

# SENATE JUDICIARY COMMITTEE

## STATEMENT TO

### SENATE, No. 2802

# STATE OF NEW JERSEY

DATED: MARCH 20, 2023

The Senate Judiciary Committee reports favorably Senate Bill No. 2802.

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

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

Section 2 defines terms and the causes of action asserted in civil actions that fall under the act. This act applies to a civil cause of action asserted against a person 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 assembly or petition, or the right of association, guaranteed by the United State Constitution or the New Jersey Constitution, on a matter of public concern.

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

(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. “Goods or services” is defined in section 2 of the bill as not including “the creation, dissemination, exhibition, or advertisement or similar promotion of a dramatic, literary, musical, political, journalistic, or artistic work.”

Section 3 permits a party to file a special motion for expedited relief to dismiss the cause of action or part thereof. A party may file this special motion for expedited relief within 60 days after a party is served with a petition or complaint, crossclaim, counterclaim, third-party claim, or other pleading that asserts a cause of action that falls under the act, or may file at a later time on a showing of good cause.

Section 4 provides that on the filing of a motion under section 3 to dismiss the cause of action or part thereof:

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

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

The stay would remain in effect until the entry of an order ruling on the motion under section 3 and expiration of the time under section 9 for the moving party to appeal the order, which is not later than 20 days after entry of the order.

With limited exceptions, if a party appeals from an order ruling on a motion under section 3, all proceedings between all parties in the action are stayed until the conclusion of the appeal. As to the exceptions: a motion under section 10 for costs, attorney's fees, and expenses is not subject to a stay; a stay does not affect a party's ability to voluntarily dismiss a cause of action or party to a cause of action, or move to sever a cause of action; and for good cause, during a stay a court may hear and rule on a motion unrelated to the section 3 motion and a motion seeking a special or preliminary injunction to protect against an imminent threat to public health or safety. Also, the court may permit limited discovery during a stay if a party shows that specific information is necessary to establish whether a party has satisfied or failed to satisfy a burden enumerated under subsection a. of section 7 (see below), and the information is not reasonably available unless discovery is allowed

Section 5 requires the court to hear a motion under section 3 to dismiss the cause of action or part thereof within 60 days after filing the motion, unless the court orders a later hearing to allow discovery as heretofore described under section 4, or for other good cause.

Section 6 provides that in ruling on a motion under section 3 to dismiss the cause of action or part thereof, the court would consider the pleadings, the motion, any reply or response to the motion, and any evidence that could be considered in ruling on a motion for summary judgment.

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

(1) the moving party established under subsection b. of section 2 that the act applies to the cause of action because it is based on the person's:

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

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

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

(2) the responding party fails to establish under subsection c. of section 2 that this act does not apply to the cause of action because it was asserted:

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

(b) 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

(c) against a person primarily engaged in the business of selling or leasing goods or services (see definition under section 2 heading) if the cause of action arises out of a communication related to the person's sale or lease of the goods or services; and

(3) either:

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

(b) the moving party establishes that:

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

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

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

Section 8 would require that the court rule on a motion under section 3 to dismiss the cause of action or part thereof within 60 days after a hearing under section 5 on the motion.

Section 9 provides that a moving party may appeal as a matter of right from an order denying, in whole or in part, a motion under

section 3 to dismiss the cause of action or part thereof within 20 days after entry of the order consistent with R.2:5-6 (a) of the Rules of Court.

Section 10 provides that on a motion under section 3 to dismiss the cause of action or part thereof, the court would award court costs, reasonable attorney's fees, and reasonable litigation expenses related to the motion:

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

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

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

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

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

The bill would take effect on the 30th day after enactment, and apply to any civil action filed or cause of action asserted in a civil action on or after that date.