

Legislative Analysis



UNIFORM PUBLIC EXPRESSION PROTECTION ACT

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House Bill 5788 as reported from committee

Sponsor: Rep. Kara Hope

Committee: Criminal Justice

Complete to 12-10-24

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5788 would create a new act, the Uniform Public Expression Protection Act, which would allow the filing of special motions for expedited relief concerning certain lawsuits the bill calls *eligible causes of action*. This would allow a stay for a review and determination to be made as to whether the lawsuit should be dismissed at an earlier point in the proceedings. The bill is based on a model uniform law drafted by the National Conference of Commissioners on Uniform State Laws, also known as the Uniform Law Commission (ULC).¹

Eligible cause of action

The bill would apply to a cause of action asserted in a civil action against a **person** after the bill's effective date that is based on any of the following:

- A communication by the person in a legislative, executive, judicial, administrative, or other governmental proceeding.
- A communication by the person on an issue under consideration or review in a legislative, executive, judicial, administrative, or other governmental proceeding.
- The person's exercise, on a matter of public concern, of any of the following rights guaranteed by the United States Constitution or the Michigan Constitution:
 - The right of freedom of speech.
 - The right of freedom of the press.
 - The right to assemble.
 - The right to petition the government for a redress of grievances.
 - The right of association.

However, the bill would *not* apply to a cause of action described above if one or more of the following apply:

- It is against a **governmental unit** or an employee or agent of a governmental unit acting or purporting to act in an official capacity.
- It is 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.
- It is 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.
- It arises from a claim by an individual for the violation of any of the following state laws:
 - The Elliott-Larsen Civil Rights Act.
 - The Persons with Disabilities Civil Rights Act.

¹ https://higherlogicdownload.s3.amazonaws.com/UNIFORMLAWS/46a646fa-5ef6-8dd0-7b0a-ce95c59f0d14_file.pdf

- The Whistleblowers' Protection Act.
 - The Worker's Disability Compensation Act.
 - The Freedom of Information Act (FOIA).
- It arises from a claim by an individual for the violation of any of the following federal laws:
 - Title VII of the Civil Rights Act of 1964.
 - Title IX of the Education Amendments of 1972.
 - The Age Discrimination in Employment Act of 1967.
 - The Americans with Disabilities Act of 1990 (ADA).
 - The Family and Medical Leave Act of 1993.
 - The Fair Labor Standards Act of 1938.

Person would mean an individual, estate, trust, partnership, business or nonprofit entity, governmental unit, or other legal entity.

Governmental unit would mean a public corporation or government or governmental subdivision, agency, or instrumentality.

Goods or services would not include the creation, dissemination, exhibition, or advertisement or similar promotion of a dramatic, literary, musical, political, journalistic, or artistic work.

Special motion for expedited relief

No later than 60 days after a party is served with a complaint, cross-claim, counterclaim, third-party claim, or other pleading that asserts an eligible cause of action (or, if good cause is shown, at a later time), the party may file a special motion for expedited relief to dismiss the action or part of the action. (For ease of reference, this motion is called a "special motion" below.)

Stay

Except as described below, all of the following would apply upon the filing of a special motion:

- All other proceedings between the moving party and the responding party, including discovery and a pending hearing or motion, would be stayed.
- Upon motion by the moving party, the court could 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.

A stay described above would remain in effect until entry of an order ruling on the special motion and expiration of the time for the moving party to appeal the order, as described below.

However, during a stay described above, the court could allow limited discovery if a party shows that specific information is necessary to establish whether a party has satisfied or failed to satisfy a burden described below (under "Ruling") and the information is not reasonably available unless discovery is allowed.

If a party appeals an order ruling on a special motion, all proceedings between all parties in the action would be stayed. The stay would remain in effect until the conclusion of the appeal.

A motion for costs, attorney fees, and expenses as described below would not be subject to a stay under these provisions.

A stay under these provisions would not affect a party's ability to voluntarily dismiss an action or part of an action or move to sever a cause of action.

During a stay, the court for good cause could hear and rule on either of the following:

- A motion unrelated to the special motion.
- A motion seeking a special or preliminary injunction to protect against an imminent threat to public health or safety.

Hearing

The court would have to hear a special motion no later than 60 days after it is filed, unless the court orders a later hearing to allow limited discovery or for other good cause. If the court orders a later hearing to allow limited discovery, the court would have to hear the special motion no later than 60 days after the court order allowing the discovery, unless the court orders a later hearing for other good cause.

Ruling

The court would have to rule on a special motion no later than 60 days after a hearing.

In ruling on a special motion, the court would have to consider the pleadings, the motion, any reply or response to the motion, affidavits, depositions, admissions, or other documentary evidence.

The court would have to dismiss with prejudice an action, or part of an action, if all of the following apply:

- The moving party establishes the cause of action is one to which the bill applies as described above under "Eligible cause of action."
- The responding party fails to establish that the cause of action is one to which the bill does *not* apply as described above under "Eligible cause of action."
- 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 of the following:
 - The responding party failed to state a cause of action on which relief can be granted.
 - 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 action or part of the action.

A voluntary dismissal without prejudice of a responding party's action, or part of an action, that is the subject of a special motion would not affect a moving party's right to obtain a ruling on the special motion and seek costs, attorney fees, and expenses as described below.

A voluntary dismissal with prejudice of a responding party's action, or part of an action, that is the subject of a special motion would establish that the moving party prevailed on the special motion for the purpose of seeking costs, attorney fees, and expenses.

Appeal

A moving party could appeal as a matter of right from an order denying, in whole or in part, a special motion. The appeal would have to be filed no later than 21 days after entry of the order.

Costs, attorney fees, and expenses

The court shall award court costs, reasonable attorney fees, and reasonable litigation expenses related to a special motion as follows:

- To the moving party if the moving party prevails on the motion.
- 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.

Applicability and construction

The new act states that it must be broadly construed and applied to protect the exercise of the right of freedom of speech and of the press, the right to assemble and petition the government for a redress of grievances, and the right of association, guaranteed by the United States Constitution and the Michigan Constitution.

Effectiveness

The new act would apply to a civil action filed or cause of action asserted in a civil action on or after the bill's effective date.

FISCAL IMPACT:

House Bill 5788 would have an indeterminate fiscal impact on the state and on local units of government. Under the bill, the right of citizens to participate in government and not be retaliated against for public participation would be promoted. It is not known if an increase in court caseloads would occur under provisions of the bill. Any fiscal impact on the judiciary and local court systems would depend on how court caseloads and related administrative costs are affected.

POSITIONS:

Representatives of the following entities testified in support of the bill (6-11-24):

- Uniform Law Commission
- Pitt McGehee
- Abdnour Weiker LLP
- Sierra Club Michigan
- Michigan Coalition to End Domestic and Sexual Violence

The following entities indicated support for the bill:

- Michigan Domestic and Sexual Violence Prevention and Treatment Board (6-18-24)
- ACLU of Michigan (6-11-24)
- Michigan Association for Justice (6-11-24)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.