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Texas' Citizen Participation Act Gets Stronger

By Laura Lee Prather¹

On June 14, 2013 Governor Perry signed into law HB 2935 further strengthening Texas' Citizen Participation Act (also known as the Anti-SLAPP statute) demonstrating continued support of free speech for our citizens. The initial Anti-SLAPP statute was passed unanimously by the 82nd Legislature and became law on June 17, 2011. After some judicial confusion over the legislative intent, the 83rd Legislature passed clean-up legislation for the statute, which became law on June 14, 2013. The Anti-SLAPP statute protects the rights of all citizens (from individuals, to companies, to advocacy or media groups), promotes judicial economy, and advances the First Amendment rights of all Texans.

Here are some quick highlights about the Texas Anti-SLAPP statute which is codified at Texas Civil Practice & Remedies Code, Chapter 27 and the recent updates to the statute enacted through HB 2935:



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- The statute allows a judge to dismiss meritless lawsuits filed against one who speaks out about a "matter of public concern" within the first 60 to 90 days. "Matter of public concern" is defined expansively in the statute and is in addition to existing constitutional, statutory and common law privileges.
- A hearing on the Anti-SLAPP motion is to take place within 60 days of the motion being served or 90 days if there is good cause, docket conditions require, or there is an agreement of the parties.
- The Anti-SLAPP motion and the opposition to it can be supported by affidavits.
- The burden of proof is initially on the party who files the Anti-SLAPP motion to establish by a preponderance of the evidence that the lawsuit was filed in response to the exercise of his/her First Amendment rights. Then the burden shifts to the plaintiff to establish by clear and specific evidence a prima facie case for each essential element of the claim. In addition, if the moving party establishes by a preponderance of the evidence each essential element of a valid defense to the non-movant's claim, the court shall dismiss the claim.
- The statute creates a stay of discovery in the lawsuit while an Anti-SLAPP motion is pending and/or appealed. The court has discretion to order discovery pertaining to the motion upon a showing of good cause, but it is to be specified and limited discovery relevant to the motion only.
- If discovery is ordered, the deadline for the hearing to take place can be extended to 120 days from the time the motion was served.
- That statute provides for mandatory fee-shifting when a party wins an Anti-SLAPP motion so that the person or entity wrongfully filing a lawsuit must pay the defense costs. There is a discretionary fee award if the court finds that the Anti-SLAPP motion was frivolous or brought solely for the purpose of delaying the proceedings.

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- The statute provides an immediate right to an expedited appeal if the Anti-SLAPP motion is denied. It falls under the interlocutory appeal statute (Texas Civil Practice & Remedies Code sec. 51.014) and the deadlines under that statute apply.
- During the interlocutory appeal, the underlying trial court proceedings are stayed.
- The statute applies to lawsuits or “legal actions” (which includes claims and counterclaims) that implicate First Amendment rights filed on or after June 17, 2011. The clarification bill (HB 2935) applies to existing lawsuits at the time of its passage (June 14, 2013).
- The exemptions contained in the statute are for enforcement actions brought by the state or law enforcement for commercial speech, the sale of insurance products or services and for wrongful death and bodily injury lawsuits. It also does not apply to a legal action brought under the Insurance Code or arising out of an insurance contract.

The passage of the Texas anti-SLAPP statute was supported by a broad-based coalition including several national, state, and local media companies and local non-profits and trade organizations such as the Texas Daily Newspaper Association, Texas Press Association, Texas Association of Broadcasters, Freedom of Information Foundation of Texas, the Better Business Bureaus of Central Texas, Texas Watch, Consumers Union, the Institute for Public Justice, Public Citizen, Homeowners for Better Building, Coalition for HOA Reform, the Texas Trial Lawyers Association, the Texans for Lawsuit Reform and the American Civil Liberties Union. Neither of these bills would have become law were it not for the passionate sponsors, Chairman Todd Hunter (R-Corpus Christi) and Sen. Rodney Ellis (D-Houston) who have been tireless key supporters of free speech. We applaud them for protecting the First Amendment rights of all Texas citizens.