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Pennsylvania Legislators Introduce Anti-Slapp Legislation

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Over the past three decades, more than 30 states have enacted anti-SLAPP laws. In recent years, the Uniform Law Commission's decision to pass [the Uniform Public Expression Protection Act](#) (UPEPA) has spurred more states to pass anti-SLAPP laws, including, most recently, New Jersey. Its neighbor – my home of state of Pennsylvania – has not followed this trend.

In 2000, Pennsylvania enacted a very narrow anti-SLAPP law that provides immunity for communications “to a government agency relating to enforcement or implementation of an environmental law or regulation.” 27 Pa. C.S.A. § 8302. For more than 10 years, free-speech advocates from across the political spectrum have been pushing for a broader anti-SLAPP law in Pennsylvania. Twice, anti-SLAPP bills have passed the State Senate – once in the [2015-16 legislative session](#), and again in the [2017-18 legislative session](#) – both times with overwhelming bipartisan support. Unfortunately, in both instances, the bills did not move forward in the State House of Representatives. In December 2019, the State House seemed poised to move anti-SLAPP legislation. That month, the legislation was the subject of a House Judiciary Committee hearing. The bill never progressed, however, because the COVID pandemic and other issues required the State House's attention.

As a coalition in Pennsylvania – led by the Pennsylvania NewsMedia Association, ACLU, and Americans for Prosperity – began making plans for a renewed push for anti-SLAPP legislation, the ULC approved [UPEPA](#) and recommended its passage in states around the country. The Pennsylvania coalition went to work to revise the bill that previously passed the State Senate to make its proposal consistent with the ULC's Act. On June 21, 2023, that legislation was introduced in the State House as [House Bill 1466](#). It garnered more than 20 co-sponsors.

HB 1466 builds on UPEPA and the collective experience of states with existing anti-SLAPP laws, while accounting for distinctive features of Pennsylvania legal practice. It also is structured to comply with unique aspects of Pennsylvania's Constitution, which provides that the power to enact court procedures is vested solely in the Supreme Court. To address that issue, HB 1466 is split into two sections – one substantive and one procedural.

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The substantive section provides immunity from civil liability for any claim based on “protected public expression.” Like UPEPA, HB 1466 defines “protected public expression” to include communications in government proceedings, communications about an issue under consideration in a government proceeding, or communication on a matter of public concern. The bill's immunity does not extend to various kinds of claims, including those excluded under UPEPA and anti-SLAPP laws recently enacted in other states.

can be granted,” or (3) “there is no genuine issue as to any material fact, and the person against whom the cause of action . . . has been asserted is entitled to judgment as a matter of law.” If a party is immune from suit under this provision, it is entitled to its attorney’s fees and costs. On the flip side, if a party asserts the immunity frivolously or solely for the purpose of delaying the proceeding, the opposing party is entitled to recover its attorney’s fees and costs. Any determination of whether the immunity applies is subject to immediate appeal.

In addition, the bill creates a new cause of action for a party previously subjected to a SLAPP suit: If the party’s immunity was not determined in the prior litigation, it can file a new claim and recover the attorney’s fees and costs it incurred defending against the SLAPP suit.

The remainder of the bill is procedural. The bill creates a new special motion to dismiss a claim based on protected public expression, which is subject to several unique procedures. The special motion generally must be filed within 60 days after a pleading asserting a covered claim was served. The filing of a special motion generally stays all proceedings in the case, with some limited exceptions. Within 60 days of the motion being filed, the court must hear oral argument on the motion and then must issue a decision within 60 days of the argument. The court can allow discovery on an issue raised by the special motion if the discovery “is necessary to establish whether a party has satisfied or failed to satisfy” its burden to show the claim is subject to immunity.

If enacted, the substantive sections of HB 1466 would go into effect immediately. In contrast, to comply with the Pennsylvania Constitution’s requirement that only the Supreme Court can implement court procedures, the procedural aspects of the bill would go into effect only if the Supreme Court takes certain actions (including promulgating a rule of civil procedure or communicating to the General Assembly that the procedural provisions do not violate the Constitution). The legislation would not apply retroactively.

Significantly, the legislation’s fee-shifting provision and its new cause of action should apply in federal court. Unlike the various states’ anti-SLAPP laws that have been held not to apply in federal court, HB 1466’s fee-shifting does not turn on any special procedure. Rather, a party subjected to any claim based on “protected public expression” is entitled to recover its fees if the claim is dismissed under the existing standards for a demurrer or summary judgment. Indeed, the fee-shifting immunity is not tied to a particular court procedure. Instead, the legislation contemplates that immunity can be raised in any pleading or motion allowed under the rules of civil procedure. As a result, a party is free to raise it in preliminary objections (the Pennsylvania equivalent of a motion to dismiss), a motion for judgment on the pleadings, at summary judgment, or even on a directed verdict. Thus, the fee-shifting provision and new cause of action should be deemed substantive laws that apply in federal court.

HB 1446 has been referred to the House Judiciary Committee. To date, no further action has been taken. If your organization is interested in learning more about the legislation or how to support its passage, please contact the author at berrym@ballardspahr.com or Barbara Huesken of the Pennsylvania NewsMedia Association at barbarah@pa-news.org.

Michael Berry is a partner at Ballard Spahr LLP. He is the principal drafter of the proposal that subsequently was introduced as HB 1466.

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