

1 **UNIFORM PUBLIC EXPRESSION PROTECTION ACT**

2 **Amendments**

3 **July 12, 2020**

4 **SECTION 2. SCOPE.**

5 (a) In this section:

6 (1) "Governmental unit" means a public corporation or government or
7 governmental subdivision, agency, or instrumentality, or a ~~federally recognized~~ Indian tribe
8 recognized by the federal government [or [the] [a] state].

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

11 (3) "Goods or services" does not include a dramatic, literary, musical, political,
12 journalistic, or artistic work.

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

15 (1) communication in a legislative, executive, judicial, administrative, or other
16 governmental proceeding;

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

19 (3) exercise of the right of freedom of speech or of the press, the right to assemble
20 or petition, or the right of association, guaranteed by the United States Constitution or the [state]
21 Constitution, on a matter of public concern.

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

23 (1) against a governmental unit or an employee or agent of a governmental unit

1 acting or purporting to act in an official capacity;

2 (2) by a governmental unit or an employee or agent of a governmental unit acting
3 in an official capacity to enforce a law to protect against an imminent threat to public health or
4 safety;

5 (3) against a person primarily engaged in the business of selling, or leasing, ~~or~~
6 ~~licensing~~ goods or services if the [cause of action] arises out of a communication related to the
7 person's sale, or lease, ~~or~~ license of the goods or services, ~~unless the cause of action arises out of~~
8 ~~the creation, dissemination, exhibition, or advertisement or similar promotion of a dramatic,~~
9 ~~literary, musical, political, or artistic work; or~~

10 (4) ~~by a person seeking recovery for bodily injury or wrongful death, unless the~~
11 ~~cause of action arises out of the creation, dissemination, exhibition, or advertisement or similar~~
12 ~~promotion of a dramatic, literary, musical, political, or artistic work.~~

13 **SECTION 4. STAY.**

14 (a) Except as otherwise provided in this section:

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

18 (2) on motion by the moving party ~~and for good cause~~, the court may stay:

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

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

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

3 (c) If a party appeals from an order ruling on a motion under Section 3, all proceedings
4 between all parties in an action are stayed. The stay remains in effect until the conclusion of the
5 appeal.

6 (d) During a stay under subsection (a), the court may allow limited discovery if a party
7 shows that specific information is necessary to establish whether a party has satisfied or failed to
8 satisfy a burden imposed by Section 7(a) and is not reasonably available without discovery.

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

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

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

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

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

17 **SECTION 5. EXPEDITED HEARING.**

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

20 ~~(1) because of other matters on the court's docket;~~

21 ~~(2)~~(1) to allow discovery under Section 4~~(b)~~(d); or

22 ~~(3)~~(2) for other good cause.

23 (b) If the court orders a later hearing under subsection (a)~~(2)~~(1), the court shall hear the

1 motion under Section 3 not later than [60] days after the court order allowing the discovery,
2 subject to subsection (a)(2).

3 **SECTION 6. PROOF.** In ruling on a motion under Section 3, the court shall consider
4 the parties' pleadings, the motion, any replies and responses to the motion, and any evidence that
5 could be considered in ruling on a motion for summary judgment under [cite to the state's statute
6 or rule governing summary judgment].

7 **SECTION 7. [DISMISSAL OF] [STRIKING] CAUSE OF ACTION.**

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

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

11 (2) the responding party fails to establish under Section 2(c) that this [act] does
12 not apply; and

13 (3) either:

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

16 (B) the moving party establishes that:

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

19 (ii) there is no genuine issue as to any material fact and the party is
20 entitled to judgment as a matter of law on the cause of action or part of the cause of action.

21 (b) A voluntary [dismissal] [nonsuit] without prejudice of a responding party's cause of
22 action, or part of a cause of action, that is the subject of a motion under Section 3 does not affect
23 a moving party's right to obtain a ruling on the motion and seek costs, reasonable attorney's fees,

1 and reasonable litigation expenses under Section 10.

2 (c) A voluntary [dismissal] [nonsuit] with prejudice of a responding party's cause of
3 action, or part of a cause of action, that is the subject of a motion under Section 3 ~~entitles the~~
4 ~~moving party to costs, reasonable attorney's fees, and reasonable expenses under Section 10~~
5 establishes for the purpose of Section 10 that the moving party prevailed on the motion.

6 **SECTION 9. APPEAL.** A moving party may appeal ~~immediately under [cite to the~~
7 ~~state's statute or rule governing interlocutory appeals]~~ within [21] days as a matter of right from
8 an order denying, in whole or in part, a motion under Section 3.

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

12 (1) to the moving party if the moving party prevails on the motion; or

13 (2) to the responding party if the responding party prevails on the motion and the court
14 finds that the motion was frivolous or filed solely with intent to delay the proceeding.