

SENATE, No. 2802

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED JUNE 6, 2022

Sponsored by:

Senator JOSEPH A. LAGANA

District 38 (Bergen and Passaic)

Senator JON M. BRAMNICK

District 21 (Morris, Somerset and Union)

Co-Sponsored by:

Senator Stack

SYNOPSIS

“Uniform Public Expression Protection Act”; provides for expedited motion and process for dismissal of “Strategic Lawsuit Against Public Participation” (“SLAPP”).

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/22/2023)

1 AN ACT concerning certain actions and supplementing Title 2A of
2 the New Jersey Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. This act shall be known and may be cited as the “Uniform
8 Public Expression Protection Act.”

9
10 2. Scope.

11 a. In this section:

12 (1) “Goods or services” does not include the creation,
13 dissemination, exhibition, or advertisement or similar promotion of
14 a dramatic, literary, musical, political, journalistic, or artistic work.

15 (2) “Governmental unit” means a public corporation or
16 government or governmental subdivision, agency, or
17 instrumentality.

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

21 b. Except as otherwise provided in subsection c., this act applies
22 to a cause of action asserted in a civil action against a person based
23 on the person’s:

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

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

29 (3) exercise of the right of freedom of speech or of the press, the
30 right to assembly or petition, or the right of association, guaranteed
31 by the United State Constitution or the New Jersey Constitution, on
32 a matter of public concern.

33 c. This act does not apply to a cause of action asserted:

34 (1) against a governmental unit or an employee or agent of a
35 governmental unit acting or purporting to act in an official capacity;

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

39 (3) against a person primarily engaged in the business of selling
40 or leasing goods or services if the cause of action arises out of a
41 communication related to the person’s sale or lease of the goods or
42 services.

43

44 3. Special Motion for Expedited Relief.

45 Not later than 60 days after a party is served with a petition or
46 complaint, crossclaim, counterclaim, third-party claim, or other
47 pleading that asserts a cause of action to which this act applies or at

1 a later time on a showing of good cause, the party may file a special
2 motion for expedited relief to dismiss the cause of action or part of
3 the cause of action.

4
5 4. Stay.

6 a. Except as otherwise provided in subsections d. through g., on
7 the filing of a motion under section 3 of P.L. , c.
8 (C.)(pending before the Legislature as this bill):

9 (1) all other proceedings between the moving party and
10 responding party, including discovery and a pending hearing or
11 motion are stayed; and

12 (2) on motion by the moving party, the court may stay a hearing
13 or motion involving another party, or discovery by another party, if
14 the hearing or ruling on the motion would adjudicate, or the
15 discovery would relate to, an issue material to the motion under
16 section 3 of P.L. , c. (C.)(pending before the Legislature as this
17 bill).

18 b. A stay under subsection a. remains in effect until entry of an
19 order ruling on the motion under section 3 of P.L. , c.
20 (C.)(pending before the Legislature as this bill) and expiration of
21 the time under section 9 of P.L. , c. (C.)(pending before the
22 Legislature as this bill) for the moving party to appeal the order.

23 c. Except as otherwise provided in subsections e., f. and g., if a
24 party appeals from an order ruling on a motion under section 3 of
25 P.L. , c. (C.)(pending before the Legislature as this bill), all
26 proceedings between all parties in the action are stayed. The stay
27 remains in effect until the conclusion of the appeal.

28 d. During a stay under subsection a., the court may allow limited
29 discovery if a party shows that specific information is necessary to
30 establish whether a party has satisfied or failed to satisfy a burden
31 under subsection a. of section 7 of P.L. , c. (C.)(pending
32 before the Legislature as this bill) and the information is not
33 reasonably available unless discovery is allowed.

34 e. A motion under section 10 of P.L. , c. (C.)(pending
35 before the Legislature as this bill) for costs, attorney's fees, and
36 expenses is not subject to a stay under this section.

37 f. A stay under this section does not affect a party's ability
38 voluntarily to dismiss a cause of action or party of a cause of action
39 or move to sever a cause of action.

40 g. During a stay under this section, the court for good cause may
41 hear and rule on:

42 (1) a motion unrelated to the motion under section 3 of P.L. , c.
43 (C.)(pending before the Legislature as this bill); and

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

46
47 5. Hearing.

1 a. The court shall hear a motion under section 3 of P.L. , c.
2 (C.)(pending before the Legislature as this bill) not later than
3 60 days after filing of the motion, unless the court orders a later
4 hearing;

5 (1) to allow discovery under subsection d. of section 4 of P.L. ,
6 c. (C.)(pending before the Legislature as this bill); or
7 (2) for other good cause.

8 b. If the Court orders a later hearing under paragraph (1) of
9 subsection a., the court shall hear the motion under section 3 of
10 P.L. , c. (C.)(pending before the Legislature as this bill) not
11 later than 60 days after the court order allowing the discovery,
12 unless the court orders a later hearing under paragraph (2) of
13 subsection a.

14

15 6. Proof.

16 In ruling on a motion under section 3 of P.L. , c.
17 (C.)(pending before the Legislature as this bill), the court shall
18 consider the pleadings, the motion, any reply or response to the
19 motion, and any evidence that could be considered in ruling on a
20 motion for summary judgment.

21

22 7. Dismissal of cause of action in whole or part.

23 a. In ruling on a motion under section 3 of P.L. , c.
24 (C.)(pending before the Legislature as this bill), the court shall
25 dismiss with prejudice a cause of action, or part of a cause of
26 action, if:

27 (1) the moving party established under subsection b. of section 2
28 of P.L. , c. (C.)(pending before the Legislature as this bill)
29 that this act applies;

30 (2) the responding party fails to establish under subsection c. of
31 section 2 of P.L. , c. (C.)(pending before the Legislature as
32 this bill) that this act does not apply; and

33 (3) either:

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

36 (b) the moving party establishes that:

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

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

42 b. A voluntary dismissal without prejudice of a responding
43 party's cause of action, or part of a cause of action, that is the
44 subject of a motion under section 3 of P.L. , c. (C.)(pending
45 before the Legislature as this bill) does not affect a moving party's
46 right to obtain a ruling on the motion and seek costs, attorney's

1 fees, and expenses under section 10 of P.L. , c.
2 (C.)(pending before the Legislature as this bill) .

3 c. A voluntary dismissal with prejudice of a responding's party
4 cause of action, or part of a cause of action, that is the subject of a
5 motion under section 3 of P.L. , c. (C.)(pending before the
6 Legislature as this bill) establishes for the purpose of section 10 of
7 P.L. , c. (C.)(pending before the Legislature as this bill) that
8 the moving party prevailed on the motion.

9
10 8. Ruling.

11 The court shall rule on a motion under section 3 of P.L. , c.
12 (C.)(pending before the Legislature as this bill) not later than
13 60 days after a hearing under section 5 of P.L. , c.
14 (C.)(pending before the Legislature as this bill).

15
16 9. Appeal.

17 A moving party may appeal as a matter of right from an order
18 denying, in whole or in part, a motion under section 3 of P.L. , c.
19 (C.)(pending before the Legislature as this bill). The appeal
20 must be filed not later than 20 days after entry of the order.

21
22 10. Costs, Attorney's Fees, and Expenses.

23 On a motion under section 3 of P.L. , c. (C.)(pending
24 before the Legislature as this bill), the court shall award court costs,
25 reasonable attorney's fees, and reasonable litigation expenses
26 related to the motion:

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

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

32
33 11. Construction.

34 This act shall be broadly construed and applied to protect the
35 exercise of the right of freedom of speech and of the press, the right
36 to assembly and petition, and the right of association, guaranteed by
37 the United State Constitution or the New Jersey Constitution.

38
39 12. Uniformity of Application and Construction.

40 In applying and construing this uniform act, consideration must
41 be given to the need to promote uniformity of the law with respect
42 to its subject matter among states that enact it.

43
44 13. Severability.

45 If any provision of this act or its application to any person or
46 circumstance is held invalid, the invalidity does not affect other
47 provisions or applications of this act which can be given effect with

1 the invalid provision or application, and to this end the provisions
2 of this act are severable.

3
4 14. This act shall take effect on the 30th day after enactment and
5 shall apply to a civil action filed or cause of action asserted in a
6 civil action on or after the effective date.

7
8
9 STATEMENT

10
11 This bill, titled the “Uniform Public Expression Protection Act,”
12 would provide an expedited motion and process to dismiss a
13 “Strategic Lawsuit Against Public Participation” (“SLAPP”). The
14 bill is based on the 2020 uniform act drafted and approved by the
15 Uniform Law Commission (also known as the National Conference
16 of Commissioners on Uniform State Laws).

17 Section 1 provides that the act may be cited as the “Uniform
18 Public Expression Protection Act.”

19 Section 2 defines terms and the causes of action asserted in civil
20 actions that fall under the act. This act applies to a civil cause of
21 action asserted against a person based on the person’s:

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

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

27 (3) exercise of the right of freedom of speech or of the press, the
28 right to assembly or petition, or the right of association, guaranteed
29 by the United State Constitution or the New Jersey Constitution, on
30 a matter of public concern.

31 Subsection c. of this section provides that the bill would not be
32 applicable to the following causes of action:

33 (1) against a governmental unit or an employee or agent of a
34 governmental unit acting or purporting to act in an official capacity;

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

38 (3) against a person primarily engaged in the business of selling
39 or leasing goods or services if the cause of action arises out of a
40 communication related to the person’s sale or lease of the goods or
41 services.

42 Section 3 permits a party to file a special motion for expedited
43 relief to dismiss the cause of action or part thereof. A party may
44 file this special motion for expedited relief within 60 days after a
45 party is served with a petition or complaint, crossclaim,
46 counterclaim, third-party claim, or other pleading that asserts a

1 cause of action that falls under the act, or at a later time on a
2 showing of good cause.

3 Section 4 provides that on the filing of a motion under section 3:

4 (1) all other proceedings between the moving party and
5 responding party, including discovery and a pending hearing or
6 motion are stayed; and

7 (2) on motion by the moving party, the court may stay a hearing
8 or motion involving another party, or discovery by another party, if
9 the hearing or ruling on the motion would adjudicate, or the
10 discovery would relate to, an issue material to the motion under
11 section 3.

12 The stay would remain in effect until the entry of an order ruling
13 on the motion under section 3 and expiration of the time under
14 section 9 for the moving party to appeal the order.

15 Except as provided in subsections e., f., and g., a party appeals
16 from an order ruling on a motion under section 3, all proceedings
17 between all parties in the action are stayed until the conclusion of
18 the appeal. The court may permit limited discovery during a stay if
19 a party shows that specific information is necessary to establish
20 whether a party has satisfied or failed to satisfy a burden under
21 subsection a. of section 7 and the information is not reasonably
22 available unless discovery is allowed.

23 Section 5 permits the court to hear a motion under section 3 within
24 60 days after filing the motion, unless the court orders a later
25 hearing to allow discovery under subsection d. of section 4 or for
26 other good cause.

27 Section 6 provides that in ruling on a motion under section 3, the
28 court would consider the pleadings, the motion, any reply or
29 response to the motion, and any evidence that could be considered
30 in ruling on a motion for summary judgment.

31 Section 7 provides that in ruling on a motion under section 3, the
32 court would dismiss with prejudice a cause of action, or part
33 thereof, if:

34 (1) the moving party established under subsection b. of section 2
35 that this act applies;

36 (2) the responding party fails to establish under subsection c. of
37 section 2 that this act does not apply; and

38 (3) either:

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

41 (b) the moving party establishes that:

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

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

1 A voluntary dismissal without prejudice of a responding party's
2 cause of action, or part thereof that is the subject of a motion under
3 section 3 does not affect a moving party's right to obtain a ruling on
4 the motion and seek costs, attorney's fees, and expenses under
5 section 10. A voluntary dismissal with prejudice of a responding's
6 party cause of action, or part of a cause of action, that is the subject
7 of a motion under section 3 establishes for the purpose of section 10
8 that the moving party prevailed on the motion.

9 Section 8 would provide that the court would rule on a motion
10 under section 3 within 60 days after a hearing under section 5.

11 Section 9 provides that a moving party may appeal as a matter of
12 right from an order denying, in whole or in part, a motion under
13 section 3 within 20 days after entry of the order consistent with R.
14 2:5-6(a) of the Rules of Court.

15 Section 10 provides that on a motion under section 3, the court
16 would award court costs, reasonable attorney's fees, and reasonable
17 litigation expenses related to the motion:

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

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

23 Section 11 provides that this act would be broadly construed and
24 applied to protect the exercise of the right of freedom of speech and
25 of the press, the right to assembly and petition, and the right of
26 association, guaranteed by the United States Constitution or the
27 New Jersey Constitution.

28 Section 12 provides that considerations must be given to the need to
29 promote uniformity of the law with respect to its subject matter
30 among states that enact it, in applying and construing this uniform
31 act.

32 Section 13 provides that if any provision of this act or its
33 application to any person or circumstance is held invalid, the
34 invalidity would not affect other provisions or applications of this
35 act which can be given effect with the invalid provision or
36 application, and to this end the provisions of this act are severable.