

**SUBSTITUTE FOR
HOUSE BILL NO. 4045**

A bill to enact the uniform public expression protection act;
and to provide protections and remedies to persons sued for
exercising rights to expression and other constitutionally
protected rights.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) This act may be cited as the "uniform public
2 expression protection act".

3 (2) The purpose and intent of this act is to do all of the
4 following:

5 (a) Establish that it is the public policy of this state to
6 promote the rights of citizens to vigorously participate in
7 government.

8 (b) Protect citizens from the chilling effect of retributive

1 and abusive strategic lawsuits against public participation,
2 commonly referred to as SLAPP suits.

3 (c) Enact substantive law to minimize the damage of lawsuits
4 described in subdivision (b) by shifting the burden of litigation
5 back to the party bringing the lawsuit, by doing all of the
6 following:

7 (i) Providing for expedited judicial review.

8 (ii) Providing for a stay on discovery and other time and money
9 consuming maneuvers during the expedited judicial review.

10 (iii) Proscribing the evidence that may be considered in the
11 expedited judicial review.

12 (iv) Establishing the burden of proof for the expedited
13 judicial review.

14 (v) Providing for sanctions.

15 Sec. 2. (1) As used in this act:

16 (a) "Goods or services" does not include the creation,
17 dissemination, exhibition, or advertisement or similar promotion of
18 a dramatic, literary, musical, political, journalistic, or artistic
19 work.

20 (b) "Governmental unit" means a public corporation or
21 government or governmental subdivision, agency, or instrumentality.

22 (c) "Person" means an individual, estate, trust, partnership,
23 business or nonprofit entity, governmental unit, or other legal
24 entity.

25 (d) "Eligible cause of action" means a cause of action
26 asserted after the effective date of this act in a civil action
27 against a person based on any of the following:

28 (i) A communication by the person in a legislative, executive,
29 judicial, administrative, or other governmental proceeding.

1 (ii) A communication by the person on an issue under
2 consideration or review in a legislative, executive, judicial,
3 administrative, or other governmental proceeding.

4 (iii) The person's exercise of the right of freedom of speech or
5 of the press, the right to assemble or petition the government for
6 a redress of grievances, or the right of association, guaranteed by
7 the United States Constitution or the state constitution of 1963 on
8 a matter of public concern.

9 (2) An otherwise eligible cause of action is not an eligible
10 cause of action if 1 or more of the following apply:

11 (a) It is against a person primarily engaged in the business
12 of selling or leasing goods or services if the cause of action
13 arises out of a communication related to the person's sale or lease
14 of the goods or services.

15 (b) It arises from a claim by an individual for the violation
16 of any of the following:

17 (i) The Elliott-Larsen civil rights act, 1976 PA 453, MCL
18 37.2101 to 37.2804.

19 (ii) The persons with disabilities civil rights act, 1976 PA
20 220, MCL 37.1101 to 37.1607.

21 (iii) The whistleblowers' protection act, 1980 PA 469, MCL
22 15.361 to 15.369.

23 (iv) The worker's disability compensation act of 1969, 1969 PA
24 317, MCL 418.101 to 418.941.

25 (v) The freedom of information act, 1976 PA 442, MCL 15.231 to
26 15.246.

27 (vi) Title VII of the civil rights act of 1964, 42 USC 2000e to
28 2000e-17, including, but not limited to, the pregnancy
29 discrimination act, 42 USC 2000e(k).

1 (vii) Title IX of the education amendments of 1972, 20 USC 1681
2 to 1689.

3 (viii) The age discrimination in employment act of 1967, 29 USC
4 621 to 634.

5 (ix) The Americans with disabilities act of 1990, Public Law
6 101-336.

7 (x) The family and medical leave act of 1993, Public Law 103-
8 3.

9 (xi) The fair labor standards act of 1938, 29 USC 201 to 219.

10 Sec. 3. Not later than 60 days after a party is served with a
11 complaint, cross-claim, counterclaim, third-party claim, or other
12 pleading that asserts an eligible cause of action, or at a later
13 time on a showing of good cause, the party may file a special
14 motion for expedited relief to dismiss the action or part of the
15 action.

16 Sec. 4. (1) Except as otherwise provided in subsections (4) to
17 (6), all of the following apply on the filing of a motion under
18 section 3:

19 (a) All other proceedings between the moving party and the
20 responding party, including discovery and a pending hearing or
21 motion, are stayed.

22 (b) On motion by the moving party, the court may stay a
23 hearing or motion involving another party, or discovery by another
24 party, if the hearing or ruling on the motion would adjudicate, or
25 the discovery would relate to, an issue material to the motion
26 under section 3.

27 (2) A stay under subsection (1) remains in effect until entry
28 of an order ruling on the motion under section 3 and expiration of
29 the time under section 9 for the moving party to appeal the order.

1 (3) Except as otherwise provided in subsections (5) and (6),
2 if a party appeals an order ruling on a motion under section 3, all
3 proceedings between all parties in the action are stayed. The stay
4 remains in effect until the conclusion of the appeal.

5 (4) During a stay under subsection (1), the court may allow
6 limited discovery if a party shows that specific information is
7 necessary to establish whether a party has satisfied or failed to
8 satisfy a burden under section 7(1) and the information is not
9 reasonably available unless discovery is allowed.

10 (5) A motion under section 10 for costs, attorney fees, and
11 expenses is not subject to a stay under this section.

12 (6) A stay under this section does not affect a party's
13 ability voluntarily to dismiss an action or part of an action or
14 move to sever a cause of action.

15 Sec. 5. (1) The court shall hear a motion under section 3 not
16 later than 60 days after the motion is filed, unless the court
17 orders a later hearing for either of the following reasons:

18 (a) To allow discovery under section 4(4).

19 (b) For other good cause.

20 (2) If the court orders a later hearing under subsection
21 (1)(a), the court shall hear the motion under section 3 not later
22 than 60 days after the court order allowing the discovery, unless
23 the court orders a later hearing under subsection (1)(b).

24 Sec. 6. In ruling on a motion under section 3, the court shall
25 consider the pleadings, the motion, any reply or response to the
26 motion, affidavits, depositions, admissions, or other documentary
27 evidence.

28 Sec. 7. (1) In ruling on a motion under section 3, the court
29 shall dismiss with prejudice an action, or part of an action, if

1 all of the following apply:

2 (a) The moving party establishes the cause of action is an
3 eligible cause of action.

4 (b) The responding party fails to establish that the cause of
5 action is not an eligible cause of action under section 2(2).

6 (c) Either of the following applies:

7 (i) The responding party fails to establish a prima facie case
8 as to each essential element of the cause of action.

9 (ii) The moving party establishes either of the following:

10 (A) The responding party failed to state a cause of action on
11 which relief can be granted.

12 (B) There is no genuine issue as to any material fact and the
13 moving party is entitled to judgment as a matter of law on the
14 action or part of the action.

15 (2) A voluntary dismissal without prejudice of a responding
16 party's action, or part of an action, that is the subject of a
17 motion under section 3 does not affect a moving party's right to
18 obtain a ruling on the motion and seek costs, attorney fees, and
19 expenses under section 10.

20 (3) A voluntary dismissal with prejudice of a responding
21 party's action, or part of an action, that is the subject of a
22 motion under section 3, establishes for the purpose of section 10
23 that the moving party prevailed on the motion.

24 Sec. 8. The court shall rule on a motion under section 3 not
25 later than 60 days after a hearing under section 5.

26 Sec. 9. A moving party may appeal as a matter of right from an
27 order denying, in whole or in part, a motion under section 3. The
28 appeal must be filed not later than 21 days after entry of the
29 order.

Sec. 10. On a motion under section 3, the court shall award court costs, reasonable attorney fees, and reasonable litigation expenses related to the motion as follows:

(a) To the moving party if the moving party prevails on the motion.

(b) 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.

Sec. 11. This act must be broadly construed and applied to protect the exercise of the right of freedom of speech and of the press, the right to assemble and petition the government for a redress of grievances, and the right of association, guaranteed by the United States Constitution and the state constitution of 1963.

Sec. 13. This act applies to a civil action filed or cause of action asserted in a civil action on or after the effective date of this act.