavits, seeking a determination that the claimant's or governmental entity's lawsuit has been brought in violation of this section. The claimant or governmental entity shall thereafter file a response and any supplemental affidavits. As soon as practicable, the court shall set a hearing on the motion, which shall be held at the earliest possible time after the filing of the claimant's or governmental entity's response. The court may award, subject to the limitations in s. 768.28, the party sued by a governmental entity actual damages arising from a governmental entity's violation of this section. The court shall award the prevailing party reasonable attorney fees and costs incurred in connection with a claim that an action was filed in violation of this section.

(5) In any case filed by a governmental entity which is found by a court to be in violation of this section, the governmental entity shall report such finding and provide a copy of the court's order to the Attorney General no later than 30 days after such order is final. The Attorney General shall report any violation of this section by a governmental entity to the Cabinet, the President of the Senate, and the Speaker of the House of Representatives. A copy of such report shall be provided to the affected governmental entity.

Credits

Laws 2000, c. 2000-174, § 1, eff. June 2, 2000. Amended by Laws 2015, c. 2015-70, § 1, eff. July 1, 2015.

West's F. S. A. § 768.295, FL ST § 768.295

Current with chapters from the 2016 2nd Regular Session of the 24th Legislature in effect through February 24, 2016



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

West's Florida Statutes Annotated

Title XL. Real and Personal Property (Chapters 689-724)

Chapter 720. Homeowners' Associations (Refs & Annos)

Part I. General Provisions

West's F.S.A. § 720.304

720.304. Right of owners to peaceably assemble;
display of flag; SLAPP suits prohibited

Effective: July 1, 2010

Currentness

(1) All common areas and recreational facilities serving any homeowners' association shall be available to parcel owners in the homeowners' association served thereby and their invited guests for the use intended for such common areas and recreational facilities. The entity or entities responsible for the operation of the common areas and recreational facilities may adopt reasonable rules and regulations pertaining to the use of such common areas and recreational facilities. No entity or entities shall unreasonably restrict any parcel owner's right to peaceably assemble or right to invite public officers or candidates for public office to appear and speak in common areas and recreational facilities.

(2)(a) Any homeowner may display one portable, removable United States flag or official flag of the State of Florida in a respectful manner, and one portable, removable official flag, in a respectful manner, not larger than 4 ½ feet by 6 feet, which represents the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, or a POW-MIA flag, regardless of any covenants, restrictions, bylaws, rules, or requirements of the association.

(b) Any homeowner may erect a freestanding flagpole no more than 20 feet high on any portion of the homeowner's real property, regardless of any covenants, restrictions, bylaws, rules, or requirements of the association, if the flagpole does not obstruct sightlines at intersections and is not erected within or upon an easement. The homeowner may further display in a respectful manner from that flagpole, regardless of any covenants, restrictions, bylaws, rules, or requirements of the association, one official United States flag, not larger than 4 ½ feet by 6 feet, and may additionally display one official flag of the State of Florida or the United States Army, Navy,

Air Force, Marines, or Coast Guard, or a POW-MIA flag. Such additional flag must be equal in size to or smaller than the United States flag. The flagpole and display are subject to all building codes, zoning setbacks, and other applicable governmental regulations, including, but not limited to, noise and lighting ordinances in the county or municipality in which the flagpole is erected and all setback and locational criteria contained in the governing documents.

(c) This subsection applies to all community development districts and homeowners' associations, regardless of whether such homeowners' associations are authorized to impose assessments that may become a lien on the parcel.

(3) Any owner prevented from exercising rights guaranteed by subsection (1) or subsection (2) may bring an action in the appropriate court of the county in which the alleged infringement occurred, and, upon favorable adjudication, the court shall enjoin the enforcement of any provision contained in any homeowners' association document or rule that operates to deprive the owner of such rights.

(4) It is the intent of the Legislature to protect the right of parcel owners to exercise their rights to instruct their representatives and petition for redress of grievances before the various governmental entities of this state as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution. The Legislature recognizes that “Strategic Lawsuits Against Public Participation” or “SLAPP” suits, as they are typically called, have occurred when members are sued by individuals, business entities, or governmental entities arising out of a parcel owner's appearance and presentation before a governmental entity on matters related to the homeowners' association. However, it is the public policy of this state that government entities, business organizations, and individuals not engage in SLAPP suits because such actions are inconsistent with the right of parcel owners to participate in the state's institutions of government. Therefore, the Legislature finds and declares that prohibiting such lawsuits by governmental entities, business entities, and individuals against parcel owners who address matters concerning their homeowners' association will preserve this fundamental state policy, preserve the constitutional rights of parcel owners, and assure the continuation of representative government in this state. It is the intent of the Legislature that such lawsuits be expeditiously disposed of by the courts.

(a) As used in this subsection, the term “governmental entity” means the state, including the executive, legislative, and judicial branches of government, the independent establishments of the state, counties, municipalities, districts, authorities, boards, or commissions, or any agencies of these branches which are subject to chapter 286.

(b) A governmental entity, business organization, or individual in this state may not file or cause to be filed through its employees or agents any lawsuit, cause of action, claim, cross-claim, or counterclaim against a parcel owner without merit and solely because such parcel owner has exercised the right to instruct his or her representatives or the right to petition for redress of grievances before the various governmental entities of this state, as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.

(c) A parcel owner sued by a governmental entity, business organization, or individual in violation of this section has a right to an expeditious resolution of a claim that the suit is in violation of this section. A parcel owner may petition the court for an order dismissing the action or granting final judgment in favor of that parcel owner. The petitioner may file a motion for summary judgment, together with supplemental affidavits, seeking a determination that the governmental entity's, business organization's, or individual's lawsuit has been brought in violation of this section. The governmental entity, business organization, or individual shall thereafter file its response and any supplemental affidavits. As soon as practicable, the court shall set a hearing on the petitioner's motion, which shall be held at the earliest possible time after the filing of the governmental entity's, business organization's or individual's response. The court may award the parcel owner sued by the governmental entity, business organization, or individual actual damages arising from the governmental entity's, individual's, or business organization's violation of this section. A court may treble the damages awarded to a prevailing parcel owner and shall state the basis for the treble damages award in its judgment. The court shall award the prevailing party reasonable attorney's fees and costs incurred in connection with a claim that an action was filed in violation of this section.

(d) Homeowners' associations may not expend association funds in prosecuting a SLAPP suit against a parcel owner.

(5)(a) Any parcel owner may construct an access ramp if a resident or occupant of the parcel has a medical necessity or disability that requires a ramp for egress and ingress under the following conditions:

1. The ramp must be as unobtrusive as possible, be designed to blend in aesthetically as practicable, and be reasonably sized to fit the intended use.

2. Plans for the ramp must be submitted in advance to the homeowners' association. The association may make reasonable requests to modify the design to achieve architectural consistency with surrounding structures and surfaces.

(b) The parcel owner must submit to the association an affidavit from a physician attesting to the medical necessity or disability of the resident or occupant of the parcel requiring the access ramp. Certification used for s. 320.0848 shall be sufficient to meet the affidavit requirement.

(6) Any parcel owner may display a sign of reasonable size provided by a contractor for security services within 10 feet of any entrance to the home.

Credits

Laws 1992, c. 92-49, § 36; Fla.St.1999, § 617.304. Renumbered as 720.304 by Laws 2000, c. 2000-258, § 51, eff. July 1, 2000. Amended by Laws 2002, c. 2002-50, § 1, eff. April 18, 2002; Laws 2004, c. 2004-345, § 19, eff. Oct. 1, 2004; Laws 2004, c. 2004-353, § 16, eff. Oct. 1, 2004; Laws 2008, c. 2008-45, § 1, eff. July 1, 2008; Laws 2010, c. 2010-174, § 23, eff. July 1, 2010.

West's F. S. A. § 720.304, FL ST § 720.304

Current with chapters from the 2016 2nd Regular Session of the 24th Legislature in effect through February 24, 2016



KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted **Limited on Preemption Grounds by** Adventure Outdoors, Inc. v. Bloomberg, N.D.Ga., Sep. 21, 2007

KeyCite Yellow Flag - Negative Treatment Proposed Legislation

West's Code of Georgia Annotated**Title 9. Civil Practice****Chapter 11. Civil Practice Act (Refs & Annos)****Article 3. Pleadings and Motions****Ga. Code Ann., § 9-11-11.1**

§ 9-11-11.1. Certification that claim arising from act in furtherance
of right of free speech or to petition government for redress
of grievances is well grounded in fact and warranted by law

Currentness

(a) The General Assembly of Georgia finds and declares that it is in the public interest to encourage participation by the citizens of Georgia in matters of public significance through the exercise of their constitutional rights of freedom of speech and the right to petition government for redress of grievances. The General Assembly of Georgia further finds and declares that the valid exercise of the constitutional rights of freedom of speech and the right to petition government for a redress of grievances should not be chilled through abuse of the judicial process.

(b) For any claim asserted against a person or entity arising from an act by that person or entity which could reasonably be construed as an act in furtherance of the right of free speech or the right to petition government for a redress of grievances under the Constitution of the United States or the Constitution of the State of Georgia in connection with an issue of public interest or concern, both the party asserting the claim and the party's attorney of record, if any, shall be required to file, contemporaneously with the pleading containing the claim, a written verification under oath as set forth in Code Section 9-10-113. Such written verification shall certify that the party and his or her attorney of record, if any, have read the claim; that to the best of their knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; that the act forming the basis for the claim is not a privileged communication under paragraph (4) of Code Section 51-5-7; and that the claim is not interposed for any improper purpose such as to suppress a person's or entity's right of free speech or right to petition government, or to harass, or to cause unnecessary delay or needless increase in the cost of litigation. If the claim is not verified as required by this subsection, it shall be stricken unless it is verified within ten days after the

omission is called to the attention of the party asserting the claim. If a claim is verified in violation of this Code section, the court, upon motion or upon its own initiative, shall impose upon the persons who signed the verification, a represented party, or both an appropriate sanction which may include dismissal of the claim and an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including a reasonable attorney's fee.

(c) As used in this Code section, “act in furtherance of the right of free speech or the right to petition government for a redress of grievances under the Constitution of the United States or the Constitution of the State of Georgia in connection with an issue of public interest or concern” includes any written or oral statement, writing, or petition made before or to a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, or any written or oral statement, writing, or petition made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law.

(d) All discovery and any pending hearings or motions in the action shall be stayed upon the filing of a motion to dismiss or a motion to strike made pursuant to subsection (b) of this Code section. The motion shall be heard not more than 30 days after service unless the emergency matters before the court require a later hearing. The court, on noticed motion and for good cause shown, may order that specified discovery or other hearings or motions be conducted notwithstanding this subsection.

(e) Nothing in this Code section shall affect or preclude the right of any party to any recovery otherwise authorized by common law, statute, law, or rule.

(f) Attorney's fees and expenses under this Code section may be requested by motion at any time during the course of the action but not later than 45 days after the final disposition, including but not limited to dismissal by the plaintiff, of the action.

Credits

Laws 1996, p. 260, § 1; Laws 1998, p. 862, § 2.

Notes of Decisions (125)

Ga. Code Ann., § 9-11-11.1, GA ST § 9-11-11.1

Current through the Regular Session of the 2015 Legislative Session. The statutes are subject to changes provided by the Georgia Code Commission.

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West's Hawai'i Revised Statutes Annotated
Division 4. Courts and Judicial Proceedings
Title 34. Pleadings and Procedure
[Chapter 634F]. [Citizen Participation in Government]

HRS § 634F-1

[§ 634F-1]. Definitions

Currentness

As used in this chapter, unless the context otherwise requires:

“Governmental body” includes a branch, department, agency, instrumentality, official, employee, agent, or other person acting under color of law of the United States, a state, or subdivision of a state or other public authority.

“Judicial claim” or “claim” includes any lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing requesting relief.

“Lacks substantial justification” means substantially frivolous, substantially groundless, or substantially vexatious.

“Motion” includes any motion to dismiss, for summary judgment, for judgment on the pleadings or to strike, a demurrer, or any other judicial pleading filed to dispose of a judicial claim.

“Moving party” means any person on whose behalf the motion described in section 634F-2 is filed seeking dismissal of the judicial claim.

“Person” includes any individual, corporation, association, organization, partnership, two or more persons having a joint or common interest, or other legal entity.

“Public participation” means any oral or written testimony submitted or provided to a governmental body during the course of a governmental proceeding.

“Responding party” means any person against whom the motion described in section 634F-2 is filed.

“SLAPP” means a strategic lawsuit against public participation and refers to a lawsuit that lacks substantial justification or is interposed for delay or harassment and that is solely based on the party's public participation before a governmental body.

Credits

Laws 2002, ch. 187, § 2.

Notes of Decisions (4)

H R S § 634F-1, HI ST § 634F-1

Current through Act 243 [End] of the 2015 Regular Session.

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West's Hawai'i Revised Statutes Annotated
Division 4. Courts and Judicial Proceedings
Title 34. Pleadings and Procedure
[Chapter 634F]. [Citizen Participation in Government]

HRS § 634F-2

[§ 634F-2]. Required procedures; motion

Currentness

Notwithstanding any law to the contrary, including rules of court, upon the filing of any motion to dispose of a claim in a judicial proceeding on the grounds that the claim is based on, relates to, or involves public participation and is a SLAPP lawsuit:

- (1) The motion shall be treated as a motion for judgment on the pleadings, matters outside the pleadings shall be excluded by the court, and the court shall expedite the hearing of the motion;
- (2) The moving party shall have a right:
 - (A) To an immediate appeal from a court order denying the motion; and
 - (B) To file an application for a writ of mandamus if the court fails to rule on the motion in an expedited fashion;
- (3) Discovery shall be suspended, pending decision on the motion and appeals;
- (4) The responding party shall:
 - (A) Without leave of court, have seven days to amend its pleadings to be pled with specificity, and shall include such supporting particulars as are peculiarly within the supporting pleader's knowledge; and

- (B) Have the burden of proof and persuasion on the motion;
- (5) The court shall make its determination based upon the allegations contained in the pleadings;
- (6) The court shall grant the motion and dismiss the judicial claim, 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;
- (7) Any governmental body to which the moving party's acts were directed or the attorney general in the case of a state governmental body, or the county attorney or corporation counsel in the case of a county governmental body may intervene to defend or otherwise support the moving party in the lawsuit;
- (8) The court shall award a moving party who prevails on the motion, without regard to any limits under state law:
 - (A) Actual damages or \$5,000, whichever is greater;
 - (B) Costs of suit, including reasonable attorneys' and expert witness fees, incurred in connection with the motion; and
 - (C) Such additional sanctions upon the responding party, its attorneys, or law firms as the court determines shall be sufficient to deter repetition of the conduct and comparable conduct by others similarly situated; and
- (9) Any person damaged or injured by reason of a claim filed in violation of their rights under this chapter may seek relief in the form of a claim for actual or compensatory damages, as well as punitive damages, attorneys' fees, and costs, from the person responsible.

Credits

Laws 2002, ch. 187, § 2.

Notes of Decisions (3)

H R S § 634F-2, HI ST § 634F-2

Current through Act 243 [End] of the 2015 Regular Session.

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West's Hawai'i Revised Statutes Annotated
Division 4. Courts and Judicial Proceedings
Title 34. Pleadings and Procedure
[Chapter 634F]. [Citizen Participation in Government]

HRS § 634F-3

[§ 634F-3]. Relationship to other laws

Currentness

Nothing in this chapter shall limit or preclude any rights the moving party may have under any other constitutional, statutory, case or common law, or rule provisions.

Credits

Laws 2002, ch. 187, § 2.

H R S § 634F-3, HI ST § 634F-3

Current through Act 243 [End] of the 2015 Regular Session.

West's Hawai'i Revised Statutes Annotated
Division 4. Courts and Judicial Proceedings
Title 34. Pleadings and Procedure
[Chapter 634F]. [Citizen Participation in Government]

HRS § 634F-4

[§ 634F-4]. Rule of construction

Currentness

This chapter shall be construed liberally to fully effectuate its purposes and intent.

Credits

Laws 2002, ch. 187, § 2.

H R S § 634F-4, HI ST § 634F-4

Current through Act 243 [End] of the 2015 Regular Session.

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 735. Civil Procedure
Act 110. Citizen Participation Act

735 ILCS 110/1

110/1. Short title

Effective: August 28, 2007
Currentness

§ 1. Short title. This Act may be cited as the Citizen Participation Act.

Credits

P.A. 95-506, § 1, eff. Aug. 28, 2007.

Notes of Decisions (13)

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735 I.L.C.S. 110/1, IL ST CH 735 § 110/1
Current through P.A. 99-500 of the 2016 Reg. Sess.

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KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 735. Civil Procedure
Act 110. Citizen Participation Act

735 ILCS 110/5

110/5. Public policy

Effective: August 28, 2007

Currentness

§ 5. Public policy. Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be the public policy of the State of Illinois that the constitutional rights of citizens and organizations to be involved and participate freely in the process of government must be encouraged and safeguarded with great diligence. The information, reports, opinions, claims, arguments, and other expressions provided by citizens are vital to effective law enforcement, the operation of government, the making of public policy and decisions, and the continuation of representative democracy. The laws, courts, and other agencies of this State must provide the utmost protection for the free exercise of these rights of petition, speech, association, and government participation.

Civil actions for money damages have been filed against citizens and organizations of this State as a result of their valid exercise of their constitutional rights to petition, speak freely, associate freely, and otherwise participate in and communicate with government. There has been a disturbing increase in lawsuits termed “Strategic Lawsuits Against Public Participation” in government or “SLAPPs” as they are popularly called.

The threat of SLAPPs significantly chills and diminishes citizen participation in government, voluntary public service, and the exercise of these important constitutional rights. This abuse of the judicial process can and has been used as a means of intimidating, harassing, or punishing citizens and organizations for involving themselves in public affairs.

It is in the public interest and it is the purpose of this Act to strike a balance between the rights of persons to file lawsuits for injury and the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government; to protect and encourage public participation in government to the maximum extent permitted by law; to establish an efficient

process for identification and adjudication of SLAPPs; and to provide for attorney's fees and costs to prevailing movants.

Credits

P.A. 95-506, § 5, eff. Aug. 28, 2007.

Notes of Decisions (11)

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735 I.L.C.S. 110/5, IL ST CH 735 § 110/5

Current through P.A. 99-500 of the 2016 Reg. Sess.

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Proposed Legislation

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 735. Civil Procedure
Act 110. Citizen Participation Act

735 ILCS 110/10

110/10. Definitions

Effective: August 28, 2007

Currentness

§ 10. Definitions. In this Act:

“Government” includes a branch, department, agency, instrumentality, official, employee, agent, or other person acting under color of law of the United States, a state, a subdivision of a state, or another public authority including the electorate.

“Person” includes any individual, corporation, association, organization, partnership, 2 or more persons having a joint or common interest, or other legal entity.

“Judicial claim” or “claim” include any lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing alleging injury.

“Motion” includes any motion to dismiss, for summary judgment, or to strike, or any other judicial pleading filed to dispose of a judicial claim.

“Moving party” means any person on whose behalf a motion described in subsection (a) of Section 20 is filed seeking dismissal of a judicial claim.

“Responding party” means any person against whom a motion described in subsection (a) of Section 20 is filed.

Credits

P.A. 95-506, § 10, eff. Aug. 28, 2007.

Notes of Decisions (4)

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735 I.L.C.S. 110/10, IL ST CH 735 § 110/10
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Proposed Legislation

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 735. Civil Procedure
Act 110. Citizen Participation Act

735 ILCS 110/15

110/15. Applicability

Effective: August 28, 2007

Currentness

§ 15. Applicability. This Act applies to any motion to dispose of a claim in a judicial proceeding on the grounds that the claim is based on, relates to, or is in response to any act or acts of the moving party in furtherance of the moving party's rights of petition, speech, association, or to otherwise participate in government.

Acts in furtherance of the constitutional rights to petition, speech, association, and participation in government are immune from liability, regardless of intent or purpose, except when not genuinely aimed at procuring favorable government action, result, or outcome.

Credits

P.A. 95-506, § 15, eff. Aug. 28, 2007.

Notes of Decisions (74)

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735 I.L.C.S. 110/15, IL ST CH 735 § 110/15

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Unconstitutional or Preempted **Validity Called into Doubt by** Mund v. Brown, Ill.App. 5 Dist., Aug. 21, 2009

KeyCite Yellow Flag - Negative Treatment Proposed Legislation

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 735. Civil Procedure
Act 110. Citizen Participation Act

735 ILCS 110/20

110/20. Motion procedure and standards

Effective: August 28, 2007
Currentness

§ 20. Motion procedure and standards.

(a) On the filing of any motion as described in Section 15, a hearing and decision on the motion must occur within 90 days after notice of the motion is given to the respondent. An appellate court shall expedite any appeal or other writ, whether interlocutory or not, from a trial court order denying that motion or from a trial court's failure to rule on that motion within 90 days after that trial court order or failure to rule.

(b) Discovery shall be suspended pending a decision on the motion. However, discovery may be taken, upon leave of court for good cause shown, on the issue of whether the movants acts are not immunized from, or are not in furtherance of acts immunized from, liability by this Act.

(c) The court shall grant the motion and dismiss the judicial claim unless the court finds that the responding party has produced 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.

Credits

P.A. 95-506, § 20, eff. Aug. 28, 2007.

Notes of Decisions (15)

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Proposed Legislation

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 735. Civil Procedure
Act 110. Citizen Participation Act

735 ILCS 110/25

110/25. Attorney's fees and costs

Effective: August 28, 2007

Currentness

§ 25. Attorney's fees and costs. The court shall award a moving party who prevails in a motion under this Act reasonable attorney's fees and costs incurred in connection with the motion.

Credits

P.A. 95-506, § 25, eff. Aug. 28, 2007.

Notes of Decisions (16)

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West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 735. Civil Procedure
Act 110. Citizen Participation Act

735 ILCS 110/30

110/30. Construction of Act

Effective: August 28, 2007
Currentness

§ 30. Construction of Act.

(a) Nothing in this Act shall limit or preclude any rights the moving party may have under any other constitutional, statutory, case or common law, or rule provisions.

(b) This Act shall be construed liberally to effectuate its purposes and intent fully.

Credits

P.A. 95-506, § 30, eff. Aug. 28, 2007.

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735 I.L.C.S. 110/30, IL ST CH 735 § 110/30
Current through P.A. 99-500 of the 2016 Reg. Sess.

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 735. Civil Procedure
Act 110. Citizen Participation Act

735 ILCS 110/35

110/35. Severability

Effective: August 28, 2007

Currentness

§ 35. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.

Credits

P.A. 95-506, § 35, eff. Aug. 28, 2007.

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735 I.L.C.S. 110/35, IL ST CH 735 § 110/35

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West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 735. Civil Procedure
Act 110. Citizen Participation Act

735 ILCS 110/99

110/99. Effective date

Effective: August 28, 2007
Currentness

§ 99. Effective date. This Act takes effect upon becoming law.

Credits

P.A. 95-506, § 99, eff. Aug. 28, 2007.

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735 I.L.C.S. 110/99, IL ST CH 735 § 110/99
Current through P.A. 99-500 of the 2016 Reg. Sess.

West's Annotated Indiana Code**Title 34. Civil Law and Procedure (Refs & Annos)****Article 7. General Provisions****Chapter 7. Defense in Civil Actions Against Persons Who Act in Furtherance of the Person's Right of Petition or Free Speech Under the Constitution of the United States or the Constitution of the State of Indiana in Connection with a Public Issue****IC 34-7-7-1****34-7-7-1 Applicability****Currentness**

Sec. 1. (a) This chapter applies to an act in furtherance of a person's right of petition or free speech under the Constitution of the United States or the Constitution of the State of Indiana in connection with a public issue or an issue of public interest that arises after June 30, 1998. This chapter does not apply to an action that was filed and is pending before July 1, 1998.

(b) This chapter does not apply to an enforcement action brought in the name of the state of Indiana by the attorney general, a prosecuting attorney, or another attorney acting as a public prosecutor.

Credits

As added by P.L.114-1998, SEC.7.

I.C. 34-7-7-1, IN ST 34-7-7-1

The statutes and Constitution are current with P.L. 1-2016 and P.L. 2-2016 of the 2016 Second Regular Session of the 119th General Assembly.

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West's Annotated Indiana Code**Title 34. Civil Law and Procedure (Refs & Annos)****Article 7. General Provisions****Chapter 7. Defense in Civil Actions Against Persons Who Act in Furtherance of the Person's Right of Petition or Free Speech Under the Constitution of the United States or the Constitution of the State of Indiana in Connection with a Public Issue****IC 34-7-7-2**

34-7-7-2 "Act in furtherance of a person's right of petition or free speech under the Constitution of the United States or the Constitution of the State of Indiana in connection with a public issue" defined

Currentness

Sec. 2. As used in this chapter, "act in furtherance of a person's right of petition or free speech under the Constitution of the United States or the Constitution of the State of Indiana in connection with a public issue" includes any conduct in furtherance of the exercise of the constitutional right of:

(1) petition; or

(2) free speech;

in connection with a public issue or an issue of public interest.

Credits

As added by P.L.114-1998, SEC.7.

I.C. 34-7-7-2, IN ST 34-7-7-2

The statutes and Constitution are current with P.L. 1-2016 and P.L. 2-2016 of the 2016 Second Regular Session of the 119th General Assembly.

West's Annotated Indiana Code**Title 34. Civil Law and Procedure (Refs & Annos)****Article 7. General Provisions****Chapter 7. Defense in Civil Actions Against Persons Who Act in Furtherance of the Person's Right of Petition or Free Speech Under the Constitution of the United States or the Constitution of the State of Indiana in Connection with a Public Issue****IC 34-7-7-3****34-7-7-3 “Claim” defined****Currentness**

Sec. 3. As used in this chapter, “claim” means:

- (1) a lawsuit;
- (2) a cause of action;
- (3) a petition;
- (4) a complaint;
- (5) a cross claim;
- (6) a counterclaim; or
- (7) any other judicial pleading or filing;

that requests legal or equitable relief.

Credits

As added by P.L.114-1998, SEC.7.

I.C. 34-7-7-3, IN ST 34-7-7-3

The statutes and Constitution are current with P.L. 1-2016 and P.L. 2-2016 of the 2016 Second Regular Session of the 119th General Assembly.

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West's Annotated Indiana Code**Title 34. Civil Law and Procedure (Refs & Annos)****Article 7. General Provisions**

Chapter 7. Defense in Civil Actions Against Persons Who Act in Furtherance of the Person's Right of Petition or Free Speech Under the Constitution of the United States or the Constitution of the State of Indiana in Connection with a Public Issue

IC 34-7-7-4**34-7-7-4 "Person" defined****Currentness**

Sec. 4. As used in this chapter, "person" means any of the following:

- (1) An individual.
- (2) Any other legal entity.

Credits

As added by P.L.114-1998, SEC.7.

I.C. 34-7-7-4, IN ST 34-7-7-4

The statutes and Constitution are current with P.L. 1-2016 and P.L. 2-2016 of the 2016 Second Regular Session of the 119th General Assembly.

West's Annotated Indiana Code**Title 34. Civil Law and Procedure (Refs & Annos)****Article 7. General Provisions****Chapter 7. Defense in Civil Actions Against Persons Who Act in Furtherance of the Person's Right of Petition or Free Speech Under the Constitution of the United States or the Constitution of the State of Indiana in Connection with a Public Issue****IC 34-7-7-5****34-7-7-5 Conditions under which rights of
petition or free speech may be used as defense****Currentness**

Sec. 5. It is a defense in a civil action against a person that the act or omission complained of is:

(1) an act or omission of that person in furtherance of the person's right of petition or free speech under the Constitution of the United States or the Constitution of the State of Indiana in connection with a public issue; and

(2) an act or omission taken in good faith and with a reasonable basis in law and fact.

Credits

As added by P.L.114-1998, SEC.7.

Notes of Decisions (19)**I.C. 34-7-7-5, IN ST 34-7-7-5**

The statutes and Constitution are current with P.L. 1-2016 and P.L. 2-2016 of the 2016 Second Regular Session of the 119th General Assembly.

West's Annotated Indiana Code**Title 34. Civil Law and Procedure (Refs & Annos)****Article 7. General Provisions****Chapter 7. Defense in Civil Actions Against Persons Who Act in Furtherance of the Person's Right of Petition or Free Speech Under the Constitution of the United States or the Constitution of the State of Indiana in Connection with a Public Issue****IC 34-7-7-6****34-7-7-6 Discovery; stay pending motion to dismiss****Currentness**

Sec. 6. All discovery proceedings in the action are stayed upon the filing of a motion to dismiss made under this chapter, except for discovery relevant to the motion.

Credits

As added by P.L.114-1998, SEC.7.

I.C. 34-7-7-6, IN ST 34-7-7-6

The statutes and Constitution are current with P.L. 1-2016 and P.L. 2-2016 of the 2016 Second Regular Session of the 119th General Assembly.

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West's Annotated Indiana Code**Title 34. Civil Law and Procedure (Refs & Annos)****Article 7. General Provisions****Chapter 7. Defense in Civil Actions Against Persons Who Act in Furtherance of the Person's Right of Petition or Free Speech Under the Constitution of the United States or the Constitution of the State of Indiana in Connection with a Public Issue****IC 34-7-7-7****34-7-7-7 Costs and attorney fees; defendant successful in motion to dismiss****Currentness**

Sec. 7. A prevailing defendant on a motion to dismiss made under this chapter is entitled to recover reasonable attorney's fees and costs.

Credits

As added by P.L.114-1998, SEC.7.

Notes of Decisions (4)**I.C. 34-7-7-7, IN ST 34-7-7-7**

The statutes and Constitution are current with P.L. 1-2016 and P.L. 2-2016 of the 2016 Second Regular Session of the 119th General Assembly.

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West's Annotated Indiana Code**Title 34. Civil Law and Procedure (Refs & Annos)****Article 7. General Provisions****Chapter 7. Defense in Civil Actions Against Persons Who Act in Furtherance of the Person's Right of Petition or Free Speech Under the Constitution of the United States or the Constitution of the State of Indiana in Connection with a Public Issue****IC 34-7-7-8****34-7-7-8 Costs and attorney fees; defendant unsuccessful in motion to dismiss****Currentness**

Sec. 8. If a court finds that a motion to dismiss made under this chapter is:

(1) frivolous; or

(2) solely intended to cause unnecessary delay;

the plaintiff is entitled to recover reasonable attorney's fees and costs to answer the motion.

Credits

As added by P.L.114-1998, SEC.7.

I.C. 34-7-7-8, IN ST 34-7-7-8

The statutes and Constitution are current with P.L. 1-2016 and P.L. 2-2016 of the 2016 Second Regular Session of the 119th General Assembly.

West's Annotated Indiana Code

Title 34. Civil Law and Procedure (Refs & Annos)

Article 7. General Provisions

Chapter 7. Defense in Civil Actions Against Persons Who Act in Furtherance of the Person's Right of Petition or Free Speech Under the Constitution of the United States or the Constitution of the State of Indiana in Connection with a Public Issue

IC 34-7-7-9

34-7-7-9 Motion to dismiss; procedures and determination

Currentness

Sec. 9. (a) If a person files a motion to dismiss under this chapter, the court in which the motion is filed shall do the following:

(1) Treat the motion as a motion for summary judgment.

(2) Establish a reasonable time period, not to exceed one hundred eighty (180) days, to expedite and rule on the motion.

(3) Specify time limits for the discovery of evidence to respond to material issues raised in the motion.

(b) The person who files a motion to dismiss must state with specificity the public issue or issue of public interest that prompted the act in furtherance of the person's right of petition or free speech under the Constitution of the United States or the Constitution of the State of Indiana.

(c) The court shall make its determination based on the facts contained in the pleadings and affidavits filed and discovered under the expedited proceeding.

(d) The motion to dismiss shall be granted if the court finds that the person filing the motion has proven, 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 Constitution of the United States or the Constitution of the State of Indiana.

(e) The court must act on the motion to dismiss within thirty (30) days from the submission of evidence made by motion to the court that is discovered within the specific expedited time period allowed.

(f) If a court does not act within the thirty (30) days provided in subsection (e), the person filing the motion may appeal the matter based on the court's failure to rule on the motion.

Credits

As added by P.L.114-1998, SEC.7.

Notes of Decisions (5)

I.C. 34-7-7-9, IN ST 34-7-7-9

The statutes and Constitution are current with P.L. 1-2016 and P.L. 2-2016 of the 2016 Second Regular Session of the 119th General Assembly.

West's Annotated Indiana Code**Title 34. Civil Law and Procedure (Refs & Annos)****Article 7. General Provisions****Chapter 7. Defense in Civil Actions Against Persons Who Act in Furtherance of the Person's Right of Petition or Free Speech Under the Constitution of the United States or the Constitution of the State of Indiana in Connection with a Public Issue****IC 34-7-7-10****34-7-7-10 Remedy in addition to other remedies provided by law****Currentness**

Sec. 10. The remedy provided by this chapter is in addition to other remedies provided by law.

Credits

As added by P.L.114-1998, SEC.7.

I.C. 34-7-7-10, IN ST 34-7-7-10

The statutes and Constitution are current with P.L. 1-2016 and P.L. 2-2016 of the 2016 Second Regular Session of the 119th General Assembly.

West's Louisiana Statutes Annotated
Louisiana Code of Civil Procedure (Refs & Annos)
Book II. Ordinary Proceedings
Title I. Pleading (Refs & Annos)
Chapter 4. Written Motions (Refs & Annos)

LSA-C.C.P. Art. 971

Art. 971. Special motion to strike

Effective: August 1, 2012

Currentness

A. (1) A cause of 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 or Louisiana Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established a probability of success on the claim.

(2) In making its determination, the court shall consider the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(3) If the court determines that the plaintiff has established a probability of success on the claim, that determination shall be admissible in evidence at any later stage of the proceeding.

B. In any action subject to Paragraph A of this Article, a prevailing party on a special motion to strike shall be awarded reasonable attorney fees and costs.

C. (1) The special motion may be filed within ninety days of service of the petition, or in the court's discretion, at any later time upon terms the court deems proper.

(2) If the plaintiff voluntarily dismisses the action prior to the running of the delays for filing an answer, the defendant shall retain the right to file a special motion to strike within the delays provided by Subparagraph (1) of this Paragraph, and the motion shall be heard pursuant to the provisions of this Article.

(3) The motion shall be noticed for hearing not more than thirty days after service unless the docket conditions of the court require a later hearing.

D. All discovery proceedings in the action shall be stayed upon the filing of a notice of motion made pursuant to this Article. The stay of discovery shall remain in effect until notice of entry of the order ruling on the motion. Notwithstanding the provisions of this Paragraph, the court, on noticed motion and for good cause shown, may order that specified discovery be conducted.

E. This Article shall not apply to any enforcement action brought on behalf of the state of Louisiana by the attorney general, district attorney, or city attorney acting as a public prosecutor.

F. As used in this Article, the following terms shall have the meanings ascribed to them below, unless the context clearly indicates otherwise:

(1) “Act in furtherance of a person's right of petition or free speech under the United States or Louisiana Constitution in connection with a public issue” includes but is not limited to:

(a) Any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law.

(b) Any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official body authorized by law.

(c) Any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest.

(d) Any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

(2) “Petition” includes either a petition or a reconventional demand.

(3) “Plaintiff” includes either a plaintiff or petitioner in a principal action or a plaintiff or petitioner in reconviction.

(4) “Defendant” includes either a defendant or respondent in a principal action or a defendant or respondent in reconviction.

Credits

Added by Acts 1999, No. 734, § 1. Amended by Acts 2004, No. 232, § 1; Acts 2012, No. 449, § 1.

Editors' Notes

LEGISLATIVE INTENT AND CONSTRUCTION--ACTS 1999, NO. 734

<Section 2 of Acts 1999, No. 734 (§ 1 of which enacted this article) provided:>

<“Section 2. The legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for redress of grievances. The legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, it is the intention of the legislature that the Article enacted pursuant to this Act shall be construed broadly.”>

Notes of Decisions (128)

LSA-C.C.P. Art. 971, LA C.C.P. Art. 971
Current through the 2015 Regular Session



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Unconstitutional or Preempted **Prior Version's Validity Called into Doubt by** Lynch v. Christie, D.Me., Sep. 07, 2011

Maine Revised Statutes Annotated
Title 14. Court Procedure--Civil
Part 2. Proceedings Before Trial
Chapter 203. Process (Refs & Annos)
Subchapter 1. General Provisions

14 M.R.S.A. § 556

§ 556. Special motion to dismiss

Effective: August 30, 2012
Currentness

When a moving party asserts that the civil claims, counterclaims or cross claims against the moving party are based on the moving party's exercise of the moving party's right of petition under the Constitution of the United States or the Constitution of Maine, the moving party may bring a special motion to dismiss. The special motion may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require. 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. In making its determination, the court shall consider the pleading and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

The Attorney General on the Attorney General's behalf or on behalf of any government agency or subdivision to which the moving party's acts were directed may intervene to defend or otherwise support the moving party on the special motion.

All discovery proceedings are stayed upon the filing of the special motion under this section, except that the court, on motion and after a hearing and for good cause shown, may order that specified discovery be conducted. The stay of discovery remains in effect until notice of entry of the order ruling on the special motion.

The special motion to dismiss may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms the court determines proper.

If the court grants a special motion to dismiss, the court may award the moving party costs and reasonable attorney's fees, including those incurred for the special motion and any related discovery matters. This section does not affect or preclude the right of the moving party to any remedy otherwise authorized by law.

As used in this section, “a party's exercise of its right of petition” means any written or oral statement made before or submitted to a legislative, executive or judicial body, or any other governmental proceeding; any written or oral statement made in connection with an issue under consideration or review by a legislative, executive or judicial body, or any other governmental proceeding; any statement reasonably likely to encourage consideration or review of an issue by a legislative, executive or judicial body, or any other governmental proceeding; any statement reasonably likely to enlist public participation in an effort to effect such consideration; or any other statement falling within constitutional protection of the right to petition government.

Credits

1995, c. 413, § 1; 2011, c. 559, § A-13.

Notes of Decisions (56)

14 M. R. S. A. § 556, ME ST T. 14 § 556

Current with legislation through the 2015 First Regular Session of the 127th Legislature. The First Regular Session convened December 3, 2014 and adjourned July 16, 2015. The general effective date is October 15, 2015.



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Proposed Legislation

West's Annotated Code of Maryland**Courts and Judicial Proceedings****Title 5. Limitations, Prohibited Actions, and Immunities (Refs & Annos)****Subtitle 8. Immunities and Prohibited Actions--Miscellaneous (Refs & Annos)****MD Code, Courts and Judicial Proceedings, § 5-807****§ 5-807. Strategic lawsuits against public participation (SLAPP)**

Effective: October 1, 2010

Currentness

SLAPP suit defined

(a) In this section, “SLAPP suit” means a strategic lawsuit against public participation.

SLAPP suits, generally

(b) A lawsuit is a SLAPP suit if it is:

(1) 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;

(2) Materially related to the defendant's communication; and

(3) Intended to inhibit or inhibits the exercise of rights under the First Amendment of the U.S. Constitution or Article 10, Article 13, or Article 40 of the Maryland Declaration of Rights.

Communications with federal, State, or local government bodies or the public

(c) A defendant in a SLAPP suit is not civilly liable for communicating with a federal, State, or local government body or the public at large, if the defendant, without constitutional malice, reports on, comments on, rules on, challenges, opposes, or in any other way exercises 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.

Motions to dismiss or stay proceedings

(d) A defendant in an alleged SLAPP suit may move to:

- (1) Dismiss the alleged SLAPP suit, in which case the court shall hold a hearing on the motion to dismiss as soon as practicable; or
- (2) Stay all court proceedings until the matter about which the defendant communicated to the government body or the public at large is resolved.

Construction and application of section

(e) This section:

- (1) Is applicable to SLAPP suits notwithstanding any other law or rule; and
- (2) Does not diminish any equitable or legal right or remedy otherwise available to a defendant in a SLAPP suit.

Credits

Added by Acts 2004, c. 279, § 1, eff. Oct. 1, 2004; Acts 2004, c. 280, § 1, eff. Oct. 1, 2004.
Amended by Acts 2010, c. 368, § 1, eff. Oct. 1, 2010; Acts 2010, c. 369, § 1, eff. Oct. 1, 2010.

MD Code, Courts and Judicial Proceedings, § 5-807, MD CTS & JUD PRO § 5-807
Current through Ch. 1 to 6 of the 2016 Regular Session of the General Assembly



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

Massachusetts General Laws Annotated**Part III. Courts, Judicial Officers and Proceedings in Civil Cases (Ch. 211-262)****Title II. Actions and Proceedings Therein (Ch. 223-236)****Chapter 231. Pleading and Practice (Refs & Annos)****M.G.L.A. 231 § 59H****§ 59H. Strategic litigation against public participation; special motion to dismiss****Currentness**

In any case in which a party asserts that the civil claims, counterclaims, or cross claims against said party are based on said party's exercise of its right of petition under the constitution of the United States or of the commonwealth, said party may bring a special motion to dismiss. The court shall advance any such special motion so that it may be heard and determined as expeditiously as possible. The court shall grant such special motion, unless the party against whom such special motion is made shows that: (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. In making its determination, the court shall consider the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

The attorney general, on his behalf or on behalf of any government agency or subdivision to which the moving party's acts were directed, may intervene to defend or otherwise support the moving party on such special motion.

All discovery proceedings shall be stayed upon the filing of the special motion under this section; provided, however, that the court, on motion and after a hearing and for good cause shown, may order that specified discovery be conducted. The stay of discovery shall remain in effect until notice of entry of the order ruling on the special motion.

Said special motion to dismiss may be filed within sixty days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper.

If the court grants such special motion to dismiss, the court shall award the moving party costs and reasonable attorney's fees, including those incurred for the special motion and any related

discovery matters. Nothing in this section shall affect or preclude the right of the moving party to any remedy otherwise authorized by law.

As used in this section, the words “a party's exercise of its right of petition” shall mean any written or oral statement made before or submitted to a legislative, executive, or judicial body, or any other governmental proceeding; any written or oral statement made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other governmental proceeding; any statement reasonably likely to encourage consideration or review of an issue by a legislative, executive, or judicial body or any other governmental proceeding; any statement reasonably likely to enlist public participation in an effort to effect such consideration; or any other statement falling within constitutional protection of the right to petition government.


Credits

Added by St.1994, c. 283, § 1. Amended by St.1996, c. 450, § 245.

Notes of Decisions (214)

M.G.L.A. 231 § 59H, MA ST 231 § 59H

Current through Chapter 46 of the 2016 2nd Annual Session

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Proposed Legislation

Minnesota Statutes Annotated
Declaratory, Corrective and Administrative Remedies (Ch. 553-569)
Chapter 554. Free Speech; Participation in Government

M.S.A. § 554.01

554.01. Definitions

Effective: May 20, 2015
Currentness

Subdivision 1. Scope. The definitions in this section apply to this chapter.

Subd. 2. Government. “Government” includes a branch, department, agency, official, employee, agent, or other person with authority to act on behalf of the federal government, this state, or any political subdivision of this state, including municipalities and their boards, commissions, and departments, or other public authority.

Subd. 3. Judicial claim; claim. “Judicial claim” or “claim” includes any civil lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing seeking damages for an alleged injury. “Judicial claim” does not include a claim solely for injunctive relief.

Subd. 4. Motion. “Motion” includes any motion to dismiss, motion for summary judgment, or any other judicial pleading filed to dispose of a judicial claim.

Subd. 5. Moving party. “Moving party” means any person on whose behalf the motion described in section 554.02, subdivision 1, is filed seeking dismissal of an action under this chapter.

Subd. 6. Public participation. “Public participation” means speech or lawful conduct that is genuinely aimed in whole or in part at procuring favorable government action, including but not limited to:

- (1) seeking assistance from, or reporting suspected unlawful conduct to, law enforcement;
- (2) speaking before a zoning board regarding a real estate development project;
- (3) communicating with an elected official concerning a change in law;
- (4) demonstrating peacefully for or against a government action; and
- (5) filing a complaint with a government entity regarding safety, sexual harassment, civil rights, or equal employment rights.

Subd. 7. Responding party. “Responding party” means any person against whom a motion described in section 554.02, subdivision 1, is filed.

Credits

Laws 1994, c. 566, § 1. Amended by Laws 2015, c. 49, § 1, eff. May 20, 2015.

Notes of Decisions (11)

M. S. A. § 554.01, MN ST § 554.01

Current with legislation through the end of the 2015 First Special Session.

Minnesota Statutes Annotated

Declaratory, Corrective and Administrative Remedies (Ch. 553-569)

Chapter 554. Free Speech; Participation in Government

M.S.A. § 554.02

554.02. Protection of citizens to participate in government

Currentness

Subdivision 1. Applicability. This section applies to any motion in a judicial proceeding to dispose of a judicial claim on the grounds that the claim materially relates to an act of the moving party that involves public participation.

Subd. 2. Procedure. On the filing of any motion described in subdivision 1:

(1) discovery must be suspended pending the final disposition of the motion, including any appeal; provided that the court may, on motion and after a hearing and for good cause shown, order that specified and limited discovery be conducted;

(2) the responding party has the burden of proof, of going forward with the evidence, and of persuasion on the motion;

(3) the court shall grant the motion and dismiss the judicial claim unless the court finds that the responding party has produced clear and convincing evidence that the acts of the moving party are not immunized from liability under section 554.03; and

(4) any governmental body to which the moving party's acts were directed or the attorney general's office may intervene in, defend, or otherwise support the moving party.

Credits

Laws 1994, c. 566, § 2.

Notes of Decisions (16)

M. S. A. § 554.02, MN ST § 554.02

Current with legislation through the end of the 2015 First Special Session.

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Minnesota Statutes Annotated**Declaratory, Corrective and Administrative Remedies (Ch. 553-569)****Chapter 554. Free Speech; Participation in Government****M.S.A. § 554.03****554.03. Immunity****Currentness**

Lawful conduct or speech that is genuinely aimed in whole or in part at procuring favorable government action is immune from liability, unless the conduct or speech constitutes a tort or a violation of a person's constitutional rights.

Credits

Laws 1994, c. 566, § 3.

Notes of Decisions (26)

M. S. A. § 554.03, MN ST § 554.03

Current with legislation through the end of the 2015 First Special Session.

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Minnesota Statutes Annotated

Declaratory, Corrective and Administrative Remedies (Ch. 553-569)

Chapter 554. Free Speech; Participation in Government

M.S.A. § 554.04

554.04. Fees and damages

Currentness

Subdivision 1. Attorney fees and costs. The court shall award a moving party who prevails in a motion under this chapter reasonable attorney fees and costs associated with the bringing of the motion.

Subd. 2. Damages. (a) A moving party may petition the court for damages under this section in conjunction with a motion under this chapter.

(b) If a motion under this chapter is granted and the moving party demonstrates that the respondent brought the cause of action in the underlying lawsuit for the purpose of harassment, to inhibit the moving party's public participation, to interfere with the moving party's exercise of protected constitutional rights, or otherwise wrongfully injure the moving party, the court shall award the moving party actual damages. The court may award the moving party punitive damages under section 549.20. A motion to amend the pleadings under section 549.191 is not required under this section, but the claim for punitive damages must meet all other requirements of section 549.191.

Credits

Laws 1994, c. 566, § 4. Amended by Laws 1995, c. 186, § 98.

M. S. A. § 554.04, MN ST § 554.04

Current with legislation through the end of the 2015 First Special Session.

Minnesota Statutes Annotated
Declaratory, Corrective and Administrative Remedies (Ch. 553-569)
Chapter 554. Free Speech; Participation in Government

M.S.A. § 554.045

554.045. Action in district court

Currentness

A person may bring an action under this section in state district court against a respondent who has brought a claim in federal court that materially relates to public participation by the person. If the person demonstrates that the respondent's action in federal court was brought for the purpose of harassment, to inhibit the person's public participation, to interfere with the person's exercise of protected constitutional rights, or otherwise wrongfully injure the person, the court shall award the person actual damages and reasonable attorney fees and costs. The court may award the person punitive damages under section 549.20.

Credits

Laws 1997, c. 209, § 1.

M. S. A. § 554.045, MN ST § 554.045

Current with legislation through the end of the 2015 First Special Session.

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Proposed Legislation

Minnesota Statutes Annotated
Declaratory, Corrective and Administrative Remedies (Ch. 553-569)
Chapter 554. Free Speech; Participation in Government

M.S.A. § 554.05

554.05. Relationships to other law

Effective: May 20, 2015

Currentness

Nothing in this chapter limits or precludes any rights the moving party or responding party may have under any other constitutional, statutory, case, or common law, or rule. Nothing in this chapter exempts individuals from their professional obligations of confidentiality.

Credits

Laws 1994, c. 566, § 5. Amended by Laws 2015, c. 49, § 2, eff. May 20, 2015.

M. S. A. § 554.05, MN ST § 554.05

Current with legislation through the end of the 2015 First Special Session.

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Minnesota Statutes Annotated
Declaratory, Corrective and Administrative Remedies (Ch. 553-569)
Chapter 554. Free Speech; Participation in Government

M.S.A. § 554.06

554.06. Rule of construction

Effective: May 20, 2015

Currentness

This chapter shall be construed liberally to effectuate its purposes and intent.

Credits

Laws 2015, c. 49, § 3, eff. May 20, 2015.

M. S. A. § 554.06, MN ST § 554.06

Current with legislation through the end of the 2015 First Special Session.

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Vernon's Annotated Missouri Statutes

Title XXXVI. Statutory Actions and Torts

Chapter 537. Torts and Actions for Damages (Refs & Annos)

V.A.M.S. 537.528

537.528. Actions for conduct or speech at public hearings and meetings to be considered on expedited basis--procedural issues

Effective: August 28, 2012

Currentness

1. Any 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 is subject to a special motion to dismiss, motion for judgment on the pleadings, or motion for summary judgment that shall be considered by the court on a priority or expedited basis to ensure the early consideration of the issues raised by the motion and to prevent the unnecessary expense of litigation. Upon the filing of any special motion described in this subsection, all discovery shall be suspended pending a decision on the motion by the court and the exhaustion of all appeals regarding the special motion.
2. If the rights afforded by this section are raised as an affirmative defense and if a court grants a motion to dismiss, a motion for judgment on the pleadings or a motion for summary judgment filed within ninety days of the filing of the moving party's answer, the court shall award reasonable attorney fees and costs incurred by the moving party in defending the action. If the court finds that a special motion to dismiss or motion for summary judgment is frivolous or solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney fees to the party prevailing on the motion.
3. Any party shall have the right to an expedited appeal from a trial court order on the special motions described in subsection 2 of this section or from a trial court's failure to rule on the motion on an expedited basis.
4. As used in this section, a **“public meeting in a quasi-judicial proceeding”** means and includes any meeting established and held by a state or local governmental entity, including without limitations meetings or presentations before state, county, city, town or village councils, planning commissions, review boards or commissions.

5. Nothing in this section limits or prohibits the exercise of a right or remedy of a party granted pursuant to another constitutional, statutory, common law or administrative provision, including civil actions for defamation.

6. If any provision of this section or the application of any provision of this section to a person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

7. The provisions of this section shall apply to all causes of actions.

Credits

(L.2004, S.B. No. 807, § A(§ 537.800). Amended by L.2012, S.B. No. 628, § A.)

Notes of Decisions (6)

V. A. M. S. 537.528, MO ST 537.528

Statutes are current with emergency legislation approved through February 18, 2016, of the 2016 Second Regular Session of the 98th General Assembly. Constitution is current through the November 4, 2014 General Election.

West's Revised Statutes of Nebraska Annotated
Chapter 25. Courts; Civil Procedure
Article 21. Actions and Proceedings in Particular Cases
(BB) Public Petition and Participation

Neb.Rev.St. § 25-21,241

25-21,241. Legislative findings and declarations

Currentness

The Legislature finds and declares that:

(1) It is the policy of the state that the constitutional rights of citizens and organizations to be involved and participate freely in the process of government must be encouraged and safeguarded with great diligence. The information, reports, opinions, claims, arguments, and other expressions provided by citizens are vital to effective law enforcement, the operation of government, the making of public policy and decisions, and the continuation of representative democracy. The laws, courts, and other agencies of this state must provide the utmost protection for the free exercise of these petition, speech, and association rights;

(2) Civil actions for damages have been filed against citizens and organizations of this state as a result of the valid exercise of their constitutional rights to petition, speech, and association. There has been a disturbing increase in such strategic lawsuits against public participation in government;

(3) The threat of strategic lawsuits against public participation, personal liability, and burdensome litigation costs significantly chills and diminishes citizen participation in government, voluntary public service, and the exercise of these important constitutional rights. This abuse of the judicial process can and has been used as a means of intimidating, harassing, or punishing citizens and organizations for involving themselves in public affairs; and

(4) It is in the public interest and it is the purpose of sections 25-21,241 to 25-21,246 to strike a balance between the rights of persons to file lawsuits for injury and the constitutional rights of persons to petition, speech, and association, to protect and encourage public participation in government to the maximum extent permitted by law, to establish an efficient process for

identification and adjudication of strategic lawsuits against public participation, and to provide for costs, attorney's fees, and actual damages.

Credits

Laws 1994, LB 665, § 1.

Notes of Decisions (1)

Neb. Rev. St. § 25-21,241, NE ST § 25-21,241

The statutes and constitution are current through the end of the 1st Regular Session of the 104th Legislature (2015).

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Proposed Legislation

West's Revised Statutes of Nebraska Annotated
Chapter 25. Courts; Civil Procedure
Article 21. Actions and Proceedings in Particular Cases
(BB) Public Petition and Participation

Neb.Rev.St. § 25-21,242

25-21,242. Terms, defined

Currentness

For purposes of sections 25-21,241 to 25-21,246:

- (1) Action involving public petition and participation shall mean 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, comment on, rule on, challenge, or oppose the application or permission;
- (2) Communication shall mean any statement, claim, allegation in a proceeding, decision, protest, writing, argument, contention, or other expression;
- (3) Government body shall mean a city, a village, a political subdivision, a state agency, the state, the federal government, or a public authority, board, or commission; and
- (4) Public applicant or permittee shall 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.

Credits

Laws 1994, LB 665, § 2.

Neb. Rev. St. § 25-21,242, NE ST § 25-21,242

The statutes and constitution are current through the end of the 1st Regular Session of the 104th Legislature (2015).

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Proposed Legislation

West's Revised Statutes of Nebraska Annotated
Chapter 25. Courts; Civil Procedure
Article 21. Actions and Proceedings in Particular Cases
(BB) Public Petition and Participation

Neb.Rev.St. § 25-21,243

25-21,243. Defendant in action involving public petition and participation; action authorized; costs, attorney's fees, and damages; authorized; waiver; section, how construed

Currentness

(1) A defendant in an action involving public petition and participation may maintain an action, claim, cross-claim, or counterclaim to recover damages, including costs and attorney's fees, from any person who commenced or continued such action. Costs and attorney's fees may be recovered upon a demonstration that the action involving public petition and participation was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification, or reversal of existing law. Other compensatory damages may only be recovered upon an additional demonstration that the action involving public petition and participation was commenced or continued for the purpose of harassing, intimidating, punishing, or otherwise maliciously inhibiting the free exercise of petition, speech, or association rights.

(2) The right to bring an action, claim, cross-claim, or counterclaim under this section may be waived only if it is waived specifically.

(3) Nothing in this section shall affect or preclude the right of any party to any recovery otherwise authorized by common law or by statute, rule, or regulation.

Credits

Laws 1994, LB 665, § 3.

Notes of Decisions (3)

Neb. Rev. St. § 25-21,243, NE ST § 25-21,243

The statutes and constitution are current through the end of the 1st Regular Session of the 104th Legislature (2015).

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Proposed Legislation

West's Revised Statutes of Nebraska Annotated
Chapter 25. Courts; Civil Procedure
Article 21. Actions and Proceedings in Particular Cases
(BB) Public Petition and Participation

Neb.Rev.St. § 25-21,244

25-21,244. Action involving public petition and participation;
damages; standard of proof; section, how construed

Currentness

(1) In an action involving public petition and participation, the plaintiff may recover damages, including costs and attorney's fees, only if he or she, in addition to all other necessary elements, has 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, if the truth or falsity of such communication is material to the cause of action at issue.

(2) Nothing in this section shall be construed to limit any constitutional, statutory, or common-law protections of defendants to actions involving public petition and participation.

Credits

Laws 1994, LB 665, § 4.

Neb. Rev. St. § 25-21,244, NE ST § 25-21,244

The statutes and constitution are current through the end of the 1st Regular Session of the 104th Legislature (2015).

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Proposed Legislation

West's Revised Statutes of Nebraska Annotated
Chapter 25. Courts; Civil Procedure
Article 21. Actions and Proceedings in Particular Cases
(BB) Public Petition and Participation

Neb.Rev.St. § 25-21,245

25-21,245. Action involving public petition and participation;
motion to dismiss; when granted; duty to expedite

Currentness

A motion to dismiss based on a failure to state a cause of action 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. The court shall expedite and grant preference in the hearing of such motion.

Credits

Laws 1994, LB 665, § 5.

Neb. Rev. St. § 25-21,245, NE ST § 25-21,245

The statutes and constitution are current through the end of the 1st Regular Session of the 104th Legislature (2015).

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Proposed Legislation

West's Revised Statutes of Nebraska Annotated
Chapter 25. Courts; Civil Procedure
Article 21. Actions and Proceedings in Particular Cases
(BB) Public Petition and Participation

Neb.Rev.St. § 25-21,246

25-21,246. Action involving public petition and
participation; motion for summary judgment; when granted

Currentness

A motion for summary judgment shall be granted when the moving party has demonstrated 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 action, claim, cross-claim, or counterclaim has a substantial basis in fact and law or is supported by a substantial argument for an extension, modification, or reversal of existing law. The court shall grant preference in the hearing of such motion.

Credits

Laws 1994, LB 665, § 6.

Neb. Rev. St. § 25-21,246, NE ST § 25-21,246

The statutes and constitution are current through the end of the 1st Regular Session of the 104th Legislature (2015).

End of Document

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West's Nevada Revised Statutes Annotated**Title 3. Remedies; Special Actions and Proceedings (Chapters 28-43)****Chapter 41. Actions and Proceedings in Particular Cases Concerning Persons
(Refs & Annos)****Liability of Persons Who Engage in Right to Petition or Free Speech in Direct
Connection with an Issue of Public Concern (Refs & Annos)****N.R.S. 41.635****41.635. Definitions****Currentness**

As used in NRS 41.635 to 41.670, inclusive, unless the context otherwise requires, the words and terms defined in NRS 41.637 and 41.640 have the meanings ascribed to them in those sections.

Credits

Added by Laws 1997, p. 1364. Amended by Laws 1997, p. 2593.

N. R. S. 41.635, NV ST 41.635

Current through the end of the 78th Regular Session (2015) and 29th Special Session (2015) of the Nevada Legislature and subject to revision and classification by the Legislative Counsel Bureau.

West's Nevada Revised Statutes Annotated**Title 3. Remedies; Special Actions and Proceedings (Chapters 28-43)****Chapter 41. Actions and Proceedings in Particular Cases Concerning Persons
(Refs & Annos)****Liability of Persons Who Engage in Right to Petition or Free Speech in Direct
Connection with an Issue of Public Concern (Refs & Annos)****N.R.S. 41.637**

41.637. “Good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern” defined

Effective: October 1, 2013

Currentness

“Good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern” means any:

1. Communication that is aimed at procuring any governmental or electoral action, result or outcome;
2. Communication of information or a complaint to a Legislator, officer or employee of the Federal Government, this state or a political subdivision of this state, regarding a matter reasonably of concern to the respective governmental entity;
3. Written or oral statement made in direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law; or
4. Communication made in direct connection with an issue of public interest in a place open to the public or in a public forum,

which is truthful or is made without knowledge of its falsehood.

Credits

Added by Laws 1997, p. 1364. Amended by Laws 1997, p. 2593; Laws 2013, c. 176, § 1.

Notes of Decisions (1)

N. R. S. 41.637, NV ST 41.637

Current through the end of the 78th Regular Session (2015) and 29th Special Session (2015) of the Nevada Legislature and subject to revision and classification by the Legislative Counsel Bureau.

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West's Nevada Revised Statutes Annotated**Title 3. Remedies; Special Actions and Proceedings (Chapters 28-43)****Chapter 41. Actions and Proceedings in Particular Cases Concerning Persons
(Refs & Annos)****Liability of Persons Who Engage in Right to Petition or Free Speech in Direct
Connection with an Issue of Public Concern (Refs & Annos)****N.R.S. 41.640****41.640. "Political subdivision" defined****Currentness**

"Political subdivision" has the meaning ascribed to it in NRS 41.0305.

Credits

Added by Laws 1993, p. 2848. Amended by Laws 1997, pp. 1365, 2593.

N. R. S. 41.640, NV ST 41.640

Current through the end of the 78th Regular Session (2015) and 29th Special Session (2015) of the Nevada Legislature and subject to revision and classification by the Legislative Counsel Bureau.

West's Nevada Revised Statutes Annotated**Title 3. Remedies; Special Actions and Proceedings (Chapters 28-43)****Chapter 41. Actions and Proceedings in Particular Cases Concerning Persons
(Refs & Annos)****Liability of Persons Who Engage in Right to Petition or Free Speech in Direct
Connection with an Issue of Public Concern (Refs & Annos)****N.R.S. 41.650****41.650. Limitation of liability****Effective: October 1, 2013****Currentness**

A person who engages in a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern is immune from any civil action for claims based upon the communication.

Credits

Added by Laws 1993, p. 2848. Amended by Laws 1997, pp. 1365, 2593; Laws 2013, c. 176, § 2.

Notes of Decisions (4)

N. R. S. 41.650, NV ST 41.650

Current through the end of the 78th Regular Session (2015) and 29th Special Session (2015) of the Nevada Legislature and subject to revision and classification by the Legislative Counsel Bureau.

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West's Nevada Revised Statutes Annotated

Title 3. Remedies; Special Actions and Proceedings (Chapters 28-43)

Chapter 41. Actions and Proceedings in Particular Cases Concerning Persons
(Refs & Annos)Liability of Persons Who Engage in Right to Petition or Free Speech in Direct
Connection with an Issue of Public Concern (Refs & Annos)

N.R.S. 41.660

41.660. Attorney General or chief legal officer of political subdivision may defend or provide support to person sued for engaging in right to petition or free speech in direct connection with an issue of public concern; special counsel; filing special motion to dismiss; stay of discovery; adjudication upon merits

Effective: June 8, 2015

Currentness

1. If an action is brought against a person based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern:

(a) The person against whom the action is brought may file a special motion to dismiss; and

(b) The Attorney General or the chief legal officer or attorney of a political subdivision of this State may defend or otherwise support the person against whom the action is brought. If the Attorney General or the chief legal officer or attorney of a political subdivision has a conflict of interest in, or is otherwise disqualified from, defending or otherwise supporting the person, the Attorney General or the chief legal officer or attorney of a political subdivision may employ special counsel to defend or otherwise support the person.

2. A special motion to dismiss must be filed within 60 days after service of the complaint, which period may be extended by the court for good cause shown.

3. If a special motion to dismiss is filed pursuant to subsection 2, the court shall:

(a) Determine whether the moving party has established, by a preponderance of the evidence, that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern;

(b) If the court determines that the moving party has met the burden pursuant to paragraph (a), determine whether the plaintiff has demonstrated with prima facie evidence a probability of prevailing on the claim;

(c) If the court determines that the plaintiff has established a probability of prevailing on the claim pursuant to paragraph (b), ensure that such determination will not:

(1) Be admitted into evidence at any later stage of the underlying action or subsequent proceeding; or

(2) Affect the burden of proof that is applied in the underlying action or subsequent proceeding;

(d) Consider such evidence, written or oral, by witnesses or affidavits, as may be material in making a determination pursuant to paragraphs (a) and (b);

(e) Except as otherwise provided in subsection 4, stay discovery pending:

(1) A ruling by the court on the motion; and

(2) The disposition of any appeal from the ruling on the motion; and

(f) Rule on the motion within 20 judicial days after the motion is served upon the plaintiff.

4. Upon a showing by a party that information necessary to meet or oppose the burden pursuant to paragraph (b) of subsection 3 is in the possession of another party or a third party and is not reasonably available without discovery, the court shall allow limited discovery for the purpose of ascertaining such information.

5. If the court dismisses the action pursuant to a special motion to dismiss filed pursuant to subsection 2, the dismissal operates as an adjudication upon the merits.

6. The court shall modify any deadlines pursuant to this section or any other deadlines relating to a complaint filed pursuant to this section if such modification would serve the interests of justice.

7. As used in this section:

(a) “Complaint” means any action brought against a person based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern, including, without limitation, a counterclaim or cross-claim.

(b) “Plaintiff” means any person asserting a claim, including, without limitation, a counterclaim or cross-claim.

Credits

Added by Laws 1993, p. 2848. Amended by Laws 1997, pp. 1365, 2593; Laws 2013, c. 176, § 3; Laws 2015, c. 428, § 13, eff. June 8, 2015.

Notes of Decisions (4)

N. R. S. 41.660, NV ST 41.660

Current through the end of the 78th Regular Session (2015) and 29th Special Session (2015) of the Nevada Legislature and subject to revision and classification by the Legislative Counsel Bureau.

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West's Nevada Revised Statutes Annotated

Title 3. Remedies; Special Actions and Proceedings (Chapters 28-43)

Chapter 41. Actions and Proceedings in Particular Cases Concerning Persons
(Refs & Annos)Liability of Persons Who Engage in Right to Petition or Free Speech in Direct
Connection with an Issue of Public Concern (Refs & Annos)

N.R.S. 41.670

41.670. Award of reasonable costs, attorney's fees and monetary relief under certain circumstances; separate action for damages; sanctions for frivolous or vexatious special motion to dismiss; interlocutory appeal

Effective: October 1, 2013

Currentness

1. If the court grants a special motion to dismiss filed pursuant to NRS 41.660:

(a) The court shall award reasonable costs and attorney's fees to the person against whom the action was brought, except that the court shall award reasonable costs and attorney's fees to this State or to the appropriate political subdivision of this State if the Attorney General, the chief legal officer or attorney of the political subdivision or special counsel provided the defense for the person pursuant to NRS 41.660.

(b) The court may award, in addition to reasonable costs and attorney's fees awarded pursuant to paragraph (a), an amount of up to \$10,000 to the person against whom the action was brought.

(c) The person against whom the action is brought may bring a separate action to recover:

(1) Compensatory damages;

(2) Punitive damages; and

(3) Attorney's fees and costs of bringing the separate action.

2. If the court denies a special motion to dismiss filed pursuant to NRS 41.660 and finds that the motion was frivolous or vexatious, the court shall award to the prevailing party reasonable costs and attorney's fees incurred in responding to the motion.

3. In addition to reasonable costs and attorney's fees awarded pursuant to subsection 2, the court may award:

(a) An amount of up to \$10,000; and

(b) Any such additional relief as the court deems proper to punish and deter the filing of frivolous or vexatious motions.

4. If the court denies the special motion to dismiss filed pursuant to NRS 41.660, an interlocutory appeal lies to the Supreme Court.

Credits

Added by Laws 1993, p. 2848. Amended by Laws 1997, pp. 1366, 2593; Laws 2013, c. 176, § 4.

Notes of Decisions (5)

N. R. S. 41.670, NV ST 41.670

Current through the end of the 78th Regular Session (2015) and 29th Special Session (2015) of the Nevada Legislature and subject to revision and classification by the Legislative Counsel Bureau.

West's New Mexico Statutes Annotated

Chapter 38. Trials

Article 2. Pleadings and Motions

N. M. S. A. 1978, § 38-2-9.1

§ 38-2-9.1. Special motion to dismiss unwarranted or specious lawsuits; procedures; sanctions; severability

Currentness

A. Any action seeking money damages 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 any political subdivision of the state is subject to a special motion to dismiss, motion for judgment on the pleadings, or motion for summary judgment that shall be considered by the court on a priority or expedited basis to ensure the early consideration of the issues raised by the motion and to prevent the unnecessary expense of litigation.

B. If the rights afforded by this section are raised as an affirmative defense and if a court grants a motion to dismiss, a motion for judgment on the pleadings or a motion for summary judgment filed within ninety days of the filing of the moving party's answer, the court shall award reasonable attorney fees and costs incurred by the moving party in defending the action. If the court finds that a special motion to dismiss or motion for summary judgment is frivolous or solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney fees to the party prevailing on the motion.

C. Any party shall have the right to an expedited appeal from a trial court order on the special motions described in Subsection B of this section or from a trial court's failure to rule on the motion on an expedited basis.

D. As used in this section, a "public meeting in a quasi-judicial proceeding" means and includes any meeting established and held by a state or local governmental entity, including without limitations, meetings or presentations before state, city, town or village councils, planning commissions, review boards or commissions.

E. Nothing in this section limits or prohibits the exercise of a right or remedy of a party granted pursuant to another constitutional, statutory, common law or administrative provision, including civil actions for defamation or malicious abuse of process.

F. If any provision of this section or the application of any provision of this section to a person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

Credits

L. 2001, Ch. 218, § 2.

Notes of Decisions (1)

NMSA 1978, § 38-2-9.1, NM ST § 38-2-9.1

Current through Ch. 2 of the 2nd Regular Session of the 52nd Legislature (2015)

West's New Mexico Statutes Annotated

Chapter 38. Trials

Article 2. Pleadings and Motions

N. M. S. A. 1978, § 38-2-9.2

§ 38-2-9.2. Findings and purpose

Currentness

The legislature declares that it is the public policy of New Mexico to protect the rights of its citizens to participate in quasi-judicial proceedings before local and state governmental tribunals. Baseless civil lawsuits seeking or claiming millions of dollars have been filed against persons for exercising their right to petition and to participate in quasi-judicial proceedings before governmental tribunals. Such lawsuits can be an abuse of the legal process and can impose an undue financial burden on those having to respond to and defend such lawsuits and may chill and punish participation in public affairs and the institutions of democratic government. These lawsuits should be subject to prompt dismissal or judgment to prevent the abuse of the legal process and avoid the burden imposed by such baseless lawsuits.

Credits

L. 2001, Ch. 218, § 1.

Notes of Decisions (1)

NMSA 1978, § 38-2-9.2, NM ST § 38-2-9.2

Current through Ch. 2 of the 2nd Regular Session of the 52nd Legislature (2015)

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Proposed Legislation

McKinney's Consolidated Laws of New York Annotated
Civil Rights Law (Refs & Annos)
Chapter 6. Of the Consolidated Laws
Article 7. Miscellaneous Rights and Immunities

McKinney's Civil Rights Law § 70-a

§ 70-a. Actions involving public petition and participation; recovery of damages

Currentness

1. A defendant in an action involving public petition and participation, as defined in paragraph (a) of subdivision one of section seventy-six-a of this article, may maintain an action, claim, cross claim or counterclaim to recover damages, including costs and attorney's fees, from any person who commenced or continued such action; provided that:

(a) costs and attorney's fees may be recovered upon a demonstration that the action involving public petition and participation was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification or reversal of existing law;

(b) other compensatory damages may only be recovered upon an additional demonstration that the action involving public petition and participation was commenced or continued for the purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of speech, petition or association rights; and

(c) punitive damages may only be recovered upon an additional demonstration that the action involving public petition and participation was commenced or continued for the sole purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of speech, petition or association rights.

2. The right to bring an action under this section can be waived only if it is waived specifically.

3. Nothing in this section shall affect or preclude the right of any party to any recovery otherwise authorized by common law, or by statute, law or rule.

Credits

(Added L.1992, c. 767, § 2.)

Notes of Decisions (28)

McKinney's Civil Rights Law § 70-a, NY CIV RTS § 70-a
Current through L.2016, chapter 1.

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Proposed Legislation

McKinney's Consolidated Laws of New York Annotated
Civil Rights Law (Refs & Annos)
Chapter 6. Of the Consolidated Laws
Article 7. Miscellaneous Rights and Immunities

McKinney's Civil Rights Law § 76-a

§ 76-a. Actions involving public petition and
participation; when actual malice to be proven

Currentness

1. For purposes of this section:

(a) An “action involving public petition and participation” is 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, comment on, rule on, challenge or oppose such application or permission.

(b) “Public applicant or permittee” shall 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.

(c) “Communication” shall mean any statement, claim, allegation in a proceeding, decision, protest, writing, argument, contention or other expression.

(d) “Government body” shall mean any municipality, the state, any other political subdivision or agency of such, the federal government, any public benefit corporation, or any public authority, board, or commission.

2. In an action involving public petition and participation, damages may only be recovered if the 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.

3. Nothing in this section shall be construed to limit any constitutional, statutory or common law protections of defendants to actions involving public petition and participation.

Credits

(Added L.1992, c. 767, § 3.)

Notes of Decisions (41)

McKinney's Civil Rights Law § 76-a, NY CIV RTS § 76-a
Current through L.2016, chapter 1.

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Oklahoma Statutes Annotated
Title 12. Civil Procedure (Refs & Annos)
Chapter 25. Libel and Slander (Refs & Annos)

12 Okl.St.Ann. § 1443.1

§ 1443.1. Privileged communication defined--Exemption from libel

Currentness

A. A privileged publication or communication is one made:

First. In any legislative or judicial proceeding or any other proceeding authorized by law;

Second. In the proper discharge of an official duty;

Third. By a fair and true report of any legislative or judicial or other proceeding authorized by law, or anything said in the course thereof, and any and all expressions of opinion in regard thereto, and criticisms thereon, and any and all criticisms upon the official acts of any and all public officers, except where the matter stated of and concerning the official act done, or of the officer, falsely imputes crime to the officer so criticized.

B. No publication which under this section would be privileged shall be punishable as libel.

Credits

Laws 1981, c. 21, § 1, operative April 7, 1981.

Notes of Decisions (144)

12 Okl. St. Ann. § 1443.1, OK ST T. 12 § 1443.1

Current through Chapter 399 (End) of the First Session of the 55th Legislature (2015)

West's Oregon Revised Statutes Annotated
Title 3. Remedies and Special Actions and Proceedings
Chapter 31. Tort Actions (Refs & Annos)
Special Motion to Strike

O.R.S. § 31.150
Formerly cited as OR ST § 30.142

31.150. Special motion to strike; availability; burden of proof

Currentness

(1) A defendant may make a special motion to strike against a claim in a civil action described in subsection (2) of this section. The court shall grant the motion unless the plaintiff establishes in the manner provided by subsection (3) of this section that there is a probability that the plaintiff will prevail on the claim. The special motion to strike shall be treated as a motion to dismiss under ORCP 21 A but shall not be subject to ORCP 21 F. Upon granting the special motion to strike, the court shall enter a judgment of dismissal without prejudice. If the court denies a special motion to strike, the court shall enter a limited judgment denying the motion.

(2) A special motion to strike may be made under this section against any claim in a civil action that arises out of:

(a) Any oral statement made, or written statement or other document submitted, in a legislative, executive or judicial proceeding or other proceeding authorized by law;

(b) Any oral statement made, or written statement or other document submitted, in connection with an issue under consideration or review by a legislative, executive or judicial body or other proceeding authorized by law;

(c) Any oral statement made, or written statement or other document presented, in a place open to the public or a public forum in connection with an issue of public interest; or

(d) Any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

(3) A defendant making a special motion to strike under the provisions of this section 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.

(4) In making a determination under subsection (1) of this section, the court shall consider pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(5) If the court determines that the plaintiff has established a probability that the plaintiff will prevail on the claim:

(a) The fact that the determination has been made and the substance of the determination may not be admitted in evidence at any later stage of the case; and

(b) The determination does not affect the burden of proof or standard of proof that is applied in the proceeding.

Credits

Formerly 30.142. Amended by Laws 2009, c. 449, § 1, eff. Jan. 1, 2010.

Notes of Decisions (44)

O. R. S. § 31.150, OR ST § 31.150

Current through End of the 2015 Reg. Sess. Revisions to Acts made by the Oregon Reviser were unavailable at the time of publication.

West's Oregon Revised Statutes Annotated
Title 3. Remedies and Special Actions and Proceedings
Chapter 31. Tort Actions (Refs & Annos)
Special Motion to Strike

O.R.S. § 31.152

Formerly cited as OR ST § 30.144

31.152. Time for special motion to strike; discovery; attorney fees

Currentness

(1) A special motion to strike under ORS 31.150 must be filed within 60 days after the service of the complaint or, in the court's discretion, at any later time. A hearing shall be held on the motion not more than 30 days after the filing of the motion unless the docket conditions of the court require a later hearing.

(2) All discovery in the proceeding shall be stayed upon the filing of a special motion to strike under ORS 31.150. The stay of discovery shall remain in effect until entry of the judgment. The court, on motion and for good cause shown, may order that specified discovery be conducted notwithstanding the stay imposed by this subsection.

(3) A defendant who prevails on a special motion to strike made under ORS 31.150 shall be awarded reasonable attorney fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney fees to a plaintiff who prevails on a special motion to strike.

(4) The purpose of the procedure established by this section and ORS 31.150 and 31.155 is to provide a defendant with the right to not proceed to trial in cases in which the plaintiff does not meet the burden specified in ORS 31.150 (3). This section and ORS 31.150 and 31.155 are to be liberally construed in favor of the exercise of the rights of expression described in ORS 31.150 (2).

Credits

Formerly 30.144. Amended by Laws 2009, c. 449, § 3, eff. Jan. 1, 2010.

Notes of Decisions (7)

O. R. S. § 31.152, OR ST § 31.152

Current through End of the 2015 Reg. Sess. Revisions to Acts made by the Oregon Reviser were unavailable at the time of publication.

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West's Oregon Revised Statutes Annotated
Title 3. Remedies and Special Actions and Proceedings
Chapter 31. Tort Actions (Refs & Annos)
Special Motion to Strike

O.R.S. § 31.155
Formerly cited as OR ST § 30.146

31.155. Exempt actions; effect upon substantive law

Currentness

(1) ORS 31.150 and 31.152 do not apply to an action brought by the Attorney General, a district attorney, a county counsel or a city attorney acting in an official capacity.

(2) ORS 31.150 and 31.152 create a procedure for seeking dismissal of claims described in ORS 31.150 (2) and do not affect the substantive law governing those claims.

Credits

Formerly 30.146.

Notes of Decisions (2)

O. R. S. § 31.155, OR ST § 31.155

Current through End of the 2015 Reg. Sess. Revisions to Acts made by the Oregon Reviser were unavailable at the time of publication.

Purdon's Pennsylvania Statutes and Consolidated Statutes
Title 27 Pa.C.S.A. Environmental Resources (Refs & Annos)
Part VI. Sanctions and Remedies
Subpart A. General Provisions
Chapter 77. Costs and Fees

27 Pa.C.S.A. § 7707

§ 7707. Participation in environmental law or regulation

Effective: February 20, 2001
Currentness

A person that successfully defends against an action under Chapter 83 (relating to participation in environmental law or regulation) shall be awarded reasonable attorney fees and the costs of litigation. If the person prevails in part, the court may make a full award or a proportionate award.

Credits

2000, Dec. 20, P.L. 980, No. 138, § 1, effective in 60 days.

27 Pa.C.S.A. § 7707, PA ST 27 Pa.C.S.A. § 7707
Current through 2016 Regular Session Act 4

Purdon's Pennsylvania Statutes and Consolidated Statutes
Title 27 Pa.C.S.A. Environmental Resources (Refs & Annos)
Part VI. Sanctions and Remedies
Subpart C. Immunity
Chapter 83. Participation in Environmental Law or Regulation

27 Pa.C.S.A. § 8301

§ 8301. Definitions

Effective: February 20, 2001
Currentness

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Communication to the government.” A written or oral statement or writing made:

- (1) before a legislative, executive or judicial proceeding or any other official proceeding authorized by law;
- (2) in connection with an issue under consideration or review by a legislative, executive or judicial body or any other official proceeding authorized by law; or
- (3) to a government agency in connection with the implementation and enforcement of environmental law and regulations.

“Enforcement of environmental law and regulation.” Activity relating to the identification and elimination of violations of environmental laws and regulations, including investigations of alleged violations, inspections of activities subject to regulation under environmental law and regulations and responses taken to produce correction of the violations.

“Government agency.” The Federal Government, the Commonwealth and any of the Commonwealth's departments, commissions, boards, agencies, authorities, political subdivisions or their departments, commissions, boards, agencies or authorities.

“Implementation of environmental law and regulation.” Activity relating to the development and administration of environmental programs developed under environmental law and regulations.

Credits

2000, Dec. 20, P.L. 980, No. 138, § 1, effective in 60 days.

Notes of Decisions (2)

27 Pa.C.S.A. § 8301, PA ST 27 Pa.C.S.A. § 8301

Current through 2016 Regular Session Act 4

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Purdon's Pennsylvania Statutes and Consolidated Statutes
Title 27 Pa.C.S.A. Environmental Resources (Refs & Annos)
Part VI. Sanctions and Remedies
Subpart C. Immunity
Chapter 83. Participation in Environmental Law or Regulation

27 Pa.C.S.A. § 8302

§ 8302. Immunity

Effective: February 20, 2001
Currentness

(a) General rule.--Except as provided in subsection (b), a person that, pursuant to Federal or State law, files an action in the courts of this Commonwealth to enforce an environmental law or regulation or that makes an oral or written communication to a government agency relating to enforcement or implementation of an environmental law or regulation shall be immune from civil liability in any resulting legal proceeding for damages where the action or communication is aimed at procuring favorable governmental action.

(b) Exceptions.--A person shall not be immune under this section if the allegation in the action or any communication to the government is not relevant or material to the enforcement or implementation of an environmental law or regulation and:

- (1) the allegation in the action or communication is knowingly false, deliberately misleading or made with malicious and reckless disregard for the truth or falsity;
- (2) the allegation in the action or communication is made for the sole purpose of interfering with existing or proposed business relationships; or
- (3) the oral or written communication to a government agency relating to enforcement or implementation of an environmental law or regulation is later determined to be a wrongful use of process or an abuse of process.

Credits

2000, Dec. 20, P.L. 980, No. 138, § 1, effective in 60 days.

Notes of Decisions (15)

27 Pa.C.S.A. § 8302, PA ST 27 Pa.C.S.A. § 8302

Current through 2016 Regular Session Act 4

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Purdon's Pennsylvania Statutes and Consolidated Statutes
Title 27 Pa.C.S.A. Environmental Resources (Refs & Annos)
Part VI. Sanctions and Remedies
Subpart C. Immunity
Chapter 83. Participation in Environmental Law or Regulation

27 Pa.C.S.A. § 8303

§ 8303. Right to a hearing

Effective: February 20, 2001
Currentness

A person who wishes to raise the defense of immunity from civil liability under this chapter may file a motion with the court requesting the court to conduct a hearing to determine the preliminary issue of immunity. If a motion is filed, the court shall then conduct a hearing and if the motion is denied, the moving party shall have an interlocutory appeal of right to the Commonwealth Court, during which time all discovery shall be stayed.

Credits

2000, Dec. 20, P.L. 980, No. 138, § 1, effective in 60 days.

27 Pa.C.S.A. § 8303, PA ST 27 Pa.C.S.A. § 8303
Current through 2016 Regular Session Act 4

West's General Laws of Rhode Island Annotated
Title 9. Courts and Civil Procedure--Procedure Generally
Chapter 33. Limits on Strategic Litigation Against Public Participation

Gen.Laws 1956, § 9-33-1

§ 9-33-1. Findings

Currentness

The legislature finds and declares that full participation by persons and organizations and robust discussion of issues of public concern before the legislative, judicial, and administrative bodies and in other public fora are essential to the democratic process, that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances; that such litigation is disfavored and should be resolved quickly with minimum cost to citizens who have participated in matters of public concern.

Credits

P.L. 1993, ch. 354, § 1; P.L. 1993, ch. 448, § 1.

Notes of Decisions (10)

Gen. Laws, 1956, § 9-33-1, RI ST § 9-33-1

The statutes and Constitution are current through chapter 4 of the January 2016 session.

West's General Laws of Rhode Island Annotated
Title 9. Courts and Civil Procedure--Procedure Generally
Chapter 33. Limits on Strategic Litigation Against Public Participation

Gen.Laws 1956, § 9-33-2

§ 9-33-2. Conditional immunity

Currentness

(a) A party's exercise of his or her right of petition or of free speech under the United States or Rhode Island constitutions in connection with a matter of public concern shall be conditionally immune from civil claims, counterclaims, or cross-claims. Such immunity will apply as a bar to any civil claim, counterclaim, or cross-claim directed at petition or free speech as defined in subsection (e) of this section, except if the petition or free speech constitutes a sham. The petition or free speech constitutes a sham only if it is not genuinely aimed at procuring favorable government action, result, or outcome, regardless of ultimate motive or purpose. The petition or free speech will be deemed to constitute a sham as defined in the previous sentence only if it is both:

(1) Objectively baseless in the sense that no reasonable person exercising the right of speech or petition could realistically expect success in procuring the government action, result, or outcome, and

(2) Subjectively baseless in the sense that it is actually an attempt to use the governmental process itself for its own direct effects. Use of outcome or result of the governmental process shall not constitute use of the governmental process itself for its own direct effects.

(b) The court shall stay all discovery proceedings in the action upon the filing of a motion asserting the immunity established by this section; provided, however, that the court, on motion and after a hearing and for good cause shown, may order that specified discovery be conducted. The stay of discovery shall remain in effect until notice of entry of the order ruling on the motion.

(c) The immunity established by this section may be asserted by an appropriate motion or by other appropriate means under the applicable rules of civil procedure.

(d) If the court grants the motion asserting the immunity established by this section, or if the party claiming lawful exercise of his or her right of petition or of free speech under the United States or Rhode Island constitutions in connection with a matter of public concern is, in fact, the eventual prevailing party at trial, the court shall award the prevailing party costs and reasonable attorney's fees, including those incurred for the motion and any related discovery matters. The court shall award compensatory damages and may award punitive damages upon a showing by the prevailing party that the responding party's claims, counterclaims, or cross-claims were frivolous or were brought with an intent to harass the party or otherwise inhibit the party's exercise of its right to petition or free speech under the United States or Rhode Island constitution. Nothing in this section shall affect or preclude the right of the party claiming lawful exercise of his or her right of petition or of free speech under the United States or Rhode Island constitutions to any remedy otherwise authorized by law.

(e) As used in this section, "a party's exercise of its right of petition or of free speech" shall mean any written or oral statement made before or submitted to a legislative, executive, or judicial body, or any other governmental proceeding; any written or oral statement made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other governmental proceeding; or any written or oral statement made in connection with an issue of public concern.

Credits

P.L. 1993, ch. 354, § 1; P.L. 1993, ch. 448, § 1; P.L. 1995, ch. 386, § 1.

Notes of Decisions (25)

Gen. Laws, 1956, § 9-33-2, RI ST § 9-33-2

The statutes and Constitution are current through chapter 4 of the January 2016 session.

West's General Laws of Rhode Island Annotated
Title 9. Courts and Civil Procedure--Procedure Generally
Chapter 33. Limits on Strategic Litigation Against Public Participation

Gen.Laws 1956, § 9-33-3

§ 9-33-3. Intervention

Currentness

Any governmental agency or subdivision to which the party's petition or free speech were directed or the attorney general may intervene to defend or otherwise support the party claiming lawful exercise of its right of petition or of free speech under United States or Rhode Island constitution.

Credits

P.L. 1993, ch. 354, § 1; P.L. 1993, ch. 448, § 1; P.L. 1995, ch. 386, § 1.

Gen. Laws, 1956, § 9-33-3, RI ST § 9-33-3

The statutes and Constitution are current through chapter 4 of the January 2016 session.

West's General Laws of Rhode Island Annotated
Title 9. Courts and Civil Procedure--Procedure Generally
Chapter 33. Limits on Strategic Litigation Against Public Participation

Gen.Laws 1956, § 9-33-4

§ 9-33-4. Construction of chapter

Currentness

Nothing contained in this chapter shall be construed to limit or affect any additional constitutional, statutory, or common law protections of defendants in actions involving their exercise of rights of petition or of free speech.

Credits

P.L. 1993, ch. 354, § 1; P.L. 1993, ch. 448, § 1; P.L. 1997, ch. 326, § 78.

Gen. Laws, 1956, § 9-33-4, RI ST § 9-33-4

The statutes and Constitution are current through chapter 4 of the January 2016 session.

West's Tennessee Code Annotated
Title 4. State Government
Chapter 21. Human Rights (Refs & Annos)
Part 10. Tennessee Anti--SLAPP Act of 1997

T. C. A. § 4-21-1001

§ 4-21-1001. Short title

Currentness

This part shall be known and may be cited as the “Tennessee Anti-Slapp Act of 1997.”

Credits

1997 Pub.Acts, c. 403, § 1, eff. June 6, 1997.

T. C. A. § 4-21-1001, TN ST § 4-21-1001

Current with laws from the 2016 Second Reg. Sess., eff. through February 1, 2016

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West's Tennessee Code Annotated
Title 4. State Government
Chapter 21. Human Rights (Refs & Annos)
Part 10. Tennessee Anti--SLAPP Act of 1997

T. C. A. § 4-21-1002

§ 4-21-1002. Intent and findings

Currentness

(a) It is the intent of the general assembly to provide protection for individuals who make good faith reports of wrongdoing to appropriate governmental bodies. Information provided by citizens concerning potential misdeeds is vital to effective law enforcement and the efficient operation of government.

(b) The general assembly finds that the threat of a civil action for damages in the form of a “strategic lawsuit against political participation” (SLAPP), and the possibility of considerable legal costs, can act as a deterrent to citizens who wish to report information to federal, state, or local agencies. SLAPP suits can effectively punish concerned citizens for exercising the constitutional right to speak and petition the government for redress of grievances.

Credits

1997 Pub.Acts, c. 403, § 2, eff. June 6, 1997.

T. C. A. § 4-21-1002, TN ST § 4-21-1002

Current with laws from the 2016 Second Reg. Sess., eff. through February 1, 2016

West's Tennessee Code Annotated
Title 4. State Government
Chapter 21. Human Rights (Refs & Annos)
Part 10. Tennessee Anti--SLAPP Act of 1997

T. C. A. § 4-21-1003

§ 4-21-1003. Immunity; recovery of costs

Currentness

(a) Any person who in furtherance of such person's right of free speech or petition under the Tennessee or United States Constitution in connection with a public or governmental issue communicates information regarding another person or entity to any agency of the federal, state or local government regarding a matter of concern to that agency shall be immune from civil liability on claims based upon the communication to the agency.

(b) The immunity conferred by this section shall not attach if the person communicating such information:

(1) Knew the information to be false;

(2) Communicated information in reckless disregard of its falsity; or

(3) Acted negligently in failing to ascertain the falsity of the information if such information pertains to a person or entity other than a public figure.

(c) A person prevailing upon the defense of immunity provided for in this section shall be entitled to recover costs and reasonable attorneys' fees incurred in establishing the defense.

Credits

1997 Pub.Acts, c. 403, § 3, eff. June 6, 1997.

T. C. A. § 4-21-1003, TN ST § 4-21-1003

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West's Tennessee Code Annotated
Title 4. State Government
Chapter 21. Human Rights (Refs & Annos)
Part 10. Tennessee Anti--SLAPP Act of 1997

T. C. A. § 4-21-1004

§ 4-21-1004. Intervention; governmental agency; attorney general

Effective: August 5, 2011

Currentness

(a) In order to protect the free flow of information from citizens to their government, an agency receiving a complaint or information under § 4-21-1003 may intervene and defend against any suit precipitated by the communication to the agency. In the event that a local government agency does not intervene in and defend against a suit arising from any communication protected under this part, the office of the attorney general and reporter may intervene in and defend against the suit.

(b) An agency prevailing upon the defense of immunity provided for in § 4-21-1003 shall be entitled to recover costs and reasonable attorneys' fees incurred in establishing the defense. If the agency fails to establish such defense, the party bringing such action shall be entitled to recover from the agency costs and reasonable attorneys' fees incurred in proving the defense inapplicable or invalid.

Credits

1997 Pub.Acts, c. 403, § 4, eff. June 6, 1997.

T. C. A. § 4-21-1004, TN ST § 4-21-1004

Current with laws from the 2016 Second Reg. Sess., eff. through February 1, 2016

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Vernon's Texas Statutes and Codes Annotated
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Title 2. Trial, Judgment, and Appeal
Subtitle B. Trial Matters
Chapter 27. Actions Involving the Exercise of Certain Constitutional Rights
(Refs & Annos)

V.T.C.A., Civil Practice & Remedies Code § 27.001

§ 27.001. Definitions

Effective: June 17, 2011

Currentness

In this chapter:

- (1) “Communication” includes the making or submitting of a statement or document in any form or medium, including oral, visual, written, audiovisual, or electronic.
- (2) “Exercise of the right of association” means a communication between individuals who join together to collectively express, promote, pursue, or defend common interests.
- (3) “Exercise of the right of free speech” means a communication made in connection with a matter of public concern.
- (4) “Exercise of the right to petition” means any of the following:
 - (A) a communication in or pertaining to:
 - (i) a judicial proceeding;
 - (ii) an official proceeding, other than a judicial proceeding, to administer the law;

- (iii) an executive or other proceeding before a department of the state or federal government or a subdivision of the state or federal government;
 - (iv) a legislative proceeding, including a proceeding of a legislative committee;
 - (v) a proceeding before an entity that requires by rule that public notice be given before proceedings of that entity;
 - (vi) a proceeding in or before a managing board of an educational or eleemosynary institution supported directly or indirectly from public revenue;
 - (vii) a proceeding of the governing body of any political subdivision of this state;
 - (viii) a report of or debate and statements made in a proceeding described by Subparagraph (iii), (iv), (v), (vi), or (vii); or
 - (ix) a public meeting dealing with a public purpose, including statements and discussions at the meeting or other matters of public concern occurring at the meeting;
- (B) a communication in connection with an issue under consideration or review by a legislative, executive, judicial, or other governmental body or in another governmental or official proceeding;
- (C) a communication that is reasonably likely to encourage consideration or review of an issue by a legislative, executive, judicial, or other governmental body or in another governmental or official proceeding;
- (D) a communication reasonably likely to enlist public participation in an effort to effect consideration of an issue by a legislative, executive, judicial, or other governmental body or in another governmental or official proceeding; and

(E) any other communication that falls within the protection of the right to petition government under the Constitution of the United States or the constitution of this state.

(5) “Governmental proceeding” means a proceeding, other than a judicial proceeding, by an officer, official, or body of this state or a political subdivision of this state, including a board or commission, or by an officer, official, or body of the federal government.

(6) “Legal action” means a lawsuit, cause of action, petition, complaint, cross-claim, or counterclaim or any other judicial pleading or filing that requests legal or equitable relief.

(7) “Matter of public concern” includes an issue related to:

(A) health or safety;

(B) environmental, economic, or community well-being;

(C) the government;

(D) a public official or public figure; or

(E) a good, product, or service in the marketplace.

(8) “Official proceeding” means any type of administrative, executive, legislative, or judicial proceeding that may be conducted before a public servant.

(9) “Public servant” means a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if the person has not yet qualified for office or assumed the person's duties:

(A) an officer, employee, or agent of government;

(B) a juror;

(C) an arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy;

(D) an attorney or notary public when participating in the performance of a governmental function; or

(E) a person who is performing a governmental function under a claim of right but is not legally qualified to do so.

Credits

Added by Acts 2011, 82nd Leg., ch. 341 (H.B. 2973), § 2, eff. June 17, 2011.

Notes of Decisions (39)

V. T. C. A., Civil Practice & Remedies Code § 27.001, TX CIV PRAC & REM § 27.001
Current through the end of the 2015 Regular Session of the 84th Legislature

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V.T.C.A., Civil Practice & Remedies Code § 27.002

§ 27.002. Purpose

Effective: June 17, 2011

Currentness

The purpose of this chapter is to encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law and, at the same time, protect the rights of a person to file meritorious lawsuits for demonstrable injury.

Credits

Added by Acts 2011, 82nd Leg., ch. 341 (H.B. 2973), § 2, eff. June 17, 2011.

Notes of Decisions (7)

V. T. C. A., Civil Practice & Remedies Code § 27.002, TX CIV PRAC & REM § 27.002

Current through the end of the 2015 Regular Session of the 84th Legislature

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V.T.C.A., Civil Practice & Remedies Code § 27.003

§ 27.003. Motion to Dismiss

Effective: June 17, 2011

Currentness

(a) If a legal action is based on, relates to, or is in response to a party's exercise of the right of free speech, right to petition, or right of association, that party may file a motion to dismiss the legal action.

(b) A motion to dismiss a legal action under this section must be filed not later than the 60th day after the date of service of the legal action. The court may extend the time to file a motion under this section on a showing of good cause.

(c) Except as provided by Section 27.006(b), on the filing of a motion under this section, all discovery in the legal action is suspended until the court has ruled on the motion to dismiss.

Credits

Added by Acts 2011, 82nd Leg., ch. 341 (H.B. 2973), § 2, eff. June 17, 2011.

Notes of Decisions (37)

V. T. C. A., Civil Practice & Remedies Code § 27.003, TX CIV PRAC & REM § 27.003
Current through the end of the 2015 Regular Session of the 84th Legislature

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(Refs & Annos)

V.T.C.A., Civil Practice & Remedies Code § 27.004

§ 27.004. Hearing

Effective: June 14, 2013

Currentness

(a) A hearing on a motion under Section 27.003 must be set not later than the 60th day after the date of service of the motion unless the docket conditions of the court require a later hearing, upon a showing of good cause, or by agreement of the parties, but in no event shall the hearing occur more than 90 days after service of the motion under Section 27.003, except as provided by Subsection (c).

(b) In the event that the court cannot hold a hearing in the time required by Subsection (a), the court may take judicial notice that the court's docket conditions required a hearing at a later date, but in no event shall the hearing occur more than 90 days after service of the motion under Section 27.003, except as provided by Subsection (c).

(c) If the court allows discovery under Section 27.006(b), the court may extend the hearing date to allow discovery under that subsection, but in no event shall the hearing occur more than 120 days after the service of the motion under Section 27.003.

Credits

Added by Acts 2011, 82nd Leg., ch. 341 (H.B. 2973), § 2, eff. June 17, 2011. Amended by Acts 2013, 83rd Leg., ch. 1042 (H.B. 2935), § 1, eff. June 14, 2013.

Notes of Decisions (5)

V. T. C. A., Civil Practice & Remedies Code § 27.004, TX CIV PRAC & REM § 27.004
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(Refs & Annos)

V.T.C.A., Civil Practice & Remedies Code § 27.005

§ 27.005. Ruling

Effective: June 14, 2013

Currentness

(a) The court must rule on a motion under Section 27.003 not later than the 30th day following the date of the hearing on the motion.

(b) Except as provided by Subsection (c), on the motion of a party under Section 27.003, a court shall dismiss a legal action against the moving party if the moving party shows by a 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.

(c) The court may not dismiss a legal action under this section if the party bringing the legal action establishes by clear and specific evidence a prima facie case for each essential element of the claim in question.

(d) Notwithstanding the provisions of Subsection (c), the court shall dismiss a legal action against the moving party if the moving party establishes by a preponderance of the evidence each essential element of a valid defense to the nonmovant's claim.

Credits

Added by Acts 2011, 82nd Leg., ch. 341 (H.B. 2973), § 2, eff. June 17, 2011. Amended by Acts 2013, 83rd Leg., ch. 1042 (H.B. 2935), § 2, eff. June 14, 2013.

Notes of Decisions (118)

V. T. C. A., Civil Practice & Remedies Code § 27.005, TX CIV PRAC & REM § 27.005
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V.T.C.A., Civil Practice & Remedies Code § 27.006

§ 27.006. Evidence

Effective: June 17, 2011

Currentness

(a) In determining whether a legal action should be dismissed under this chapter, the court shall consider the pleadings and supporting and opposing affidavits stating the facts on which the liability or defense is based.

(b) On a motion by a party or on the court's own motion and on a showing of good cause, the court may allow specified and limited discovery relevant to the motion.

Credits

Added by Acts 2011, 82nd Leg., ch. 341 (H.B. 2973), § 2, eff. June 17, 2011.

Notes of Decisions (9)

V. T. C. A., Civil Practice & Remedies Code § 27.006, TX CIV PRAC & REM § 27.006
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V.T.C.A., Civil Practice & Remedies Code § 27.007

§ 27.007. Additional Findings

Effective: June 17, 2011

Currentness

(a) At the request of a party making a motion under Section 27.003, the court shall issue findings regarding whether the legal action was brought to deter or prevent the moving party from exercising constitutional rights and is brought for an improper purpose, including to harass or to cause unnecessary delay or to increase the cost of litigation.

(b) The court must issue findings under Subsection (a) not later than the 30th day after the date a request under that subsection is made.

Credits

Added by Acts 2011, 82nd Leg., ch. 341 (H.B. 2973), § 2, eff. June 17, 2011.

V. T. C. A., Civil Practice & Remedies Code § 27.007, TX CIV PRAC & REM § 27.007
Current through the end of the 2015 Regular Session of the 84th Legislature

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V.T.C.A., Civil Practice & Remedies Code § 27.008

§ 27.008. Appeal

Effective: June 14, 2013

Currentness

(a) If a court does not rule on a motion to dismiss under Section 27.003 in the time prescribed by Section 27.005, the motion is considered to have been denied by operation of law and the moving party may appeal.

(b) An appellate court shall expedite an appeal or other writ, whether interlocutory or not, from a trial court order on a motion to dismiss a legal action under Section 27.003 or from a trial court's failure to rule on that motion in the time prescribed by Section 27.005.

(c) Repealed by Acts 2013, 83rd Leg., ch. 1042 (H.B. 2935), § 5.

Credits

Added by Acts 2011, 82nd Leg., ch. 341 (H.B. 2973), § 2, eff. June 17, 2011. Amended by Acts 2013, 83rd Leg., ch. 1042 (H.B. 2935), § 5, eff. June 14, 2013.

Notes of Decisions (22)

V. T. C. A., Civil Practice & Remedies Code § 27.008, TX CIV PRAC & REM § 27.008
Current through the end of the 2015 Regular Session of the 84th Legislature

Vernon's Texas Statutes and Codes Annotated
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 (Refs & Annos)

V.T.C.A., Civil Practice & Remedies Code § 27.009

§ 27.009. Damages and Costs

Effective: June 17, 2011

Currentness

(a) If the court orders dismissal of a legal action under this chapter, the court shall award to the moving party:

(1) court costs, reasonable attorney's fees, and other expenses incurred in defending against the legal action as justice and equity may require; and

(2) sanctions against the party who brought the legal action as the court determines sufficient to deter the party who brought the legal action from bringing similar actions described in this chapter.

(b) If the court finds that a motion to dismiss filed under this chapter is frivolous or solely intended to delay, the court may award court costs and reasonable attorney's fees to the responding party.

Credits

Added by Acts 2011, 82nd Leg., ch. 341 (H.B. 2973), § 2, eff. June 17, 2011.

Notes of Decisions (32)

V. T. C. A., Civil Practice & Remedies Code § 27.009, TX CIV PRAC & REM § 27.009

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(Refs & Annos)

V.T.C.A., Civil Practice & Remedies Code § 27.010

§ 27.010. Exemptions

Effective: June 14, 2013

Currentness

(a) This chapter does not apply to an enforcement action that is brought in the name of this state or a political subdivision of this state by the attorney general, a district attorney, a criminal district attorney, or a county attorney.

(b) This chapter does not apply to a legal action brought against a person primarily engaged in the business of selling or leasing goods or services, if the statement or conduct arises out of the sale or lease of goods, services, or an insurance product, insurance services, or a commercial transaction in which the intended audience is an actual or potential buyer or customer.

(c) This chapter does not apply to a legal action seeking recovery for bodily injury, wrongful death, or survival or to statements made regarding that legal action.

(d) This chapter does not apply to a legal action brought under the Insurance Code or arising out of an insurance contract.

Credits

Added by Acts 2011, 82nd Leg., ch. 341 (H.B. 2973), § 2, eff. June 17, 2011. Amended by Acts 2013, 83rd Leg., ch. 1042 (H.B. 2935), § 3, eff. June 14, 2013.

Notes of Decisions (15)

V. T. C. A., Civil Practice & Remedies Code § 27.010, TX CIV PRAC & REM § 27.010
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(Refs & Annos)

V.T.C.A., Civil Practice & Remedies Code § 27.011

§ 27.011. Construction

Effective: June 17, 2011

Currentness

(a) This chapter does not abrogate or lessen any other defense, remedy, immunity, or privilege available under other constitutional, statutory, case, or common law or rule provisions.

(b) This chapter shall be construed liberally to effectuate its purpose and intent fully.

Credits

Added by Acts 2011, 82nd Leg., ch. 341 (H.B. 2973), § 2, eff. June 17, 2011.

Notes of Decisions (1)

V. T. C. A., Civil Practice & Remedies Code § 27.011, TX CIV PRAC & REM § 27.011

Current through the end of the 2015 Regular Session of the 84th Legislature

West's Utah Code Annotated
Title 78b. Judicial Code
Chapter 6. Particular Proceedings (Refs & Annos)
Part 14. Citizen Participation in Government Act

U.C.A. 1953 § 78B-6-1401
Formerly cited as UT ST § 78-58-101

§ 78B-6-1401. Title

Currentness

This part is known as the “Citizen Participation in Government Act.”

Credits

Laws 2008, c. 3, § 1085, eff. Feb. 7, 2008.

U.C.A. 1953 § 78B-6-1401, UT ST § 78B-6-1401
Current through 2015 First Special Session

West's Utah Code Annotated
Title 78b. Judicial Code
Chapter 6. Particular Proceedings (Refs & Annos)
Part 14. Citizen Participation in Government Act

U.C.A. 1953 § 78B-6-1402
Formerly cited as UT ST § 78-58-102

§ 78B-6-1402. Definitions

Currentness

As used in this part:

(1) “Action involving public participation in the process of government” means any lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing requesting relief to which this act applies.

(2) “Government” includes a branch, department, agency, instrumentality, official, employee, agent, or other person acting under color of law of the United States, a state, or subdivision of a state or other public authority.

(3) “Moving party” means any person on whose behalf the motion is filed.

(4) “Process of government” means the mechanisms and procedures by which the legislative and executive branches of government make decisions, and the activities leading up to the decisions, including the exercise by a citizen of the right to influence those decisions under the First Amendment to the U.S. Constitution.

(5) “Responding party” means any person against whom the motion described in Section 78B-6-1403 is filed.

Credits

Laws 2008, c. 3, § 1086, eff. Feb. 7, 2008; Laws 2010, c. 254, § 12, eff. May 11, 2010.

Notes of Decisions (3)

U.C.A. 1953 § 78B-6-1402, UT ST § 78B-6-1402

Current through 2015 First Special Session

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West's Utah Code Annotated

Title 78b. Judicial Code

Chapter 6. Particular Proceedings (Refs & Annos)

Part 14. Citizen Participation in Government Act

U.C.A. 1953 § 78B-6-1403

Formerly cited as UT ST § 78-58-103

§ 78B-6-1403. Applicability

Currentness

(1) A defendant in an action who believes that the action is primarily based on, relates to, or is in response to an act of the defendant while participating in the process of government and is done primarily to harass the defendant, may file:

(a) an answer supported by an affidavit of the defendant detailing his belief that the action is designed to prevent, interfere with, or chill public participation in the process of government, and specifying in detail the conduct asserted to be the participation in the process of government believed to give rise to the complaint; and

(b) a motion for judgment on the pleadings in accordance with the Utah Rules of Civil Procedure Rule 12(c).

(2) Affidavits detailing activity not adequately detailed in the answer may be filed with the motion.

Credits

Laws 2008, c. 3, § 1087, eff. Feb. 7, 2008.

Notes of Decisions (4)

U.C.A. 1953 § 78B-6-1403, UT ST § 78B-6-1403

Current through 2015 First Special Session

West's Utah Code Annotated

Title 78b. Judicial Code

Chapter 6. Particular Proceedings (Refs & Annos)

Part 14. Citizen Participation in Government Act

U.C.A. 1953 § 78B-6-1404
Formerly cited as UT ST § 78-58-104

§ 78B-6-1404. Procedures

Currentness

(1) On the filing of a motion for judgment on the pleadings:

(a) all discovery shall be stayed pending resolution of the motion unless the court orders otherwise;

(b) the trial court shall hear and determine the motion as expeditiously as possible with the moving party providing by clear and convincing evidence that the primary reason for the filing of the complaint was to interfere with the first amendment right of the defendant; and

(c) the moving party shall have a right to seek interlocutory appeal from a trial court order denying the motion or from a trial court failure to rule on the motion in expedited fashion.

(2) The court shall grant the motion and dismiss the action upon a finding that the primary purpose of the action is to prevent, interfere with, or chill the moving party's proper participation in the process of government.

(3) Any government body to which the moving party's acts were directed or the attorney general may intervene to defend or otherwise support the moving party.

Credits

Laws 2008, c. 3, § 1088, eff. Feb. 7, 2008.

Notes of Decisions (3)

U.C.A. 1953 § 78B-6-1404, UT ST § 78B-6-1404

Current through 2015 First Special Session

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West's Utah Code Annotated

Title 78b. Judicial Code

Chapter 6. Particular Proceedings (Refs & Annos)

Part 14. Citizen Participation in Government Act

U.C.A. 1953 § 78B-6-1405

Formerly cited as UT ST § 78-58-105

§ 78B-6-1405. Counter actions--Attorney fees--Damages

Currentness

(1) A defendant in an action involving public participation in the process of government may maintain an action, claim, cross-claim, or counterclaim to recover:

(a) costs and reasonable attorney fees, upon a demonstration that the action involving public participation in the process of government was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification, or reversal of existing law; and

(b) other compensatory damages upon an additional demonstration that the action involving public participation in the process of government was commenced or continued for the purpose of harassing, intimidating, punishing, or otherwise maliciously inhibiting the free exercise of rights granted under the First Amendment to the U.S. Constitution.

(2) Nothing in this section shall affect or preclude the right of any party to any recovery otherwise authorized by law.

Credits

Laws 2008, c. 3, § 1089, eff. Feb. 7, 2008.

Notes of Decisions (4)

U.C.A. 1953 § 78B-6-1405, UT ST § 78B-6-1405

Current through 2015 First Special Session

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West's Vermont Statutes Annotated
Title Twelve. Court Procedure
Part 2. Proceedings Before Trial
Chapter 27. Pleading and Practice
Subchapter 2. Pleadings Generally

12 V.S.A. § 1041

§ 1041. Exercise of rights to free speech and to petition
government for redress of grievances; special motion to strike

Currentness

(a) A defendant in an action arising from the defendant's exercise, in connection with a public issue, of the right to freedom of speech or to petition the government for redress of grievances under the United States or Vermont Constitution may file a special motion to strike under this section.

(b) A special motion to strike under this section shall be filed with the court and served on all parties not more than 60 days after the filing of the complaint. A party may file a response to the motion not more than 15 days after the motion is served on the party. The court may extend the time limits of this subsection for good cause shown.

(c)(1) The filing of a special motion to strike under this section shall stay all discovery proceedings in the action. Except as provided in subdivision (2) of this subsection, the stay of discovery shall remain in effect until the court rules on the special motion to strike.

(2) The court, on motion and for good cause shown, may order that limited discovery be conducted for the purpose of assisting its decision on the special motion to strike.

(d) The court shall hold a hearing on a special motion to strike not more than 30 days after service of the motion unless good cause exists for an extension.

(e)(1) The court shall grant the special motion to strike, unless the plaintiff shows that:

(A) the defendant's exercise of his or her right to freedom of speech and to petition was devoid of any reasonable factual support and any arguable basis in law; and

(B) the defendant's acts caused actual injury to the plaintiff.

(2) In making its determination, the court shall consider the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(f)(1) If the court grants the special motion to strike, the court shall award costs and reasonable attorney's fees to the defendant. If the court denies the special motion to strike and finds the motion is frivolous or is intended solely to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to the plaintiff.

(2) Neither the court's ruling on the special motion to strike nor the fact that it made such a ruling shall be admissible in evidence at any later stage of the case, and no burden of proof or degree of proof otherwise applicable shall be affected by the ruling.

(g) An order granting or denying a special motion to strike shall be appealable in the same manner as an interlocutory order under Rule 5 of the Vermont Rules of Appellate Procedure.

(h) This section shall not apply to any enforcement action or criminal proceeding brought by the State of Vermont or any political subdivision thereof.

(i) As used in this section, “the exercise, in connection with a public issue, of the right to freedom of speech or to petition the government for redress of grievances under the United States or Vermont Constitution” includes:

(1) any written or oral statement made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law;

(2) any written or oral statement made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law;

(3) any written or oral statement concerning an issue of public interest made in a public forum or a place open to the public; or

(4) any other statement or conduct concerning a public issue or an issue of public interest which furthers the exercise of the constitutional right of freedom of speech or the constitutional right to petition the government for redress of grievances.

Credits

2005, Adj. Sess., No. 134, § 2.

Notes of Decisions (8)

12 V.S.A. § 1041, VT ST T. 12 § 1041

The statutes are current through the First Session of the 2015-2016 Vermont General Assembly (2015).

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West's Revised Code of Washington Annotated

Title 4. Civil Procedure (Refs & Annos)

Chapter 4.24. Special Rights of Action and Special Immunities (Refs & Annos)

West's RCWA 4.24.500

4.24.500. Good faith communication to
government agency--Legislative findings--Purpose

Currentness

Information provided by citizens concerning potential wrongdoing is vital to effective law enforcement and the efficient operation of government. The legislature finds that the threat of a civil action for damages can act as a deterrent to citizens who wish to report information to federal, state, or local agencies. The costs of defending against such suits can be severely burdensome. The purpose of RCW 4.24.500 through 4.24.520 is to protect individuals who make good-faith reports to appropriate governmental bodies.

Credits

[1989 c 234 § 1.]

Notes of Decisions (1)

West's RCWA 4.24.500, WA ST 4.24.500

Current with all laws from the 2015 Regular and Special Sessions and Laws 2016, chs. 1 and 2

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West's Revised Code of Washington Annotated

Title 4. Civil Procedure (Refs & Annos)

Chapter 4.24. Special Rights of Action and Special Immunities (Refs & Annos)

West's RCWA 4.24.510

4.24.510. Communication to government agency or self-regulatory organization--Immunity from civil liability

Currentness

A person who communicates a complaint or information to any branch or agency of federal, state, or local government, or to any self-regulatory organization that regulates persons involved in the securities or futures business and that has been delegated authority by a federal, state, or local government agency and is subject to oversight by the delegating agency, is immune from civil liability for claims based upon the communication to the agency or organization regarding any matter reasonably of concern to that agency or organization. A person prevailing upon the defense provided for in this section is entitled to recover expenses and reasonable attorneys' fees incurred in establishing the defense and in addition shall receive statutory damages of ten thousand dollars. Statutory damages may be denied if the court finds that the complaint or information was communicated in bad faith.

Credits

[2002 c 232 § 2; 1999 c 54 § 1; 1989 c 234 § 2.]

Notes of Decisions (74)

West's RCWA 4.24.510, WA ST 4.24.510

Current with all laws from the 2015 Regular and Special Sessions and Laws 2016, chs. 1 and 2

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West's Revised Code of Washington Annotated

Title 4. Civil Procedure (Refs & Annos)

Chapter 4.24. Special Rights of Action and Special Immunities (Refs & Annos)

West's RCWA 4.24.520

4.24.520. Good faith communication to government agency--When
agency or attorney general may defend against lawsuit--Costs and fees

Currentness

In order to protect the free flow of information from citizens to their government, an agency receiving a complaint or information under RCW 4.24.510 may intervene in and defend against any suit precipitated by the communication to the agency. In the event that a local governmental agency does not intervene in and defend against a suit arising from any communication protected under chapter 234, Laws of 1989, the office of the attorney general may intervene in and defend against the suit. An agency prevailing upon the defense provided for in RCW 4.24.510 shall be entitled to recover costs and reasonable attorneys' fees incurred in establishing the defense. If the agency fails to establish the defense provided for in RCW 4.24.510, the party bringing the action shall be entitled to recover from the agency costs and reasonable attorney's fees incurred in proving the defense inapplicable or invalid.

Credits

[1989 c 234 § 4.]

West's RCWA 4.24.520, WA ST 4.24.520

Current with all laws from the 2015 Regular and Special Sessions and Laws 2016, chs. 1 and 2



KeyCite Red Flag - Severe Negative Treatment

Unconstitutional or Preempted **Held Unconstitutional by** Davis v. Cox, Wash., May 28, 2015

West's Revised Code of Washington Annotated

Title 4. Civil Procedure (Refs & Annos)

Chapter 4.24. Special Rights of Action and Special Immunities (Refs & Annos)

West's RCWA 4.24.525

4.24.525. Public participation lawsuits--Special motion to strike claim--Damages, costs, attorneys' fees, other relief--Definitions

Effective: June 10, 2010

Currentness

(1) As used in this section:

(a) "Claim" includes any lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing requesting relief;

(b) "Government" includes a branch, department, agency, instrumentality, official, employee, agent, or other person acting under color of law of the United States, a state, or subdivision of a state or other public authority;

(c) "Moving party" means a person on whose behalf the motion described in subsection (4) of this section is filed seeking dismissal of a claim;

(d) "Other governmental proceeding authorized by law" means a proceeding conducted by any board, commission, agency, or other entity created by state, county, or local statute or rule, including any self-regulatory organization that regulates persons involved in the securities or futures business and that has been delegated authority by a federal, state, or local government agency and is subject to oversight by the delegating agency.

(e) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity;

(f) “Responding party” means a person against whom the motion described in subsection (4) of this section is filed.

(2) This section applies to any claim, however characterized, that is based on an action involving public participation and petition. As used in this section, an “action involving public participation and petition” includes:

- (a) Any oral statement made, or written statement or other document submitted, in a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;
- (b) Any oral statement made, or written statement or other document submitted, in connection with an issue under consideration or review by a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;
- (c) Any oral statement made, or written statement or other document submitted, that is reasonably likely to encourage or to enlist public participation in an effort to effect consideration or review of an issue in a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;
- (d) Any oral statement made, or written statement or other document submitted, in a place open to the public or a public forum in connection with an issue of public concern; or
- (e) Any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern, or in furtherance of the exercise of the constitutional right of petition.

(3) This section does not apply to any action brought by the attorney general, prosecuting attorney, or city attorney, acting as a public prosecutor, to enforce laws aimed at public protection.

(4)(a) A party may bring a special motion to strike any claim that is based on an action involving public participation and petition, as defined in subsection (2) of this section.

(b) A moving party bringing a special motion to strike a claim under this subsection has the initial burden of showing by a preponderance of the evidence that the claim is based on an action involving public participation and petition. If the moving party meets this burden, the burden shifts to the responding party to establish by clear and convincing evidence a probability of prevailing on the claim. If the responding party meets this burden, the court shall deny the motion.

(c) In making a determination under (b) of this subsection, the court shall consider pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(d) If the court determines that the responding party has established a probability of prevailing on the claim:

(i) The fact that the determination has been made and the substance of the determination may not be admitted into evidence at any later stage of the case; and

(ii) The determination does not affect the burden of proof or standard of proof that is applied in the underlying proceeding.

(e) The attorney general's office or any government body to which the moving party's acts were directed may intervene to defend or otherwise support the moving party.

(5)(a) The special motion to strike may be filed within sixty days of the service of the most recent complaint or, in the court's discretion, at any later time upon terms it deems proper. A hearing shall be held on the motion not later than thirty days after the service of the motion unless the docket conditions of the court require a later hearing. Notwithstanding this subsection, the court is directed to hold a hearing with all due speed and such hearings should receive priority.

(b) The court shall render its decision as soon as possible but no later than seven days after the hearing is held.

(c) All discovery and any pending hearings or motions in the action shall be stayed upon the filing of a special motion to strike under subsection (4) of this section. The stay of discovery shall remain in effect until the entry of the order ruling on the motion. Notwithstanding the stay imposed by this

subsection, the court, on motion and for good cause shown, may order that specified discovery or other hearings or motions be conducted.

(d) Every party has a right of expedited appeal from a trial court order on the special motion or from a trial court's failure to rule on the motion in a timely fashion.

(6)(a) The court shall award to a moving party who prevails, in part or in whole, on a special motion to strike made under subsection (4) of this section, without regard to any limits under state law:

(i) Costs of litigation and any reasonable attorneys' fees incurred in connection with each motion on which the moving party prevailed;

(ii) An amount of ten thousand dollars, not including the costs of litigation and attorney fees; and

(iii) Such additional relief, including sanctions upon the responding party and its attorneys or law firms, as the court determines to be necessary to deter repetition of the conduct and comparable conduct by others similarly situated.

(b) If the court finds that the special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award to a responding party who prevails, in part or in whole, without regard to any limits under state law:

(i) Costs of litigation and any reasonable attorneys' fees incurred in connection with each motion on which the responding party prevailed;

(ii) An amount of ten thousand dollars, not including the costs of litigation and attorneys' fees; and

(iii) Such additional relief, including sanctions upon the moving party and its attorneys or law firms, as the court determines to be necessary to deter repetition of the conduct and comparable conduct by others similarly situated.

(7) Nothing in this section limits or precludes any rights the moving party may have under any other constitutional, statutory, case or common law, or rule provisions.

Credits

[2010 c 118 § 2, eff. June 10, 2010.]

Editors' Notes**VALIDITY**

<Evidentiary burden provision of this section was held unconstitutional in Davis v. Cox, --- P.3d ----, 2015 WL 3413375, Wash., 2015. See Notes of Decisions. >

Notes of Decisions (93)

West's RCWA 4.24.525, WA ST 4.24.525

Current with all laws from the 2015 Regular and Special Sessions and Laws 2016, chs. 1 and 2

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West's District of Columbia Code Annotated 2001 Edition
Division II. Judiciary and Judicial Procedure
Title 16. Particular Actions, Proceedings and Matters. (Refs & Annos)
Chapter 55. Strategic Lawsuits Against Public Participation.

DC ST § 16-5501

§ 16-5501. Definitions.

Effective: September 26, 2012
Currentness

For the purposes of this chapter, the term:

(1) “Act in furtherance of the right of advocacy on issues of public interest” means:

(A) Any written or oral statement made:

(i) In connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; or

(ii) In a place open to the public or a public forum in connection with an issue of public interest; or

(B) Any other expression or expressive conduct that involves petitioning the government or communicating views to members of the public in connection with an issue of public interest.

(2) “Claim” includes any civil lawsuit, claim, complaint, cause of action, cross-claim, counterclaim, or other civil judicial pleading or filing requesting relief.

(3) “Issue of public interest” means an issue related to health or safety; environmental, economic, or community well-being; the District government; a public figure; or a good, product, or service in the market place. The term “issue of public interest” shall not be construed to include private interests, such as statements directed primarily toward protecting the speaker's

commercial interests rather than toward commenting on or sharing information about a matter of public significance.

(4) “Personal identifying information” shall have the same meaning as provided in § 22-3227.01(3).

Credits

(Mar. 31, 2011, D.C. Law 18-351, § 2, 58 DCR 741; Sept. 26, 2012, D.C. Law 19-171, § 401, 59 DCR 6190.)

Notes of Decisions (11)

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DC CODE § 16-5501

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Chapter 55. Strategic Lawsuits Against Public Participation.

DC ST § 16-5502

§ 16-5502. Special motion to dismiss.

Effective: September 26, 2012
Currentness

(a) A party may file a special motion to dismiss any claim arising from an act in furtherance of the right of advocacy on issues of public interest within 45 days after service of the claim.

(b) 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.

(c)(1) Except as provided in paragraph (2) of this subsection, upon the filing of a special motion to dismiss, discovery proceedings on the claim shall be stayed until the motion has been disposed of.

(2) When it appears likely that targeted discovery will enable the plaintiff to defeat the motion and that the discovery will not be unduly burdensome, the court may order that specified discovery be conducted. Such an order may be conditioned upon the plaintiff paying any expenses incurred by the defendant in responding to such discovery.

(d) The court shall hold an expedited hearing on the special motion to dismiss, and issue a ruling as soon as practicable after the hearing. If the special motion to dismiss is granted, dismissal shall be with prejudice.

Credits

(Mar. 31, 2011, D.C. Law 18-351, § 3, 58 DCR 741; Apr. 20, 2012, D.C. Law 19-120, § 201, 58 DCR 11235; Sept. 26, 2012, D.C. Law 19-171, § 401, 59 DCR 6190.)

Notes of Decisions (22)

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DC CODE § 16-5502

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Chapter 55. Strategic Lawsuits Against Public Participation.

DC ST § 16-5503

§ 16-5503. Special motion to quash.

Effective: September 26, 2012
Currentness

(a) A person whose personal identifying information is sought, pursuant to a discovery order, request, or subpoena, in connection with a claim arising from an act in furtherance of the right of advocacy on issues of public interest may make a special motion to quash the discovery order, request, or subpoena.

(b) If a person bringing a special motion to quash under this section makes a prima facie showing that the underlying claim arises from an act in furtherance of the right of advocacy on issues of public interest, then the motion shall be granted unless the party seeking his or her personal identifying information demonstrates that the underlying claim is likely to succeed on the merits, in which case the motion shall be denied.

Credits

(Mar. 31, 2011, D.C. Law 18-351, § 4, 58 DCR 741; Sept. 26, 2012, D.C. Law 19-171, § 401, 59 DCR 6190.)

Notes of Decisions (1)

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 Chapter 55. Strategic Lawsuits Against Public Participation.

DC ST § 16-5504

§ 16-5504. Fees and costs.

Effective: September 26, 2012
 Currentness

(a) The court may award a moving party who prevails, in whole or in part, on a motion brought under § 16-5502 or § 16-5503 the costs of litigation, including reasonable attorney fees.

(b) The court may award reasonable attorney fees and costs to the responding party only if the court finds that a motion brought under § 16-5502 or § 16-5503 is frivolous or is solely intended to cause unnecessary delay.

Credits

(Mar. 31, 2011, D.C. Law 18-351, § 5, 58 DCR 741; Sept. 26, 2012, D.C. Law 19-171, § 401, 59 DCR 6190.)

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Chapter 55. Strategic Lawsuits Against Public Participation.

DC ST § 16-5505

§ 16-5505. Exemptions.

Effective: September 26, 2012
Currentness

This chapter shall not apply to any claim for relief brought against a person primarily engaged in the business of selling or leasing goods or services, if the statement or conduct from which the claim arises is:

- (1) A representation of fact made for the purpose of promoting, securing, or completing sales or leases of, or commercial transactions in, the person's goods or services; and
- (2) The intended audience is an actual or potential buyer or customer.

Credits

(Mar. 31, 2011, D.C. Law 18-351, § 6, 58 DCR 741; Sept. 26, 2012, D.C. Law 19-171, § 401, 59 DCR 6190.)

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DC CODE § 16-5505

Current through February 2, 2016

Guam Code Annotated Currentness

Title 7. Civil Procedure and Judiciary

Division 2 . Civil Actions

Chapter 17. Citizen Participation in Government Act (Refs & Annos)

7 G.C.A. § 17101

§ 17101. Short Title.

This Chapter may be cited as the “*Citizen Participation in Government Act of 1998.*”

7 G.C.A. § 17101, GU ST T. 7, § 17101

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Guam Code Annotated Currentness

Title 7. Civil Procedure and Judiciary

Division 2 . Civil Actions

Chapter 17. Citizen Participation in Government Act (Refs & Annos)

7 G.C.A. § 17102

§ 17102. Legislative Findings and Declaration of Purposes.

(a) Findings. *I Liheslaturan Guåhan* [The Guam Legislature] finds and declares that:

(1) the framers of the United States Constitution, recognizing citizen participation in government as an inalienable right essential to the survival of democracy, secured its protection through the right to petition the government for redress of grievances in the First Amendment to the U.S. Constitution;

(2) the communications, information, opinions, reports, testimony, claims and arguments provided by citizens to their governments are essential to the making of wise government decisions and public policy; the public health, safety and welfare; effective law enforcement; the efficient operation of government programs; the credibility and trust afforded government; and the continuation of America's republican form of government through representative democracy in America;

(3) civil lawsuits and counterclaims, often claiming millions of dollars, have been, and are being, filed against thousands of citizens, businesses and organizations based on their valid exercise of their right to petition, including seeking relief, influencing action, informing, communicating, and otherwise participating with government bodies, officials, or employees or the electorate;

(4) such lawsuits, called “Strategic Lawsuits Against Public Participation” or “SLAPPs,” are typically dismissed as unconstitutional, but often not before the defendants are put to great expense, harassment and interruption of their productive activities;

(5) the number of SLAPPs has increased significantly over the past thirty (30) years;

(6) SLAPPs are an abuse of the judicial process; they are used to censor, chill, intimidate, or punish citizens, businesses and organizations for involving themselves in public affairs, and controlling SLAPPs will make a major contribution to lawsuit reform;

(7) the threat of financial liability, litigation costs, destruction of one's business, loss of one's home and other personal losses from groundless lawsuits seriously affects government, public welfare and individual rights by significantly diminishing public participation in government, in public issues and in voluntary service;

(8) while courts have recognized and discouraged SLAPPS, judicial protection of these important rights has not been uniform or comprehensive; and

(9) while some citizen communications to government inevitably will be incorrect, unsound, self-interested or not in good faith, it is essential in our democracy that the constitutional rights of citizens to participate fully in the process of government be uniformly, consistently, and comprehensively protected and encouraged.

(b) Purposes. The purposes of this Chapter are:

(1) to protect and encourage citizen participation in government to the maximum extent permitted by law;

(2) to create a more equitable balance between the rights of persons to file lawsuits and to trial by jury, and the rights of other persons to petition, speak out, associate and otherwise participate in their governments;

(3) to support the operation of and assure the continuation of representative government in America, including the protection and regulation of public health, safety and welfare by protecting public participation in government programs, public policy decisions and other actions;

(4) to establish a balanced, uniform, comprehensive process for speedy adjudication of SLAPPs, as a major contribution to lawsuit reform; and

(5) to provide for attorneys fees, costs, sanctions and damages for persons whose citizen participation rights have been violated by the filing of a SLAPP against them.

7 G.C.A. § 17102, GU ST T. 7, § 17102

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Guam Code Annotated Currentness

Title 7. Civil Procedure and Judiciary

Division 2 . Civil Actions

Chapter 17. Citizen Participation in Government Act (Refs & Annos)

7 G.C.A. § 17103

§ 17103. Definitions.

As used in this Chapter:

(a) “*Government*” includes a branch, department, agency, instrumentality, official, employee, agent or other person acting under color of law of the United States, a State, a Territory, or a subdivision of a State or Territory, including municipalities and their boards, commissions, and departments, or other public authority, including the electorate.

(b) “*Person*” includes any individual, corporation, association, organization, partnership, two (2) or more persons having a joint or common interest, or other legal entity.

(c) “*Judicial claim*” or “*claim*” includes any lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing requesting relief.

(d) “*Motion*” includes any motion to dismiss, for summary judgment, for judgment on the pleadings, to strike, demurrer, or any other judicial pleading filed to dispose of a judicial claim.

(e) “*Moving party*” means any person on whose behalf the motion described in § 17104 is filed seeking dismissal of the judicial claim.

(f) “*Responding party*” means any person against whom the motion described in § 17104 is filed.

7 G.C.A. § 17103, GU ST T. 7, § 17103

Guam Code Annotated Currentness

Title 7. Civil Procedure and Judiciary

Division 2 . Civil Actions

Chapter 17. Citizen Participation in Government Act (Refs & Annos)

7 G.C.A. § 17104

§ 17104. Immunity.

Acts in furtherance of the Constitutional rights to petition, including seeking relief, influencing action, informing, communicating and otherwise participating in the processes of government, shall be immune from liability, regardless of intent or purpose, except where not aimed at procuring any government or electoral action, result or outcome.

7 G.C.A. § 17104, GU ST T. 7, § 17104

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Guam Code Annotated Currentness

Title 7. Civil Procedure and Judiciary

Division 2 . Civil Actions

Chapter 17. Citizen Participation in Government Act (Refs & Annos)

7 G.C.A. § 17105

§ 17105. Applicability.

This Chapter applies to any motion to dispose of a claim in a judicial proceeding on the grounds that the claim is based on, relates to or is in response to any act of the moving party in furtherance of the moving party's rights as described in § 17104.

7 G.C.A. § 17105, GU ST T. 7, § 17105

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Guam Code Annotated Currentness
Title 7. Civil Procedure and Judiciary
Division 2 . Civil Actions
Chapter 17. Citizen Participation in Government Act (Refs & Annos)

7 G.C.A. § 17106

§ 17106. Required Procedures.

On the filing of any motion as described in § 17105:

(a) the motion shall be treated as one for summary judgment:

(1) the trial court shall use a time period appropriate to preferred or expedited motions; and

(2) the moving party shall have a right of expedited appeal from a trial court order denying such a motion or from a trial court failure to rule on such a motion in expedited fashion;

(b) discovery shall be suspended, pending decision on the motion and appeals;

(c) the responding party shall have the burden of proof, of going forward with the evidence and of persuasion on the motion;

(d) the court shall make its determination based on the facts contained in pleadings and affidavits filed;

(e) the court shall grant the motion and dismiss the judicial claim, unless the responding party has produced *clear and convincing* evidence that the acts of the moving party are not immunized from liability by § 17104;

(f) any government body to which the moving party's acts were directed, or the Attorney General of this Island, may intervene, defend or otherwise support the moving party in the SLAPP;

(g) the court shall award a moving party who is dismissed, without regards to any limit under Guam law:

(1) costs of litigation, including reasonable attorney and expert witness fees, incurred in connection with the motion; and

(2) such additional sanctions upon the responding party, its attorneys or law firms as it determines will be sufficient to deter repetition of such conduct and comparable conduct by others similarly situated; and

(h) a person damaged or injured by reason of a claim filed in violation of their rights under § 17104 may seek relief in the form of a claim for actual or compensatory damages, as well as punitive damages, attorney's fees and costs, from the person or persons responsible.

7 G.C.A. § 17106, GU ST T. 7, § 17106

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Guam Code Annotated Currentness

Title 7. Civil Procedure and Judiciary

Division 2 . Civil Actions

Chapter 17. Citizen Participation in Government Act (Refs & Annos)

7 G.C.A. § 17107

§ 17107. Relationship to Other Laws.

Nothing in this Chapter shall limit or preclude any rights the moving party may have under any other constitutional, statutory, case or common law, or rule provisions.

7 G.C.A. § 17107, GU ST T. 7, § 17107

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Title 7. Civil Procedure and Judiciary

Division 2 . Civil Actions

Chapter 17. Citizen Participation in Government Act (Refs & Annos)

7 G.C.A. § 17108

§ 17108. Rule of Construction.

This Chapter shall be construed liberally to effectuate its purposes and intent fully.

7 G.C.A. § 17108, GU ST T. 7, § 17108

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Title 7. Civil Procedure and Judiciary

Division 2 . Civil Actions

Chapter 17. Citizen Participation in Government Act (Refs & Annos)

7 G.C.A. § 17109

§ 17109. Separability of Provisions.

If any provision of this Chapter or the application of any provision of this Chapter to any person or circumstance is held invalid, the application of such provision to other persons or circumstances and the remainder of this Chapter shall not be affected thereby.

7 G.C.A. § 17109, GU ST T. 7, § 17109

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A UNIFORM ACT LIMITING STRATEGIC LITIGATION AGAINST PUBLIC PARTICIPATION: GETTING IT PASSED

SOCIETY OF PROFESSIONAL JOURNALISTS
BAKER & HOSTETLER LLP

Fifteen years have passed since the first anti-SLAPP statute was passed in Washington State, and as of spring 2004, 21 states have some type of anti-SLAPP legislation in place. These facts will both benefit and hinder us as we bring our Model Act out into the world. On one hand, we are able to learn from the experiences of others in drafting and passing these statutes, and we have years of anti-SLAPP success stories to draw upon when making our cases. On the other hand, opponents of the legislation will be well equipped to highlight so-called “abuse” of these statutes – which may include, in their views, large media entities using anti-SLAPP motions to fight defamation lawsuits.

In light of this latter point, it is crucial that the journalism community thoughtfully considers the role it will assume in pushing for the future enactment of anti-SLAPP legislation. Without a doubt, media entities and press organizations, as among the more well-heeled and well-respected advocates of these statutes, must use their influence with the public and the government to gain recognition and support of the legislation. However, to the extent it is still possible given the countless examples of anti-SLAPP statutes benefiting the media, these groups need to downplay any personal interest in the legislation and focus on its capacity for empowering the “little guy” and the First Amendment in general.

As we keep our goals and roles in mind, we can also benefit from these tips, which several anti-SLAPP experts – including California Anti-SLAPP Project director Mark Goldowitz and Tom Newton, counsel for the California Newspaper Publishers Association – have offered.

Enlist An Influential Government Supporter. Particularly in governments that are very pro-business or otherwise disinclined to support anti-SLAPP legislation, such legislation is likely to stall without the push of at least one powerful government leader who is strongly invested in its success. In California, Senator Bill Lockyer, a democrat from Alameda County and then-head of the state Judiciary Committee, was inspired by Pring’s and Penelope Canan’s seminal article on SLAPPs and made it a mission of sorts to enact an anti-SLAPP law in California. A similar role was played by democratic Senator James J. Cox in Louisiana. In Washington State, then-Governor Booth Gardner and his attorney general, Kenneth Eikenberry, pushed for introduction of legislation.

In those cases, the lawmakers initiated the legislation, but we can try to jump-start the efforts in other states by honing in on effective champions for our cause. In the state legislatures, members of the judiciary committees are likely candidates, especially those who have an intellectual bent or have shown themselves to be strong supporters of First Amendment interests. Senator Lockyer was one such man, a former schoolteacher who strongly believed in freedom of thought. Another approach might be to pinpoint some powerful examples of citizens being victimized by SLAPPs (see “Tell A Good Story” below) and target those citizens’ representatives, or other legislators who might be particularly affected by their stories.

On the executive front, if it is not possible to engage the governor or another powerful official directly, it might be fruitful to bring the issue to a potentially interested agency or even a citizen advisory group that has access to agency officials. In Oregon, the idea for an anti-SLAPP statute originated with the citizen involvement advisory committee to the Department of Land Conservation and Development. The committee made a recommendation to the Land Conservation and Development Commission, the Department's public policy decision-making body, and the Commission directed an investigation and appropriate action. Ultimately, the Department drafted a proposal for the legislation and sought sponsors.

Enunciate The Problem. Both in enlisting government support and building a coalition (see "Build A Coalition" below), it is important that we effectively explain what SLAPPs are and why something must be done. Attached as an appendix is a sample "Statement of the Problem," adapted from one prepared by the Communications and Public Affairs Program of the Oregon Department of Land Conservation and Development. It will be most effective if we personalize our "Statements," bearing in mind each state's unique composition and challenges.

Build A Coalition. The single most important lobbying strategy, cited by all the experts, was building the broadest possible coalition to push for passage of the legislation. Media, environmental and civil rights groups are the most frequent supporters of anti-SLAPP legislation, but groups defending the rights of women and the elderly are also potentially strong advocates, as are municipalities and neighborhood and civic associations. Appendix B, which lists the supporters of the California statute, shows the great variety of groups that are sympathetic to anti-SLAPP legislation.

Several states found it useful to develop more formal coalitions, providing organizational structure to harness the power of the myriad supporters. The California Anti-SLAPP Project began as such a coalition and has continued as the lead proponent of improvements to the California statute. New Mexico also had a formal coalition, the NoSLAPP Alliance, which coordinated the statewide media and lobbying campaign.

Finally, in addition to recognizing potential allies, it is important for anti-SLAPP proponents to recognize their likely opponents. Developers and building industry associations are the No. 1 opponents of anti-SLAPP legislation, not surprising given that the quintessential SLAPP involves a developer suing a citizen for his criticism of a development project. Representatives of business, including chambers of commerce, also tend to oppose anti-SLAPP legislation, as did the Trial Lawyers Association in California, though there are certainly arguments as to why anti-SLAPP legislation would benefit its constituency.

Tell A Meaningful Story. Politicians are politicians, and they will be most likely to get behind legislation that makes them look compassionate. Therefore, it is crucial to set off on the lobbying trail with some good stories about SLAPP victims, stories that will outrage lawmakers in their injustice and present them with possible "poster children" for the new legislation. Even more effective is to enlist the victims themselves to tell their own stories.

In California, Senator Lockyer was swayed by the story of Alan LaPointe, a Contra Costa County man who led community opposition to a proposed waste-burning plant. LaPointe spoke against the plant at district meetings and before a grand jury, and was the lead plaintiff in a taxpayer's action filed in 1987 based on an allegedly improper use of public funds for feasibility studies for the proposed plant. The sanitation district cross-complained against LaPointe personally for interference with prospective economic advantage.

In Washington State, the anti-SLAPP legislation was named "The Brenda Hill Bill" after a woman who reported her subdivision developer to the state for failure to pay its tax bill. The developer filed foreclosure proceedings on Hill's home and sued her for defamation, seeking \$100,000. Her story swayed both the governor and the legislator who brought the bill, Holly Myers.

In a related matter, point out specific examples of how the current system is insufficient. In New York, legislators passed the anti-SLAPP statute out of frustration over how the legal system was addressing SLAPPs, which were common especially in the real estate context. For example, a developer sued nine Suffolk County homeowner groups and sixteen individuals after they had testified against town approval of a proposed housing development. The developer alleged various tort claims and sought more than \$11 million in damages. More than three years later, the case was finally dismissed on appeal.

Channel Your Power Effectively. Media and journalism groups are essential participants in the anti-SLAPP movement, says Goldowitz, because they are a commonly SLAPPED group with a relatively large bank of resources and a significant amount of influence. However, it is crucial that these groups know when and how to use their power. Because of their resources and contacts, media groups should probably play a key role in coalition-building, but the media would probably do best to step back and let their allies tell their own SLAPP stories. The tale of a poor woman fighting a big developer will almost always have more resonance than the travails of a large newspaper facing a baseless libel suit – even by the same developer.

The exception to the hands-off approach should be in running editorials and op-ed pieces. Newspapers and other media have an unmatched ability to reach large numbers of people, and such outreach is crucial to a successful anti-SLAPP campaign. For example, in California, more than two dozen newspapers published editorials in favor of the anti-SLAPP legislation. Op-ed pieces written by coalition allies or SLAPP victims are also powerful. The key is to emphasize the First Amendment benefits of anti-SLAPP legislation while downplaying the possibility that it could be exploited by the media itself.

Play The Politics. Even in situations fairly conducive to the passage of anti-SLAPP legislation, the political stars have to align. In California, two situations having nothing to do with SLAPPs boosted the anti-SLAPP effort immeasurably. First, on the second attempt to pass the legislation, it was merged with another bill that made permanent liability protections for volunteer officers and directors of non-profit organizations. Support for the bill more than doubled, with organizations such as the Red Cross, the United Way, and dozens of local chambers of commerce joining. Increased pressure from all sides contributed to Governor Pete Wilson's decision to sign the bill in 1992 on its third attempt.

Second, when the democrats took control of both houses of the California legislature in 1997, certain anti-SLAPP allies, such as the ACLU and environmental groups, saw a boost in their lobbying influence. This contributed in part to the California coalition's ability to push through an amendment to the anti-SLAPP statute clarifying that its provisions should be interpreted broadly.

Certainly we as political outsiders are limited in the amount of maneuvering we can achieve – and politicians are limited ethically in the steps they can take. But it is always worth using our imaginations and keeping an eye out for situations that may improve the climate for passage of anti-SLAPP legislation.

Be Patient. It can take time to pass anti-SLAPP legislation. In California and Pennsylvania, it took three tries to generate enough momentum and support to achieve success. A first attempt can be effective, even if it doesn't lead to a law, if it gets the issue on the radar screens of lawmakers and citizens. Sometimes, we might have to wait until one political party makes an exit, or the right sponsor comes along.

Be Willing to Compromise. A little bit of give-and-take is essential in the legislative process. In California, in exchange for Governor Wilson's signature on the anti-SLAPP bill, Senator Lockyer agreed to introduce remedial legislation to make mandatory a permissive provision for awarding attorney's fees and costs to a plaintiff who prevailed on a motion to strike. (The remedial legislation has not passed.) In New Mexico, the bill was on the verge of dying in the Senate when a last-minute compromise was brokered which, among other things, changed the definition of what speech would be immunized.

As in New Mexico or Pennsylvania – where the statute was greatly watered down before passage – the results of compromise may be harsh. But keep in mind that where passage of the desired language does not seem possible, it might be better to get some kind of statute on the books. Once that happens, some of the opposing pressure may lift and it may be easier to pass amendments that will bring the statute in line with our goals.

Appendix A

SLAPPs: A STATEMENT OF THE PROBLEM

What is a SLAPP Suit?

The essence of a SLAPP suit is the transformation of a debate over public policy – including such local issues as zoning, environmental preservation, school curriculum, or consumer protection – into a private dispute. A SLAPP suit shifts a political dispute into the courtroom, where the party speaking out on the issue must defend his or her actions. Although SLAPP suits may arise in many different contexts, they share a number of features:

1. The conduct of the targets that are sued is generally constitutionally protected speech intended to advance a view on an issue of public concern. In most cases, a SLAPP suit is filed in retaliation for public participation in a political dispute. The plaintiff is attempting to intimidate a political opponent and, if possible, prevent further public participation on the issue by the person or organization.
2. Targets typically are individuals or groups that are advancing social or political interests of some significance and not acting solely for personal profit or commercial advantage.
3. The filers are individuals or groups who believe their current or future commercial interests may be negatively affected by the targets' actions. Though developers and other commercial entities are the most common SLAPP plaintiffs, they are not the only ones. For example, in Oklahoma, a group supporting tort reform was the subject of a class action libel suit filed by trial lawyers, and in California, county officials filed a \$42 million SLAPP against a local citizen because of his opposition to a proposed incinerator project.
4. The actions tend to be based on one or more of the following torts: defamation (libel or slander); business torts (interference with contract, business relationships or economic advantage, or restraint of trade); misuse of process (abuse of process or malicious prosecution); civil rights violations (due process, takings, or equal protection); or conspiracy to commit one or more of the above acts.
5. Damages sought are often in the millions of dollars. According to a study by the Denver Political Litigation Project, the average demand was for \$9.1 million. See Penelope Canan and George Pring, SLAPPs: Getting Sued for Speaking Out 217 (Philadelphia: Temple University Press, 1996).
6. Almost all SLAPP suits are eventually dismissed or decided in favor of the defendants. Canan and Pring reported that targets win dismissals at the very first trial court appearance in about two-thirds of the cases. Id. at 218.

By all accounts, the number of SLAPP suits has increased during the past 30 years. Examples of SLAPP suits from around the country reveal the extent of the practice:

- In Rhode Island, a woman filed comments on proposed groundwater rules, raising concerns about possible contamination from a local landfill. The landfill operators sued her for defamation and tortious interference with prospective business contracts, seeking both compensatory and punitive damages.
- In Pennsylvania, a couple wrote letters to their United States Senator, state health officials, and CBS News complaining about conditions at a local nursing home. The state investigated and eventually revoked the nursing home's license. The nursing home then sued the couple, the Senator, and a state health department official.
- In Minnesota, a retired United States Fish and Wildlife Service employee mobilized his neighbors against a proposed condominium development on a small lake. After the rezoning request was rejected, the developer sued him, alleging he had made false statements that damaged the developer's business reputation.
- In Texas, a woman confined to her home by illness spoke out publicly against a nearby landfill. In response, the landfill owners filed a \$5 million defamation suit against the woman and her husband.
- In California, a group of small cotton farmers bought newspaper advertising opposing a proposed ballot measure supported by the nation's largest cotton agribusiness. The corporation sued the farmers for libel, requesting \$2.5 million in damages.
- In California, a \$63 million lawsuit was filed by a developer who claimed that the Beverly Hills League of Women Voters had unlawfully stymied his 10-acre project.
- In Washington, The Nature Conservancy was sued for \$2.79 million by seaweed farm developers after it had inventoried potential natural areas in San Juan County, identified lands that should be preserved (including the plaintiffs'), and turned the study over to the county as a recommendation.

Isn't Action Involving Public Participation And Petition Already Protected By The Constitution? Why Is A Special Anti-SLAPP Provision Needed?

Two constitutional doctrines, both founded on the First Amendment, protect the sort of speech and conduct that is targeted by SLAPPs. The first, the New York Times v. Sullivan doctrine, provides that a person cannot be found liable for a false statement about a public figure on a matter of public concern unless the statement was made with "actual malice," that is, with knowledge that it was false or with reckless disregard for its truth or falsity. The second, the Noerr-Pennington doctrine, provides that petitioning activity is shielded from liability as long as it is genuinely aimed at procuring favorable government action.

Under both these doctrines, a defendant seeking to promptly dispose of a lawsuit files a motion to dismiss, in which the defendant argues that the plaintiff's allegations in the complaint do not state a viable claim. The burden of persuasion lies with the defendant, and the facts alleged are presumed to be true, though later inquiries will be intensely fact-specific. For those

reasons, and because the right to sue is itself constitutionally protected, a judge generally will not dismiss a lawsuit at this stage. Most often, the judge will allow the plaintiff to proceed with discovery, including depositions during which the plaintiff's attorney may question the defendant's knowledge, beliefs, and motives.

The problem with the current legal framework is that it takes too long to get SLAPP suits dismissed. According to Dr. Pring, the average SLAPP suit proceeds for 40 months – more than three years. During this time, the suit inflicts massive emotional and financial harm on the defendant, and often the defendant withdraws completely from action involving public participation and petition. By the time the SLAPP suit is dismissed, the plaintiff has thus achieved its goals of retaliation and silencing protected speech.

What Will Anti-SLAPP Legislation Do?

Essentially, anti-SLAPP legislation identifies the speech and conduct that should be protected – defined as “action involving public participation and petition” – and provides a procedure for speedy review of lawsuits that are filed as a result of such protected action.

In particular, the proposed legislation permits a suspecting SLAPP victim to file a special motion to strike, which must be heard within 60 days. At the hearing, the SLAPP must be dismissed unless the filer establishes a probability of prevailing. The proposed legislation also states that discovery will be stayed pending a decision on the motion to strike. A prevailing victim is entitled to his attorney's fees and costs, and a court may issue other sanctions to deter similar conduct in the future by the filer or others similarly situated.

The proposed legislation also features protections for those who file legitimate suits and find themselves the subject of special motions to strike. The court will not dismiss a suit if the filer produces substantial evidence to support a prima facie case. Furthermore, the filer is entitled to his attorney's fees and costs if the court finds that the motion to strike was frivolous or filed in bad faith.

Although arguments can be made against anti-SLAPP legislation, such statutes represent a legislative decision that, even though citizen communications may at times be self-interested or incorrect, public participation and petition are essential to our democratic process and must be protected from the threat of SLAPP suits.

Appendix B

BUILDING A BROAD COALITION: ANTI-SLAPP PROPONENTS IN CALIFORNIA

American Civil Liberties Union
American Lung Association of California
Bar Association of San Francisco
California Association of Nonprofits
California Association of Professional Liability Insurers
California Association of Zoos and Aquariums
California Common Cause (good government group)
California First Amendment Coalition
California First Amendment Project (predecessor of CASP)
California League of United Latin American Citizens
California Legislative Council For Older Americans
California Newspaper Publishers Association
California School Employees Association
California Thoracic Society
Center for Law in the Public Interest
City and County of Los Angeles
City of Napa
City of San Diego
City of San Francisco
City of San Mateo
Complete Equity Markets, Inc. (professional insurance company)
Concerned Citizens for Environmental Health
Consumers Union
Friends of the River (statewide river conservation organization)
Golden State Manufactured-Home Owners League
Greenlining Coalition (multi-ethnic community leaders)
Land Utilization Alliance
Neighborhood and civic associations
Planning and Conservation League (California environmental org.)
Public Advocates (public-interest law firm)
Queen's Bench (women's lawyers association in San Francisco)
Sierra Club, Ventana Chapter
Women Lawyers of Alameda County

A UNIFORM ACT LIMITING STRATEGIC LITIGATION

AGAINST PUBLIC PARTICIPATION

PREFATORY NOTE

The past 30 years have witnessed the proliferation of Strategic Lawsuits against Public Participation ("SLAPPs") as a powerful mechanism for stifling free expression. SLAPPs defy simple definition. They are initiated by corporations, companies, government officials, and individuals, and they target both radical activists and typical citizens. They occur in every state, at every level in and outside of government, and address public issues from zoning to the environment to politics to education. They are cloaked as claims for defamation, nuisance, invasion of privacy, and interference with contract, to name a few. For all the diversity of SLAPPs, however, their unifying features make them a dangerous force: They are brought not in pursuit of justice, but rather to ensnare their targets in costly litigation that distracts them from the controversy at hand, and to deter them and others from engaging in their rights of speech and petition on issues of public concern.

To limit the detrimental effects of SLAPPs, 21 states have enacted laws that authorize special and/or expedited procedures for addressing such suits, and ten others are considering or have previously considered similar legislation. Though grouped under the "anti-SLAPP" moniker, these statutes and bills differ widely in scope, form, and the weight they accord First Amendment rights vis a vis the constitutional right to a trial by jury. Some "anti-SLAPP" statutes are triggered by any claim that implicates free speech on a public issue, while others apply only to speech in specific settings or concerning specific subjects. Some statutes provide for special motions to dismiss, while others employ traditional summary procedures. The burden of proof placed on the responding party, whether discovery is stayed pending consideration, and the availability of attorney's fees and damages all vary from state to state. Perhaps as a result of the confusion these variations engender, anti-SLAPP measures in many states are grossly under-utilized.

The Uniform Act Limiting Strategic Litigation Against Public Participation seeks to remedy these flaws by enunciating a clear process through which SLAPPs can be challenged and their merits evaluated in an expedited manner. The Act sets out the

situations in which a special motion to strike may be brought, a uniform timeframe and other procedures for evaluating the special motion, and a uniform process for setting and distributing attorney's fees and other damages. In so doing, the Act ensures that parties operating in more than one state will face consistent and thoughtful adjudication of disputes implicating the rights of speech and petition.

Because often conflicting constitutional considerations bear on anti-SLAPP statutes, the Act is in many respect an exercise in balance. The triggering "action involving public participation and petition" is defined so that the special motion to strike may be employed against all true SLAPPs without becoming a blunt instrument for every person who is sued in connection with the exercise of his or her rights of free speech or petition. To avoid due process concerns, the responding party's burden of proof is not overly onerous, yet steep enough to weed out truly baseless suits. Finally, to reduce the possibility that the specter of an anti-SLAPP motion will deter the filing of valid lawsuits, the fee-shifting structure is intended to ensure proper compensation without imposing purely punitive measures. In these ways and more, the Act serves both the citizens' interests in free speech and petition and their rights to due process.

**A UNIFORM ACT LIMITING STRATEGIC LITIGATION
AGAINST PUBLIC PARTICIPATION**

SECTION 1. FINDINGS AND PURPOSES.

(a) FINDINGS. The Legislature finds and declares that

(1) there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances;

(2) such lawsuits, called "Strategic Lawsuits Against Public Participation" or "SLAPPs," are typically dismissed as groundless or unconstitutional, but often not before the defendants are put to great expense, harassment, and interruption of their productive activities.

(3) the costs associated with defending such suits can deter individuals and entities from fully exercising their constitutional rights to petition the government and to speak out on public issues;

(4) it is in the public interest for citizens to participate in matters of public concern and provide information to public entities and other citizens on public issues that affect them without fear of reprisal through abuse of the judicial process;

(5) an expedited judicial review would avoid the potential for abuse in these cases.

(b) PURPOSES. The purposes of this Act are

(1) to strike a balance between the rights of persons to file lawsuits and to trial by jury and the rights of persons to participate in matters of public concern;

(2) to establish an efficient, uniform, and comprehensive method for speedy adjudication of SLAPPs;

(3) to provide for attorney's fees, costs, and additional relief where appropriate.

Comment

The findings bring to light the costs of baseless SLAPPs - their harassing and disruptive effect and financial burdens on those forced to defend against them, and the danger that such lawsuits will deter individuals and entities from speaking out on public issues and exercising their constitutional right to petition the government. The stated purposes make clear that that drafters also recognize important interests opposing the speedy disposal of lawsuits, particularly the right of an individual to due process and evaluation of his or her claim by a jury of peers. Thus, the primary intent of the Act is not to do away with SLAPPs, but to limit their detrimental effects on the First Amendment without infringing on citizens' due process and jury trial rights.

Though a statement of findings and purposes is not required in many states (only about half of the anti-SLAPP laws in effect have them), several states have put such statements to good use. They can be invaluable in helping courts interpret the reach of the statute. This has been particularly evident in California, the epicenter of anti-SLAPP litigation. For example, in 1999, the United States Court of Appeals for the Ninth Circuit found the legislative findings crucial to its holding that the statute may properly be applied in federal court. See United States ex rel. Newsham v. Lockheed Missiles and Space Co., 190 F.3d 963, 972-73 (9th Cir. 1999). If the statute were strictly

procedural, the court noted, choice-of-law considerations would likely deem it inapplicable in federal court. However, because of California's "important, substantive state interests furthered by anti-SLAPP statute," which are enunciated in Cal. Civ. Proc. Code 425.16(a), the court held that the anti-SLAPP statute should be applied in conjunction with the Federal Rules of Civil Procedure. Id.

The Supreme Court of California also has deemed the legislative findings useful in determining many of the most important questions that have arisen from application of the anti-SLAPP statute. In Briggs v. Eden Council for Hope and Opportunity, the Court examined whether a party moving to strike a cause of action arising from a statement made before, or in connection with an issue under consideration by, a legally authorized official proceeding was required to demonstrate separately that the statement concerned an issue of public significance. 969 P.2d 564, 565 (Cal. 1999). The court found that the 425.16(a) findings evinced an intent broadly to protect petition-related activity; to require separate proof of the public significance of the issue in such cases would result in the exclusion of much direct petition activity from the statute's protections, contrary to the clear legislative intent. Id. at 573-74. In Equilon Enterprises, LLC v. Consumer Cause, Inc., the same court found that requiring a moving party to demonstrate that the action was brought with an "intent to chill" speech would contravene the legislative intent by lessening the statute's effectiveness in encouraging public participation in matters of public significance. 52 P.2d 685, 689 (Cal. 2002).

The benefits of statements of findings and purposes have been seen outside California as well. In Hawks v. Hinely, an appellate court in Georgia cited the General Assembly's stated findings in holding that statements made in a petition itself - not just statements concerning the petition - trigger the safeguards of the anti-SLAPP statute. 556 S.E.2d 547, 550 (Ga. App. 2001). In Globe Waste Recycling, Inc. v. Mallette, the Supreme Court of Rhode Island found that legislative intent, as recorded in the statute, indicated that statements for which immunity is claimed need not necessarily be made before a legislative, judicial, or administrative body under the terms of the statute. 762 A.2d 1208, 1213 (R.I. 2000). Finally, in Kauzlarich v. Yarbrough, an appellate court in Washington held that the legislative findings indicated that the Superior Court Administration is an "agency," and thus communications to that

entity trigger the immunity protection and other benefits of the anti-SLAPP statute. 20 P.3d 946 (Wash. App. 2001).

SECTION 2. DEFINITIONS. As used in this Act,

(a) "Claim" includes any lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing requesting relief;

(b) "Government" includes a branch, department, agency, instrumentality, official, employee, agent, or other person acting under color of law of the United States, a state, or subdivision of a state or other public authority;

(c) "Moving party" means a person on whose behalf the motion described in Section 4 is filed seeking dismissal of a claim;

(d) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity.

(e) "Responding party" means a person against whom the motion described in Section 4 is filed.

Comment

Most SLAPPs present themselves as primary causes of action, with the moving party as the defendant to the original SLAPP suit and the responding party as the plaintiff. However, "claim," "moving party," and "responding party" are defined so the protections of the statute extend to other, less common situations. For example, the moving party may be a plaintiff in the underlying action if the SLAPP claim is a counter-claim.

See, e.g., Simmons v. Allstate Ins. Co., 92 Cal. App. 4th 1068 (Cal. Ct. App. 2001); Wilcox v. Superior Court, 27 Cal. App. 4th 809 (Cal. Ct. App. 1994). Alternatively, the moving and responding parties may be co-defendants or co-plaintiffs in the underlying action if the SLAPP claim is a cross-claim.

Similarly, while the quintessential SLAPPs are brought by corporate entities against individuals, the definition of "person" in the Act is not so limited. A "person" eligible to be a moving or responding party under the Act may be an individual or a wide range of corporate or other entities. Thus, the evaluation of a SLAPP claim is properly focused on the substance of the claim rather than peripheral matters such as the status of the parties. With the same purpose in mind, "government" is defined broadly to ensure that action in furtherance of the right of petition is not construed to include only interaction with administrative agencies.

SECTION 3. SCOPE; EXCLUSION.

(a) SCOPE. This Act applies to any claim, however characterized, that is based on an action involving public participation and petition. As used in this Act, an "action involving public participation and petition" includes

(1) any oral statement made, or written statement or other document submitted, in a legislative, executive, or judicial proceeding or other proceeding authorized by law;

(2) any oral statement made, or written statement or other document submitted, in connection with an issue under consideration or review by a legislative, executive, or judicial proceeding or other proceeding authorized by law;

(3) any oral statement made, or written statement or other document submitted, that is reasonably likely to

encourage, or to enlist public participation in an effort to effect, consideration or review of an issue in a legislative, executive, or judicial proceeding or other proceeding authorized by law;

(4) any oral statement made, or written statement or other document submitted, in a place open to the public or a public forum in connection with an issue of public concern; or

(5) any other conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern, or in furtherance of the exercise of the constitutional right of petition.

(b) EXCLUSION. This Act shall not apply to any action brought by the attorney general, district attorney, or city attorney, acting as a public prosecutor, to enforce laws aimed at public protection.

Comment

This section is the core of the statute, defining what First Amendment activities will trigger the protections stated herein. First, the claim must be "based on" an action involving public participation and petition. The existing California statute uses the terminology "arising from," but in response to confusion over that language, the California Supreme Court has held that "the critical point is whether the plaintiff's cause of action itself was based on an act in furtherance of the defendant's right of petition or free speech." City of Cotati v. Cashman, 52 P.3d 695 (Cal. 2002). The use of "based on" in this Act is designed to omit that confusion and clarify that there must be a real - not simply temporal - connection between the action involving public participation and petition and the legal claim that follows.

The term "action involving public participation and petition" is modeled after the defining language in the existing New York and Delaware anti-SLAPP statutes and is designed to reinforce the model statute's main focus: to protect the public's right to participate in the democratic process through expression of their views and opinions. This terminology is also designed to avoid the confusion engendered by the existing California statute - which is triggered by a cause of action arising from an "act in furtherance of person's right of petition or free speech . . . in connection with a public issue" - over whether the statute only applies to activity addressing a matter of public concern. As discussed below, this statute is not so limited.

The enunciation of what constitutes an "action involving public participation" attempts to combine the best features of the Massachusetts and California statutes, which have been the models for anti-SLAPP laws in several other states, including Louisiana, Maine, and Oregon. Subsection (1) is intended to cover pure petitioning activity and other statements made during official proceedings. Subsection (2) extends the same protections to statements that concern such activity but are made outside the realm of official proceedings or petition processes. Subsection (3) is drawn from the Massachusetts and Maine statutes and is not included in the California act and its progeny (though much of the conduct covered by this subsection is provided for elsewhere in those statutes). This subsection is designed to protect conduct that is similar in form and value to the activity discussed above but is not protected by (1) or (2) because it concerns petitions or official proceedings that have not yet been initiated.

The first three subsections contain no requirement that the statements made relate to a matter of public concern. This is consistent with the California Supreme Court's holding in Briggs v. Eden Council for Hope and Opportunity, 969 P.2d 564 (Cal. 1999). In that case, two owners of residential rental properties sued a nonprofit corporation over statements made by employees of the defendant in connection with the defendant's assistance of a tenant in pursuing an investigation of the plaintiffs by the Department of Housing and Urban Development. The California Supreme Court held that the section "broadly encompasses participation in official proceedings, generally, whether or not such participation remains strictly focused on 'public' issues." Id. at 571.

Subsection (4) is drawn from the existing California statute and its progeny and offers protection for statements made in a place open to the public or a public forum in connection with an issue of public concern. The statute does not attempt to define "a place open to the public" or "a public forum," out of concern that such a definition would be unintentionally restrictive. This provision clearly encompasses those spaces historically considered public forums - such as parks, streets, and sidewalks - but on the fringes, there has been more confusion. In particular, courts have disagreed on whether a publication of the media constitutes a public forum, such that a lawsuit stemming from a media publication would be subject to an anti-SLAPP motion. Compare Zhao v. Wong, 48 Cal. App. 4th 1114 (Cal. Ct. App. 1996) (holding private newspaper publishing falls outside concept of public forum), and Lafayette Morehouse, Inc. v. Chronicle Publishing Co., 37 Cal. App. 4th 855 (Cal. Ct. App. 1995) (same), with Baxter v. Scott, 845 So. 2d 225 (La. Ct. App. 2003) (holding professor's website is public forum), Seelig v. Infinity Broadcasting Corp., 97 Cal.App.4th 798 (Cal. Ct. App. 2002) (holding radio talk show is public forum), M.G. v. Time Warner, 89 Cal.App.4th 623 (Cal. Ct. App. 2001) (holding magazine is public forum), and Damon v. Ocean Hills Journalism Club, 85 Cal.App.4th 468 (Cal. Ct. App. 2000) (holding residential community newsletter is public forum). Courts are encouraged to consider this and related issues with an eye toward the purposes of the statute and the intent that it be construed broadly (see Section 8 below).

Finally, Subsection (5) is designed to capture any expressions of the First Amendment right of free speech on matters of public concern and right of petition that might not fall under the other categories. This includes all such conduct, such as symbolic speech, that might not be considered an oral or written statement or other document. This provision resembles the corresponding provision in the existing California statute, which covers "any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." See Cal. Code Civ. Proc. § 425.16(e)(4). However, this provision has been modified to make clear that conduct falling within the right to petition the government need not implicate a matter of public concern. This broad provision has been held to include speech published in the media, and is intended to do so here. See M.G. v. Time Warner, 89 Cal.App.4th at 629.

It is likely that most situations which the proposed statute is designed to address will be addressed by the five subdivisions discussed above. However, as written, the list is not exclusive. A court has jurisdiction to find that the protections of this Act are triggered by a claim based on actions that do not fall within these subdivisions, if the court deems that the claim has the effect of chilling the valid exercise of freedom of speech or petition and that application of the Act would not unduly hinder the constitutional rights of the claimant.

Subsection (b) provides that enforcement actions by the government will not be subject to anti-SLAPP motions. This exclusion is intended to ensure that the statute's protections do not hinder the government's ability to enforce consumer protection laws. In People v. Health Laboratories of North America, 87 Cal. App. 4th 442 (Cal. Ct. App. 2001), the Court of Appeals of California upheld a similar provision in the California statute against an equal protection challenge. The court noted that the exclusion is consistent with the purposes of the statute, as a public prosecutor is not motivated by retaliation or personal advantage, and it held that the provision is rationally related to the legitimate state interest of ensuring the government may pursue actions to enforce its laws uniformly. The language from the existing California statute has been modified to make clear that the exception does not apply only to civil enforcement actions initiated in the name of the people of the state.

SECTION 4. SPECIAL MOTION TO STRIKE; BURDEN OF PROOF.

(a) A party may bring a special motion to strike any claim that is based on an action involving public participation and petition, as defined in Section 3.

(b) A party bringing a special motion to strike under this Act has the initial burden of making a prima facie showing that the claim against which the motion is based on an action involving public participation and petition. If the moving party meets this burden, the burden shifts to the responding

party to establish a probability of prevailing on the claim by presenting substantial evidence to support a prima facie case. If the responding party meets this burden, the court shall deny the motion.

(c) In making a determination under subsection (b), the court shall consider pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(d) If the court determines that the responding party has established a probability of prevailing on the claim,

(1) the fact that the determination has been made and the substance of the determination may not be admitted into evidence at any later stage of the case; and

(2) the determination does not affect the burden of proof or standard of proof that is applied in the proceeding.

(e) The Attorney General's office or any government body to which the moving party's acts were directed may intervene to defend or otherwise support the moving party.

Comment

Section 4 sets out the expedited process through which "a claim that is based on an action involving public participation and petition" may be evaluated. Subsection (a) states that a party subject to such a claim may file a special motion to strike that claim. Many existing anti-SLAPP statutes provide for adjudication through motions to dismiss or motions for summary judgment. This Act mimics the existing California statute in choosing terminology that makes clear that this

Motion is governed by special procedures that distinguish it from other dispositive motions.

Subsection (b) delineates the allocation of the burden between the moving and responding parties. The moving party first must make a prima facie showing that the claim is based on an action involving public participation and petition, as defined in Section 3. The moving party need not show that the action was brought with the intent to chill First Amendment expression or has such a chilling effect, though such a showing might be necessary if the action does not fit into one of the five specified categories in Section 3.

If the moving party carries its burden, the responding party must establish a probability of prevailing on its claim. This standard is higher than the standard of review for a traditional motion to dismiss; in addition to stating a legally sufficient claim, the responding party must demonstrate that the claim is supported by a prima facie showing of facts that, if true, would support a favorable judgment. See Briggs v. Eden Council for Hope and Opportunity, 969 P.2d 564 (Cal. 1999); Matson v. Dvorak, 40 Cal. App. 4th 539 (Cal. Ct. App. 1995). In so doing, the responding party should point to competent, admissible evidence.

In evaluating whether the responding party has put forth facts establishing a probability of prevailing, the court shall also consider defenses put forth by the moving party. As Subsection (c) makes clear, at all stages in this examination the court must consider the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

Existing and proposed state statutes that allocate a similar burden of proof to the responding party have faced constitutional challenges. In New Hampshire in 1994, a senate bill modeled on the existing California statute was presented to the state Supreme Court, which found that it was inconsistent with the state's constitution. See Opinion of the New Hampshire Supreme Court on an Anti-SLAPP Bill, 641 A.2d 1012 (1994). The court found that the statute's provision for court consideration of the pleadings and affidavits denied a plaintiff who is entitled to a jury trial the corresponding right to have all factual issues resolved by a jury. In the face of similar concerns, the Rhode Island General Assembly amended its statute in 1995 to do away with the "special motion to dismiss"

provision and its "preponderance of the evidence" standard. See Hometown Properties, Inc. v. Fleming, 680 A.2d 56 (R.I. 1996).

The opinion of the New Hampshire Supreme Court evinces a misunderstanding of a court's role in evaluating a motion to strike and response. The court does not weigh the parties' evidence at this preliminary stage, but rather determines whether the responding party has passed a certain threshold by pointing to the existence of evidence that creates a legitimate issue of material fact. See Lafayette Morehouse, Inc. v. Chronicle Publishing Co., 37 Cal. App. 4th 855 (Cal. Ct. App. 1995); Dixon v. Superior Court, 30 Cal. App. 4th 733 (Cal. Ct. App. 1994); see also Lee v. Pennington, 830 So. 2d 1037 (La. Ct. App. 2002) ("The only purpose of [the state statute] is to act as a procedural screen for meritless suits, which is a question of law for the court to determine at every stage of a legal proceeding."). The court's analysis is not unlike that which it would undertake in examination of a summary judgment motion. Furthermore, the court may permit a responding party to conduct discovery after the filing of a special motion to strike if the responding party needs such discovery to establish its burden under the Act. See Section 5, infra.

Subsection (d) provides that if a responding party is successful in defeating a special motion to strike, its case should proceed as if no motion had occurred. The evaluation of a special motion to strike is based on the examination of evidence, the veracity of which is assumed at this preliminary stage but has not been established. Thus, the survival of a motion to strike is not a reflection of the validity of the underlying claim, and evidence of the survival of a motion to strike is inadmissible as proof of the strength of the claim. Likewise, the special motion to strike should in no way alter the burden of proof as to the underlying claim.

A variation of subsection (e) is included in almost every existing anti-SLAPP statute and provides that the attorney general's office or the government body to which the moving party's acts were directed may intervene to defend or otherwise support the moving party. Many of the most troubling SLAPPs are brought by a powerful party against a relatively powerless individual or group. Though the government's role is purely discretionary, this provision is designed to grant more targets of SLAPPs the resources needed to fight baseless lawsuits.

SECTION 5. REQUIRED PROCEDURES.

(a) The special motion to strike may be filed within 60 days of the service of the most recent complaint or, in the court's discretion, at any later time upon terms it deems proper. A hearing shall be held on the motion not more than 30 days after the service of the motion unless the docket conditions of the court require a later hearing.

(b) All discovery and any pending hearings or motions in the action shall be stayed upon the filing of a special motion to strike under Section 3. The stay of discovery shall remain in effect until the entry of the order ruling on the motion. Notwithstanding the stay imposed by this subsection, the court, on motion and for good cause shown, may order that specified discovery or other hearings or motions be conducted.

(c) Any party shall have a right of expedited appeal from a trial court order on the special motion or from a trial court's failure to rule on the motion in a timely fashion.

Comment

The procedures set out in Section 5 are designed to facilitate speedy adjudication of anti-SLAPP motions, one of the main goals of this Act. Subsection (a) states that unless the court deems it proper to appoint a later deadline, a special motion to strike must be filed within 60 days of service of the most recent amended complaint - or the original complaint, if it has not been amended. The motion must be heard by the court within 30 days of service of the motion to the opposing party, unless the docket conditions of the court require a later hearing. The court may not delay the hearing date merely for the convenience of one or both parties.

Subsection (b) provides for a stay of discovery and all other pending motions from the time a special motion to strike is filed until the entry of the order ruling on the motion. This stay is designed to mitigate the effects of SLAPP suits brought for the purpose of tying up the SLAPP victim's time and financial resources. However, it is also understood that in some situations the party opposing the special motion to strike will need discovery in order to adequately frame its response to the motion, and restricting discovery in these situations might raise constitutional concerns. In addition, there will be times when a stay on all other pending motions will be impractical.

Thus, the court is permitted, on motion and for good cause shown, to permit limited discovery and/or the hearing of other motions. Relevant considerations for the judge when evaluating "good cause" include whether the responding party has reasonably identified material held or known by the moving party that would permit it to demonstrate a prima facie case, see Lafayette Morehouse Inc. v. Chronicle Publishing Co., 37 Cal. App. 4th 855, 868 (Cal. Ct. App. 1995), and whether the materials sought are available elsewhere, see Schroeder v. City Council of City of Irvine, 97 Cal. App. 4th 172 (Cal. Ct. App. 2002). The requirement for a timely motion is intended to be enforced; responding parties will not be permitted to raise the issue for the first time on appeal or when seeking reconsideration. See Evans v. Unkow, 38 Cal. App. 4th 1490 (Cal. Ct. App. 1995).

Subsection (c) makes clear that an order granting or denying a special motion to strike is immediately appealable. This provision is modeled after the 1999 amendment to the existing California statute that was intended to give the moving party -- the party the statute was designed to protect -- the same ability as the responding party to challenge an adverse trial court ruling. Originally, the California statute permitted the responding party to appeal the grant of a motion to strike, while the moving party could only challenge the denial through petition for a writ in the court of appeals, a process that is disfavored and rarely successful.

SECTION 6. ATTORNEY'S FEES, COSTS, AND OTHER RELIEF.

(a) The court shall award a moving party who prevails on a special motion to strike made under Section 3, without regard to any limits under state law:

(1) costs of litigation and any reasonable attorney's fees incurred in connection with the motion; and

(2) such additional relief, including sanctions upon the responding party and its attorneys or law firms, as the court determines shall be necessary to deter repetition of the conduct and comparable conduct by others similarly situated.

(b) If the court finds that the special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award reasonable attorney's fees and costs to the responding party.

Comment

The attorney's fee provisions are a central feature of the Uniform Act, designed to create the proper incentives for both parties considering lawsuits arising out of the First Amendment activities of another, and parties pondering how to respond to such lawsuits. Subsection (a) sets out the costs, fees, and other relief recoverable by a moving party who succeeds on a special motion to strike under this statute. It provides that a prevailing movant is entitled to recover reasonable attorney's fees and costs, and that the court should issue such other relief, including sanctions against the responding party or its attorneys, as the court deems necessary to deter the responding party and others from similar suits in the future. Subsection (b) counterbalances (a) by providing mandatory fee-shifting to the responding party if the court finds that the special motion to strike is frivolous or brought with intent to delay.

Nearly every state anti-SLAPP statute includes a section providing for mandatory or discretionary fee-shifting for the benefit of a prevailing movant. The main purpose of such provisions is to discourage the bringing of baseless SLAPPs by "plac[ing] the financial burden of defending against so-called SLAPP actions on the party abusing the judicial system." Poulard v. Lauth, 793 N.E.2d 1120, 1124 (Ind. Ct. App. 2003); see also Ketchum v. Moses, 17 P.3d 735, 745 (Cal. 2001). Another important purpose of such provisions is to encourage private representation of parties defending against SLAPPs, even where the party might not be able to afford fees. See id. Thus, fees are recoverable even if the prevailing defendant is represented on a pro bono basis, see Rosenaur v. Scherer, 88 Cal. App. 4th 260, 287 (Cal. Ct. App. 2001).

By "reasonable attorney's fees," the statute refers to those fees that will adequately compensate the defendant for the expense of responding to a baseless lawsuit. See Robertson v. Rodriguez, 36 Cal. App. 4th 347, 362 (Cal. Ct. App. 1995). The statute permits the use of the lodestar method for calculating reasonable fees. The lodestar method provides for a baseline fee for comparable legal services in the community that may be adjusted by the court based on factors including (1) the novelty and difficulty of the questions involved; (2) the skill displayed by the attorneys; (3) the extent to which the nature of the litigation precluded other employment of the attorneys; and (4) the contingent nature of the fee award. See Ketchum, 17 P.3d at 741. Even if the lodestar method is not followed strictly, the court may take those and other factors - such as a responding party's bad-faith tactics - into account in determining "reasonable" fees.

Much confusion has arisen in the application of California's anti-SLAPP statute over what constitutes a "prevailing" defendant or moving party, particularly where the responding party voluntarily dismisses the underlying case prior to a court's ruling on the special motion to strike. The authors of this statute agree with the majority of California courts that proper disposition of these situations requires the court to make a determination of the merits of the motion to strike. See Pfeiffer Venice Properties v. Bernard, 107 Cal. App. 4th 761, 768 (Cal. Ct. App. 2002); Liu v. Moore, 69 Cal. App. 4th 745, 755 (Cal. Ct. App. 1999). If the court finds that the moving party would have succeeded on its motion to strike, it shall award the moving party reasonable attorney's fees and costs. This interpretation does not provide a disincentive for responding parties to dismiss baseless lawsuits, because if the

responding party timely dismisses, the moving party will likely have incurred less in fees and costs than it would have if the responding party pursued its lawsuit to a ruling on the motion to strike.

One California court has held that where the responding party voluntarily dismisses prior to a ruling on the special motion to strike, the responding party could prove it prevailed by showing "it actually dismissed because it had substantially achieved its goals through a settlement or other means, because the [moving party] was insolvent, or for other reasons unrelated to the probability of success on the merits." Coltrain v. Shewalter, 66 Cal. App. 4th 94, 107 (Cal. Ct. App. 1998). This analysis is flawed because it places impoverished moving parties in the position of having to fight baseless SLAPP suits out of their own pockets because the responding party can at any time dismiss the SLAPP on the grounds that the moving party is insolvent and thereby avoid paying attorney's fees.

Another question that has arisen in the interpretation of the California statute is how the fee award is to be assessed if the moving party's victory is partial or limited in comparison to the litigation as a whole. In such cases, the prevailing movant is entitled to a fee award reduced by the court to reflect the partial or limited victory. See ComputerXpress, Inc. v. Jackson, 93 Cal. App. 4th 993, 1019 (Cal. Ct. App. 2001). Finally, the government, if it prevails on a special motion to strike, is entitled to recover its fees and costs just as a private party would. See Schroeder v. City Council of City of Irvine, 99 Cal. App. 4th 174, 197 (Cal. Ct. App. 2002).

Subsection (a)(2), which gives the court discretion to apply additional sanctions upon the responding party, is modeled after a provision in Guam's anti-SLAPP statute. Several state statutes (though notably not California's) provide for additional sanctions beyond fees and costs in various circumstances, with most requiring a showing that the responding party brought its lawsuit with the intent to harass. See, e.g., 10 Delaware Code § 8138(a)(2); Minnesota Statutes § 554.04(2)(b). Such intent-based provisions are ineffective because they place a heavy burden of proof on moving parties when, in fact, most SLAPP lawsuits by definition are brought with an intent to harass. The provision in this Act lifts the heavy burden from the moving party but at the same time makes clear that additional relief is not to be applied in every case - only when the court finds that an extra penalty would serve the purposes of the Act.

Just as subsection (a) is designed to deter the filing of baseless SLAPPs, subsection (b) is intended to deter parties who find themselves on the receiving end of valid lawsuits from filing special motions to strike that have no chance of success and show some evidence of bad faith on the part of the movant. The court should grant reasonable attorney's fees to the responding party when, for example, the moving party cannot in good faith maintain that the underlying conduct constitutes "action involving public participation and petition." See Moore v. Shaw, 116 Cal. App. 4th 182, 200 (Cal. Ct. App. 2004).

As a final matter, a moving party who prevails on a special motion to strike under this Act will recover attorney's fees and costs related to a successful appeal on the issue. Dove Audio, Inc. v. Rosenfeld, Meyer & Susman, 47 Cal. App. 4th 777, 785 (Cal. Ct. App. 1996); Church of Scientology v. Wollersheim, 42 Cal. App. 4th 628, 659 (Cal. Ct. App. 1996). In addition, a moving party may recover reasonable fees in connection with an appeal even when the responding party does not pursue the appeal to a final determination. Wilkerson v. Sullivan, 99 Cal. App. 4th 443, 448 (Cal. Ct. App. 2002).

SECTION 7. RELATIONSHIP TO OTHER LAWS. Nothing in this Act shall limit or preclude any rights the moving party may have under any other constitutional, statutory, case or common law, or rule provisions.

SECTION 8. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This Act shall be applied and construed liberally to effectuate its general purpose to make uniform the law with respect to the subject of this Act among States enacting it.

SECTION 9. SEVERABILITY OF PROVISIONS. 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.

SECTION 10. SHORT TITLE. This Act may be cited as the Uniform Act Limiting Strategic Litigation Against Public Participation.

SECTION 11. EFFECTIVE DATE. This Act takes effect



FACT SHEET: Bill 52 – Protection of Public Participation Act

The Ontario government recently introduced Bill 52, the *Protection of Public Participation Act*. The Bill is designed to create a new procedure in civil litigation to help ensure that our courts are not used for bringing lawsuits to silence or deter people from speaking out on matters of public interest.

There is a fair bit of misinformation about what the Act will and what it will not do. However, Bill 52 largely reflects the recommendations of an expert panel appointed by the Attorney General of Ontario. The panel, which solicited public feedback and reported to the Attorney General in the Fall of 2010, was established to advise the Attorney General as to “how the Ontario justice system may prevent the misuse of our courts and other agencies of justice, without depriving anyone of appropriate remedies for expression that actually causes significant harm.”¹ This fact sheet is intended to provide clarification and to answer outstanding questions about the effect of Bill 52.

What is a SLAPP suit?

SLAPP stands for “Strategic Lawsuit Against Public Participation.” In essence, SLAPPs are lawsuits, or the threat of a lawsuit, directed against individuals or organizations, in order to silence and deter their public criticisms or advocacy for change. Although SLAPPs can take a variety of forms, many come in the form of a legal action for defamation or for other civil claims including interference with contractual relations. SLAPPs generally lack merit and are not likely to succeed in court. The term is used in part to describe a case where the goal of the party bringing the lawsuit is generally not to win, but to silence critics.

The lawsuit is started by a plaintiff, which may be an individual or corporation, in order to intimidate those who criticize or question the plaintiff’s behavior or stance with respect to certain public interest issues. In response, the critics (defendants in the lawsuit) have to redirect all of their energies to defending the lawsuit. In light of the time, resources and stress that can accompany being sued, the defendants may be encouraged to simply stop expressing their views and critical assessments of the plaintiff. The lawsuit may also have the effect of dissuading others from speaking out and exercising their own rights to express themselves and participate in the democratic process. This is sometimes referred to as the “chilling effect.”

¹ Ministry of the Attorney General, *Anti-SLAPP Advisory Panel*, online: https://www.attorneygeneral.jus.gov.on.ca/english/anti_slapp/. The Advisory Panel’s full report is available at: http://www.attorneygeneral.jus.gov.on.ca/english/anti_slapp/anti_slapp_final_report_en.pdf.

How would Bill 52 change the civil litigation process?

- If Bill 52 becomes law, there would be a new procedure available in Ontario's civil courts. In particular, a defendant in a lawsuit could bring a **special motion** asking for the claim against them to be dismissed because of its impact on the freedom of expression in a matter of public interest.
- The **motion could be brought at any time** after the claim is filed. In practice, a defendant would probably bring this motion soon after being served with a statement of claim, and thus forego having to file a statement of defence and proceed with many of the other time-consuming and costly steps in civil litigation, until a Court has decided whether the lawsuit may or may not continue.
- The Bill also proposes **cost consequences** that are designed to discourage SLAPP lawsuits from being started and to encourage the targets of such lawsuits to have them disposed of promptly. If the defendant succeeds in having the proceeding dismissed, there is a presumption that they can recover costs (i.e. the person who brought the lawsuit will have to pay all of the legal costs). Conversely, if the defendant is unsuccessful in having the lawsuit dismissed, and it proceeds, there is no presumption they would be liable for costs. Damages could also be awarded in cases where a judge determines that a proceeding was started in bad faith or for an improper purpose.

When would a case be dismissed?

- It has been suggested that Bill 52 would prevent individuals and corporations from protecting themselves against an unfair and untrue "smear campaign". This is not accurate. **The proposed legislation does not change the law of defamation, it only creates a new procedure** to help ensure the Court's resources and powers are not being used to shut down legitimate public debate and discussion.
- **If a judge determines that the lawsuit was started based on an expression made by the defendant that relates to a matter of public interest, it should be dismissed. However, if the party bringing the lawsuit can demonstrate that:**
 - the case has substantial merit;
 - the defendant has no valid defence; and
 - the harm it has suffered outweighs the harm that could be done to the public interest (particularly freedom of expression) by allowing the action to continue**THEN: the case will not be dismissed and the action will be allowed to proceed.**

What Bill 52 will and won't do:

- It will **save time and money**.
 - How? By making sure that an early determination is made about whether a lawsuit can proceed where it appears to be aimed at silencing public participation.
- It will **ensure a fairer process** in our courts.
 - How? The targets of SLAPPs often have limited financial resources and many are not able to cover the cost of defending themselves in a lawsuit, even if they have a strong defence or did nothing unlawful in the first place. The special motion will help make sure these people have an opportunity to defend themselves and not simply bow out because of a lack of resources.

- It will help to **protect freedom of expression**.
 - How? Lawsuits and threats of lawsuits that target expression create a “chill” and discourage people from speaking their minds. The procedure created by Bill 52 will help to guard against this chilling effect.
- It will be available to **any** civil litigant in Ontario (involved in a lawsuit started after December 1, 2014) who feels the suit is targeting their public participation and **will not limit who can bring a special motion to dismiss**.
 - Why not? The proposed scheme should apply to anyone in any civil litigation. The value of public participation is not restricted to specific individuals.
- It will **not create a new legal right** (unlike several American anti-SLAPP laws that expressly protect the right of citizens to petition government).
 - Why not? Canadians’ freedom of expression is already protected by our Constitution. An anti-SLAPP law would merely act as a new procedure to better enforce an existing body of rights.
- It will **not limit protection to communication that targets governments**.
 - Why not? Protection should be based on whether the expression is on a matter of public interest. This may include commentary on government actions and actors, as well as non-government actors.
- It will **not focus on the purpose of the lawsuit**.
 - Why not? Judging the motive of a plaintiff is difficult, and often impossible, especially in an accelerated proceeding such as a motion. Consideration should be given to the effect the lawsuit may have on expression on matters of public interest, not on why the plaintiff decided to sue.



1ST SESSION, 41ST LEGISLATURE, ONTARIO
64 ELIZABETH II, 2015

1^{re} SESSION, 41^e LÉGISLATURE, ONTARIO
64 ELIZABETH II, 2015

Bill 52

*(Chapter 23
Statutes of Ontario, 2015)*

**An Act to amend
the Courts of Justice Act,
the Libel and Slander Act and
the Statutory Powers Procedure Act
in order to protect expression
on matters of public interest**

The Hon. M. Meilleur
Attorney General

Projet de loi 52

*(Chapitre 23
Lois de l'Ontario de 2015)*

**Loi modifiant la
Loi sur les tribunaux judiciaires, la
Loi sur la diffamation et la
Loi sur l'exercice des compétences
légales afin de protéger l'expression
sur les affaires d'intérêt public**

L'honorable M. Meilleur
Procureure générale

1st Reading	December 1, 2014
2nd Reading	September 15, 2015
3rd Reading	October 28, 2015
Royal Assent	November 3, 2015

1 ^{re} lecture	1 ^{er} décembre 2014
2 ^e lecture	15 septembre 2015
3 ^e lecture	28 octobre 2015
Sanction royale	3 novembre 2015



EXPLANATORY NOTE

This Explanatory Note was written as a reader's aid to Bill 52 and does not form part of the law. Bill 52 has been enacted as Chapter 23 of the Statutes of Ontario, 2015.

The Bill amends the *Courts of Justice Act* to add sections 137.1 to 137.5, which create a process for getting a proceeding against a person dismissed if it is shown that the proceeding arises from an expression made by the person that relates to a matter of public interest (section 3 of the Bill). Subsection 137.1 (1) sets out the purposes of the new sections.

Under subsection 137.1 (3), a person against whom a proceeding is brought may bring a motion to get the proceeding dismissed on the basis that the proceeding arises from an expression made by the person that relates to a matter of public interest (subsection 137.1 (2) defines “expression” for the purposes of section 137.1). If the judge hearing the motion is satisfied of this, he or she must dismiss the proceeding unless the party who brought the proceeding satisfies the judge that the proceeding should not be dismissed because the conditions in subsection 137.1 (4) are met. These conditions include that there are grounds to believe that the proceeding has substantial merit and that the person against whom the proceeding was brought has no valid defence in the proceeding. Once a motion under section 137.1 is brought, no further steps may be taken in the proceeding until the motion is finally disposed of (subsection 137.1 (5)). Section 137.1 also sets out restrictions on amending pleadings in the proceeding (subsection 137.1 (6)) and sets out rules for awards of costs and damages on the motion to dismiss (subsections 137.1 (7), (8) and (9)).

Section 137.2 deals with various procedural aspects of the motion to dismiss under section 137.1. These include that the motion may be brought at any time after the proceeding to which it relates has commenced (subsection 137.2 (1)); that the motion must be heard within 60 days (subsection 137.2 (2)); and that cross-examination on documentary evidence is limited to seven hours per side, unless a judge orders otherwise (subsections 137.2 (4) and (5)).

An appeal of a motion under section 137.1 must be heard as soon as practicable (section 137.3). Sections 1 and 2 of the Bill amend sections 6 and 19 of the Act to provide that appeals of motions made under section 137.1 shall be heard by the Court of Appeal.

Section 137.4 creates a process by which a person who brought a motion under section 137.1 can have a tribunal proceeding automatically stayed if he or she believes that the tribunal proceeding is related to the same matter of public interest that he or she alleges is the basis of the proceeding that is the subject of his or her motion under section 137.1. The stay remains in effect until the motion under section 137.1 is finally disposed of (subsection 137.4 (3)); however, a judge may, on motion, order that it be lifted earlier if one of the conditions in subsection 137.4 (4) is met.

Section 137.5 specifies that sections 137.1 to 137.4 apply to proceedings commenced on or after the day the Bill received first reading.

The Bill also amends the *Libel and Slander Act* to add section 25, which states that any qualified privilege that applies in respect of an oral or written communication on a matter of public

NOTE EXPLICATIVE

La note explicative, rédigée à titre de service aux lecteurs du projet de loi 52, ne fait pas partie de la loi. Le projet de loi 52 a été édicté et constitue maintenant le chapitre 23 des Lois de l'Ontario de 2015.

Le projet de loi modifie la *Loi sur les tribunaux judiciaires* pour ajouter les articles 137.1 à 137.5, lesquels créent une procédure pour obtenir le rejet d'une instance introduite contre une personne s'il est démontré que l'instance découle du fait de l'expression de la personne relativement à une affaire d'intérêt public (article 3 du projet de loi). Le paragraphe 137.1 (1) énonce les objets de ces nouveaux articles.

Le nouveau paragraphe 137.1 (3) prévoit que la personne contre qui une instance est introduite peut présenter une motion pour faire rejeter l'instance pour le motif que celle-ci découle de l'expression de la personne relativement à une affaire d'intérêt public (le paragraphe 137.1 (2) définit «expression» pour l'application de l'article 137.1). Si le juge qui entend la motion est convaincu du motif invoqué, il doit rejeter l'instance, sauf si la partie qui l'a introduite le convainc que celle-ci ne devrait pas être rejetée du fait que les conditions du paragraphe 137.1 (4) sont remplies. Ces conditions comprennent notamment le fait qu'il existe des motifs de croire que le bien-fondé de l'instance est substantiel et que la personne contre qui celle-ci a été introduite n'a pas de défense valable dans l'instance. Une fois qu'une motion a été présentée en vertu de l'article 137.1, aucune autre étape ne peut être commencée dans l'instance tant qu'il n'a pas été statué de façon définitive sur la motion (paragraphe 137.1 (5)). De plus, l'article 137.1 énonce les restrictions relatives à la modification des actes de procédure (paragraphe 137.1 (6)) et les règles applicables à l'adjudication des dépens et des dommages-intérêts afférents à la motion en rejet (paragraphe 137.1 (7), (8) et (9)).

L'article 137.2 porte sur divers aspects de la procédure applicable à la motion en rejet prévue à l'article 137.1. Ces aspects comprennent, entre autres, le fait que la motion peut être présentée à n'importe quel moment après l'introduction de l'instance à laquelle elle se rapporte (paragraphe 137.2 (1)); que l'audience sur la motion doit être tenue dans les 60 jours (paragraphe 137.2 (2)); enfin, que le contre-interrogatoire sur tout élément de preuve documentaire est limité à sept heures pour chaque côté, sauf ordonnance contraire d'un juge (paragraphe 137.2 (4) et (5)).

L'appel d'une motion prévue à l'article 137.1 doit être entendu dès qu'il est matériellement possible de le faire (article 137.3). Les articles 1 et 2 du projet de loi modifient les articles 6 et 19 de la Loi pour prévoir que les appels des motions présentées en vertu de l'article 137.1 sont interjetés devant la Cour d'appel.

L'article 137.4 crée une procédure permettant à la personne qui a présenté une motion en vertu de l'article 137.1 d'obtenir la suspension automatique d'une instance devant un tribunal administratif si elle croit que celle-ci se rapporte à la même affaire d'intérêt public qui, selon elle, serait le fondement de l'instance faisant l'objet de sa motion visée à l'article 137.1. La suspension demeure en vigueur tant qu'il n'a pas été statué de façon définitive sur la motion visée à l'article 137.1 (paragraphe 137.4 (3)); cependant, un juge peut, sur motion, ordonner la levée de la suspension à une date antérieure si une des conditions visées au paragraphe 137.4 (4) est remplie.

L'article 137.5 précise que les articles 137.1 à 137.4 s'appliquent aux instances introduites le jour où le projet de loi reçoit la première lecture ou après ce jour.

Le projet de loi modifie aussi la *Loi sur la diffamation* pour ajouter l'article 25, lequel énonce que l'immunité relative qui s'applique à l'égard d'une communication verbale ou écrite

interest between two or more persons who have a direct interest in the matter applies regardless of whether the communication is witnessed or reported on by media representatives or other persons (section 4 of the Bill).

Finally, the Bill amends section 17.1 of the *Statutory Powers Procedure Act* to provide that submissions for a costs order in a proceeding must be made in writing, unless a tribunal determines that to do so is likely to cause a party to the proceeding significant prejudice. In addition, three spent subsections in that section are repealed (section 5 of the Bill).

The Bill comes into force on Royal Assent (section 6 of the Bill).

portant sur une affaire d'intérêt public entre deux personnes ou plus qui ont un intérêt direct dans l'affaire s'applique, que des représentants des médias ou d'autres personnes soient témoins de la communication ou en fassent état (article 4 du projet de loi).

Enfin, le projet de loi modifie l'article 17.1 de la *Loi sur l'exercice des compétences légales* pour prévoir que les observations relatives à une ordonnance d'adjudication des dépens devant être rendue dans une instance doivent être présentées par écrit, sauf si un tribunal administratif décide que cela causera vraisemblablement un préjudice considérable à une partie à l'instance. De plus, trois paragraphes périmés de cet article sont abrogés (article 5 du projet de loi).

Le projet de loi entre en vigueur lorsqu'il reçoit la sanction royale (article 6 du projet de loi).

**An Act to amend
the Courts of Justice Act,
the Libel and Slander Act and
the Statutory Powers Procedure Act
in order to protect expression
on matters of public interest**

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

COURTS OF JUSTICE ACT

1. Subsection 6 (1) of the *Courts of Justice Act* is amended by adding the following clause:

- (d) an order made under section 137.1.

2. Section 19 of the Act is amended by adding the following subsection:

Same

(1.0.1) Clauses (1) (a) and (b) do not apply to orders made under section 137.1.

3. The Act is amended by adding the following sections:

PREVENTION OF PROCEEDINGS THAT LIMIT
FREEDOM OF EXPRESSION ON MATTERS
OF PUBLIC INTEREST (GAG PROCEEDINGS)

Dismissal of proceeding that limits debate

Purposes

137.1 (1) The purposes of this section and sections 137.2 to 137.5 are,

- (a) to encourage individuals to express themselves on matters of public interest;
- (b) to promote broad participation in debates on matters of public interest;
- (c) to discourage the use of litigation as a means of unduly limiting expression on matters of public interest; and
- (d) to reduce the risk that participation by the public in debates on matters of public interest will be hampered by fear of legal action.

Definition, “expression”

- (2) In this section,

**Loi modifiant la
Loi sur les tribunaux judiciaires, la
Loi sur la diffamation et la
Loi sur l’exercice des compétences
légales afin de protéger l’expression
sur les affaires d’intérêt public**

Sa Majesté, sur l’avis et avec le consentement de l’Assemblée législative de la province de l’Ontario, édicte :

LOI SUR LES TRIBUNAUX JUDICIAIRES

1. Le paragraphe 6 (1) de la *Loi sur les tribunaux judiciaires* est modifié par adjonction de l’alinéa suivant :

- d) d’une ordonnance rendue en application de l’article 137.1.

2. L’article 19 de la Loi est modifié par adjonction du paragraphe suivant :

Idem

(1.0.1) Les alinéas (1) a) et b) ne s’appliquent pas aux ordonnances rendues en application de l’article 137.1.

3. La Loi est modifiée par adjonction des articles suivants :

PRÉVENTION DES INSTANCES LIMITANT
LA LIBERTÉ D’EXPRESSION SUR DES AFFAIRES
D’INTÉRÊT PUBLIC (POURSUITES-BÂILLONS)

Rejet d’une instance limitant les débats

Objets

137.1 (1) Les objets du présent article et des articles 137.2 à 137.5 sont les suivants :

- a) encourager les particuliers à s’exprimer sur des affaires d’intérêt public;
- b) favoriser une forte participation aux débats sur des affaires d’intérêt public;
- c) décourager le recours aux tribunaux comme moyen de limiter indûment l’expression sur des affaires d’intérêt public;
- d) réduire le risque que la participation du public aux débats sur des affaires d’intérêt public ne soit entravée par crainte d’une action en justice.

Définition du terme «expression»

- (2) La définition qui suit s’applique au présent article.

“expression” means any communication, regardless of whether it is made verbally or non-verbally, whether it is made publicly or privately, and whether or not it is directed at a person or entity.

Order to dismiss

(3) On motion by a person against whom a proceeding is brought, a judge shall, subject to subsection (4), dismiss the proceeding against the person if the person satisfies the judge that the proceeding arises from an expression made by the person that relates to a matter of public interest.

No dismissal

(4) A judge shall not dismiss a proceeding under subsection (3) if the responding party satisfies the judge that,

- (a) there are grounds to believe that,
 - (i) the proceeding has substantial merit, and
 - (ii) the moving party has no valid defence in the proceeding; and
- (b) the harm likely to be or have been suffered by the responding party as a result of the moving party’s expression is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting that expression.

No further steps in proceeding

(5) Once a motion under this section is made, no further steps may be taken in the proceeding by any party until the motion, including any appeal of the motion, has been finally disposed of.

No amendment to pleadings

(6) Unless a judge orders otherwise, the responding party shall not be permitted to amend his or her pleadings in the proceeding,

- (a) in order to prevent or avoid an order under this section dismissing the proceeding; or
- (b) if the proceeding is dismissed under this section, in order to continue the proceeding.

Costs on dismissal

(7) If a judge dismisses a proceeding under this section, the moving party is entitled to costs on the motion and in the proceeding on a full indemnity basis, unless the judge determines that such an award is not appropriate in the circumstances.

Costs if motion to dismiss denied

(8) If a judge does not dismiss a proceeding under this section, the responding party is not entitled to costs on the motion, unless the judge determines that such an award is appropriate in the circumstances.

«expression» Toute communication, que celle-ci soit faite verbalement ou non, qu’elle soit faite en public ou en privé et qu’elle s’adresse ou non à une personne ou à une entité.

Ordonnance de rejet

(3) Sur motion d’une personne contre qui une instance est introduite, un juge, sous réserve du paragraphe (4), rejette l’instance si la personne le convainc que l’instance découle du fait de l’expression de la personne relativement à une affaire d’intérêt public.

Absence de rejet

(4) Un juge ne doit pas rejeter une instance en application du paragraphe (3) si la partie intimée le convainc de ce qui suit :

- a) il existe des motifs de croire :
 - (i) d’une part, que le bien-fondé de l’instance est substantiel,
 - (ii) d’autre part, que l’auteur de la motion n’a pas de défense valable dans l’instance;
- b) le préjudice que la partie intimée subit ou a subi vraisemblablement du fait de l’expression de l’auteur de la motion est suffisamment grave pour que l’intérêt public à permettre la poursuite de l’instance l’emporte sur l’intérêt public à protéger cette expression.

Suspension des autres étapes de l’instance

(5) Une fois qu’une motion est présentée en vertu du présent article, aucune autre étape ne peut être commencée dans l’instance par l’une ou l’autre partie tant qu’il n’a pas été statué de façon définitive sur la motion, y compris tout appel de celle-ci.

Aucune modification des actes de procédure

(6) Sauf ordonnance contraire d’un juge, la partie intimée ne doit pas être autorisée à modifier ses actes de procédure dans l’instance :

- a) soit afin d’empêcher ou d’éviter qu’une ordonnance rejetant l’instance ne soit rendue en application du présent article;
- b) soit, si l’instance est rejetée en application du présent article, afin de poursuivre l’instance.

Dépens en cas de rejet

(7) Si un juge rejette une instance en vertu du présent article, l’auteur de la motion a droit aux dépens afférents à la motion et à l’instance sur une base d’indemnisation intégrale, sauf si le juge décide que l’adjudication de ces dépens n’est pas appropriée dans les circonstances.

Dépens en cas de refus de la motion en rejet

(8) Si un juge ne rejette pas une instance en application du présent article, la partie intimée n’a pas droit aux dépens afférents à la motion, sauf si le juge décide que l’adjudication de ces dépens est appropriée dans les circonstances.

Damages

(9) If, in dismissing a proceeding under this section, the judge finds that the responding party brought the proceeding in bad faith or for an improper purpose, the judge may award the moving party such damages as the judge considers appropriate.

Procedural matters**Commencement**

137.2 (1) A motion to dismiss a proceeding under section 137.1 shall be made in accordance with the rules of court, subject to the rules set out in this section, and may be made at any time after the proceeding has commenced.

Motion to be heard within 60 days

(2) A motion under section 137.1 shall be heard no later than 60 days after notice of the motion is filed with the court.

Hearing date to be obtained in advance

(3) The moving party shall obtain the hearing date for the motion from the court before notice of the motion is served.

Limit on cross-examinations

(4) Subject to subsection (5), cross-examination on any documentary evidence filed by the parties shall not exceed a total of seven hours for all plaintiffs in the proceeding and seven hours for all defendants.

Same, extension of time

(5) A judge may extend the time permitted for cross-examination on documentary evidence if it is necessary to do so in the interests of justice.

Appeal to be heard as soon as practicable

137.3 An appeal of an order under section 137.1 shall be heard as soon as practicable after the appellant perfects the appeal.

Stay of related tribunal proceeding

137.4 (1) If the responding party has begun a proceeding before a tribunal, within the meaning of the *Statutory Powers Procedure Act*, and the moving party believes that the proceeding relates to the same matter of public interest that the moving party alleges is the basis of the proceeding that is the subject of his or her motion under section 137.1, the moving party may file with the tribunal a copy of the notice of the motion that was filed with the court and, on its filing, the tribunal proceeding is deemed to have been stayed by the tribunal.

Notice

(2) The tribunal shall give to each party to a tribunal proceeding stayed under subsection (1),

- (a) notice of the stay; and

Domages-intérêts

(9) Lorsqu'il rejette une instance en application du présent article, le juge qui conclut que la partie intimée a introduit l'instance de mauvaise foi ou à une fin illégitime peut accorder à l'auteur de la motion les dommages-intérêts qu'il estime appropriés.

Questions procédurales**Introduction**

137.2 (1) Une motion en rejet d'une instance visée à l'article 137.1 est présentée conformément aux règles de pratique, sous réserve des règles énoncées au présent article. Sa présentation peut se faire à n'importe quel moment après l'introduction de l'instance.

Motion entendue dans les 60 jours

(2) Une motion visée à l'article 137.1 est entendue au plus tard 60 jours après le dépôt de l'avis de motion auprès du tribunal.

Obtention préalable de la date d'audience

(3) L'auteur de la motion obtient du tribunal la date d'audience sur la motion avant la signification de l'avis de motion.

Limitation des contre-interrogatoires

(4) Sous réserve du paragraphe (5), le contre-interrogatoire sur tout élément de preuve documentaire déposé par les parties ne doit pas dépasser un total de sept heures pour l'ensemble des demandeurs dans l'instance et de sept heures pour l'ensemble des défendeurs.

Idem : prolongation

(5) Un juge peut prolonger la durée accordée pour le contre-interrogatoire sur tout élément de preuve documentaire si cette prolongation est nécessaire dans l'intérêt de la justice.

Appel entendu dès que matériellement possible

137.3 L'appel d'une ordonnance visée à l'article 137.1 est entendu dès que matériellement possible après que l'appelant a mis l'appel en état.

Suspension d'une instance connexe devant un tribunal administratif

137.4 (1) Si la partie intimée a introduit une instance devant un tribunal administratif au sens que la *Loi sur l'exercice des compétences légales* donne à «tribunal» et que l'auteur de la motion croit que l'instance se rapporte à la même affaire d'intérêt public qui, selon lui, serait le fondement de l'instance faisant l'objet de sa motion visée à l'article 137.1, ce dernier peut déposer auprès du tribunal administratif une copie de l'avis de motion qui a été déposé auprès du tribunal judiciaire et, une fois celle-ci déposée, l'instance devant le tribunal administratif est réputée avoir été suspendue par celui-ci.

Avis

(2) Le tribunal administratif remet les documents suivants à chaque partie à l'instance dont il est saisi et qui est suspendue en vertu du paragraphe (1) :

- a) un avis de la suspension;

- (b) a copy of the notice of motion that was filed with the tribunal.

Duration

(3) A stay of a tribunal proceeding under subsection (1) remains in effect until the motion, including any appeal of the motion, has been finally disposed of, subject to subsection (4).

Stay may be lifted

(4) A judge may, on motion, order that the stay is lifted at an earlier time if, in his or her opinion,

- (a) the stay is causing or would likely cause undue hardship to a party to the tribunal proceeding; or
- (b) the proceeding that is the subject of the motion under section 137.1 and the tribunal proceeding that was stayed under subsection (1) are not sufficiently related to warrant the stay.

Same

(5) A motion under subsection (4) shall be brought before a judge of the Superior Court of Justice or, if the decision made on the motion under section 137.1 is under appeal, a judge of the Court of Appeal.

Statutory Powers Procedure Act

(6) This section applies despite anything to the contrary in the *Statutory Powers Procedure Act*.

Application

137.5 Sections 137.1 to 137.4 apply in respect of proceedings commenced on or after the day the *Protection of Public Participation Act, 2015* received first reading.

LIBEL AND SLANDER ACT

4. The *Libel and Slander Act* is amended by adding the following section:

COMMUNICATIONS ON PUBLIC INTEREST MATTERS

Application of qualified privilege

25. Any qualified privilege that applies in respect of an oral or written communication on a matter of public interest between two or more persons who have a direct interest in the matter applies regardless of whether the communication is witnessed or reported on by media representatives or other persons.

STATUTORY POWERS PROCEDURE ACT

5. Subsections 17.1 (7), (8) and (9) of the *Statutory Powers Procedure Act* are repealed and the following substituted:

Submissions must be in writing

(7) Despite sections 5.1, 5.2 and 5.2.1, submissions for a costs order, whether under subsection (1) or under an

- b) une copie de l'avis de motion qui a été déposée auprès du tribunal administratif.

Durée

(3) La suspension d'une instance devant le tribunal administratif visé au paragraphe (1) demeure en vigueur tant qu'il n'a pas été statué de façon définitive sur la motion, y compris tout appel de celle-ci, sous réserve du paragraphe (4).

Levée de la suspension

(4) Un juge peut, sur motion, ordonner que la suspension soit levée à une date antérieure s'il est d'avis :

- a) soit que la suspension cause ou causerait vraisemblablement un préjudice injustifié à une partie à l'instance devant le tribunal administratif;
- b) soit que l'instance qui fait l'objet de la motion visée à l'article 137.1 et l'instance devant le tribunal administratif qui a été suspendue aux termes du paragraphe (1) ne sont pas suffisamment connexes pour justifier la suspension.

Idem

(5) Une motion visée au paragraphe (4) est présentée devant un juge de la Cour supérieure de justice ou, si la décision rendue sur la motion en vertu de l'article 137.1 est portée en appel, devant un juge de la Cour d'appel.

Loi sur l'exercice des compétences légales

(6) Le présent article s'applique malgré toute disposition contraire de la *Loi sur l'exercice des compétences légales*.

Application

137.5 Les articles 137.1 à 137.4 s'appliquent à l'égard des instances introduites le jour où la *Loi de 2015 sur la protection du droit à la participation aux affaires publiques* reçoit la première lecture ou après ce jour.

LOI SUR LA DIFFAMATION

4. La *Loi sur la diffamation* est modifiée par adjonction de l'article suivant :

COMMUNICATIONS SUR DES AFFAIRES D'INTÉRÊT PUBLIC

Application de l'immunité relative

25. L'immunité relative qui s'applique à l'égard d'une communication verbale ou écrite portant sur une affaire d'intérêt public entre deux personnes ou plus qui ont un intérêt direct dans l'affaire s'applique, que des représentants des médias ou d'autres personnes soient témoins de la communication ou en fassent état.

LOI SUR L'EXERCICE DES COMPÉTENCES LÉGALES

5. Les paragraphes 17.1 (7), (8) et (9) de la *Loi sur l'exercice des compétences légales* sont abrogés et remplacés par ce qui suit :

Obligation de présenter les observations par écrit

(7) Malgré les articles 5.1, 5.2 et 5.2.1, les observations relatives à une ordonnance d'adjudication des dépens qui

authority referred to in subsection (6), shall be made by way of written or electronic documents, unless a party satisfies the tribunal that to do so is likely to cause the party significant prejudice.

COMMENCEMENT AND SHORT TITLE

Commencement

6. This Act comes into force on the day it receives Royal Assent.

Short title

7. The short title of this Act is the *Protection of Public Participation Act, 2015*.

sera rendue soit en application du paragraphe (1) soit en vertu d'un pouvoir mentionné au paragraphe (6), sont présentées sous forme de documents écrits ou électroniques, sauf si une partie convainc le tribunal que cela lui causera vraisemblablement un préjudice considérable.

ENTRÉE EN VIGUEUR ET TITRE ABRÉGÉ

Entrée en vigueur

6. La présente loi entre en vigueur le jour où elle reçoit la sanction royale.

Titre abrégé

7. Le titre abrégé de la présente loi est *Loi de 2015 sur la protection du droit à la participation aux affaires publiques*.