Uniform Law Commission
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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THE UNIFORM PUBLIC EXPRESSION PROTECTION ACT (2020)

- A Summary -

The Uniform Public Expression Protection Act ("UPEPA") is designed to prevent an abusive type of litigation called a "SLAPP," or "strategic lawsuit against public participation." A SLAPP may be filed as a defamation, invasion of privacy, nuisance, or other type of claim, but its real purpose is to silence and intimidate the defendant from engaging in constitutionally protected activities, such as free speech. The uniform act contains a clear framework for the efficient review and dismissal of SLAPPs. Below is a summary of how the motion procedure operates under the uniform act.

Phase 1 – Filing of the Motion and Scope of the Act

First, the party targeted by the SLAPP (the party who has been sued) files a motion for expedited relief under Section 3 of the uniform act. The filing of the motion stays, or freezes, all proceedings between the moving party and responding party (unless the court grants specific relief from the stay) until the court rules on the motion. The moving party must file the motion within 60 days after being served with a complaint, crossclaim, counterclaim, or other pleading that asserts a cause of action to which the act applies. Section 2 of UPEPA explains that the act applies if the cause of action asserted against a person is based on the person's:

1. Communication in a legislative, executive, judicial, administrative, or other governmental proceeding;
2. Communication on an issue under consideration or review in a legislative, executive, judicial, administrative, or other governmental proceeding; or
3. Exercise of the right of freedom of speech or of the press, the right to assemble or petition, or the right of association, guaranteed by the United States Constitution or the State constitution, on a matter of public concern.

Section 2(c) provides exemptions from the scope of the act; the act does *not* apply to a cause of action asserted:

1. Against a governmental unit or an employee or agent of a governmental unit acting or purporting to act in an official capacity;
2. By a governmental unit or an employee or agent of a governmental unit acting in an official capacity to enforce a law to protect against an imminent threat to public health or safety; or
3. Against a person primarily engaged in the business of selling or leasing goods or services if the cause of action arises out of a communication related to the person's sale or lease of the goods or services.

Once the motion is filed, the responding party may argue that the action does *not* fall within the scope of the act. If the court finds that the action is *not* within the scope, the moving party loses the motion and may appeal immediately. However, if the court finds the action *is* within the scope, then the parties move to the second phase of the motion process.

The ULC is a nonprofit formed in 1892 to create nonpartisan state legislation. Over 350 volunteer commissioners—lawyers, judges, law professors, legislative staff, and others—work together to draft laws ranging from the Uniform Commercial Code to acts on property, trusts and estates, family law, criminal law and other areas where uniformity of state law is desirable.

Phase 2 – Prima Facie Viability
In this phase, the responding party must show that the cause of action states a prima facie case as to each essential element of the claim. In short, the responding party must provide evidence sufficient as a matter of law to establish a given fact if it is not rebutted or contradicted. If the respondent cannot establish a prima facie case, then the court must grant the motion and the cause of action (or portion of the cause of action) must be dismissed. If the responding party *does* establish a prima facie case, then the court moves to phase three of the motion procedure.

Phase 3 – Legal Viability
In this phase, the burden shifts back to the moving party to either show that:

1. The responding party failed to state a cause of action upon which relief can be granted; or
2. There is no genuine issue as to any material fact and the party is entitled to judgment as a matter of law on the cause of action or part of the cause of action.

If the moving party meets this burden, then the moving party wins and the cause of action is stricken with prejudice (Section 7). The responding party may appeal at the conclusion of the case. If the moving party fails to meet its burden (the court finds the responding party's case to be viable as a matter of law), then the moving party will lose the motion and may appeal immediately (Section 9).

Costs, Attorney's Fees, and Expenses
Section 10 of UPEPA states that if the moving party wins on the motion, then the court must award it costs, reasonable attorney's fees, and reasonable litigation expenses related to the motion. If the responding party wins and the court finds that the SLAPP motion was frivolous or filed solely with intent to delay the proceeding, then the responding party will get its costs, fees, and expenses.

UPEPA offers to enacting states a comprehensive, efficient framework for the resolution of SLAPPs. The uniform act's broad scope also provides more protection to citizens than most existing anti-SLAPP statutes. States that have already adopted a SLAPP law should consider updating their existing law by adopting the uniform act.

For more information about UPEPA, please contact ULC Legislative Program Director Kaitlin Wolff at (312) 450-6615 or kwolff@uniformlaws.org.