SPONSOR: Sen. Mantzavinos & Sen. Pettyjohn & Sen. Townsend & Rep. Burns & Rep. D. Short
Sens. Huxtable, Sokola, Walsh, Wilson; Reps. Gorman, Griffith, Romer

DELAWARE STATE SENATE
153rd GENERAL ASSEMBLY

SENATE BILL NO. 80
AS AMENDED BY
HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO THE UNIFORM PUBLIC EXPRESSION PROTECTION ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Part IV, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 60 Uniform Public Expression Protection Act.

§ 6001. Short title.

This chapter may be cited as the Uniform Public Expression Protection Act.

§ 6002. Scope.

(a) In this section:

(1) "Goods or services" does not include the creation, dissemination, exhibition, or advertisement or similar promotion of a dramatic, literary, musical, political, journalistic, or artistic work.

(2) "Governmental unit" means a public corporation or government or governmental subdivision, agency, or instrumentality.

(3) "Person" means an individual, estate, business or nonprofit entity, governmental unit, or other legal entity.

(b) Except as otherwise provided in subsection (c) of this section, this chapter applies to a cause of action asserted in a civil action against a person based on the person's:

(1) Communication in a legislative, executive, judicial, administrative, or other governmental proceeding;

(2) Communication on an issue under consideration or review in a legislative, executive, judicial, administrative, or other governmental proceeding; or

(3) Exercise of the right of freedom of speech or of the press, the right to assemble or petition, or the right of association, guaranteed by the United States Constitution or Delaware's Constitution, on a matter of public concern.

(c) Except as providing in subsection (d) of this section, this chapter does not apply to a cause of action:

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(1) Against a governmental unit or an employee or agent of a governmental unit acting or purporting to act in an official capacity;

(2) By a governmental unit or an employee or agent of a governmental unit acting in an official capacity to enforce a law, regulation, or ordinance;

(3) 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;

(4) Based on a common law fraud claim; or

(5) Alleging a violation of either Subchapter II or III of Chapter 25 of Title 6.

(d) This chapter applies to a cause of action asserted under paragraph (c)(3), (4), or (5) of this section when the cause of action is a legal action against a person related to the communication, gathering, receiving, posting, or processing of consumer opinions or commentary, evaluations of consumer complaints, or reviews or ratings of businesses.

§ 6003. Special motion for expedited relief.

Not later than 60 days after a party is served with a complaint, crossclaim, counterclaim, third-party claim, or other pleading that asserts a cause of action to which this chapter applies, or at a later time on a showing of good cause, the party may file a special motion for expedited relief to dismiss the cause of action or part of the cause of action.

§ 6004. Stay.

(a) Except as otherwise provided in subsections (d) through (g) of this section, on the filing of a motion under § 6003 of this title:

(1) All other proceedings between the moving party and responding party, including discovery and a pending hearing or motion, are stayed; and

(2) On motion by the moving party, the court may 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 motion under § 6003 of this title.

(b) A stay under subsection (a) of this section remains in effect until entry of an order ruling on the motion under § 6003 of this title and expiration of the time under § 6009 of this title for the moving party to appeal the order.

(c) Except as otherwise provided in subsections (e), (f), and (g) of this section, if a party appeals from an order ruling on a motion under § 6003 of this title, all proceedings between all parties in the action are stayed. The stay remains in effect until the conclusion of the appeal.

(d) During a stay under subsection (a) of this section, the court may 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 under § 6007(a) of this title and the information is not reasonably available unless discovery is allowed.

(e) A motion under § 6010 of this title for costs, attorney's fees, and expenses is not subject to a stay under this section.

(f) A stay under this section does not affect a party's ability voluntarily to dismiss a cause of action or part of a cause of action or move to sever a cause of action.

(g) During a stay under this section, the court for good cause may hear and rule on:

(1) A motion unrelated to the motion under § 6003 of this title; and

(2) A motion seeking a special or preliminary injunction to protect against an imminent threat to public health or safety.

§ 6005. Hearing.

(a) The court shall hear a motion under § 6003 of this title not later than 60 days after filing of the motion, unless the court orders a later hearing:

(1) To allow discovery under § 6004(d) of this title; or

(2) For other good cause.

(b) If the court orders a later hearing under paragraph (a)(1) of this section, the court shall hear the motion under § 6003 of this title not later than 60 days after the court order allowing the discovery, unless the court orders a later hearing under paragraph (a)(2) of this section.

§ 6006. Proof.

In ruling on a motion under § 6003 of this title, the court shall consider the pleadings, the motion, any reply or response to the motion, and any evidence that could be considered in ruling on a motion for summary judgment.

§ 6007 Dismissal of cause of action in whole or part.

(a) In ruling on a motion under § 6003 of this title, the court shall dismiss with prejudice a cause of action, or part of a cause of action, if:

(1) The moving party establishes under § 6002(b) or (d) of this title that this chapter applies;

(2) The responding party fails to establish under § 6002(c) of this title that this chapter does not apply; and

(3) Either:

a. The responding party fails to establish a prima facie case as to each essential element of the cause of action; or

b. The moving party establishes that:

1. The responding party failed to state a cause of action upon which relief can be granted; or

2. 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 cause of action or part of the cause of action.

(b) A voluntary dismissal without prejudice of a responding party's cause of action, or part of a cause of action, that is the subject of a motion under § 6003 of this title does not affect a moving party's right to obtain a ruling on the motion and seek costs, attorney's fees, and expenses under § 6010 of this title.

(c) A voluntary dismissal with prejudice of a responding party's cause of action, or part of a cause of action, that is the subject of a motion under § 6003 of this title establishes for the purpose of § 6010 of this title that the moving party prevailed on the motion.

§ 6008. Ruling.

The court shall rule on a motion under § 6003 of this title not later than 60 days after a hearing under § 6005 of this title.

§ 6009. Appeal.

A moving party may appeal as a matter of right from an order denying, in whole or in part, a motion under § 6003 of this title. The appeal must be filed not later than 10 days after entry of the order.

§ 6010. Costs, attorney's fees, and expenses.

(a) On a motion under § 6003 of this title, the court shall award court costs, reasonable attorney's fees, and reasonable litigation expenses related to the motion:

(1) To the moving party if the moving party prevails on the motion; or

(2) 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.

(b) On a motion under § 6003 of this title, the court shall award punitive damages to the moving party if:

(1) The moving party prevails on the motion; and

(2) The court finds that the moving party has demonstrated that the responding party's cause of action was commenced or continued for the purpose of harassing, intimidating, punishing, or otherwise maliciously inhibiting the moving party's free exercise of speech, petition, or association rights.

§ 6011. Construction.

This chapter 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, and the right of association, guaranteed by the United States Constitution or Delaware Constitution.

§ 6012. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 6013. Transitional provision**.**

This chapter applies to a civil action filed or cause of action asserted in a civil action on or after [the effective date of this Act].

§ 6014. Savings clause.

This chapter does not affect a cause of action asserted before [the effective date of this Act] in a civil action or a motion under §§ 8136 through 8138 of this title regarding the cause of action.

Section 2. Amend § 8136, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8136. Actions involving public petition and participation.

~~(a) For purposes of this section, the following terms shall have the meaning ascribed herein:~~

~~(1) An "action involving public petition and participation" is an action, claim, cross-claim or counterclaim for damages that is brought by a public applicant or permittee, and is materially related to any efforts of the defendant to report on, rule on, challenge or oppose such application or permission.~~

~~(2) "Communication" shall mean any statement, claim or allegation in a proceeding, decision, protest, writing, argument, contention or other expression.~~

~~(3) "Government body" shall mean the State and any county, city, town, village or any other political subdivision of the State; any public improvement or special district, public authority, commission, agency or public benefit corporation; any other separate corporate instrumentality or unit of State or local government; or the federal government.~~

~~(4) "Public applicant or permittee" shall mean any person who has applied for or obtained a permit, zoning change, lease, license, certificate or other entitlement for use or permission to act from any government body, or any person with an interest, connection or affiliation with such person that is materially related to such application or permission.~~

~~(b) In an action involving public petition and participation, damages may only be recovered if the plaintiff, in addition to all other necessary elements, shall have established by clear and convincing evidence that any communication which gives rise to the action was made with knowledge of its falsity or with reckless disregard of whether it was false, where the truth or falsity of such communication is material to the cause of action at issue.~~

~~(c) Nothing in this section shall be construed to limit any constitutional, statutory or common-law protection of defendants to actions involving public petition and participation.~~ [Repealed, but see Chapter 60 of this title.]

Section 3. Amend § 8137, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8137. Standards for motion to dismiss and summary judgment in certain cases involving public petition and participation.

~~(a) A motion to dismiss in which the moving party has demonstrated that the action, claim, cross-claim or counterclaim subject to the motion is an action involving public petition and participation as defined in § 8136 of this title shall be granted unless the party responding to the motion demonstrates that the cause of action has a substantial basis in law or is supported by a substantial argument for an extension, modification or reversal of existing law. The court shall grant preference in the hearing of such motion.~~

~~(b) A motion for summary judgment in which the moving party has demonstrated that the action, claim, cross-claim or counterclaim subject to the action is an action involving public petition and participation as defined in § 8136 of this title shall be granted unless the party responding to the motion demonstrates that the cause of action has a substantial basis in fact and law or is supported by a substantial argument for an extension, modification or reversal of existing law. The court shall grant preference in the hearing of such motion.~~ [Repealed, but see Chapter 60 of this title.]

Section 4. Amend § 8138, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8138. Recovery of damages in actions involving public petition and participation.

~~(a) A defendant in an action involving public petition and participation, as defined in § 8136 of this title, may maintain an action, claim, cross-claim or counter-claim to recover damages, including costs and attorney's fees, from any person who commenced or continued such action; provided that:~~

~~(1) Costs, attorney's fees and other compensatory damages may be recovered upon a demonstration that the action involving public petition and participation was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification or reversal of existing law; and~~

~~(2) Punitive damages may only be recovered upon an additional demonstration that the action involving public petition and participation was commenced or continued for the purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of speech, petition or association rights.~~

~~(b) The right to bring an action under this section can be waived only if it is waived specifically.~~

~~(c) Nothing in this section shall affect or preclude the right of any party to any recovery otherwise authorized by law.~~ [Repealed, but see Chapter 60 of this title.]

Section 5. Sections 8136 through 8138 of Title 10 of the Delaware Code continue to apply to a cause of action asserted in a civil action before the effective date of this Act.