

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4393

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 18, 2023

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 4393.

This bill, titled the “Uniform Public Expression Protection Act,” would provide an order to show cause and expedited 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.

Actions that Constitute SLAPP

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.

Exceptions

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.

Application for Show Cause Order

The bill permits a party to file an application for an order to show cause for expedited relief to dismiss the cause of action or part thereof. A party may file application 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 at a later time on a showing of good cause. The bill provides that on the filing of an order to show cause:

- (1) all other proceedings between the moving party and responding party, including discovery and a pending hearing or motion may be stayed;
- (2) on motion by the moving party, the court may stay an action or proceeding involving another party, or discovery by another party, if the hearing or ruling in that proceeding would adjudicate, or the discovery would relate to, an issue material to the order to show cause; and
- (3) In determining whether to stay any proceedings, there would be a presumption that such a stay shall be granted.

Right to Appeal

A party maintains the right to appeal an order ruling on an order to show cause, and if so appealed, all proceedings between all parties in the action are stayed until the conclusion of the appeal. 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 and the information is not reasonably available unless discovery is allowed.

A moving party may appeal as a matter of right from an order denying, in whole or in part, an order to show cause within 20 days after entry of the order consistent with R. 2:5-6(a) of the Rules of Court.

Hearing for Show Cause Order

The bill further provides that the court would hear an order to show cause as expeditiously as possible, unless the court allows limited discovery. In ruling on an order to show cause, the court would consider the pleadings, the order to show cause application and support certifications, briefs, any reply or response to the order to show cause, and any evidence that could be considered in ruling on a motion for summary judgment.

Dismissal of SLAPP Actions

The court is permitted to dismiss with prejudice a cause of action, or part thereof, if:

- (1) the moving party established that the act applies;

(2) the responding party fails to establish that the act does not apply; 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 an order to show cause does not affect a moving party's right to obtain a ruling on the order to show cause and seek costs, attorney's fees, and expenses. A voluntary dismissal with prejudice of a responding party's cause of action, or part of a cause of action, that is the subject of an order to show cause establishes that the moving party prevailed on the motion.

COMMITTEE AMENDMENTS

The committee amended the bill to:

(1) clarify that the dismissal of a SLAPP suit may occur upon an "order to show cause," not a "motion;"

(2) require the court to hear an order to show cause as expeditiously as possible and to rule on such as soon as practicable; and

(3) replace synopsis to read: "Uniform Public Expression Protection Act"; provides for expedited process for dismissal of "Strategic Lawsuit Against Public Participation" (SLAPP).