

A Primer on the Texas Anti-SLAPP Statute

By Laura Lee Prather | October 18, 2017

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As the Texas Supreme Court continues to demonstrate unprecedented judicial activism to prevent access to public information such as dates of birth and travel vouchers for state employees, the Texas Legislature unanimously adopted one of the strongest Anti-SLAPP statutes in the nation and showed their continued support of the First Amendment. On June 17, 2011, the Texas Citizens Participation Act (the “Texas Anti-SLAPP statute”) was signed into law by Gov. Rick Perry. And, because the law was passed out of both legislative chambers by more than a two-thirds majority, the law went into effect immediately. This is a great piece of legislation that protects the little guy, promotes judicial economy, provides for tort reform and advances the First Amendment rights of all Texas citizens.

Here are some quick highlights about the Texas Anti-SLAPP statute which is codified at Texas Civil Practice & Remedies Code, Chapter 27:

- The statute allows a judge to dismiss frivolous lawsuits filed against one who speaks out about a “matter of public concern” within the first 60 days. “Matter of public concern” is defined expansively in the statute.
- The Anti-SLAPP motion is supported by affidavits explaining to the court that the lawsuit is based on, relates to, or is in response to one’s exercise of his right to free speech, right to petition or right of association.
- 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 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.
- The statute creates a stay of discovery in a lawsuit while an Anti-SLAPP motion is pending and/or appealed. The court has discretion to order discovery pertaining to the motion if it feels it is necessary.
- The 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.
- The statute provides an immediate right to an expedited appeal if the Anti-SLAPP motion is denied.
- 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 exemptions contained in the statute are for enforcement actions brought by the State or law enforcement, for commercial speech and for wrongful death and bodily injury lawsuits.

The effort, which began as a pro bono project by Laura Prather at Sedgwick, LLP, quickly became a tour de force at the Legislature with the help of key strategist, former Sen. Don Adams and the marketing savvy of recent St. Mary’s law graduate, Alicia Wagner Calzada. As momentum mounted, a broad-based coalition of groups began supporting the Citizen Participation Act,

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](#), [HOA Reform Coalition](#), [the Texas Trial Lawyers Association](#), [the Texans for Lawsuit Reform](#) and the [American Civil Liberties Union](#).

The bill would never have become law were it not for the tireless efforts of all those who came to testify, who contacted their senators and representatives in support of the bill, who ultimately helped to subsidize some of the costs, and who provided examples of demonstrated need to personalize the issue for their lawmakers. The masterful legislative talents of our sponsors, Chairman Todd Hunter and Senators Rodney Ellis and Kevin Eltife, cannot be overstated either. Each of these gentlemen brought their gravitas and significant imprint to the legislation and to the process. We applaud them for protecting the First Amendment rights of all Texas citizens.

(Note: Haynes Boone Partner Laura Lee Prather formed and spearheaded the coalition that worked for and obtained passage of HB 2793/SB 1565, the Texas Anti-SLAPP statute.)