

**The Citizen Participation Act**

*Model Legislation*

**Section 1. {Definitions}**

In this chapter:

- (1) “Communication” includes the making or submitting of a statement or document in any form or medium, including oral, visual, written, audiovisual, or electronic.
- (2) “Exercise of the right of association” means a communication between individuals who join together to collectively express, promote, pursue, or defend common interests.
- (3) “Exercise of the right of free speech” means a communication made in connection with a matter of public concern.
- (4) “Exercise of the right to petition” means any of the following:
  - (A) a communication in or pertaining to:
    - (i) a judicial proceeding;
    - (ii) an official proceeding, other than a judicial proceeding, to administer the law;
    - (iii) an executive or other proceeding before a department of the state or federal government or a subdivision of the state or federal government;
    - (iv) a legislative proceeding, including a proceeding of a legislative committee;
    - (v) a proceeding before an entity that requires by rule that public notice be given before proceedings of that entity;
    - (vi) a proceeding in or before a managing board of an educational or eleemosynary institution supported directly or indirectly from public revenue;
    - (vii) a proceeding of the governing body of any political subdivision of this state;
    - (viii) a report of or debate and statements made in a proceeding described by Subparagraph (iii), (iv), (v), (vi), or (vii); or
    - (ix) a public meeting dealing with a public purpose, including statements and discussions at the meeting or other matters of public concern occurring at the meeting;

39 (B) a communication in connection with an issue under consideration or review by a  
40 legislative, executive, judicial, or other governmental body or in another governmental or  
41 official proceeding;

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43 (C) a communication that is reasonably likely to encourage consideration or review of an  
44 issue by a legislative, executive, judicial, or other governmental body or in another  
45 governmental or official proceeding;

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47 (D) a communication reasonably likely to enlist public participation in an effort to effect  
48 consideration of an issue by a legislative, executive, judicial, or other governmental body  
49 or in another governmental or official proceeding; and

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51 (E) any other communication that falls within the protection of the right to petition  
52 government under the Constitution of the United States or the constitution of this state.

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54 (5) "Governmental proceeding" means a proceeding, other than a judicial proceeding, by an  
55 officer, official, or body of this state or a political subdivision of this state, including a board or  
56 commission, or by an officer, official, or body of the federal government.

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58 (6) "Legal action" means a lawsuit, cause of action, petition, complaint, cross-claim, or  
59 counterclaim or any other judicial pleading or filing that requests legal or equitable relief.

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61 (7) "Matter of public concern" includes an issue related to:

62 (A) health or safety;

63 (B) environmental, economic, or community well-being;

64 (C) the government;

65 (D) a public official or public figure; or

66 (E) a good, product, or service in the marketplace.

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72 (8) "Official proceeding" means any type of administrative, executive, legislative, or judicial  
73 proceeding that may be conducted before a public servant.

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75 (9) "Public servant" means a person elected, selected, appointed, employed, or otherwise  
76 designated as one of the following, even if the person has not yet qualified for office or assumed  
77 the person's duties:

78 (A) an officer, employee, or agent of government;

79 (B) a juror;

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84 (C) an arbitrator, referee, or other person who is authorized by law or private written  
85 agreement to hear or determine a cause or controversy;

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87 (D) an attorney or notary public when participating in the performance of a governmental  
88 function; or

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90 (E) a person who is performing a governmental function under a claim of right but is not  
91 legally qualified to do so.

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93 **Section 2. {Purpose}**

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95 The purpose of this chapter is to encourage and safeguard the constitutional rights of persons to  
96 petition, speak freely, associate freely, and otherwise participate in government to the maximum  
97 extent permitted by law and, at the same time, protect the rights of a person to file meritorious  
98 lawsuits for demonstrable injury.

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100 **Section 3. {Motion to Dismiss}**

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102 (a) If a legal action is based on, relates to, or is in response to a party's exercise of the right of  
103 free speech, right to petition, or right of association, that party may file a motion to dismiss the  
104 legal action.

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106 (b) A motion to dismiss a legal action under this section must be filed not later than the 60th day  
107 after the date of service of the legal action. The court may extend the time to file a motion under  
108 this section on a showing of good cause.

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110 (c) Except as provided by Section 6(b), on the filing of a motion under this section, all discovery  
111 in the legal action is suspended until the court has ruled on the motion to dismiss.

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113 **Section 4. {Hearing}**

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115 (a) A hearing on a motion under Section 3 must be set not later than the 60th day after the date of  
116 service of the motion unless the docket conditions of the court require a later hearing, upon a  
117 showing of good cause, or by agreement of the parties, but in no event shall the hearing occur  
118 more than 90 days after service of the motion under Section 3, except as provided by Subsection  
119 (c).

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121 (b) In the event that the court cannot hold a hearing in the time required by Subsection (a), the  
122 court may take judicial notice that the court's docket conditions required a hearing at a later date,  
123 but in no event shall the hearing occur more than 90 days after service of the motion under  
124 Section 3, except as provided by Subsection (c).

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126 (c) If the court allows discovery under Section 6(b), the court may extend the hearing date to  
127 allow discovery under that subsection, but in no event shall the hearing occur more than 120  
128 days after the service of the motion under Section 3.

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**Section 5. {Ruling}**

(a) The court must rule on a motion under Section 3 not later than the 30th day following the date of the hearing on the motion.

(b) Except as provided by Subsection (c), on the motion of a party under Section 3, a court shall dismiss a legal action against the moving party if the moving party shows by a preponderance of the evidence that the legal action is based on, relates to, or is in response to the party's exercise of:

- (1) the right of free speech;
- (2) the right to petition; or
- (3) the right of association.

(c) The court may not dismiss a legal action under this section if the party bringing the legal action establishes by clear and specific evidence a prima facie case for each essential element of the claim in question.

(d) Notwithstanding the provisions of Subsection (c), the court shall dismiss a legal action against the moving party if the moving party establishes by a preponderance of the evidence each essential element of a valid defense to the nonmovant's claim.

**Section 6. {Evidence}**

(a) In determining whether a legal action should be dismissed under this chapter, the court shall consider the pleadings and supporting and opposing affidavits stating the facts on which the liability or defense is based.

(b) On a motion by a party or on the court's own motion and on a showing of good cause, the court may allow specified and limited discovery relevant to the motion.

**Section 7. {Additional Findings}**

(a) At the request of a party making a motion under Section 3, the court shall issue findings regarding whether the legal action was brought to deter or prevent the moving party from exercising constitutional rights and is brought for an improper purpose, including to harass or to cause unnecessary delay or to increase the cost of litigation.

(b) The court must issue findings under Subsection (a) not later than the 30th day after the date a request under that subsection is made.

**Section 8. {Appeal}**

175 (a) If a court does not rule on a motion to dismiss under Section 3 in the time prescribed by  
176 Section 5, the motion is considered to have been denied by operation of law and, in this  
177 circumstance, and when the motion is denied by the court, the moving party may appeal.  
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179 (b) An appellate court shall expedite an appeal or other writ, whether interlocutory or not, from a  
180 trial court order on a motion to dismiss a legal action under Section 3 or from a trial court's  
181 failure to rule on that motion in the time prescribed by Section 5.  
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183 (c) – An interlocutory appeal under Subsection (a), stays the commencement of a trial and all  
184 other proceedings in the trial court pending resolution of the appeal.  
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### 186 **Section 9. {Damages and Costs}**

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188 (a) If the court orders dismissal of a legal action under this chapter, the court shall award to the  
189 moving party:

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191 (1) court costs, reasonable attorney's fees, and other expenses incurred in defending  
192 against the legal action as justice and equity may require; and  
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194 (2) sanctions against the party who brought the legal action as the court determines  
195 sufficient to deter the party who brought the legal action from bringing similar actions  
196 described in this chapter.  
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198 (b) If the court finds that a motion to dismiss filed under this chapter is frivolous or solely  
199 intended to delay, the court may award court costs and reasonable attorney's fees to the  
200 responding party.  
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### 202 **Section 10. {Exemptions}**

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204 (a) This chapter does not apply to an enforcement action that is brought in the name of this state  
205 or a political subdivision of this state by the attorney general, a district attorney, a criminal  
206 district attorney, or a county attorney.  
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208 (b) This chapter does not apply to a legal action brought against a person primarily engaged in  
209 the business of selling or leasing goods or services, if the statement or conduct arises out of the  
210 sale or lease of goods, services, or an insurance product, insurance services, or a commercial  
211 transaction in which the intended audience is an actual or potential buyer or customer.  
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213 (c) This chapter does not apply to a legal action seeking recovery for bodily injury, wrongful  
214 death, or survival or to statements made regarding that legal action.  
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216 (d) This chapter does not apply to a legal action brought under the Insurance Code or arising out  
217 of an insurance contract.  
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### 219 **Section 11. {Construction}**

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(a) This chapter does not abrogate or lessen any other defense, remedy, immunity, or privilege available under other constitutional, statutory, case, or common law or rule provisions.

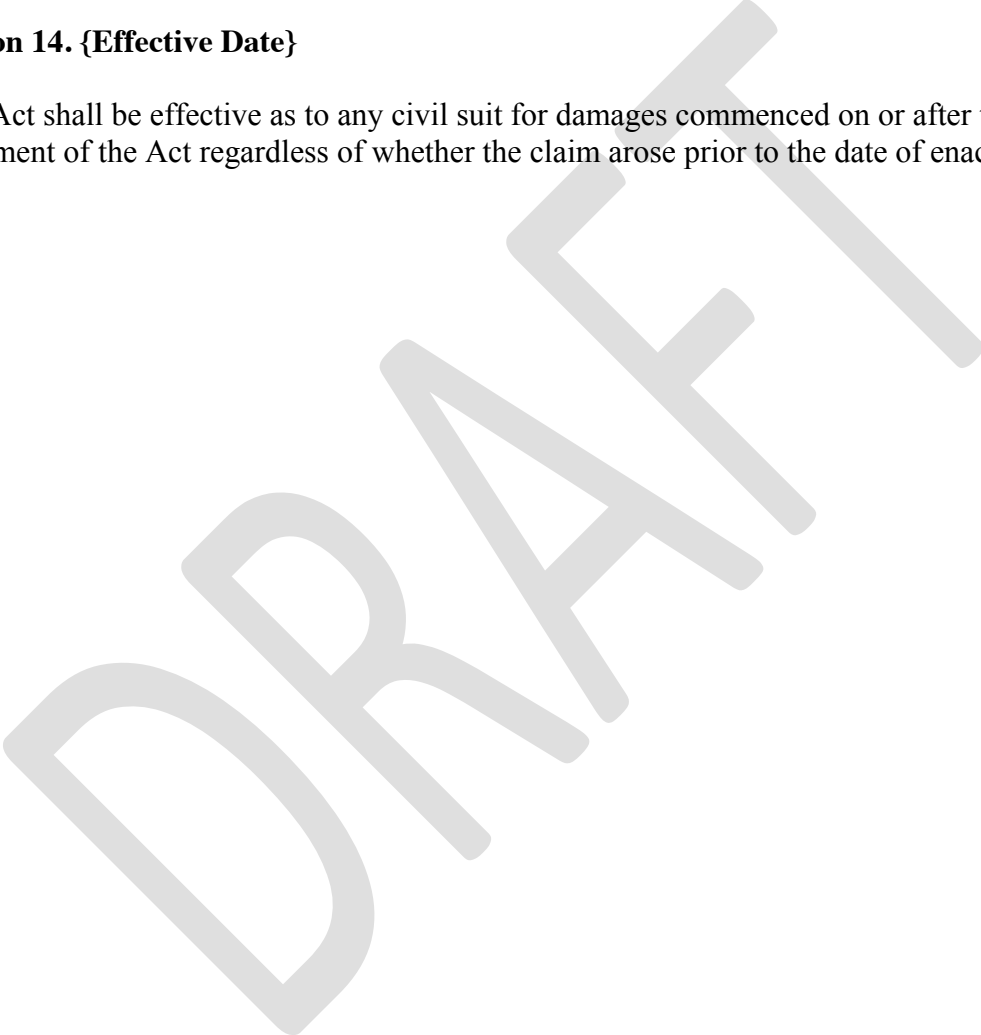
(b) This chapter shall be construed liberally to effectuate its purpose and intent fully.

**Section 12. {Severability Clause}**

**Section 13. {Repealer Clause}**

**Section 14. {Effective Date}**

This Act shall be effective as to any civil suit for damages commenced on or after the date of enactment of the Act regardless of whether the claim arose prior to the date of enactment.



## Summary of the Citizen Participation Act

During the 2011 Session of the Texas legislature, Texas joined 28 other states and the District of Columbia in adopting an Anti-SLAPP<sup>1</sup> statute aimed at providing a mechanism for early dismissal of meritless lawsuits brought against those who exercise their free speech rights. This model bill is based on the law passed in Texas.

The 2011 Texas Anti-SLAPP statute, and its subsequent 2013 amendment, is one of the strongest in the nation. The statute allows a judge to dismiss meritless lawsuits (including claims and counterclaims) filed against one who speaks out about a “matter of public concern” (which is defined expansively) within the first 60-90 days after the case was filed.<sup>2</sup> Once an Anti-SLAPP motion is filed, discovery is stayed unless there is a showing of good cause and the judge orders discovery, but it is still limited to what is necessary to address the motion.

In order to obtain a dismissal under the proposed model bill, one must establish, by a preponderance of the evidence, that the lawsuit was filed in response to the exercise of one’s First Amendment rights. Then, the burden shifts to the plaintiff to establish, by clear and specific evidence, that they have support for each essential element of their claim. In addition, the court can dismiss the case, if the moving party establishes a valid defense to the claim.

If the Anti-SLAPP motion is denied, one can file an immediate interlocutory appeal which is to be handled on an expedited basis and during which the entire underlying proceeding is stayed.

Finally, there is a mandatory fee shifting provision if an Anti-SLAPP motion is granted so the person or entity wrongfully filing a lawsuit must pay the defense costs. There is also a discretionary fee award if the court finds the Anti-SLAPP motion was frivolous or brought solely for the purpose of delay.

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<sup>1</sup> The acronym “SLAPP” stands for “Strategic Lawsuit Against Public Participation” and is a lawsuit aimed at those people who are speaking out about matters of public concern, petitioning their government for redress of grievances or exercising their First Amendment right of association.

<sup>2</sup> There are a few exemptions: 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. The statute also does not apply to a legal action brought under the Insurance Code or arising out of an insurance contract.