

ACT 96

S.B. NO. 3329

A Bill for an Act Relating to Public Participation in Government.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the enactment in 2002 of Hawaii's Citizen Participation in Government Act, codified as chapter 634F, Hawaii Revised Statutes, was intended to promote the rights of citizens to vigorously participate in government and to protect citizens from the chilling effect of retributive strategic lawsuits against public participation or "SLAPP" suits. To minimize the damage of SLAPP claims against citizens, Hawaii's anti-SLAPP law seeks to shift the burden of litigation back to the party bringing the SLAPP claim by providing for expedited judicial review, a stay on discovery, and sanctions.

The legislature further finds that despite the broad intentions of the legislature that the law "shall be construed liberally to fully effectuate its purposes and intent", the anti-SLAPP law has not been effective at protecting citizen participation. The Public Participation Project has rated the law as a "C" compared to other state laws, and courts have often declined to apply its procedural protections due to its narrow and confusing provisions.

The legislature also finds that the Uniform Law Commission provides states with nonpartisan, well-conceived, and well-drafted legislation that brings clarity and stability to critical areas of state statutory law. In 2020, due to the rise in SLAPP suits nationally and the need to strengthen protection for citizen participation in government and increase consistency among states with anti-SLAPP laws, the Uniform Law Commission proposed the Uniform Public Expression Protection Act as a model act to assist states in modernizing their anti-SLAPP laws.

The legislature finds that to protect public participation at all levels of government, the State should adopt the provisions of the model act recommended by the Uniform Law Commission. By adopting the Uniform Act provisions, the State will have an anti-SLAPP law that is among the best in the nation, with procedural protections for all parties, and clearer instructions for the courts on how to fairly and expeditiously dispose of SLAPP claims to ensure citizens are protected from punitive SLAPP suits.

The purpose of this Act is to enact the Uniform Public Expression Protection Act.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
HAWAII PUBLIC EXPRESSION PROTECTION ACT**

§ -1 **Short Title.** This chapter may be cited as the Hawaii Public Expression Protection Act.

§ -2 **Scope of chapter.** (a) Except as otherwise provided in subsection (b), this chapter shall apply to a 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 assemble or petition, or the right of association, guaranteed by the United States Constitution or the Hawaii State Constitution, on a matter of public concern.
- (b) This chapter shall 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.

(c) As used in this section:

“Goods or services” does not include a dramatic, literary, musical, political, journalistic, or artistic work.

“Governmental unit” means a public corporation or government or governmental subdivision, agency, or instrumentality.

“Person” means an individual, estate, trust, partnership, business or non-profit entity, governmental unit, or other legal entity.

§ -3 **Required procedures; motions; stays.** (a) Notwithstanding any law to the contrary, including rules of the court, no later than sixty days after a party is served with a complaint, crossclaim, counterclaim, third-party claim, or other pleading that asserts a cause of action to which this chapter applies, or at a later time on a showing of good cause, the party may file a special motion to dismiss the cause of action or part of the cause of action.

(b) Except as otherwise provided in this section:

- (1) All other proceedings between the moving party and responding party in an action, including discovery and a pending hearing or

motion, shall be stayed upon the filing of a motion under subsection (a); and

(2) On motion by the moving party, the court may stay:

(A) A hearing or motion involving another party if the ruling on the hearing or motion would adjudicate a legal or factual issue that is material to the motion under subsection (a); or

(B) Discovery by another party if the discovery relates to the issue.

(c) A stay under subsection (b) shall remain in effect until entry of an order ruling on the motion filed under subsection (a) and the expiration of the time to appeal the order.

(d) If a party appeals from an order ruling on a motion filed under subsection (a), all proceedings between all parties in an action shall be stayed. The stay shall remain in effect until the conclusion of the appeal.

(e) During a stay under subsection (b), the court may allow limited discovery if a party shows that specific information is necessary to establish whether a party has satisfied or failed to satisfy the burden imposed by section -6(a) and is not reasonably available without discovery.

(f) A motion for costs and expenses under section -9 shall not be subject to a stay under this section.

(g) A stay under this section shall not affect a party's ability to voluntarily dismiss a cause of action or part of a cause of action or move to sever a cause of action.

(h) During a stay under this section, the court for good cause may hear and rule on a motion:

(1) Unrelated to the motion under subsection (a); and

(2) Seeking a special or preliminary injunction to protect against an imminent threat to public health or safety.

§ -4 Expedited hearings. (a) The court shall hear a motion under section -3(a) no later than sixty days after filing of the motion, unless the court orders a later hearing:

(1) To allow discovery under section -3(e); or

(2) For other good cause.

(b) If the court orders a later hearing under subsection (a)(1), the court shall hear the motion under section -3(a) no later than sixty days after the court order allowing the discovery, subject to subsection (a)(2).

§ -5 Evidence. In ruling on a motion under section -3(a), the court shall consider the parties' pleadings, the motion, any replies and responses to the motion, and any evidence that could be considered in ruling on a motion for summary judgment under the applicable Hawaii rules of civil procedure.

§ -6 Dismissal of cause of action. (a) In ruling on a motion under section -3(a), the court shall dismiss with prejudice a cause of action or part of a cause of action if:

(1) The moving party establishes under section -2(a) that this chapter applies;

(2) The responding party fails to establish under section -2(b) that this chapter 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 party is entitled to judgment as a matter of law on the cause of action or part of the cause of action.

(b) A voluntary dismissal without prejudice of a responding party's cause of action, or part of a cause of action, that is the subject of a motion under section -3(a) shall not affect a moving party's right to obtain a ruling on the motion and seek costs, reasonable attorney's fees, and reasonable litigation expenses under section -9.

(c) 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 a motion under section -3(a) shall establish for the purpose of section -9 that the moving party prevailed on the motion.

§ -7 **Court ruling.** The court shall rule on a motion under section -3(a) no later than sixty days after the hearing under section -4.

§ -8 **Appeal.** A moving party may appeal within thirty days as a matter of right from an order denying, in whole or in part, a motion under section -3(a).

§ -9 **Costs, attorney's fees, and expenses.** On a motion under section -3(a) the court shall award 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.

§ -10 **Rule of construction.** This chapter shall be construed liberally to fully effectuate its purposes and intent to protect the exercise of the right of freedom of speech and of the press, the right to assemble and petition, and the right of association, guaranteed by the United States Constitution or Hawaii State Constitution.

§ -11 **Uniformity of application and construction.** In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it."

SECTION 3. Chapter 634F, Hawaii Revised Statutes, is repealed.

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 17, 2022.)