

PUBLIC PARTICIPATION PROTECTION ACT

Model Policy

Section 1. {Title.}

This Act shall be known and may be cited as the Public Participation Protection Act.

Section 2. {Time for Filing Special Motion to Dismiss; Discovery.}

(A) ~~(A)~~ A party, other than a government agency, entity, or employee acting in an official capacity, may file a special motion to dismiss a claim under this Act if the claim infringes upon that party's exercise of the constitutional right of petition, free speech, or association under the United States Constitution or the [State] Constitution in connection with a public issue, which includes: if the claim is based on, or in response to, an act of the party in furtherance of the right of petition, free speech, or association under the United States Constitution or the [State] Constitution in connection with a public issue, which includes:

(1) the right of free speech, which means a communication that falls within the protection of the Constitution of the United States or the Constitution of the State of [State].

(1) the right of free speech by communicating, or conduct furthering communication, in a public forum on a matter of public concern related to

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~~(a) health or safety; (b) environmental, economic, or community well being; (c) the government; (d) a public official or public figure; or (e) a good, product, or service in the marketplace;~~

(2) the right to petition the government through (a) a communication in connection with an issue under consideration or review by a legislative, executive, administrative, judicial, or other official body; (b) a communication that is reasonably likely to encourage consideration or review of an issue by a legislative, executive, administrative, judicial, or other official body; or (c) a communication that is reasonably likely to enlist public participation in an effort to effect consideration of an issue by a legislative, executive, administrative, judicial, or other official body; or

(3) the right of association, meaning a communication between individuals who join together to collectively express, promote, pursue, or defend common interests that falls within the Constitution of the United States or the Constitution of the State of []:

(C) A special motion to dismiss under this section must be filed not later than the 60th day after the date of service of the legal action. The court may extend the time to file a motion under this section for good cause.

(D) All discovery, except specified and limited discovery relevant to the motion, in the proceeding shall be stayed upon the filing of a special motion to dismiss under this section. The stay of discovery shall remain in effect until the entry of the order ruling on the motion and any interlocutory appeal thereof. Notwithstanding the stay imposed by this section, the court, on motion by a party or the court's own motion and for

good cause shown, may order specified and limited discovery relevant to the motion.

Section 3. {Expedited Hearing on Special Motion to Dismiss; Determination; Appeal.}

(A) The court shall conduct an expedited hearing on the motion. A hearing on the motion shall be held not later than [30] days after service of the motion, or [30] days of ordering discovery under paragraph (D), unless docket conditions of the court require a later hearing, upon a showing of good cause, or by agreement of the parties.

(B) Consideration of the Special Motion to Dismiss.

(1) If the moving party makes an initial showing by a preponderance of the evidence that the legal action infringes upon that party's exercise of the constitutional right to free speech, right to petition, or right of association as defined in Section 2(A), is based on, or is in response to, that party's exercise of the right to free speech, right to petition, or right of association as defined in Section 2(A), the court shall grant the motion to dismiss unless the party bringing the action states with particularity the circumstances giving rise to the claim and shows by a preponderance of the evidence a probability of prevailing on the merits can establish a prima facie case for the legal action.

(2) Notwithstanding paragraph (B)(1), the court shall grant the motion to dismiss if the moving party establishes each element of a valid defense to the claim.

(3) Notwithstanding paragraph (B)(1), if a party against whom a Special Motion to Dismiss is brought under this title can show that the party's claim is a constitutionally protected public interest case and is used as a vehicle for effective political expression or injury, or as means of communicating useful information to the public, then the Motion to Dismiss shall be denied.

(43) In its determination, the court shall consider pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(54) The court shall rule on a special motion to dismiss as soon as possible, [but no later than [30] days after hearing the motion. If the court does not rule on a motion to dismiss within this period, the motion is considered to have been denied by operation of law.]

(C) An order granting or denying a special motion to dismiss shall be appealable under [insert reference to state statute or court rule providing grounds for interlocutory appeals].

Section 4. {Recovery of Attorneys' Fees and Costs; Sanctions.}

(A) If the court orders dismissal of a legal action under this Act, the court shall award to the moving party costs and reasonable attorney's fees, including those incurred on the motion.

(B) If the court finds that a special motion to dismiss is frivolous and solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to the party opposing the motion.

Section 5. {Exemptions / Rules of Construction.}

This Act does not:

(A) PUBLIC INTEREST.— The court shall not grant a special motion to dismiss under this section in any action brought to enforce an important constitutional or statutory right held by the general public, or in an action seeking declaratory or injunctive relief against a government entity, agency, or employee acting in an official capacity.

(B) FAMILY LAW – This Act shall not apply to the Family Code or an application for a protective order.

(C) This Act shall not:

(1A) Apply to an enforcement action, with the exception of an action directed against an individual or entity requesting information in accordance with the state’s open record laws, that is brought in the name of this state or a political subdivision of this state by the attorney general, a district attorney, or a county attorney;

(2B) Result in findings or determinations that are admissible into evidence at any later stage of the case or in any subsequent action;

(3E) Affect or limit the authority of a court to award sanctions, costs, attorneys’ fees or any other relief available under any statute, court rule, or other authority;

(4D) Affect, limit, or preclude the right of the moving party to any defense, remedy, immunity, or privilege otherwise authorized by law;

(5E) Affect the substantive law governing any asserted claim; or

(6F) Create a private right of action.

Section 6. {Severability Clause.}

Section 7. {Repealer Clause.}

Section 8. {Effective Date.}

This Act shall be effective as to any civil action commenced on or after the date of enactment of the Act regardless of whether the claim arose prior to the date of enactment.

Approved by the ALEC Board of Directors July 1, 2014.