



## GENERAL STATUTES COMMISSION

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### MEMORANDUM

**To:** House Judiciary 1  
**From:** General Statutes Commission  
**Re:** HB 144 (GSC Uniform Public Expression Protection Act)  
**Date:** March 1, 2023

#### General Comments

This bill enacts the Uniform Public Expression Protection Act, which was promulgated by the Uniform Law Commission and is recommended by the General Statutes Commission. The purpose of this Act is to protect people from lawsuits designed to deter or punish the constitutional exercise of the right of free speech and other constitutionally protected forms of public expression. These lawsuits are often referred to as strategic lawsuits against public participation, or "SLAPPs." This Act creates a special motion for expedited relief that stays the lawsuit to allow a court to first determine whether the lawsuit is a SLAPP and, if so, to dismiss it.

Since the Uniform Law Commission promulgated this Act in 2020, Washington, Hawaii, and Kentucky have enacted it, and Oregon, Utah, Iowa, Missouri, and New Jersey have introduced bills on it this year. Moreover, a majority of states have enacted similar anti-SLAPP laws.

In addition to publishing all its drafts online, the General Statutes Commission circulated a draft to the North Carolina Bar Association, Administrative Office of the Courts, Conference of Clerks of Superior Court, UNC School of Government, Department of Justice, North Carolina Press Association, North Carolina Advocates for Justice, North Carolina Justice Center, Legal Aid of North Carolina, and North Carolina Center for Nonprofits. Additionally, Duke Law School's First Amendment Clinic participated in drafting this bill.

#### Specific Comments

**Section 1** enacts a new article ("Uniform Public Expression Protection Act") that consists of the following new sections:

**G.S. 1-671** ("Short title") provides that this Article may be cited as the Uniform Public Expression Protection Act.

**G.S. 1-672** ("Scope") defines certain terms and provides that this Article applies to a cause of action asserted in a civil action against a person based on a communication in a governmental proceeding, a communication on an issue under consideration in a governmental proceeding, or an exercise of the right of freedom of speech, or other form of public expression protected by the United States or North Carolina constitutions, on a matter of public concern. Conversely, this Article does not apply to a cause of action against a governmental unit, a cause of action by a governmental unit to enforce a law to protect against an imminent threat to public health or safety, or a cause of action against a person selling or leasing goods or services for a communication related to that business activity, unless the goods or services consist of the creation, dissemination, exhibition, or promotion of a dramatic, literary, musical, political, journalistic, or artistic work.

**G.S. 1-673** ("Special motion for expedited relief") provides that a party may file a special motion for expedited relief not later than 60 days after being served with a pleading asserting a cause of action subject to this Article (or later, for good cause). The General Statutes Commission added that this motion does not waive any other defense, objection, or motion nor is this motion waived if a party does not consolidate it with another motion or pleading.

**G.S. 1-674** ("Stay") provides that a special motion for expedited relief generally stays all other proceedings between the moving party and responding party. The court may also stay a hearing or motion involving another party, or discovery by another party, if the hearing or ruling on the motion would adjudicate, or the discovery would relate to, an issue material to the special motion for expedited relief. The stay lasts until entry of an order ruling on the motion and the time for the moving party to appeal expires, or, if a party appeals, until the conclusion of the appeal. This section provides the following exceptions to the stay:

- Under subsection (d), a court may allow limited discovery if a party shows that specific information is necessary to meet the party's burden for a ruling on the special motion for expedited relief and the information is not reasonably available.
- Under subsections (e) and (f), the stay does not affect a motion for costs, attorney's fees, and expenses or a party's ability to voluntarily dismiss or move to sever a cause of action.
- Under subsection (g), the court may hear and rule on a motion unrelated to the special motion for expedited relief. The General Statutes Commission added that an unrelated motion includes a motion to dismiss for lack of jurisdiction over the subject matter or person. The court may also hear and rule on a motion seeking a special or preliminary injunction to protect against an imminent threat to public health or safety.

**G.S. 1-675** ("Hearing") provides that generally a court shall hear a special motion for expedited relief not later than 60 days after a party submits a calendar request for the motion. In response to a comment from the Administrative Office of the Courts, the General Statutes Commission modified the Act so that the submission of a calendar request is what triggers the 60-day period. This section also provides that a court may order a later hearing to allow for limited discovery or for other good cause. If the court orders a later hearing to allow for limited discovery, the court shall hear the motion not later than 60 days after the order (or later, for good cause).

**G.S. 1-676** ("Proof") provides that, in ruling on the special motion for expedited relief, the court shall consider the pleadings, the motion, any response to the motion, and any evidence that could be considered in ruling on a motion for summary judgment.

**G.S. 1-677** ("Dismissal of cause of action in whole or part") provides that in ruling on the special motion for expedited relief, the court shall dismiss with prejudice a cause of action if all the following requirements are met:

- The moving party establishes that this Article applies.
- The responding party fails to establish that this Article does not apply.
- Either of the following:
  - The responding party fails to establish a prima facie case as to each essential element of the cause of action.
  - The moving party establishes either that the responding party failed to state a cause of action upon which relief can be granted or that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.

This section also provides that a voluntary dismissal without prejudice by the responding party does not affect the moving party's right to obtain a ruling on the motion and seek costs, attorney's fees, and expenses. Similarly, a voluntary dismissal with prejudice by the responding party establishes that the moving party prevailed on the motion for purposes of awarding costs, attorney's fees, and expenses.

**G.S. 1-678** ("Ruling") provides that the court shall rule on the special motion for expedited relief not later than 60 days after a hearing on the motion.

**G.S. 1-679** ("Appeal") provides that a moving party may appeal an order denying a special motion for expedited relief not later than 30 days after entry of the order.

**G.S. 1-680** ("Costs, attorney's fees, and expenses") provides that a court shall award court costs, reasonable attorney's fees, and reasonable litigation expenses related to the special motion for expedited relief to the moving party if that party prevails or to the responding party if that party prevails and the court finds that the motion was frivolous or filed solely to delay the proceeding.

**G.S. 1-681** ("Construction") provides that this Article must be broadly construed and applied to protect the exercise of the right of freedom of speech and other forms of public expression protected by the United States and North Carolina constitutions.

**G.S. 1-682** ("Uniformity of application and construction") provides that in applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law among states that enact it.

**Section 2** makes a conforming change to provide that a party may appeal an interlocutory order that denies a special motion for expedited relief.

**Section 3(a)** provides that, if a court holds a provision of this act to be invalid, the provisions of this act are severable.

**Section 3(b)** authorizes the Revisor of Statutes to print drafters comments. The General Statutes Commission approved the following comment to new G.S. 1-672: "When applied in federal court, this Act is intended to supplement, not conflict with, the Federal Rules of Civil Procedure."

**Section 3(c)** provides that this act becomes effective October 1, 2023, and applies to a civil action filed or cause of action asserted in a civil action on or after that date.