

HOUSE BILL NO. 5788

June 06, 2024, Introduced by Reps. Hope, Breen, Hill, Rheingans, Steckloff, Dievendorf, Coffia, MacDonell, Paiz, Byrnes, Hood, Wilson and Andrews and referred to the Committee on Criminal Justice.

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

1 promote the rights of citizens to vigorously participate in
2 government.

3 (b) Protect citizens from the chilling effect of retributive
4 and abusive strategic lawsuits against public participation,
5 commonly referred to as SLAPP suits.

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

10 (i) Providing for expedited judicial review.

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

13 (iii) Proscribing the evidence that may be considered in the
14 expedited judicial review.

15 (iv) Establishing the burden of proof for the expedited
16 judicial review.

17 (v) Providing for sanctions.

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

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

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

25 (c) "Person" means an individual, estate, trust, partnership,
26 business or nonprofit entity, governmental unit, or other legal
27 entity.

28 (d) "Eligible cause of action" means a cause of action
29 asserted after the effective date of this act in a civil action

1 against a person based on any of the following:

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

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

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

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

14 (a) It is against a governmental unit or an employee or agent
15 of a governmental unit acting or purporting to act in an official
16 capacity.

17 (b) It is by a governmental unit or an employee or agent of a
18 governmental unit acting in an official capacity to enforce a law
19 to protect against an imminent threat to public health or safety.

20 (c) It is against a person primarily engaged in the business
21 of selling or leasing goods or services if the cause of action
22 arises out of a communication related to the person's sale or lease
23 of the goods or services.

24 (d) It arises from a claim by an individual for the violation
25 of any of the following:

26 (i) The Elliott-Larsen civil rights act, 1976 PA 453, MCL
27 37.2101 to 37.2804.

28 (ii) The persons with disabilities civil rights act, 1976 PA
29 220, MCL 37.1101 to 37.1607.

1 (iii) The whistleblowers' protection act, 1980 PA 469, MCL
2 15.361 to 15.369.

3 (iv) The worker's disability compensation act of 1969, 1969 PA
4 317, MCL 418.101 to 418.941.

5 (v) The freedom of information act, 1976 PA 442, MCL 15.231 to
6 15.246.

7 (vi) Title VII of the civil rights act of 1964, 42 USC 2000e to
8 2000e-17, including, but not limited to, the pregnancy
9 discrimination act, 42 USC 2000e(k).

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

12 (viii) The age discrimination in employment act of 1967, 29 USC
13 621 to 634.

14 (ix) The Americans with disabilities act of 1990, Public Law
15 101-336.

16 (x) The family and medical leave act of 1993, Public Law 103-
17 3.

18 (xi) The fair labor standards act of 1938, 29 USC 201 to 219.
19 Sec. 3. Not later than 60 days after a party is served with a
20 complaint, cross-claim, counterclaim, third-party claim, or other
21 pleading that asserts an eligible cause of action, or at a later
22 time on a showing of good cause, the party may file a special
23 motion for expedited relief to dismiss the action or part of the
24 action.

25 Sec. 4. (1) Except as otherwise provided in subsections (4) to
26 (7), all of the following apply on the filing of a motion under
27 section 3:

28 (a) All other proceedings between the moving party and the
29 responding party, including discovery and a pending hearing or

1 motion, are stayed.

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

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

10 (3) Except as otherwise provided in subsections (5), (6), and
11 (7), if a party appeals an order ruling on a motion under section
12 3, all proceedings between all parties in the action are stayed.
13 The stay remains in effect until the conclusion of the appeal.

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

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

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

24 (7) During a stay under this section, the court for good cause
25 may hear and rule on the following:

26 (a) A motion unrelated to the motion under section 3.

27 (b) a motion seeking a special or preliminary injunction to
28 protect against an imminent threat to public health or safety.

29 Sec. 5. (1) The court shall hear a motion under section 3 not

1 later than 60 days after the motion is filed, unless the court
2 orders a later hearing for either of the following reasons:

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

4 (b) For other good cause.

5 (2) If the court orders a later hearing under subsection
6 (1)(a), the court shall hear the motion under section 3 not later
7 than 60 days after the court order allowing the discovery, unless
8 the court orders a later hearing under subsection (1)(b).

9 Sec. 6. In ruling on a motion under section 3, the court shall
10 consider the pleadings, the motion, any reply or response to the
11 motion, affidavits, depositions, admissions, or other documentary
12 evidence.

13 Sec. 7. (1) In ruling on a motion under section 3, the court
14 shall dismiss with prejudice an action, or part of an action, if
15 all of the following apply:

16 (a) The moving party establishes the cause of action is an
17 eligible cause of action.

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

20 (c) Either of the following applies:

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

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

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

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

29 (2) A voluntary dismissal without prejudice of a responding

1 party's action, or part of an action, that is the subject of a
2 motion under section 3 does not affect a moving party's right to
3 obtain a ruling on the motion and seek costs, attorney fees, and
4 expenses under section 10.

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

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

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

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

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

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

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

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

1 this act.