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# A BILL FOR AN ACT

RELATING TO PUBLIC PARTICIPATION IN GOVERNMENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the enactment in  
2   2002 of Hawai'i's Citizen Participation in Government Act,  
3   codified as chapter 634F, Hawaii Revised Statutes, was intended  
4   to promote the rights of citizens to vigorously participate in  
5   government and to protect citizens from the chilling effect of  
6   retributive "strategic lawsuit[s] against public participation"  
7   or "SLAPP" suits. To minimize the damage of SLAPP claims  
8   against citizens, Hawai'i's "Anti-SLAPP" law seeks to shift the  
9   burden of litigation back to the party bringing the SLAPP claim  
10  by providing for expedited judicial review, a stay on discovery,  
11  and sanctions.

12           The legislature further finds that despite the broad  
13  intentions of the legislature that the law "shall be construed  
14  liberally to fully effectuate its purposes and intent", section  
15  634F-4, Hawaii Revised Statutes, Hawai'i's Anti-SLAPP law, has  
16  not been effective at protecting citizen participation. The law  
17  has been rated at the "C" level compared to other state laws,



1 and courts have often declined to apply its procedural  
2 protections due to its narrow and confusing provisions.

3       The legislature also finds that the Uniform Law Commission,  
4 also known as the National Conference of Commissioners on  
5 Uniform State Laws, established in 1892, provides states with  
6 non-partisan, well-conceived, and well-drafted legislation that  
7 brings clarity and stability to critical areas of state  
8 statutory law. Due to the rise in SLAPP suits nationally, the  
9 need to strengthen protection for citizen participation in  
10 government and to increase consistency among states with anti-  
11 SLAPP laws, in 2020 the Uniform Law Commission proposed the  
12 Uniform Public Expression Protection Act as a model act to  
13 assist states in modernizing their anti-SLAPP laws.

14       The legislature finds that to protect public participation  
15 at all levels of government, Hawai'i should adopt the provisions  
16 of the model act recommended by the Uniform Law Commission. By  
17 adopting the Uniform Act provisions, Hawai'i will have an anti-  
18 SLAPP law that is among the best in the nation, with procedural  
19 protections for all parties, and clearer instructions for the  
20 courts on how to fairly and expeditiously dispose of SLAPP



1 claims to ensure citizens are protected from punitive SLAPP  
2 suits.

3 The purpose of this Act is to enact the Uniform Public  
4 Expression Protection Act.

5 SECTION 2. The Hawaii Revised Statutes is amended by  
6 adding a new chapter to be appropriately designated and to read  
7 as follows:

8 "CHAPTER

9 HAWAII PUBLIC EXPRESSION PROTECTION ACT

10 § -1 Short Title. This chapter may be cited as the  
11 Hawaii Public Expression Protection Act.

12 § -2 Definitions. As used in the chapter, unless the  
13 context otherwise requires:

14 "Goods or services" does not include a dramatic, literary,  
15 musical, political, journalistic, or artistic work.

16 "Governmental unit" means a public corporation or  
17 government or governmental subdivision, agency, or  
18 instrumentality.

19 "Person" means an individual, estate, trust, partnership,  
20 business or nonprofit entity, governmental unit, or other legal  
21 entity.



1           §   -3   **Scope of chapter.**   (a)   Except as otherwise  
2 provided in subsection (b), this chapter shall apply to a cause  
3 of action asserted against a person based on the person's:

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

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

9           (3)   Exercise of the right of freedom of speech or of the  
10               press, the right to assemble or petition, or the right  
11               of association, guaranteed by the United States  
12               Constitution or the Hawaii State Constitution, on a  
13               matter of public concern.

14           (b)   This act shall not apply to a cause of action  
15 asserted:

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

19           (2)   By a governmental unit or an employee or agent of a  
20                governmental unit acting in an official capacity to



1           enforce a law to protect against an imminent threat to  
2           public health or safety; or

3           (3) Against a person primarily engaged in the business of  
4           selling or leasing goods or services if the cause of  
5           action arises out of a communication related to the  
6           person's sale or lease of the goods or services.

7           § -4 Required procedures; motions; stays. (a)

8 Notwithstanding any law to the contrary, including rules of the  
9 court, no later than sixty days after a party is served with a  
10 complaint, crossclaim, counterclaim, third-party claim, or other  
11 pleading that asserts a cause of action to which this chapter  
12 applies, or at a later time on a showing of good cause, the  
13 party may file a special motion to dismiss the cause of action  
14 or part of the cause of action.

15           (b) Except as otherwise provided in this section:

16           (1) All other proceedings between the moving party and  
17           responding party in an action, including discovery and  
18           a pending hearing or motion, shall be stayed upon the  
19           filing of a motion under subsection (a); and

20           (2) On motion by the moving party, the court may stay:



1 (A) A hearing or motion involving another party if  
2 the ruling on the hearing or motion would  
3 adjudicate a legal or factual issue that is  
4 material to the motion under subsection (a); or

5 (B) Discovery by another party if the discovery  
6 relates to the issue.

7 (c) A stay under subsection (b) shall remain in effect  
8 until entry of an order ruling on the motion filed under  
9 subsection (a) and the expiration of the time to appeal the  
10 order.

11 (d) If a party appeals from an order ruling on a motion  
12 filed under subsection (a), all proceedings between all parties  
13 in an action shall be stayed. The stay shall remain in effect  
14 until the conclusion of the appeal.

15 (e) During a stay under subsection (b), the court may  
16 allow limited discovery if a party shows that specific  
17 information is necessary to establish whether a party has  
18 satisfied or failed to satisfy a burden imposed by section  
19 -7(a) and is not reasonably available without discovery.

20 (f) A motion for costs and expenses under section -10  
21 shall not be subject to a stay under this section.



1 (g) A stay under this section shall not affect a party's  
2 ability to voluntarily dismiss a cause of action or part of a  
3 cause of action or move to sever a cause of action.

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

6 (1) Unrelated to the motion under subsection (a); and

7 (2) Seeking a special or preliminary injunction to protect  
8 against an imminent threat to public health or safety.

9 § -5 Expedited hearings. (a) The court shall hear a  
10 motion under section -4(a) no later than sixty days after  
11 filing of the motion, unless the court orders a later hearing:

12 (1) To allow discovery under section -4(e); or

13 (2) For other good cause.

14 (b) If the court orders a later hearing under subsection  
15 (a)(1), the court shall hear the motion under section -4(a)  
16 no later than sixty days after the court order allowing the  
17 discovery, subject to subsection (a)(2).

18 § -6 Evidence. In ruling on a motion under section  
19 -4(a), the court shall consider the parties' pleadings, the  
20 motion, any replies and responses to the motion, and any  
21 evidence that could be considered in ruling on a motion for



1 summary judgment under the applicable Hawaii rules of civil  
2 procedure.

3 § -7 Dismissal of cause of action. (a) In ruling on a  
4 motion under section -4(a), the court shall dismiss with  
5 prejudice a cause of action or part of a cause of action if:

6 (1) The moving party establishes under section -3(a)  
7 that this chapter applies;

8 (2) The responding party fails to establish under section  
9 -3(b) that this act does not apply; and

10 (3) Either:

11 (A) The responding party fails to establish a prima  
12 facie case as to each essential element of the  
13 cause of action; or

14 (B) The moving party establishes that:

15 (i) The responding party failed to state a cause  
16 of action upon which relief can be granted;  
17 or

18 (ii) There is no genuine issue as to any material  
19 fact and the party is entitled to judgment  
20 as a matter of law on the cause of action or  
21 part of the cause of action.



1 (b) A voluntary dismissal without prejudice of a  
2 responding party's cause of action, or part of a cause of  
3 action, that is the subject of a motion under section -4(a)  
4 shall not affect a moving party's right to obtain a ruling on  
5 the motion and seek costs, reasonable attorney's fees, and  
6 reasonable litigation expenses under section -10.

7 (c) A voluntary dismissal with prejudice of a responding  
8 party's cause of action, or part of a cause of action, that is  
9 the subject of a motion under section -4(a) shall establish  
10 for the purpose of section -10 that the moving party  
11 prevailed on the motion.

12 § -8 **Court ruling.** The court shall rule on a motion  
13 under section -4(a) no later than sixty days after the  
14 hearing under section -5.

15 § -9 **Appeal.** A moving party may appeal within thirty  
16 days as a matter of right from an order denying, in whole or in  
17 part, a motion under section -4(a).

18 § -10 **Costs; attorney's fees, and expenses.** On a motion  
19 under section -4(a) the court shall award costs, reasonable  
20 attorney's fees, and reasonable litigation expenses related to  
21 the motion:



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

3 (2) To the responding party if the responding party  
4 prevails on the motion and the court finds that the  
5 motion was frivolous or filed solely with intent to  
6 delay the proceeding.

7 § -11 Rule of construction. This chapter shall be  
8 construed liberally to fully effectuate its purposes and intent  
9 to protect the exercise of the right of freedom of speech and of  
10 the press, the right to assemble and petition, and the right of  
11 association, guaranteed by the United States Constitution or  
12 Hawaii State Constitution.

13 § -12 Uniformity of application and construction. In  
14 applying and construing this uniform act, consideration shall be  
15 given to the need to promote uniformity of the law with respect  
16 to its subject matter among states that enact it."

17 SECTION 3. Chapter 634F, Hawaii Revised Statutes, is  
18 repealed.

19 SECTION 4. This Act does not affect rights and duties that  
20 matured, penalties that were incurred, and proceedings that were  
21 begun before its effective date.



1 SECTION 5. This Act shall take effect upon its approval.



**Report Title:**

Public Participation in Government; Scope of Application;  
Strategic Lawsuits Against Public Participation; Discovery;  
Suspension

**Description:**

Repeals chapter 634F, Hawaii Revised Statutes. Enacts the  
Uniform Public Expression Protection Act. (Proposed SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

