



Anti-SLAPP Statutes: A Report Card

By Dan Greenberg, David Keating, and Helen Knowles-Gardner

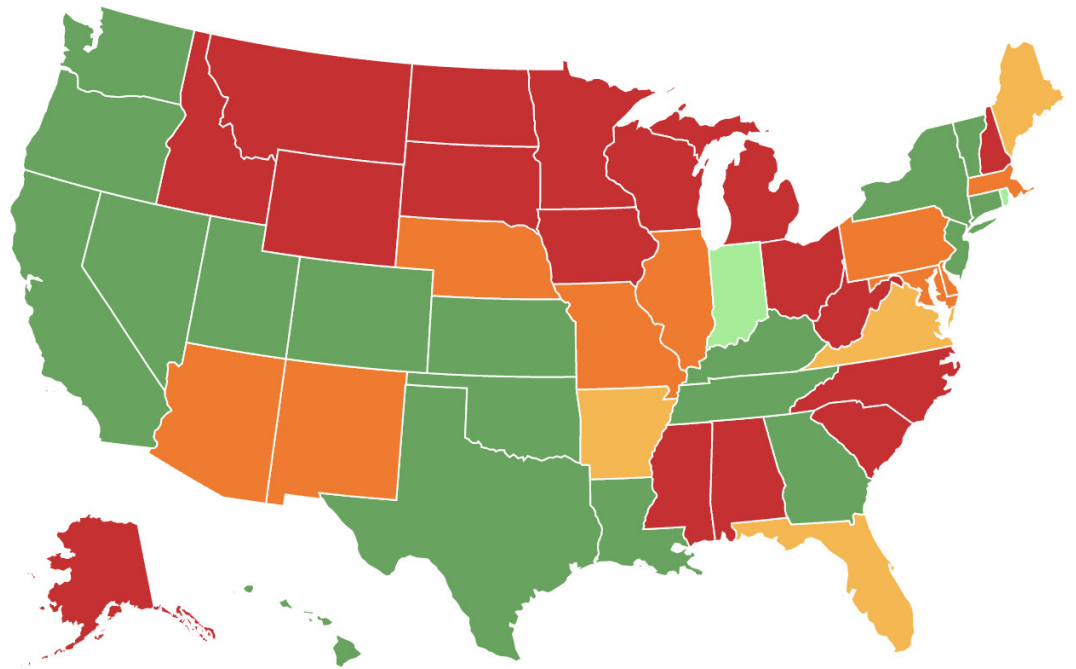




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Introduction

Anti-SLAPP statutes prevent abuse of the legal system by providing additional defenses to those who are sued for exercising their First Amendment rights. The term “SLAPP” is an acronym for strategic lawsuit against public participation.

This report summarizes and evaluates anti-SLAPP statutes in 34 jurisdictions – 33 states and the District of Columbia. (The other 17 states have no functioning anti-SLAPP statute.)

This report begins by explaining the functions of anti-SLAPP statutes. It sketches the structure of a well-designed anti-SLAPP statute; summarizes the changes that have occurred in some state ratings and grades; describes two minor changes in the methodology used since the 2022 report was published; explains the importance and operation of the elements of a statute; includes a brief account of the structure and functions of the Uniform Law Commission’s model anti-SLAPP statute (UPEPA); provides a numerical rating and letter grade for each jurisdiction’s statute, based on evaluations of how well each statute protects First Amendment rights; and recommends a particular improvement to the statutes of states with poor grades. Because such ratings and grades necessarily involve some judgment and subjectivity, this report explains in detail the rationale of those ratings and grades.

The report also includes an Appendix that provides a plain-English, jurisdiction-by-jurisdiction account of the anti-SLAPP statute in each state and Washington D.C., including both statutory text and some relevant caselaw.



How Anti-SLAPP Statutes Help Protect Free Speech

Anti-SLAPP statutes are designed to address a structural problem within American law: an unscrupulous litigant can use litigation strategically to suppress or punish speech he or she dislikes. Such a litigant would typically claim that the speech constituted defamation and then sue speakers to harass them, silence them, or force them to bear significant litigation costs. Those who encounter such a lawsuit (sometimes called a “SLAPP”¹ or a “SLAPP suit”) are often presented with a harsh choice – accede to the litigant’s demand for settlement (which may include paying compensation, ceasing criticism, and apologizing) or continue to bear heavy legal fees as the suit progresses. We estimate that the median cost of defeating a typical meritless defamation lawsuit in court is \$39,000, but mounting such a defense can easily exceed this figure, with legal fees sometimes running into the millions of dollars.²

Whether or not the defendant chooses to settle or fight the lawsuit, he or she is likely to suffer substantial losses of speech, reputation, time, and money. These are costs defendants must bear even when faced with lawsuits that plaintiffs have a minimal chance of winning.

Anti-SLAPP statutes attempt to protect speakers from such lawsuits. This report examines statutory protections for those who face these abusive litigation claims, which are typically filed to deter or harass the exercise of First Amendment rights when communicating about matters of public interest. A matter of public interest might include almost any topic – ranging from a governor’s job performance to a restaurant review on Yelp. Generally, policymakers who support anti-SLAPP statutes are attempting to protect the public from retaliatory and groundless lawsuits. Citizens deserve protection when speaking on matters of public concern and, more particularly, they deserve protection against the expenses that strategic lawsuits can force defendants to bear.

Anti-SLAPP statutes are intended to provide a legal defense for those who have been targeted by litigation just because they have said or written something that a plaintiff does not like; the defense of these actions lies in the exercise of one’s First Amendment rights. But anti-SLAPP statutes generally have a procedural aspect that many conventional defenses lack – an opportunity for the defendant to file a motion that forces judicial consideration of certain issues at an early stage in the litigation (known as an anti-SLAPP motion).

Non-lawyers may wish to think of the events triggered by an anti-SLAPP motion as something like a mini-trial. These events will typically require the plaintiff to provide evidence and a relatively focused argument early on. More precisely, the procedural aspect of an anti-SLAPP statute generally forces the plaintiff to demonstrate, at an early stage in litigation, that the case merits consideration in court. Until the plaintiff meets this burden, the defendant generally

won’t be subject to discovery (for instance, the defendant won’t have to undergo a deposition or be required to produce documents) or be forced to bear similarly expensive or burdensome aspects of litigation. Without an anti-SLAPP statute, plaintiffs can often strategically impose the significant costs of litigation – in time, money, and aggravation – on defendants.

A good anti-SLAPP statute will impose notable costs on plaintiffs with weak or frivolous cases. If those plaintiffs fail early on to meet the heavier burden of specifying in detail the wrongful conduct they allege, their case will be dismissed. In that circumstance, the fee-shifting provisions of strong anti-SLAPP statutes make plaintiffs liable for reasonable attorney fees and court costs originally borne by the speaker. Such fee-shifting provisions make it more likely that a defendant with limited financial resources who faces a SLAPP will be represented by an attorney. The prospect of fee-shifting encourages attorneys to provide defendants with representation – especially when defendants face weak or frivolous claims.

Strong anti-SLAPP laws encourage potential plaintiffs to think twice before hauling speakers into court with weak or frivolous cases. Plaintiffs must demonstrate that the grounds for the suit lie in actual wrongdoing and not simply in hearing sharply critical statements they dislike and asserting weak or frivolous claims without real evidence. In short, these laws protect defendants who have merely exercised their First Amendment rights. Anti-SLAPP statutes are intended to provide a relatively quick, cheap, and effective way to dispose of one type of meritless lawsuit. Such statutes often enable defendants to achieve rapid dismissal of weak litigation claims, and a good anti-SLAPP law enables defendants to recoup the money they spent on legal costs. Strong anti-SLAPP statutes provide deterrent effects against strategic lawsuits of dubious merit.

Those who seek a more extensive discussion of the rationale for anti-SLAPP laws should read a series of blog posts by attorney and legal commentator Ken White. That series explains in greater detail how anti-SLAPP laws further free speech. White’s first post, “How Do Lawsuits Work Without An Anti-SLAPP Statute, And Why Is That A Problem?”³ is an excellent explanation of how a SLAPP can threaten free speech. His second post, “How Do Anti-SLAPP Statutes Fix Problems With Civil Litigation And Help Defendants?”⁴ is a deeper dive into the mechanisms of anti-SLAPP laws and how they reduce the harm of SLAPPs. He concludes his series with a post titled “What Makes A Good Or Bad Anti-SLAPP Statute?”⁵ which, as the title suggests, provides many examples of effective and ineffective state statutes.

¹ Penelope Canan and George W. Pring, two professors (Professor Emerita of Sociology at the University of Central Florida, and Professor of Law Emeritus at the University of Denver Sturm College of Law, respectively), are typically credited with coining the term. See generally their article, *Studying Strategic Lawsuits Against Public Participation: Mixing Quantitative and Qualitative Approaches*, 22 LAW & SOCIETY REVIEW 385 (1988). Over time, the conventional understanding of a SLAPP has expanded: originally, the concept’s originators viewed the subject matter of a SLAPP as necessarily involving communications to a government body about a government action, but the modern understanding of a SLAPP is not limited in this way.

² David Keating, *Estimating the Cost of Fighting a SLAPP in a State With No Anti-SLAPP Law*, INSTITUTE FOR FREE SPEECH BLOG (June 16, 2022), <https://www.ifs.org/blog/estimating-the-cost-of-fighting-a-slapp-in-a-state-with-no-anti-slapp-law/>. For more on the methodology used to arrive at such figures, see Paula Hannaford-Agor and Nicole L. Waters, *Estimating the Cost of Civil Litigation*, National Center for State Courts, (January 2013), https://www.ncsc.org/_data/assets/pdf_file/0020/25337/csph_online2.pdf.

³ Ken White, *What Is An Anti-SLAPP, Anyway? A Lawsplainer Series – Chapter One: How Do Lawsuits Work Without An Anti-SLAPP Statute, And Why Is That A Problem?* THE POPEHAT REPORT, (Oct. 26, 2020), <https://popehat.substack.com/p/what-is-an-anti-slapp-anyway-a-lawsplainer>.

⁴ Ken White, *What Is An Anti-SLAPP, Anyway? A Lawsplainer Series – Chapter Two: How Do Anti-SLAPP Statutes Fix Problems With Civil Litigation And Help Defendants?*, THE POPEHAT REPORT, (Oct. 29, 2020), <https://popehat.substack.com/p/what-is-an-anti-slapp-anyway-a-lawsplainer-44b>.

⁵ Ken White, *What Is An Anti-SLAPP, Anyway? A Lawsplainer Series – Chapter Three: What Makes A Good Or Bad Anti-SLAPP Statute?*, THE POPEHAT REPORT, (July 8, 2021), <https://popehat.substack.com/p/what-is-an-anti-slapp-anyway-a-lawsplainer-46c>.



The Structure of Anti-SLAPP Statutes

This report surveys 51 jurisdictions (the 50 states and the District of Columbia), finding that 34 of those jurisdictions have functioning anti-SLAPP statutes enacted before September 15, 2023. The details of these statutes vary, but by and large an anti-SLAPP statute includes or requires these features:

- a. The scope or coverage of the statute – that is, the nature of the speech it protects – is specified. The statute only protects speech inside the domain of the statute’s protection.
- b. A defendant – faced with a lawsuit that appears to punish, silence, or deter activities that are based on the exercise of First Amendment rights – has the right to file an anti-SLAPP motion. The motion must argue that the lawsuit’s claim targets expressive conduct that the jurisdiction’s anti-SLAPP statute protects. (This report sometimes calls this defendant a “movant;” the *movant* is the party that files the anti-SLAPP *motion*.)
- c. When the anti-SLAPP motion is filed, most or all other aspects of the lawsuit (such as discovery) are suspended until the court makes a final decision on the motion.
- d. An anti-SLAPP motion typically triggers a two-step process, with the first step borne by the movant and the second step borne by the plaintiff. If the movant satisfies the burden of establishing that the speech is covered by the jurisdiction’s anti-SLAPP statute, then the burden of proof shifts to the plaintiff. At this point, the plaintiff must demonstrate that the claim is meritorious – that is, that the claim is well-grounded enough that it might prevail at trial. (This report sometimes calls this plaintiff – when responding to the anti-SLAPP motion – a “respondent.”)
- e. If the movant prevails on the motion, then the case is dismissed. In many states, the respondent must pay for the movant’s reasonable legal fees and costs.
- f. If the respondent prevails on the motion, in some states the movant may immediately appeal the court’s ruling. While the appeal continues, discovery and other aspects of the lawsuit remain suspended. If there is no appeal, then any suspension of the lawsuit ends. If the respondent can establish that the movant filed the motion for improper reasons (for instance, only to create delay), then the movant may be liable for the respondent’s legal fees and costs on the motion in certain circumstances.

The above outline provides an abstract and general portrait of the process created by anti-SLAPP statutes. An examination of anti-SLAPP statutes across jurisdictions will reveal deep similarities, but also significant differences.

Summary of Results

This report finds that there are functioning anti-SLAPP statutes in 34 jurisdictions. It assigns an “A+,” “A,” or “A-” grade to statutes in 18 jurisdictions. The remaining jurisdictions received a grade of “B+” or “B” (three jurisdictions), “C+,” “C,” or “C-” (four jurisdictions), or “D+,” “D,” or “D-” (nine jurisdictions). States without an anti-SLAPP statute (16) or that had an anti-SLAPP statute struck down by a court (Minnesota) received a grade of “F.”

Rankings of Jurisdictions with Anti-SLAPP Laws

Jurisdiction	Overall Points	Overall Grade
Hawaii	100	A+
Kentucky	100	A+
Utah	100	A+
Oregon	99	A+
New York	99	A+
California	99	A+
Georgia	98	A
New Jersey	97	A
Colorado	97	A
Nevada	97	A
Oklahoma	97	A
Tennessee	97	A
Vermont	97	A
Washington	93	A-
Texas	93	A-
Kansas	92	A-
Louisiana	90	A-
Connecticut	89	A-
Indiana	85	B+
Rhode Island	80	B
District of Columbia	79	B
Virginia	70	C+
Arkansas	61	C
Florida	50	C-
Maine	50	C-
Massachusetts	49	D+
Arizona	46	D+
Illinois	45	D+
Maryland	37	D
New Mexico	31	D
Missouri	26	D-
Pennsylvania	25	D-
Delaware	11	D-
Nebraska	11	D-



These 17 states with no anti-SLAPP law each received 0 points in the study and an overall grade of “F.”

States Without An Anti-SLAPP Law	Overall Points	Overall Grade
Alabama	0	F
Alaska	0	F
Idaho	0	F
Iowa	0	F
Michigan	0	F
Minnesota	0	F
Mississippi	0	F
Montana	0	F
New Hampshire	0	F
North Carolina	0	F
North Dakota	0	F
Ohio	0	F
South Carolina	0	F
South Dakota	0	F
West Virginia	0	F
Wisconsin	0	F
Wyoming	0	F

What Has Changed Since the 2022 Report

The anti-SLAPP landscape has substantially improved since the publication of the 2022 Anti-SLAPP Report. Thirty-three states and the District of Columbia now have a functioning anti-SLAPP statute. For the first time in the nation’s history, over 50% of the population now resides in a jurisdiction with a good anti-SLAPP law, meaning a grade of “B” or better. It is also notable that 79% of the population is now covered by some form of anti-SLAPP law.

Since 2022, the anti-SLAPP grades assigned to 10 states have improved. Six of those grade increases result from states amending existing laws or enacting a new anti-SLAPP law. Four new laws enacted since 2022 closely follow the Uniform Law Commission’s model UPEPA. Two states that previously had no anti-SLAPP law enacted laws and two states replaced weak anti-SLAPP laws with new UPEPA-style statutes. Two other states have seen their grades increase because of new expansive judicial interpretations of their anti-SLAPP statutes. One state has seen an improvement in its grade because of changes to our methodology and one state’s grade rose due to a correction in our score for that state’s law.

- Arizona: *grade increases from a “D-” to a “D+”* after the state revised its law. The amendment expanded the law to cover all constitutionally protected speech on matters of public concern, but also required that a defendant filing an anti-SLAPP motion show that the lawsuit “was substantially motivated by a desire to deter, retaliate against or prevent the lawful exercise of a constitutional right.” This is an odd provision not found in any other anti-SLAPP statute, which will likely greatly limit speakers’ ability to benefit from the anti-SLAPP law.

Arizona also eliminated the previous law’s provision that required payment of attorney’s fees and costs to defendants who prevail on an anti-SLAPP motion, the most important procedural provision in an anti-SLAPP law. The new law only allows the court to consider granting such an award.

A right to an interlocutory appeal was also created, but that too is conditioned on the defendant establishing the “prima facie proof” discussed above.

The effectiveness of the revised law will likely hinge on how the courts interpret it.

- Colorado: *grade increases from a “B” to an “A”* after a state appeals court ruling in 2022 broadly interpreted the scope of speech covered by the law.
- Connecticut: *grade increases from a “B+” to an “A-”* after state supreme court rulings in 2023 interpreted the statute as providing speakers with a right of an interlocutory appeal.
- Hawaii: *grade increases from a “D” to an “A+”* after enacting the Hawaii Public Expression Protection Act that is modeled after UPEPA.
- Kentucky: *grade increases from an “F” to an “A+”* after enacting an anti-SLAPP statute modeled after UPEPA.
- Maine: *grade increases from a “D” to a “C-”* for two reasons. One reason is due to the methodology change providing points for a judicial holding that there is a right to



interlocutory appeal after an anti-SLAPP motion is denied. The other is our further review of caselaw examining the Maine and Massachusetts statutes, which have similar provisions for the scope of speech covered by their anti-SLAPP laws. In the previous rating, both states had received a subscore of 30 out of a possible 100 points for the scope of speech subscore as detailed below. However, Maine’s Supreme Judicial Court interprets that language broadly, so that state’s law now receives a subscore of 45 points while the Massachusetts statute maintains a subscore of 30.

- New Jersey: *grade increases from an “F” to an “A”* after its 2023 enactment of the Uniform Public Expression Protection Act that closely tracks UPEPA.
- New York: *grade increases from an “A-” to an “A+”* upon our discovery that New York guarantees a general right to an interlocutory appeal.
- Oregon: *grade increases from an “A-” to an “A+”* after amending its statute to explicitly provide for interlocutory appeals and to ensure a plaintiff cannot avoid paying attorney fees and costs to the speaker defendant by voluntarily dismissing the litigation after an anti-SLAPP motion has been filed.
- Utah: *grade increases from a “D-” to an “A+”* after enacting its Public Expression Act modeled after UPEPA.

We also note that 12 other states had minor changes in their scores due to methodology changes, but the resulting changes in these scores were not enough to trigger a change in grades.

Recent Trends Show Strong Improvements Nationally

The significant improvements reflected in the 2023 scorecard continue the recent trend of increasing state legislative and judicial awareness of the importance of anti-SLAPP laws to free expression. Along with the four excellent new or substantially improved state anti-SLAPP laws in this scorecard, four more were adopted between 2019 and 2021 (Colorado, New York, Tennessee, and Washington). These followed the enactment of other “A” grade laws by Nevada (2013), Oklahoma (2014), Georgia (2016), Kansas (2016), and Connecticut (2017). In just ten years, 13 states have adopted “A” grade laws.

On July 15, 2020, the Uniform Law Commission adopted its model anti-SLAPP law, which has already led to excellent new or revised laws in six states.

Indeed, only three of the good anti-SLAPP laws (ones that receive a “B” grade or higher) were on the books at the beginning of the 21st century (Rhode Island, Indiana, and Louisiana). And of the other 18 “B” grade or better laws, 15 (83.3%) have been enacted since 2010.

Methodology Updates

We made two changes in our methodology since the 2022 rating. As explained in the methodology discussion below, the rating is based on how closely the state’s statute corresponds with the underlying policy of the model anti-SLAPP law (UPEPA) recommended by the Uniform Law Commission.

The first change made was to the fee-shifting provision. UPEPA requires the court to award costs and reasonable attorney fees and expenses to the prevailing movant. The model law also

states that a voluntary dismissal of the lawsuit by the respondent establishes that the movant prevailed. To receive the full 40 points for the fee-shifting subscore in the 2023 rating, the statute must also provide that a voluntary dismissal results in an award of fees to the movant. If the state’s highest appellate court interprets the statute in that way, the state receives 38 points. Otherwise, the statute receives credit for 36 points. Fifteen states saw their points for this subcategory fall to 36 or 38 points.

The second change was to the subscore for an interlocutory appeal. The previous report only gave states credit if the statute expressly provided for the right to such an appeal. We now award 20 of a possible 25 points if the state’s highest appellate court interprets the statute as providing for an interlocutory appeal.



Policy Choices and Consequences of Anti-SLAPP Statutes

This report evaluates the details of anti-SLAPP statutes and assigns the highest value to the anti-SLAPP statutes that best protect First Amendment rights. Understanding the operation of any particular anti-SLAPP statute requires a focus on the policy choices and consequences entailed by the text of that statute. The machinery of those policy choices and consequences is discussed immediately below. More details on each jurisdiction's statute are available in the Appendix.

- **What conduct does the anti-SLAPP statute cover and protect?** The scope of the most speech-protective anti-SLAPP statutes is extensive. The strongest anti-SLAPP statutes, like those in California and Tennessee, and the Uniform Law Commission's Model Act (discussed in the next section), protect broad sectors of speech made in any forum and on any matter of public concern. Yet the coverage of some other anti-SLAPP statutes is narrow. Some anti-SLAPP statutes – New Mexico's is one example – only protect speech that is directly addressed to a government body. A few anti-SLAPP statutes protect speech only about a narrow issue, such as environmental laws and regulations (Pennsylvania) or public permits (Delaware).

This report assigns the most points to anti-SLAPP statutes that protect speech on any matter of public concern in any forum.

- **Is discovery permitted once an anti-SLAPP motion is filed?** In some jurisdictions, like Washington, the filing of an anti-SLAPP motion suspends all other litigation proceedings (for example, discovery proceedings) until the motion is resolved. In other jurisdictions, however, discovery after the filing of an anti-SLAPP motion is at the discretion of the court. California is an example of such a state. In these states, the court decides whether to allow continued discovery, typically requiring the plaintiff to produce a motion showing “good cause” for discovery. In that circumstance, the court will typically narrow or limit the scope of permitted discovery. A few jurisdictions – Nevada and the District of Columbia are two examples – supply other tests for judicially permitted discovery; for instance, discovery may be permitted if it is necessary to meet the party's burden of proof. Indiana's statute suspends all discovery, except for discovery related to the anti-SLAPP motion. Pennsylvania confines suspension of discovery to the circumstance in which the movant appeals the court's denial of an anti-SLAPP motion.

This report assigns the most points to anti-SLAPP statutes that completely suspend discovery and all other proceedings upon the filing of the anti-SLAPP motion.

- **What must the plaintiff show to defeat an anti-SLAPP motion?** The standard of proof that a respondent must satisfy to defeat an anti-SLAPP motion (alluded to in part D of the “The Structure of Anti-SLAPP Statutes” section) varies widely among jurisdictions. In several states, the respondent must show that there is a probability that he or she will prevail at trial. For example, the California and Georgia statutes operate this way. As a practical matter, this requirement is often understood as constituting a burden to demonstrate an initially plausible case. In several other states (Maine and Massachusetts are two examples), a respondent must show that the movant's actions both caused actual injury to the plaintiff and that those actions were without

reasonable factual support or any arguable basis in law. In Delaware, the respondent must provide either a substantial basis in law for the claim or a substantial argument for an extension, modification, or reversal of existing law. In Illinois, the respondent must provide clear and convincing evidence that the state's anti-SLAPP law does not immunize the defendant from liability. The requirements imposed on the plaintiff in a few other jurisdictions are difficult to sum up, but all are described in the Appendix.

This report assigns the most points to anti-SLAPP statutes that come closest to the Uniform Law Commission Model Act, especially its requirement that a plaintiff “establish a prima facie case as to each essential element” of the lawsuit.

- **Is there a right of interlocutory appeal?** If an anti-SLAPP motion is denied, several states, like Nevada and New Mexico, grant the movant a statutory right to interlocutory appeal of that ruling. In that event, the case remains suspended until the anti-SLAPP motion is ultimately resolved. An “interlocutory” appeal, speaking generally, is a request to a higher court for it to decide a particular issue immediately. In most litigation, interlocutory appeals are difficult to obtain, so this right of appeal is an important feature of an anti-SLAPP law. Without it, a defendant who loses an anti-SLAPP motion would be forced to continue to litigate the entire trial before the finding on the motion could ever be appealed.

An interlocutory appeal on an anti-SLAPP motion suspends other aspects of the litigation until a higher court can rule on the anti-SLAPP motion. However, most states do not expressly provide for such a right of appeal. Some states, such as New Mexico, also allow for appeal if the court fails to rule on the anti-SLAPP motion after a given period. This policy choice avoids leaving the anti-SLAPP litigant under the specter of litigation if the court fails to act with reasonable speed on an anti-SLAPP motion.

As attorney Ken White has eloquently explained, the provision of a right of interlocutory appeal creates a strong protection for First Amendment liberties, especially because it blunts the force of lawsuits that target speech.⁶

This report assigns the most points to anti-SLAPP statutes that provide for an immediate right of appeal if a lower court denies an anti-SLAPP motion.

- **Can the defendant recover costs and attorney fees from the plaintiff?** Many states provide for the mandatory award of attorney fees and costs if the defendant prevails on an anti-SLAPP motion. Statutes in California and Tennessee, among others, have this provision. Other states, like Nebraska, allow the court to decide whether to award attorney fees and costs, and one state (Maryland) makes no provision for fee- and cost-shifting at all. Some states that shift fees and costs provide that they may be shifted only to benefit the prevailing movant and not the prevailing respondent; the states that allow fee-shifting to benefit the respondent typically require a showing that the

⁶“It's impossible to overstate how utterly [the right to an interlocutory appeal] transforms the strategy of lawsuits aimed at speech. These days appeals usually take years. That means that if I sue over speech in a state with a strong Anti-SLAPP statute, even if I win the Anti-SLAPP motion, and then win again on appeal, I'm looking at years of delay before my case can move forward to discovery and substantive litigation. It's a huge deterrent to censorious litigation and an incalculable benefit for defendants. Appeals, in general, are much cheaper and less disruptive than trial court litigation; it's much easier and cheaper to file an Anti-SLAPP motion and then appeal it if you lose than it is to defend a defamation case in the trial court. This dramatically reduces the coercive effect of filing a lawsuit targeting speech.” *Id.*



anti-SLAPP motion was frivolous or that it was filed solely with the intent to delay resolution of the action.

This report assigns the most points to anti-SLAPP statutes that require an award of attorney fees and costs to defendants who win an anti-SLAPP motion.

- **Does the statute instruct courts to interpret it broadly or liberally?** A few anti-SLAPP statutes instruct courts to interpret the anti-SLAPP statute “broadly” (*see*, for example, California’s statute) or “liberally” (*see* Oregon’s statute). Sometimes, a judge might find it unclear whether some particular instance of First Amendment-related speech or conduct should fall within the protections granted by an anti-SLAPP statute. Generally, language that commands broad or liberal interpretation might increase the likelihood of the application of an anti-SLAPP statute by interpretively giving that speech or conduct the benefit of the doubt. On the other hand, anti-SLAPP statutes that lack instructions for broad or liberal interpretation might face an increased likelihood that a court would, in practice, narrow their scope; for example, by requiring more exacting tests for an anti-SLAPP motion’s success than those in the statute. Missouri is one state where its anti-SLAPP statute has been interpreted through case law due to a lack of instruction about judicial interpretation.

This report assigns the most points to anti-SLAPP statutes that expressly encourage courts to read the statutory language expansively to protect free speech.

The Appendix describes each jurisdiction’s anti-SLAPP statute within its scope; sometimes, these summaries include notes about the interaction of relevant caselaw with the statute’s operations.

The Uniform Law Commission’s Uniform Public Expression Protection Act

In 2020, the Uniform Law Commission (ULC),⁷ a nonprofit and nonpartisan organization of state commissioners on uniform laws that recommends and drafts model state legislation, produced its Uniform Public Expression Protection Act (UPEPA).⁸ UPEPA is a model anti-SLAPP statute.

When evaluated using the criteria as described in the next section, UPEPA contains provisions that are superior to almost every current state anti-SLAPP statute (at least from the perspective of First Amendment protections). In particular, UPEPA:

- Applies to and protects not only communication directed to government or that pertains to government proceedings, but also to the exercise of First Amendment rights on matters of public concern in any forum (*see* Section 2 of UPEPA).
- Provides for a general stay of proceedings between the movant and respondent upon the filing of a special motion for expedited relief; that motion provides for a stay of all related proceedings, including discovery and pending hearings (*see* Section 4 of UPEPA).
- Creates an obligation for the plaintiff (the respondent in the anti-SLAPP motion) to establish a prima facie case for each essential element of the lawsuit (*see* Section 7 of UPEPA).
- Establishes that the movant may appeal as a matter of right if a court denies the anti-SLAPP motion (*see* Section 9 of UPEPA).
- Requires the court to award costs and reasonable attorney fees and expenses to the prevailing movant. It awards costs and fees to the prevailing respondent, but only if the motion was frivolous or filed solely to delay the litigation (*see* Section 10 of UPEPA). A voluntary dismissal of the lawsuit by the respondent establishes that the movant prevailed.
- Commands the court that interprets the Act to apply and construe it broadly to protect First Amendment rights under the U.S. Constitution and under similar free expression rights of state constitutions (*see* Section 11 of UPEPA).

In short, policymakers who seek to improve their own jurisdiction’s anti-SLAPP statute are well-advised to consider the Model Act as proposed by the Uniform Law Commission. The

⁷ As described on its website, “The Uniform Law Commission (ULC, also known as the National Conference of Commissioners on Uniform State Laws), established in 1892, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.... [It is] comprised of state commissions on uniform laws from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. Each jurisdiction determines the method of appointment and the number of commissioners actually appointed. Most jurisdictions provide for their commission by statute.... The state uniform law commissioners come together as the Uniform Law Commission for one purpose – to study and review the law of the states to determine which areas of law should be uniform. The commissioners promote the principle of uniformity by drafting and proposing specific statutes in areas of the law where uniformity between the states is desirable.” *See About Us*, UNIFORM LAW COMMISSION (2023), <https://www.uniformlaws.org/aboutulc/overview>.

⁸ *Public Expression Protection Act*, UNIFORM LAW COMMISSION (2020), <https://www.uniformlaws.org/committees/community-home?CommunityKey=4f486460-199c-49d7-9fac-05570be1e7b1>.



Model Act contains protections for free speech that are more extensive than any existing statute. Furthermore, if the relevant text of the Model Act were amended into a state's anti-SLAPP statute, federal courts would be more likely to incorporate those provisions into their deliberations than is the case with most states' anti-SLAPP statutes.

Ratings and Grades of Anti-SLAPP Statutes

Of the 51 jurisdictions examined in this report, 34 currently have functioning anti-SLAPP statutes. Seventeen states do not have a functioning anti-SLAPP statute, including Minnesota's anti-SLAPP statute that was struck down by its high court as unconstitutional. This report's evaluative method is based on quantitative assessments that cover two broad categories. First, and most importantly, what is the scope of speech covered by each jurisdiction's anti-SLAPP law? Second, how comprehensive are the protections for speakers that are included in or required by each jurisdiction's anti-SLAPP law? Ultimately, this report compiles quantitative assessments to produce one overall grade for each jurisdiction's statute. Statutes that best protect the First Amendment rights of litigants received the highest scores and grades.

The report considers caselaw that interprets the statute if the caselaw appears to have changed the meaning of the statute. Often, such interpretations limit the procedural protections available to defendants. As such, each jurisdiction's scores and grades reflect how the law is applied in court. If judicial interpretations narrow free speech protections in a manner that is contrary to the intent of state lawmakers, then lawmakers should modify the law to clarify the legislature's intent.

Overall Grades

This report assigns an overall grade to each state's anti-SLAPP law. Two-thirds of the overall grade is based on the scope of speech that the statute covers; one-third of the overall grade is based on the procedural protections for speakers in each state's law. This report assigns a relatively large weight (a two-thirds share) to the scope of the statute's coverage because strong statutory procedural protections are of no help to a speaker if the scope of the statute excludes the speech at issue. States with no anti-SLAPP law are assigned a grade of "F."

Each grade was calculated by adjusting and summing the subscores described below. More precisely, each grade was calculated by multiplying the subscore for the scope of speech that the statute protects by two-thirds; then multiplying the sum of the subscores for the protections for speakers in the statute by one-third; then summing the two resultant products to produce an overall score. For example, consider Indiana. Its subscore for the scope of speech is 100 while the state's total subscores for the protections for speakers is 54. Two-thirds of 100 is 66.67, and one-third of 54 is 17. The sum of 66.67 and 17 is 85, Indiana's overall score. The jurisdiction's overall grade is simply a function of its overall score.⁹

Scoring Rubric Summary

This report evaluates six aspects of anti-SLAPP statutes in the 34 jurisdictions described above. One of these six aspects is the scope of speech that the statute covers; the remaining five aspects are various facets of the procedures included in or required by each anti-SLAPP statute.

The subscore that measures the scope of protected speech ranges from 0 to 100; a perfect subscore is assigned to measures that protect the broadest range of speech – any speech on a matter of public concern in any forum.

The anti-SLAPP procedures section contains five subscores that evaluate the effectiveness of

⁹Here are minimum scores for each grade: A+, 99; A, 94; A-, 89; B+, 83; B, 78; B-, 72; C+, 67; C, 60; C-, 50; D+, 40; D, 30; D-, 10.



each procedure contained in or required by the law in protecting First Amendment rights. The maximum subscore for each of the five procedural aspects ranges from 3 to 40; the minimum subscore for each aspect is 0. If a state's anti-SLAPP procedures provide the highest First Amendment protections for each of the five aspects, it receives a perfect subscore of 100 on this portion of the evaluation.

The criteria for the six subscores follow. Although the criteria for each are briefly described below, the statutory details are explained in the jurisdiction-by-jurisdiction accounts in the Appendix.

Each of these subscores is based on how closely the state's statute corresponds with the underlying policy of the model anti-SLAPP law (UPEPA) recommended by the Uniform Law Commission. The UPEPA model provides a vigorous set of protections for First Amendment rights.

The report also provides two sets of subgrades that derive from these subscores. The resulting two subgrades should not be confused with the overall grade ultimately assigned to each statute. Each subgrade evaluates only one portion of one statute. Said differently, these subscores and subgrades are something like the interim evaluations that students receive when taking a class; ultimately, all the subscores and subgrades are compiled to produce an overall score and an overall grade.

The interpretation and evaluation of statutes is far from an exact science. The evaluative choices that this report contains are transparent; a reader who objects to the quantitative or interpretive significance this report assigns to any aspect of the anti-SLAPP landscape can use any part of the data or methodology to produce and calculate a different set of evaluations.

The Scope of Protected Speech (Maximum Subscore: 100)

The ULC Model Act protects a wide spectrum of speech and expressive conduct, as follows:

[T]his [act] 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 [cite to the state's constitution], on a matter of public concern.*

Some anti-SLAPP statutes are designed to protect all speech on matters of public concern while other anti-SLAPP statutes have a more limited scope. For instance, some anti-SLAPP statutes are limited to the protection of speech related to matters that a government body is considering or reviewing. Other anti-SLAPP statutes are limited to the protection of speech expressed during a government meeting or directly to a government body. A few anti-SLAPP statutes have an even more sharply limited domain.

Statutes with a broad scope of coverage – those which specify that they protect all speech related to a “matter of public concern,” “public issue,” or an “issue of public interest” – received the maximum subscore of 100 points in this category.

However, the scope of coverage of some anti-SLAPP statutes is smaller.

- Because Georgia courts sometimes read its anti-SLAPP statute narrowly (despite the statute's internal instruction that it should be read broadly), that statute received a subscore of 97 in this category.
- Because several statutes contain narrow content-related exemptions from their broad protections, those statutes each received a subscore of 90 points.
- The Arkansas statute appears to provide broad coverage for speech, but a more restrictive judicial interpretation is possible. To date, there is no caselaw on the scope of speech protected by the law. Thus, the statute received a subscore of 70 points.
- Because Florida's statute protects both statements made before a governmental entity and statements made in connection with created texts, such as books, plays, news articles, and movies, that statute received a subscore of 65.
- Maryland's brief and unusually worded law also limits the amount of speech potentially covered. It defines a SLAPP suit in part as one that is “[b]rought in bad faith” and “[i]ntended to inhibit or inhibits the exercise of rights under the First Amendment.” In effect, this standard narrows the scope of speech protected by the law. As a result, the law received a subscore of 50 points.
- Arizona's statute, as revised in 2022, now covers all constitutionally protected speech on matters of public concern. Unfortunately, it also has an odd provision not in any other anti-SLAPP statute. It requires that a defendant filing an anti-SLAPP motion must show that the lawsuit “was substantially motivated by a desire to deter, retaliate against or prevent the lawful exercise of a constitutional right.” Plaintiffs suing speakers will not be required to respond to an anti-SLAPP motion until or unless the target of their lawsuit has established this “prima facie proof.” Because of this uncertainty about how the courts will interpret this provision and the unique burden of proof placed on a speaker, this law received a subscore of 50.
- The Maine and Massachusetts statutes generally confine their reach to matters involving government action, but also include speech that is “reasonably likely” to encourage government consideration or review. But Maine's Supreme Judicial Court interprets that language broadly, so that state's law received a subscore of 45 points while the Massachusetts statute received a subscore of 30.
- The Illinois statute confines its reach to matters involving government action and received a subscore of 20 points.
- Missouri and New Mexico's statutes only protect “conduct or speech undertaken or made in connection with a public hearing or public meeting;” those statutes received a subscore of 10.



- Three states’ anti-SLAPP laws only protect speech in even narrower domains. The Delaware and Nebraska statutes only apply to speech by public applicants, permittees, and those materially connected to the entitlement at issue, and the Pennsylvania statute is limited to the protection of statements related to environmental laws and regulations. Those statutes each received subscores of 3.

Anti-SLAPP Law Procedures (Maximum Sum of Five Subscores: 100)

These five subscores measure various features to protect First Amendment rights that are contained in or implied by anti-SLAPP statutes.

1) **Suspension of Court Proceedings Upon Anti-SLAPP Filing (Maximum Subscore: 20).** The ULC’s UPEPA and several state statutes suspend all proceedings when an anti-SLAPP motion is filed; the statutes of many other jurisdictions with anti-SLAPP statutes suspend discovery once an anti-SLAPP motion is filed. If a jurisdiction’s statute provides for a stay of all proceedings, it receives a subscore of 20 points.

- Statutes that only stay discovery, but not other proceedings, received a subscore of 18 points.
- A few statutes do not suspend proceedings or discovery, but they might limit discovery by requiring the court to schedule an expedited anti-SLAPP hearing upon the filing of such a motion; those statutes received subscores of 5.
- New Jersey’s statute creates “a presumption that such a stay [of proceedings] shall be granted;” its statute received a subscore of 12.
- Maryland’s statute allows the target of a SLAPP suit to file various motions that will impede discovery, but it is unclear from the statute whether the court must grant them; its statute received a subscore of 10.
- Pennsylvania’s statute provides for a stay of discovery only if an anti-SLAPP motion is denied and the movant makes an interlocutory appeal; its statute received a subscore of 2.
- Finally, the statutes of those jurisdictions that neither make provisions for suspension of discovery nor for an expedited hearing in the event of the filing of an anti-SLAPP motion received subscores of 0.

2) **The Burden of Proof Required to Defeat an Anti-SLAPP Motion (Maximum Subscore: 12).** If a relevant anti-SLAPP motion is filed, the ULC model requires that the motion succeed if 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:*

(i) *the responding party failed to state a [cause of action] upon which relief can be granted; or*

(ii) *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].*

The ULC model and the statutes of many jurisdictions with strong anti-SLAPP laws impose a burden of proof on the plaintiff. In particular, the plaintiff must show the court that the original lawsuit was meritorious. The statutes of these jurisdictions received subscores of 12 points – the maximum subscore for this category.

- The statutes of a few states require or imply a response to an anti-SLAPP motion from the respondent, but do not appear to shift the burden of proof to the respondent during the motion’s disposition. These statutes received subscores of 6 points.
- Four states place a relatively heavy burden of proof on the movant but appear to create no burden of proof for the respondent; these statutes received a subscore of 0.

3) **The Right of Immediate (“Interlocutory”) Appeal (Maximum Subscore: 25).** An interlocutory appeal, speaking generally, is a request to a higher court to decide a particular issue immediately; such interlocutory appeals suspend other aspects of the litigation until the outcome of that particular issue is determined. The statutes of several states prioritize the decision of whether a lawsuit is appropriately disposed of with an anti-SLAPP motion by providing for interlocutory appeal of this question upon a trial court’s disposition of the motion. Statutes that provide for an immediate right of appeal received the maximum subscore of 25 points in this category. If the state’s highest appellate court interprets the statute as providing for an interlocutory appeal, the state receives a subscore of 20 points. If there is no right to an interlocutory appeal, the statute receives a subscore of 0.

- Arizona has a right to an interlocutory appeal, but it is conditioned on the defendant establishing the lawsuit was “substantially motivated by a desire to deter, retaliate against or prevent the lawful exercise of a constitutional right.” Its statute received a subscore of 13.
- Although Missouri’s statute appears to provide for rights of interlocutory appeal, its caselaw suggests that a court’s denial of an anti-SLAPP motion cannot, itself, be appealed;¹⁰ its statute, therefore, received a subscore of 5.

4) **Award of Costs and Attorney Fees (Maximum Subscore: 40).** The ULC Model Act and many jurisdictions’ anti-SLAPP statutes provide for the mandatory award of costs and attorney fees to the successful anti-SLAPP movant. Such awards will appropriately deter SLAPP-related misbehavior. Statutes of jurisdictions that require this kind of cost- and fee-shifting received subscores of 40 points in this category. Some state statutes with mandatory fee-shifting do not recognize a voluntary dismissal of the lawsuit by the respondent as establishing that the movant prevailed. These states receive a subscore of 36. If the state’s highest appellate court interprets the statute so that a voluntary dismissal of the lawsuit by the respondent establishes that the movant

¹⁰ See the discussion of Missouri’s law in the Appendix.



prevailed, the state receives 38 points.

- Oklahoma’s statute mandates the payment of “attorney fees and other expenses” to movants “as justice and equity may require.” Because state courts have to date interpreted fee-shifting as mandatory, this clause appears to have little force. Oklahoma’s statute therefore received a subscore of 38 points.¹¹
- Since District of Columbia courts have said that jurisdiction’s law provides a presumption to award fees, that law received a subscore of 25.
- Florida has an unusual “loser pays” rule on an anti-SLAPP motion; its statute received a subscore of 10, as this rule greatly discourages use of an anti-SLAPP motion.
- Other jurisdictions assign the court the option, not the requirement, of cost- and fee-shifting in this circumstance; the statutes of those jurisdictions received subscores of 10.
- Other jurisdictions have no provision for cost- and fee-shifting; the statutes of those jurisdictions received subscores of 0.

5) **Expansive Statutory Interpretation Instruction (Maximum Subscore: 3).** The ULC model and several jurisdictions’ anti-SLAPP statutes provide guidance about interpretation of their own language: they instruct judges to read the anti-SLAPP statute itself “broadly” or “liberally.” Statutes that contain this kind of interpretive instruction received subscores of 3 points in this category; statutes without such an instruction received subscores of 0.

¹¹ See the discussion of Oklahoma’s law in the Appendix.

How Good Is My Jurisdiction’s Anti-SLAPP Law?

As explained above, this report assigns an overall grade to each jurisdiction’s anti-SLAPP statute. Two-thirds of the overall grade is based on the scope of speech the statute covers; one-third of the overall grade is based on the procedural protections for speakers in each state’s law. States with no anti-SLAPP statute are assigned a grade of “F.” The table contains the same overall grades and scores for the states as in the Summary of Results section, but the states are arranged in alphabetical rather than ranking order.

Jurisdiction	Overall Points	Overall Grade
Alabama	0	F
Alaska	0	F
Arizona	46	D+
Arkansas	61	C
California	99	A+
Colorado	97	A
Connecticut	89	A-
Delaware	11	D-
District of Columbia	79	B
Florida	50	C-
Georgia	98	A
Hawaii	100	A+
Idaho	0	F
Illinois	45	D+
Indiana	85	B+
Iowa	0	F
Kansas	92	A-
Kentucky	100	A+
Louisiana	90	A-
Maine	50	C-
Maryland	37	D
Massachusetts	49	D+
Michigan	0	F
Minnesota	0	F
Mississippi	0	F
Missouri	26	D-

Jurisdiction	Overall Points	Overall Grade
Montana	0	F
Nebraska	11	D-
Nevada	97	A
New Hampshire	0	F
New Jersey	97	A
New Mexico	31	D
New York	99	A+
North Carolina	0	F
North Dakota	0	F
Ohio	0	F
Oklahoma	97	A
Oregon	99	A+
Pennsylvania	25	D-
Rhode Island	80	B
South Carolina	0	F
South Dakota	0	F
Tennessee	97	A
Texas	93	A-
Utah	100	A+
Vermont	97	A
Virginia	70	C+
Washington	93	A-
West Virginia	0	F
Wisconsin	0	F
Wyoming	0	F



How Much Speech Is Protected? (Maximum Subscore: 100)

As explained above, two-thirds of the overall grade is based on the scope of speech that the statute covers. That’s because strong statutory procedural protections are of no help to a speaker if the scope of the statute excludes the speech at issue.

Statutes with a broad scope of coverage – those that protect all speech related to a “matter of public concern,” a “public issue,” or an “issue of public interest” – received the maximum subscore of 100 points in this category.

Here’s how each jurisdiction scores on this portion of the evaluation.

Jurisdiction	Speech Covered by Anti-SLAPP Law (Two-thirds of Overall Grade)	
	Covered Speech Points	Covered Speech Subgrade
	Alabama	0
Alaska	0	F
Arizona	50	C-
Arkansas	70	C+
California	100	A+
Colorado	100	A+
Connecticut	90	A-
Delaware	3	F
District of Columbia	90	A-
Florida	65	C
Georgia	97	A
Hawaii	100	A+
Idaho	0	F
Illinois	20	D-
Indiana	100	A+
Iowa	0	F
Kansas	90	A-
Kentucky	100	A+
Louisiana	100	A+
Maine	45	D+
Maryland	50	C-
Massachusetts	30	D
Michigan	0	F
Minnesota	0	F
Mississippi	0	F
Missouri	10	D-

Jurisdiction	Speech Covered by Anti-SLAPP Law (Two-thirds of Overall Grade)	
	Covered Speech Points	Covered Speech Subgrade
	Montana	0
Nebraska	3	F
Nevada	100	A+
New Hampshire	0	F
New Jersey	100	A+
New Mexico	10	D-
New York	100	A+
North Carolina	0	F
North Dakota	0	F
Ohio	0	F
Oklahoma	100	A+
Oregon	100	A+
Pennsylvania	3	F
Rhode Island	90	A-
South Carolina	0	F
South Dakota	0	F
Tennessee	100	A+
Texas	90	A-
Utah	100	A+
Vermont	100	A+
Virginia	100	A+
Washington	90	A-
West Virginia	0	F
Wisconsin	0	F
Wyoming	0	F

Anti-SLAPP Law Procedures (Maximum Sum of Five Subscores: 100)

As noted earlier, one-third of each statute’s overall grade is based on how well the procedural protections in each state’s law safeguard First Amendment rights. For each jurisdiction, the five subscores that measure procedural protections are summed together to produce an overall procedural rating.

The criteria and maxima for these five subscores follow (See the [Policy Choices and Consequences of Anti-SLAPP Statutes](#) section for more information on these procedures.):

- Suspension of Court Proceedings Upon an Anti-SLAPP Motion (20 points)
- Burden of Proof on Plaintiff to Defeat an Anti-SLAPP Motion (12 points)
- Right to an Immediate (Interlocutory) Appeal (25 points)
- Award of Costs and Attorney Fees (40 points)
- Expansive Statutory Interpretation Instruction to Courts (3 points)

Here is a summary of each jurisdiction’s subscores and subgrades for the procedural protections in their law.

Jurisdiction	Anti-SLAPP Law Procedures (One-third of Overall Grade)	
	Total Anti-SLAPP Procedures Points	Anti-SLAPP Procedures Subgrade
	Alabama	0
Alaska	0	F
Arizona	38	D
Arkansas	42	D+
California	96	A
Colorado	91	A-
Connecticut	86	B+
Delaware	27	D-
District of Columbia	57	C-
Florida	21	D-
Georgia	100	A+
Hawaii	100	A+
Idaho	0	F
Illinois	94	A
Indiana	54	C-
Iowa	0	F
Kansas	96	A
Kentucky	100	A+
Louisiana	70	C+
Maine	60	C
Maryland	10	D-
Massachusetts	86	B+
Michigan	0	F
Minnesota	0	F
Mississippi	0	F
Missouri	59	C-

Jurisdiction	Anti-SLAPP Law Procedures (One-third of Overall Grade)	
	Total Anti-SLAPP Procedures Points	Anti-SLAPP Procedures Subgrade
	Montana	0
Nebraska	27	D-
Nevada	91	A-
New Hampshire	0	F
New Jersey	92	A-
New Mexico	72	B-
New York	97	A
North Carolina	0	F
North Dakota	0	F
Ohio	0	F
Oklahoma	91	A-
Oregon	98	A
Pennsylvania	69	C+
Rhode Island	60	C
South Carolina	0	F
South Dakota	0	F
Tennessee	91	A-
Texas	98	A
Utah	100	A+
Vermont	91	A-
Virginia	10	D-
Washington	100	A+
West Virginia	0	F
Wisconsin	0	F
Wyoming	0	F



Here is a summary of the points earned for the procedural protections in each jurisdiction with an anti-SLAPP law:

Jurisdiction	Anti-SLAPP Law Procedures					Subscore
	Suspension of Court Proceedings Upon an Anti-SLAPP Motion	Burden of Proof on Plaintiff to Defeat an Anti-SLAPP Motion	Right to an Immediate Appeal	Award of Costs and Attorney Fees	Expansive Statutory Interpretation Instruction to Courts	
ULC Model Law	20	12	25	40	3	100
Arizona	9	6	13	10	0	38
Arkansas	20	12	0	10	0	42
California	18	12	25	38	3	96
Colorado	18	12	25	36	0	91
Connecticut	18	12	20	36	0	86
Delaware	5	12	0	10	0	27
District of Columbia	0	12	20	25	0	75
Florida	5	6	0	10	0	21
Georgia	20	12	25	40	3	100
Hawaii	20	12	25	40	3	100
Illinois	18	12	25	36	3	94
Indiana	18	0	0	36	0	54
Kansas	20	12	25	36	3	96
Kentucky	20	12	25	40	3	100
Louisiana	18	12	0	40	0	70
Maine	18	12	20	10	0	60
Maryland	10	0	0	0	0	10
Massachusetts	18	12	20	36	0	86
Missouri	18	0	5	36	0	59
Nebraska	5	12	0	10	0	27
Nevada	18	12	25	36	0	91
New Jersey	12	12	25	40	3	92
New Mexico	5	6	25	36	0	72
New York	20	12	25	40	0	97
Oklahoma	18	12	25	36	0	91
Oregon	18	12	25	40	3	98
Pennsylvania	2	6	25	36	0	69
Rhode Island	18	6	0	36	0	60
Tennessee	18	12	25	36	0	91
Texas	18	12	25	40	3	98
Utah	20	12	25	40	3	100
Vermont	18	12	25	36	0	91
Virginia	0	0	0	10	0	10
Washington	20	12	25	40	3	100

How States With “D” Grades Can Improve

Most of the states with “D” grades have a fundamental flaw in their anti-SLAPP statutes – the scope of the statute covers too little speech. Eight of the nine states with “D” grades could improve their grades to “B-” or better simply by expanding the scope of their statutes to cover the same kinds of speech recommended by the Uniform Law Commission’s Model Act. (In short, the Uniform Law Commission’s model law protects any speech about a matter of public importance in any forum. The model is explained in a previous section.)

Five of those nine states would reach “B+” or better, including four “A” or “A-” grades. Every state would achieve at least a “C+” by adopting the ULC model for the scope of speech covered.

If States With “D” Grades Adopted the ULC Model on Speech Covered by the Law, Here’s How Their Grades Would Rise

Jurisdiction	Current Law		With ULC Model Speech Coverage	
	Overall Points	Grade	Overall Points	Grade
Arizona	46	D+	79	B
Delaware	11	D-	76	B-
Illinois	45	D+	98	A
Maryland	37	D	70	C+
Massachusetts	49	D+	95	A
Missouri	26	D-	86	B+
Nebraska	11	D-	76	B-
New Mexico	31	D	91	A-
Pennsylvania	25	D-	90	A-



Appendix: A Jurisdiction-by-Jurisdiction Summary of Anti-SLAPP Statutes

This section summarizes anti-SLAPP statutes across 51 jurisdictions in plain English. Summaries, by their nature, omit details; a reader who wants an exhaustive account of the operation of a particular anti-SLAPP statute will find that there is no substitute for a direct examination of the statutory text. These summaries seek to provide a basis for the comparison of anti-SLAPP statutes across jurisdictions; they therefore use broad, functional language that may not capture some nuances in some of the laws.

- For instance, this report uses the term “anti-SLAPP motion” broadly and functionally, although in some jurisdictions a more precise term – such as a motion to dismiss, a motion to strike, or a motion for summary judgment – would be more technically correct. Because this report’s goal is a cross-jurisdictional comparison of the functions of and processes entailed by anti-SLAPP statutes, the report sometimes uses broader, more general terms or labels.¹²
- This report also uses the term “statute” functionally. In this report, a statute generally means the parts of the jurisdiction’s legal code that determine the rights and powers of litigants that are affected by an anti-SLAPP motion, whether that code is lumped together in one place or scattered throughout statute books. When appropriate, however, this report also describes the effect of caselaw that appears to modify the function of the anti-SLAPP statute at issue.
- Notably, there is variance in the operation of anti-SLAPP laws that is outside the scope of this report. There are differences among the federal circuits as to whether state anti-SLAPP acts apply in the federal courts. At least three federal circuits have held that such laws do apply in federal courts; at least four federal circuits have held that they do not. This report does not analyze this important question.

Alabama

Overall Grade: F

Subgrades

Covered Speech: F

Anti-SLAPP Procedures: F

Alabama appears to have no anti-SLAPP statute.

How to Improve Alabama’s Score:

Policymakers who seek to enact an anti-SLAPP statute are well-advised to consider the Uniform Public Expression Protection Act (UPEPA) as proposed by the Uniform Law Commission.

¹² Again, the use of broad terms to describe phenomena across jurisdictions may result in the occasional loss of precision. One notable instance of this lies in the scope of some anti-SLAPP statutes which have a domain limited to government actions. In some jurisdictions, however, the scope of government actions is defined so as to exclude judicial processes. *See, e.g., Crow v. Uintah Basin Elec. Telecomms.*, No. 2:09-CV-1010 TS, 2010 U.S. Dist. Lexis 129865 at *18 (D. Utah Dec. 6, 2010).

In 2020, the Uniform Law Commission (ULC), a nonprofit and nonpartisan organization of state commissioners on uniform laws that recommends and drafts model state legislation, adopted UPEPA as a model anti-SLAPP statute.

More information about UPEPA is available above.

Alaska

Overall Grade: F

Subgrades

Covered Speech: F

Anti-SLAPP Procedures: F

Alaska appears to have no anti-SLAPP statute.

How to Improve Alaska’s Score:

Policymakers who seek to enact an anti-SLAPP statute are well-advised to consider the Uniform Public Expression Protection Act (UPEPA) as proposed by the Uniform Law Commission.

In 2020, the Uniform Law Commission (ULC), a nonprofit and nonpartisan organization of state commissioners on uniform laws that recommends and drafts model state legislation, adopted UPEPA as a model anti-SLAPP statute.

More information about UPEPA is available above.

Arizona

Overall Grade: D+

Subgrades

Covered Speech: C-

Anti-SLAPP Procedures: D

Arizona’s anti-SLAPP statute, amended in 2022,¹³ now covers all constitutionally protected speech on matters of public concern. Unfortunately, it also has an odd provision not in any other anti-SLAPP statute. It requires that a defendant filing an anti-SLAPP motion must show that the lawsuit “was substantially motivated by a desire to deter, retaliate against or prevent the lawful exercise of a constitutional right.” Plaintiffs suing speakers will not be required to respond to an anti-SLAPP motion until or unless the target of their lawsuit has established this “prima facie proof.” This places a unique burden of proof on a speaker and has thus eroded Arizona’s score. If a speaker successfully demonstrates that this “prima facie proof” exists, discovery is suspended. Even so, the court retains the power to order “specified discovery” for “good cause.” An Arizona court shall grant a motion to dismiss under the statute if the responding party is not a state actor and “shows that the legal action on which the motion is based is justified by existing law or supported by a reasonable argument for extending or

¹³ Ariz. Rev. Stat. Ann. §12-751.



modifying existing law.” The amendments to the previous law now provide for interlocutory appeal of an order granting or denying an anti-SLAPP motion, but that too is conditioned on the defendant establishing the “prima facie proof” discussed above. A court “may” award costs and attorney fees to the prevailing movant on an anti-SLAPP motion (it is notable that the law previously *required* the awarding of such costs and fees); but if the court finds that the motion is frivolous or solely intended to delay, it must award costs and attorney fees to the respondent. The law does not appear to include a provision granting a moving party the right to seek costs and fees if a respondent voluntarily dismisses the lawsuit.

How to Improve Arizona’s Score:

The most important part of anti-SLAPP law is the scope of speech that the statute covers. After all, strong statutory procedural protections are of no help to a speaker if the scope of the statute excludes the speech at issue.

Although the amended statute now covers all constitutionally protected speech on matters of public concern, the odd provision requiring speakers to show the lawsuit was “substantially motivated” by a “desire” to abridge speech limits the effectiveness of the law. If Arizona simply removed that provision, thus bringing the statute in line with the covered speech provision of the Uniform Law Commission’s model law, the overall grade would rise to a “B.” That model law is described above.

Arizona should also consider removing the aforementioned “prima facie proof” burden on speakers from the “interlocutory appeal” and suspension of court proceedings components of its law.

The Uniform Law Commission’s model law and the statutes of most states with anti-SLAPP statutes suspend discovery once an anti-SLAPP motion is filed. As currently written, Arizona’s law does not automatically provide such protections; and the effectiveness of the law (and thus the protections for free speech) will depend on how courts interpret it.

Strong anti-SLAPP laws impose notable costs on plaintiffs with weak or frivolous cases. One important feature of strong anti-SLAPP statutes is that they make losing plaintiffs liable for reasonable attorney fees and court costs originally borne by the speaker.

Unfortunately, Arizona gives the court the option, not the requirement, of awarding reasonable attorney fees and court costs to prevailing defendants.

A mandatory fee-shifting provision would make it more likely that a defendant with limited financial resources who faces a SLAPP will be represented by an attorney. The prospect of fee-shifting encourages attorneys to provide such defendants with representation – especially when defendants face weak or frivolous claims.

Arkansas

Overall Grade: C

Subgrades

Covered Speech: C+

Anti-SLAPP Procedures: D+

Arkansas’s anti-SLAPP statute,¹⁴ the Citizen Participation in Government Act, protects both privileged communications (under the First Amendment) and the performance of acts in furtherance of the right to free speech and the right to petition government for a redress of grievances under the state or federal Constitutions in connection with an issue of public interest or concern. The acts that the statute covers include, but are not limited to, four classes of statements: (1) statements made before or to a legislative, executive, or judicial proceeding; (2) statements made to or before a proceeding authorized by a state or local government; (3) statements made in connection with an issue under consideration or review by a legislative, executive, or judicial body; and (4) statements made in connection with an issue under consideration or review before a proceeding authorized by a state or local government. Another provision also protects “[a]ll criticisms of the official acts of any and all public officers.” Although discovery, pending hearings, and motions are stayed once an anti-SLAPP motion is filed, a court may nonetheless order that specified discovery or other hearings or motions be conducted if good cause is shown. In the event that the anti-SLAPP statute governs the action, the statute requires the respondent to file a written verification under oath within ten days of the original filing that certifies that “(1) The party and his or her attorney of record, if any, have read the claim; (2) To the best of the knowledge, information, and belief formed after reasonable inquiry of the party or his or her attorney, the claim is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (3) The act forming the basis for the claim is not a privileged communication; and (4) The claim is not asserted for any improper purpose such as to suppress the right of free speech or right to petition government of a person or entity, to harass, or to cause unnecessary delay or needless increase in the cost of litigation”; otherwise, the court will strike the claim. The statute does not provide for interlocutory appeal of an order granting or denying an anti-SLAPP motion. A court may award costs and attorney fees to the movant if the required certification is improperly verified.

How to Improve Arkansas’s Score:

Arkansas should consider including a right to an “interlocutory” appeal as part of its law. Speaking generally, that is a request to a higher court for it to decide a particular issue immediately. In most litigation, interlocutory appeals are difficult to obtain, so this right of appeal is an important feature of an anti-SLAPP law. Without it, a defendant who loses an anti-SLAPP motion would be forced to continue to litigate the entire trial before the finding on the motion could ever be appealed.

As attorney Ken White has eloquently explained, the provision of a right of interlocutory appeal creates a strong protection for First Amendment liberties, because it “dramatically reduces the coercive effect of filing a lawsuit targeting speech.”

Strong anti-SLAPP laws impose notable costs on plaintiffs with weak or frivolous cases. One important feature of strong anti-SLAPP statutes is that they make losing plaintiffs liable for reasonable attorney fees and court costs originally borne by the speaker.

Unfortunately, Arkansas gives the court the option, not the requirement, of awarding reason-

¹⁴ Ark. Code Ann. § 16-63-501 through § 16-63-508.



able attorney fees and court costs to prevailing defendants.

A mandatory fee-shifting provision would make it more likely that a defendant with limited financial resources who faces a SLAPP will be represented by an attorney. The prospect of fee-shifting encourages attorneys to provide such defendants with representation – especially when defendants face weak or frivolous claims.

The Uniform Law Commission model anti-SLAPP statute, and the best state anti-SLAPP laws, enable defendants to recoup the money they spent on legal costs. Requiring payment of reasonable attorney fees and court costs to prevailing speakers would provide deterrent effects against strategic lawsuits of dubious merit.

California

Overall Grade: A+

Subgrades

Covered Speech: A+

Anti-SLAPP Procedures: A

California’s anti-SLAPP statute¹⁵ protects “any act ... in furtherance of the ... right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue.”¹⁶ Although discovery is stayed once an anti-SLAPP motion is filed, a court may nonetheless order that specified discovery be conducted if good cause is shown. To prevail against an anti-SLAPP motion, the respondent must establish a probability of prevailing at trial. California caselaw suggests that this probability is established if the respondent demonstrates both that the complaint is legally sufficient and that it is supported by a sufficient prima facie showing of facts to sustain a favorable judgment.¹⁷ The statute provides for interlocutory appeal of an order granting or denying an anti-SLAPP motion. Except in narrow circumstances,¹⁸ a court must award costs and attorney fees to the prevailing movant on an anti-SLAPP motion; conversely, if the court finds the motion to be frivolous or solely intended to cause unnecessary delay, then it must award costs and attorney fees to the prevailing respondent. If a plaintiff voluntarily dismisses her complaint after an anti-SLAPP motion has been filed, she cannot escape paying attorney fees and costs if the court determines the motion would have been granted.¹⁹ This determination necessarily requires the court to consider the merits of the anti-SLAPP motion, even though the court does not have jurisdiction to grant or deny the underlying motion.²⁰ The scope of California’s anti-SLAPP statute was subsequently modified in minor respects;²¹ a detailed description of those modifications is beyond the scope of this summary. In general, the anti-SLAPP statute instructs courts to interpret the statute’s language “broadly” – an instruction presumably designed to foil readings of the statute in a

¹⁵ Cal. Civ. Proc. Code § 425.16 through § 425.18.

¹⁶ California caselaw suggests that the ‘commercial speech’ exception to the anti-SLAPP statute is narrow in scope. *Simpson Strong-Tie Co., Inc. v. Gore*, 49 Cal. 4th 12, 230 P.3d 1117, 109 Cal. Rptr. 3d 329 (Cal. May 17, 2010).

¹⁷ *Matson v. Dvorak*, 40 Cal. App. 4th 539, 46 Cal. Rptr. 2d 880 (Cal. Nov. 21, 1995).

¹⁸ Cal. Civ. Proc. Code § 425.16 (c)(2).

¹⁹ *Tourgeman v. Nelson & Kennard*, 222 Cal.App.4th 1447 (Cal. Ct. App. 2014).

²⁰ *Moore v. Liu*, 69 Cal.App.4th 745 (Cal. Ct. App. 1999).

²¹ Cal. Civ. Proc. Code § 425.17.

cramped or narrow way that would exclude marginal cases.

Colorado

Overall Grade: A

Subgrades

Covered Speech: A+

Anti-SLAPP Procedures: A-

Colorado’s anti-SLAPP statute²² protects (1) statements made before a legislative, executive, or judicial body, (2) statements made before any legally authorized official proceeding, (3) statements made in connection with an issue under consideration or review by a legislative, executive, or judicial body, (4) statements made in connection with an issue under consideration or review by any legally authorized official proceeding, (5) statements made in public or in a public forum made in connection with an issue of public interest, and (6) any other conduct or communication that furthers rights of free speech or petition in connection with a public issue or an issue of public interest. This language has been interpreted broadly by a state appellate court.²³ (However, the statute also carves out several content-related exemptions from the broad principles stated above, such as those related to selling or leasing goods and services.) Although discovery is stayed once an anti-SLAPP motion is filed, a court may nonetheless order that specified discovery be conducted if good cause is shown. To prevail against an anti-SLAPP motion, the respondent must establish that there is a “reasonable likelihood”²⁴ of prevailing at trial. The statute provides for interlocutory appeal of an order granting or denying an anti-SLAPP motion. Generally, a court must award costs and attorney fees to the prevailing movant on an anti-SLAPP motion; conversely, if the court finds the motion to be frivolous or solely intended to cause unnecessary delay, then it must award costs and attorney fees to the prevailing respondent.

Connecticut

Overall Grade: A-

Subgrades

Covered Speech: A-

Anti-SLAPP Procedures: A-

Connecticut’s anti-SLAPP statute²⁵ protects statements that are based on the exercise of constitutional rights of free speech, petition, or association in connection to a matter of public concern. (However, because the statute defines a matter of public concern as an issue related to “(A) health or safety, (B) environmental, economic or community well-being, (C) the government, zoning and other regulatory matters, (D) a public official or public figure, or

²² Col. Rev. Stat. Ann. § 13-20-1101.

²³ *L.S.S. v. S.A.P.*, 523 P.3d 1280, 2022 COA 123 (Colo. App. Division V, 2022).

²⁴ Consistent with the appellate courts of other states, the Colorado Supreme Court has interpreted this term as synonymous, in its meaning, with “reasonable probability.” See *Salazar v. Pub. Tr. Inst.*, 522 P.3d 242, 2022 COA 109 (Colo. App. 2022), and *L.S.S. v. S.A.P.*, 523 P.3d at 1286n3.

²⁵ Conn. Gen. Stat. Ann. § 52-196a.



(E) an audiovisual work,” this scope of coverage appears to exclude some kinds of speech.) Although discovery is stayed once an anti-SLAPP motion is filed, a court may nonetheless order that specified and limited discovery be conducted upon its own motion or if good cause is shown. To prevail against an anti-SLAPP motion, the respondent must both provide the circumstances of the complaint with particularity and establish that there is probable cause to believe that the respondent will prevail at trial. Although the statute’s language does not provide for a general right of interlocutory appeal of an anti-SLAPP motion, in three rulings issued in May 2023 the Connecticut Supreme Court held that caselaw and legislative history provide speakers with that right.²⁶ Generally, a court must award costs and attorney fees to the prevailing movant on an anti-SLAPP motion; conversely, if the court finds the motion to be frivolous or solely intended to cause unnecessary delay, then it must award costs and attorney fees to the prevailing respondent.

Delaware

Overall Grade: D-

Subgrades

Covered Speech: F

Anti-SLAPP Procedures: D-

Delaware’s anti-SLAPP statute²⁷ is relatively narrow in scope: it may only be used by a “public applicant or permittee” (that is, someone who has applied for or received a zoning change, license, or other government entitlement) or someone who is materially connected to the entitlement. Furthermore, the anti-SLAPP claim must be materially related to the defendant’s efforts to report on, rule on, challenge, or oppose the government entitlement at issue. The statute does not provide for the stay of discovery in the event of an anti-SLAPP filing, although the court must grant preference in the hearing of such a motion. To prevail against an anti-SLAPP motion, the respondent must establish that the cause of action has a substantial basis or is supported by a substantial argument for an extension, modification, or reversal of existing law. The statute does not provide for interlocutory appeal of an order granting or denying an anti-SLAPP motion. A defendant in an action that involves a public applicant or permittee may recover costs and attorney fees; punitive damages may only be recovered upon an additional demonstration that the action was motivated for the purpose of maliciously inhibiting the free exercise of speech, petition, or association rights. Conversely, the plaintiff in such an action may only recover damages by establishing with clear and convincing evidence that the communication was made with knowledge of its material falsity or with reckless disregard of whether it was materially false.

How to Improve Delaware’s Score:

The most important part of anti-SLAPP law is the scope of speech that the statute covers. After all, strong statutory procedural protections are of no help to a speaker if the scope of the statute excludes the speech at issue.

²⁶ See *Smith v. Supple*, 346 Conn. 928 (2023); *Pryor v. Brignole*, 346 Conn. 534, 292 A.3d 701 (2023); *Robinson v. V.D.*, 346 Conn. 1002 (2023).

²⁷ Del. Code Ann. tit. 10, § 8136 through § 8138.

The fundamental flaw in Delaware’s anti-SLAPP statute is that it covers too little speech. If Delaware simply expanded the scope of its statute to cover the same kinds of speech recommended by the Uniform Law Commission’s model Act, the overall grade would rise to B-.

The Uniform Law Commission’s model law protects any speech about a matter of public importance in any forum. The model is explained in the full report and is available above.

Delaware should also consider including a right to an “interlocutory” appeal as part of its law. Speaking generally, that is a request to a higher court for it to decide a particular issue immediately. In most litigation, interlocutory appeals are difficult to obtain, so this right of appeal is an important feature of an anti-SLAPP law. Without it, a defendant who loses an anti-SLAPP motion would be forced to continue to litigate the entire trial before the finding on the motion could ever be appealed.

As attorney Ken White has eloquently explained, the provision of a right of interlocutory appeal creates a strong protection for First Amendment liberties, because it “dramatically reduces the coercive effect of filing a lawsuit targeting speech.”

Strong anti-SLAPP laws impose notable costs on plaintiffs with weak or frivolous cases. One important feature of strong anti-SLAPP statutes is that they make losing plaintiffs liable for reasonable attorney fees and court costs originally borne by the speaker.

Unfortunately, Delaware gives the court the option, not the requirement, of awarding reasonable attorney fees and court costs to prevailing defendants.

A mandatory fee-shifting provision would make it more likely that a defendant with limited financial resources who faces a SLAPP will be represented by an attorney. The prospect of fee-shifting encourages attorneys to provide such defendants with representation – especially when defendants face weak or frivolous claims.

The best anti-SLAPP laws enable defendants to recoup the money they spent on legal costs. Requiring payment of reasonable attorney fees and court costs to prevailing speakers would provide deterrent effects against strategic lawsuits of dubious merit.

The Uniform Law Commission’s model law and several state statutes also suspend all court proceedings when an anti-SLAPP motion is filed; the statutes of most states with anti-SLAPP statutes suspend discovery once an anti-SLAPP motion is filed.

Unfortunately, Delaware’s law does not automatically suspend proceedings or discovery upon the filing of an anti-SLAPP motion. This failure drives up the cost of litigation to defend against a SLAPP. The state can improve its protections for free speech by adding this provision to the law.

District of Columbia

Overall Grade: B

Subgrades

Covered Speech: A-

Anti-SLAPP Procedures: C-



The District of Columbia’s anti-SLAPP statute²⁸ protects (1) statements made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (2) statements made in a place open to the public or in a public forum in connection with an issue of public interest, and (3) expressions and expressive conduct that involves petitioning the government or communicating with the public in connection with an “issue of public interest.” (The statute expressly distinguishes between issues of public interest and issues of private or commercial interest; the statute protects speech about goods, products, or services in the marketplace, but not statements that are directed primarily towards protecting the speaker’s commercial interests.) Although the statute provides that discovery is stayed once an anti-SLAPP motion is filed, the District of Columbia Court of Appeals (the highest appellate court in the jurisdiction) has ruled that this provision is invalid because it “violates the [federal] Home Rule Act.”²⁹ The statute says that in order to prevail against an anti-SLAPP motion, the respondent must establish that the claim is “likely to succeed on the merits” at trial. However, the District of Columbia Court of Appeals has held that this “high of a bar” raises “serious constitutional concerns,” and has thus interpreted the language as meaning a plaintiff only needs to “present an evidentiary basis that would permit a reasonable, properly instructed jury to find in the plaintiff’s favor.”³⁰ The Court of Appeals has held that there is a right to interlocutory appeal of an order denying an anti-SLAPP motion even though that right is not stated in the statute’s text.³¹ The court may award costs and attorney fees to the prevailing movant on an anti-SLAPP motion; conversely, if the court finds the motion to be frivolous or solely intended to cause unnecessary delay, then it may award costs and attorney fees to the prevailing respondent.³²

How to Improve the District of Columbia’s Score:

The District’s law gives the court the option, not the requirement, of awarding reasonable attorney fees and court costs to prevailing defendants. Fortunately, the city’s highest court has ruled that a successful SLAPP movant is entitled to “a presumptive award of reasonable attorney’s fees,” unless special circumstances would make that award unjust.

A mandatory fee-shifting provision would remove the risk that an award might not be granted and make it more likely that a defendant with limited financial resources who faces a SLAPP will be represented by an attorney. The prospect of fee-shifting encourages attorneys to provide such defendants with representation – especially when defendants face weak or frivolous claims.

The best anti-SLAPP laws enable defendants to recoup the money they spent on legal costs. Requiring payment of reasonable attorney fees and court costs to prevailing speakers would provide deterrent effects against strategic lawsuits of dubious merit.

Under the Home Rule Act, the city council is powerless to fix the invalidated provision staying discovery once an anti-SLAPP motion is filed. But the city’s court system has the power to adopt a rule to implement an automatic stay of discovery after an anti-SLAPP motion is filed.

²⁸ D.C. Code § 16-5501 through § 16-5505.

²⁹ *Morgan Banks v. Hoffman*, No. 20-CV-0318 (D.C. Sep. 7, 2023).

³⁰ *Competitive Enter. Inst. v. Mann*, 150 A.3d 1213, 1235, 1262 (D.C. 2016).

³¹ *Id.* at 1231.

³² In *Doe v. Burke*, 133 A.3d 569, 578 (D.C. 2016), the court held that a successful SLAPP movant is entitled to “a presumptive award of reasonable attorney’s fees,” unless special circumstances would make that award unjust.

Such a rule would need to be adopted by the Superior Court, the trial court in the District, and “shall not take effect until approved by” the Court of Appeals.

Florida

Overall Grade: C-

Subgrades

Covered Speech: C

Anti-SLAPP Procedures: D-

Florida’s anti-SLAPP statute³³ protects (1) statements made before a governmental entity in connection with an issue under consideration or review by that entity and (2) statements made in or in connection with a “play, movie, television program, radio broadcast, audiovisual work, book, magazine article, musical work, news report, or other similar work.” The statute does not provide for the stay of discovery in the event of an anti-SLAPP filing, although the court must set a hearing on the motion as soon as practicable; the hearing must be set at the earliest possible time after the filing of the response to the motion. The statute does not describe any special standard of proof that the respondent must meet in order to defeat the anti-SLAPP motion, nor does it provide for an interlocutory appeal of an order granting or denying an anti-SLAPP motion.³⁴ The court must award costs and attorney fees to the prevailing party on an anti-SLAPP motion. Florida’s statute also affects the rights of litigants in actions between homeowners and homeowners’ associations in ways that are not central to this report.

How to Improve Florida’s Score:

Florida’s law suffers from two fundamental flaws. The scope of speech protected is too narrow. The law also has weak statutory procedures to protect speakers facing weak or frivolous lawsuits.

It should consider adopting the Uniform Law Commission’s model law in its entirety. More information about UPEPA is available above.

Georgia

Overall Grade: A

Subgrades

Covered Speech: A

Anti-SLAPP Procedures: A+

Georgia’s anti-SLAPP statute³⁵ protects “(1) Any written or oral statement or writing or pe-

³³ Fla. Stat. Ann. §§ 720.304, 768.295.

³⁴ Courts of Appeal in Florida are divided over whether the statute provides for a right to interlocutory appeal. Two decisions say that it does not: *Vericker v. Powell*, 343 So. 3d 1278 (Fla. Dist. Ct. App. 2022); *Bosshardt v. Drotos*, No. 1D21-3379 (Fla. Dist. Ct. App. Nov. 30, 2022). By contrast, one decision says that the “essential requirements of law” require interpreting the law as providing such a right. See *Davis v. Mishiyev*, No. 2D21-1726 (Fla. Dist. Ct. App. May. 11, 2022).

³⁵ Ga. Code Ann. § 9-11-11.1.



tion made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) Any written or oral statement or writing or petition made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; (3) Any written or oral statement or writing or petition made in a place open to the public or a public forum in connection with an issue of public interest or concern; or (4) Any other conduct in furtherance of the exercise of the constitutional right of petition or free speech in connection with a public issue or an issue of public concern.” (Georgia caselaw, however, suggests that the scope of the statute should be read narrowly³⁶ despite the self-contained instruction that commands broad interpretation described at the end of this paragraph.) Although discovery, pending motions, and hearings are stayed once an anti-SLAPP motion is filed, a court may nonetheless order specified discovery, motions, or other action to be conducted, if good cause is shown. If the respondent is a public figure, the respondent is also entitled to discovery on the sole issue of actual malice if that issue is relevant. To prevail against an anti-SLAPP motion, the respondent must establish a probability of prevailing at trial. The statute provides for interlocutory appeal of an order granting or denying an anti-SLAPP motion. The court must award costs and attorney fees related to the action to the prevailing movant on an anti-SLAPP motion. Conversely, if the court finds the motion to be frivolous or solely intended to cause unnecessary delay, then it must award costs and attorney fees related to the motion to the prevailing respondent. In general, the anti-SLAPP statute instructs courts that interpret its language to do so “broadly” – an instruction presumably designed to foil readings of the statute in a cramped or narrow way that would exclude marginal cases.

Hawaii

Overall Grade: A+

Subgrades

Covered Speech: A+

Anti-SLAPP Procedures: A+

Hawaii’s anti-SLAPP statute,³⁷ the Hawaii Public Expression Act, was signed into law in 2022. As stated in the law, “The purpose of this Act is to enact the Uniform Public Expression Protection Act” (UPEPA). Mirroring the model bill from the Uniform Law Commission, Hawaii’s law now applies to any “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 the Hawaii State Constitution, on a matter of public concern.” Although discovery is stayed once an anti-SLAPP motion is filed, a court may nonetheless order limited discovery “if a party shows that specific information is necessary to establish whether a party has satisfied or failed to satisfy” the burden of proof related to the order and that information is not “reasonably available without discovery.” A voluntary dismissal of the lawsuit by the respondent “shall not affect a moving party’s right to obtain a ruling” and to “seek costs, attorney’s fees, and reasonable litigation expenses.” The statute provides for interlocutory appeal of an order denying an anti-SLAPP motion. The court must award costs, attorney fees, and reasonable litigation expenses related to the action to the prevailing movant on an anti-SLAPP

³⁶ *Berryhill v. Ga. Cmty. Support & Solutions, Inc.*, 281 Ga. 439, 638 S.E.2d 278 (Ga. Nov. 28, 2006).

³⁷ Haw. Rev. Stat. § 634G.

motion. Conversely, if the court finds the motion to be “frivolous or filed solely with intent to delay the proceeding,” then it must award costs and attorney fees related to the motion to the prevailing respondent. This law is a dramatic improvement on Hawaii’s previously enacted anti-SLAPP statute, the Citizen Participation in Government Act, which earned a “D” grade in our 2022 report.

Idaho

Overall Grade: F

Subgrades

Covered Speech: F

Anti-SLAPP Procedures: F

Idaho appears to have no anti-SLAPP statute.

How to Improve Idaho’s Score:

Policymakers who seek to enact an anti-SLAPP statute are well-advised to consider the Uniform Public Expression Protection Act (UPEPA) as proposed by the Uniform Law Commission.

In 2020, the Uniform Law Commission (ULC), a nonprofit and nonpartisan organization of state commissioners on uniform laws that recommends and drafts model state legislation, adopted UPEPA as a model anti-SLAPP statute.

More information about UPEPA is available above.

Illinois

Overall Grade: D+

Subgrades

Covered Speech: D-

Anti-SLAPP Procedures: A

Illinois’s anti-SLAPP statute,³⁸ the Citizen Participation Act, protects any act that furthers the rights of petition, speech, association, or participation in government, unless those acts are not genuinely aimed at procuring favorable government action, result, or outcome. (Illinois caselaw suggests that the statute operates only on meritless or retaliatory claims with no other basis that are “solely based on” protected speech.³⁹) Although discovery is suspended once an anti-SLAPP motion is filed, a court may nonetheless order that discovery be conducted on the issue of whether the anti-SLAPP statute provides immunity to the movant if good cause is shown. To prevail against an anti-SLAPP motion, the respondent must produce clear and convincing evidence that the acts of the movants are not immunized from liability (or are not in furtherance of acts immunized from liability) by the anti-SLAPP statute. The statute requires the appellate court to expedite the movant’s appeal on the motion, whether interlocutory or

³⁸ 735 Ill. Comp. Stat. 110/15 through 110/99.

³⁹ *Sandholm v. Kuecker*, 962 N.E.2d 418, 2012 IL 111443 (Ill. Jan. 20, 2012).



not. This right of appeal covers both the trial court’s denial of an anti-SLAPP motion and its failure to rule on an anti-SLAPP motion. The court must award costs and attorney fees to the prevailing movant on an anti-SLAPP motion. In general, the anti-SLAPP statute instructs courts that interpret its language to do so “liberally” – an instruction presumably designed to foil readings of the statute in a cramped or narrow way that would exclude marginal cases.

How to Improve Illinois’s Score:

The most important part of anti-SLAPP law is the scope of speech that the statute covers. After all, strong statutory procedural protections are of no help to a speaker if the scope of the statute excludes the speech at issue.

The fundamental flaw in Illinois’s anti-SLAPP statute is it covers too little speech. If Illinois simply expanded the scope of its statute to cover the same kinds of speech recommended by the Uniform Law Commission’s model Act, the overall grade would rise to A+.

The Uniform Law Commission’s model law protects any speech about a matter of public importance in any forum. The model is explained in the full report and is available above.

Indiana

Overall Grade: B+

Subgrades

Covered Speech: A+

Anti-SLAPP Procedures: C-

Indiana’s anti-SLAPP statute⁴⁰ protects acts in furtherance of rights both to free speech and to petition in connection with a public issue or an issue of public interest. The filing of an anti-SLAPP motion stays all discovery proceedings, except for discovery relevant to the motion. The anti-SLAPP movant must state with specificity how the anti-SLAPP statute protects the movant’s actions; that the motion will be granted if the movant proves, by a preponderance of the evidence, that the actions in question are lawful and that they fall within the scope of the anti-SLAPP statute. Although the statute is silent on the right to interlocutory appeal if an anti-SLAPP motion is denied, the movant may appeal the matter if the court fails to act on the anti-SLAPP motion within 30 days. The court must award costs and attorney fees to the prevailing movant on an anti-SLAPP motion, although Indiana caselaw suggests that the movant is entitled to fee-shifting only if the original action is brought primarily to chill the exercise of First Amendment rights.⁴¹

How to Improve Indiana’s Score:

While the state already has a reasonably strong anti-SLAPP law, it could be bolstered with two minor changes. The law does not include a right to an “interlocutory” appeal. Speaking generally, that is a request to a higher court for it to decide a particular issue immediately. In most litigation, interlocutory appeals are difficult to obtain, so this right of appeal is an important feature of an anti-SLAPP law. Without it, a defendant who loses an anti-SLAPP motion

⁴⁰ Ind. Code § 34-7-7-1 through § 34-7-7-10.

⁴¹ *Hamilton v. Prewett*, 860 N.E.2d 1234 (Ind. Ct. App. Feb. 6, 2007).

would be forced to continue to litigate the entire trial before the finding on the motion could ever be appealed.

As attorney Ken White has eloquently explained, the provision of a right of interlocutory appeal creates a strong protection for First Amendment liberties, because it “dramatically reduces the coercive effect of filing a lawsuit targeting speech.”

With this one change, the anti-SLAPP procedures subgrade would rise to B+ and the overall grade would rise to A.

Finally, the Uniform Law Commission’s [model law](#) and most anti-SLAPP laws put the burden of proof on the plaintiff to show a prima facie case. But Indiana’s law does not contain this feature. That is a serious deficiency in the statute.

Iowa

Overall Grade: F

Subgrades

Covered Speech: F

Anti-SLAPP Procedures: F

Iowa appears to have no anti-SLAPP statute.

How to Improve Iowa’s Score:

Policymakers who seek to enact an anti-SLAPP statute are well-advised to consider the Uniform Public Expression Protection Act (UPEPA) as proposed by the Uniform Law Commission.

In 2020, the Uniform Law Commission (ULC), a nonprofit and nonpartisan organization of state commissioners on uniform laws that recommends and drafts model state legislation, adopted UPEPA as a model anti-SLAPP statute.

More information about UPEPA is available above.

Kansas

Overall Grade: A-

Subgrades

Covered Speech: A-

Anti-SLAPP Procedures: A+

Kansas’s anti-SLAPP statute,⁴² the Public Speech Protection Act, protects the right of free speech, the right of petition, and the right of association. (However, the statute carves out several content-related exemptions from the broad principles stated above, such as those related to selling or leasing goods and services.) Although discovery, motions, and pending hearings

⁴² Kan. Stat. Ann § 60-5320.



are stayed once an anti-SLAPP motion is filed, a court may nonetheless order specified and limited discovery, motions, and pending hearings to be conducted upon its own motion or if good cause is shown. The anti-SLAPP movant bears the initial burden of making a prima facie case that the actions at issue in the claim are protected by the anti-SLAPP statute; the anti-SLAPP respondent must then establish the likelihood of prevailing on the claim by presenting substantial competent evidence to support a prima facie case that the actions at issue in the claim are not protected by the anti-SLAPP statute. If the court denies an anti-SLAPP motion, the movant has the right to file an interlocutory appeal. If the court fails to rule on the anti-SLAPP motion in an expedited fashion, the movant has the right to petition for a writ of mandamus. A court must award costs and attorney fees to the prevailing movant on an anti-SLAPP motion, as well as additional relief that will deter similar conduct by others. Conversely, if the court finds that the motion is frivolous or solely intended to delay, it must award costs and attorney fees to the respondent that are related to the motion. In general, the anti-SLAPP statute instructs courts that interpret its language to do so “liberally” – an instruction presumably designed to foil readings of the statute in a cramped or narrow way that would exclude marginal cases.

Kentucky

Overall Grade: A+

Subgrades

Covered Speech: A+

Anti-SLAPP Procedures: A+

Kentucky’s anti-SLAPP law,⁴³ enacted in 2022, retains the essential provisions of the UPEPA. Importantly, the recently enacted law extends to “freedom of speech or of the press, the right to assemble or petition, or the right of association,” as protected “by the United States Constitution or Kentucky Constitution, on a matter of public concern.” This law is also to be “broadly construed.” Discovery is stayed once an anti-SLAPP motion is filed.” Although discovery is stayed once an anti-SLAPP motion is filed, a court may nonetheless order that specified discovery be conducted if the information sought is not reasonably available without discovery. A voluntary dismissal of the lawsuit by the respondent “does not affect a moving party’s right to obtain a ruling” and to “seek costs, attorney’s fees, and expenses.” The statute provides for interlocutory appeal of an order denying an anti-SLAPP motion. The court must award costs and attorney fees related to the action to the prevailing movant on an anti-SLAPP motion.

Louisiana

Overall Grade: A-

Subgrades

Covered Speech: A+

Anti-SLAPP Procedures: C+

⁴³ Kentucky Revised Statutes 454.460 to 454.478.

Louisiana’s anti-SLAPP statute⁴⁴ protects the acts of any person⁴⁵ in furtherance of the right of free speech in connection with a public issue.⁴⁶ Although discovery is stayed once an anti-SLAPP motion is filed, a court may nonetheless order specified discovery to be conducted if good cause is shown. To prevail against an anti-SLAPP motion, the respondent must establish a probability of success at trial. The statute does not provide for interlocutory appeal of an order granting or denying an anti-SLAPP motion. A court must award costs and attorney fees to the prevailing party on an anti-SLAPP motion.

How to Improve Louisiana’s Score:

While the state already has a reasonably strong anti-SLAPP law, it could be upgraded with one minor change. The law does not include a right to an “interlocutory” appeal. Speaking generally, that is a request to a higher court for it to decide a particular issue immediately. In most litigation, interlocutory appeals are difficult to obtain, so this right of appeal is an important feature of an anti-SLAPP law. Without it, a defendant who loses an anti-SLAPP motion would be forced to continue to litigate the entire trial before the finding on the motion could ever be appealed.

As attorney Ken White has eloquently explained, the provision of a right of interlocutory appeal creates a strong protection for First Amendment liberties, because it “dramatically reduces the coercive effect of filing a lawsuit targeting speech.”

The Uniform Law Commission’s model anti-SLAPP law – UPEPA – includes an interlocutory appeal provision. More information about UPEPA is available above.

With this one change, the anti-SLAPP procedures subgrade would rise to A and the overall grade would rise to A.

Maine

Overall Grade: C-

Subgrades

Covered Speech: D+

Anti-SLAPP Procedures: C

Maine’s anti-SLAPP statute⁴⁷ protects “any written or oral statement made before or submitted to a legislative, executive or judicial body, or any other governmental proceeding; any written or oral statement made in connection with an issue under consideration or review by a legislative, executive or judicial body, or any other governmental proceeding; any statement

⁴⁴ La. Code Civ. Proc. Ann. art. 971.

⁴⁵ However, it should be noted that the courts of appeal disagree over what type of “persons” are covered under the statute. See *Lacerte v. State*, 323 So. 3d 414 (La. Ct. App. 2021); *Lacerte v. State*, 317 So. 3d 763 (La. Ct. App. 2021); *Lacerte v. State*, 330 So. 3d 656 (La. Ct. App. 2021); *Braxton v. La. State Troopers Ass’n*, 333 So. 3d 516 (La. Ct. App. 2022); *Duhe v. Loyola Univ. of New Orleans*, 22-292 (La. App. 5 Cir. 05/30/23).

⁴⁶ This includes aspects of commercial speech – see *Risher v. Doug Gore & Lifestyle, LLC*, 2022 CW 0138 (La. Ct. App. May. 11, 2022) (holding that criticisms of a business are matters of a public concern) – but does not include racial slurs an employee makes which result in his/her termination even though a news outlet has reported on the issue. See *Jones v. St. Augustine High Sch.*, 336 So. 3d 470 (La. Ct. App. 2022).

⁴⁷ Me. Rev. Stat. Ann. tit. 14, § 556.



reasonably likely to encourage consideration or review of an issue by a legislative, executive or judicial body, or any other governmental proceeding; any statement reasonably likely to enlist public participation in an effort to effect such consideration; or any other statement falling within constitutional protection of the right to petition government.” This portion of the statute has been interpreted broadly.⁴⁸ Although discovery is stayed once an anti-SLAPP motion is filed, a court may nonetheless order specified discovery to be conducted if good cause is shown. To prevail against an anti-SLAPP motion, the respondent must show that the movant’s expressive actions were “devoid of any reasonable factual support or any arguable basis in law and that the moving party’s acts caused actual injury to the responding party.” The statute does not expressly provide for interlocutory appeal of an order granting or denying an anti-SLAPP motion; however, the Maine Supreme Judicial Court has held that an interlocutory appeal may be made.⁴⁹ If the anti-SLAPP motion is granted, the court may award the movant costs and attorney fees.

How to Improve Maine’s Score:

The most important part of anti-SLAPP law is the scope of speech that the statute covers. After all, strong statutory procedural protections are of no help to a speaker if the scope of the statute excludes the speech at issue.

While Maine’s Supreme Judicial Court has interpreted the scope of covered speech broadly considering the limits of the statute, the state should consider changing the scope of covered speech to match the Uniform Law Commission’s model law.

If Maine expanded the scope of its statute to cover the same kinds of speech recommended by the Uniform Law Commission’s model Act, the overall grade would rise to a “B+.”

The Uniform Law Commission’s model law protects any speech about a matter of public importance in any forum. The model is explained in the full report and is available above.

Maine should also consider including an explicit right to an “interlocutory” appeal as part of its law, even though the Maine Supreme Judicial Court has allowed such an appeal. Speaking generally, that is a request to a higher court for it to decide a particular issue immediately. In most litigation, interlocutory appeals are difficult to obtain, so this right of appeal is an important feature of an anti-SLAPP law. Without it, a defendant who loses an anti-SLAPP motion would be forced to continue to litigate the entire trial before the finding on the motion could ever be appealed.

As attorney Ken White has eloquently explained, the provision of a right of interlocutory appeal creates a strong protection for First Amendment liberties, because it “dramatically reduces the coercive effect of filing a lawsuit targeting speech.”

Additionally, strong anti-SLAPP laws impose notable costs on plaintiffs with weak or frivolous cases. One important feature of strong anti-SLAPP statutes is that they make losing plaintiffs liable for reasonable attorney fees and court costs originally borne by the speaker.

Unfortunately, Maine gives the court the option, not the requirement, of awarding reasonable

⁴⁸ *Schelling v. Lindell*, 942 A.2d 1226, 2008 Me. 59 (Me. 2008).

⁴⁹ *Bradbury v. City of Eastport*, 72 A.3d 512, 2013 Me. 72 (Me. 2013).

attorney fees and court costs to prevailing defendants.

A mandatory fee-shifting provision would make it more likely that a defendant with limited financial resources who faces a SLAPP will be represented by an attorney. The prospect of fee-shifting encourages attorneys to provide such defendants with representation – especially when defendants face weak or frivolous claims.

The best anti-SLAPP laws enable defendants to recoup the money they spent on legal costs. Requiring payment of reasonable attorney fees and court costs to prevailing speakers would provide deterrent effects against strategic lawsuits of dubious merit.

Maryland

Overall Grade: D

Subgrades

Covered Speech: C-

Anti-SLAPP Procedures: D-

Maryland’s anti-SLAPP statute⁵⁰ protects communications with a government body or to the public on any matter within the authority of government or on any issue of public concern. However, this brief and unusually worded statute also limits the scope of speech it covers: it defines a SLAPP suit in part as one that is “[b]rought in bad faith” and “[i]ntended to inhibit or inhibits the exercise of rights under the First Amendment.” A defendant facing a SLAPP suit may move to stay all court proceedings until the matter is resolved; notably, this option supplies a considerably weaker tool than many other anti-SLAPP statutes, which provide for mandatory suspension of proceedings. The defendant may also move to dismiss the suit, in which case the court must hold a hearing on the matter as soon as practicable. Unlike many anti-SLAPP statutes, the Maryland statute does not shift the burden of proof on an anti-SLAPP motion to the respondent at any point; furthermore, the statute contains no provisions for interlocutory appeal of an anti-SLAPP motion order or for shifting of costs and attorney fees to the prevailing party.

How to Improve Maryland’s Score:

The most important part of anti-SLAPP law is the scope of speech that the statute covers. After all, strong statutory procedural protections are of no help to a speaker if the scope of the statute excludes the speech at issue.

The fundamental flaw in Maryland’s anti-SLAPP statute is that it covers too little speech. If Maryland simply expanded the scope of its statute to cover the same kinds of speech recommended by the Uniform Law Commission’s model Act, the overall grade would rise to C+.

The Uniform Law Commission’s model law protects any speech about a matter of public importance in any forum. The model is explained in the full report and is available above.

Maryland’s law also has weak statutory procedures to protect speakers facing weak or frivolous lawsuits. It should consider adopting the Uniform Law Commission’s model law in its

⁵⁰ Md. Code Ann., Cts. & Jud. Proc. § 5-807.



entirety.

Massachusetts

Overall Grade: D+

Subgrades

Covered Speech: D

Anti-SLAPP Procedures: B+

Massachusetts's anti-SLAPP statute⁵¹ protects "any written or oral statement made before or submitted to a legislative, executive, or judicial body, or any other governmental proceeding; any written or oral statement made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other governmental proceeding; any statement reasonably likely to encourage consideration or review of an issue by a legislative, executive, or judicial body or any other governmental proceeding; any statement reasonably likely to enlist public participation in an effort to effect such consideration; or any other statement falling within constitutional protection of the right to petition government." Massachusetts caselaw has underscored that the protection of the anti-SLAPP statute does not typically extend to statements that are unrelated to the right of petition.⁵² Indeed, Massachusetts courts have narrowed the application of the statute by holding that an anti-SLAPP respondent may defeat the motion by showing that its claim was not "brought primarily to chill" the movant's right to petition.⁵³ Although discovery is stayed once an anti-SLAPP motion is filed, a court may nonetheless order specified discovery to be conducted if good cause is shown. To prevail against an anti-SLAPP motion, the respondent must show that (1) the movant's expressive actions were devoid of any reasonable factual support or any arguable basis in law and (2) the moving party's acts caused actual injury to the responding party. The Massachusetts Supreme Judicial Court has held that there is a right to interlocutory appeal of an order denying an anti-SLAPP motion to dismiss.⁵⁴ A court must award costs and attorney fees to the prevailing movant on an anti-SLAPP motion.

How to Improve Massachusetts's Score:

The most important part of anti-SLAPP law is the scope of speech that the statute covers. After all, strong statutory procedural protections are of no help to a speaker if the scope of the statute excludes the speech at issue.

The fundamental flaw in Massachusetts's anti-SLAPP statute is it covers too little speech. If Massachusetts simply expanded the scope of its statute to cover the same kinds of speech

⁵¹ MGL c.231, § 59H.

⁵² The state's anti-SLAPP statute was held not to apply in a defamation case against a journalist, because the journalistic articles at issue "did not contain statements seeking to redress a grievance or to petition for relief of her own." *Fustolo v. Hollander*, 455 Mass. 861, 920 N.E.2d 837 (Mass. Feb. 1, 2010). See also *Islamic Soc'y of Boston v. Boston Herald, Inc.*, in which statements opposing the construction of a mosque were held not to be "petitioning activity," and therefore outside the bounds of the anti-SLAPP statute, because the statements were directed at media entities and not at a government body. 21 Mass. L. Rep. 441 (Mass. Super. Ct. July 20, 2006).

⁵³ *Blanchard v. Steward Carney Hosp.*, 477 Mass. 141, 75 N.E.3d 21 (Mass. May 23, 2017); see also *Cadle Co. v. Schlichtmann*, 448 Mass. 242, 859 N.E.2d 858 (Mass. Jan. 17, 2007), in which the court refused to allow anti-SLAPP application in a case involving online comments, which were found to be motivated by a commercial goal of attracting new clients.

⁵⁴ *Benoit v. Frederickson*, 454 Mass. 148, 151 (Mass. 2009).

recommended by the Uniform Law Commission's model Act, the overall grade would rise to an "A."

The Uniform Law Commission's model law protects any speech about a matter of public importance in any forum. The model is explained in the full report and is available above.

Michigan

Overall Grade: F

Subgrades

Covered Speech: F

Anti-SLAPP Procedures: F

Michigan appears to have no anti-SLAPP statute.

How to Improve Michigan's Score:

Policymakers who seek to enact an anti-SLAPP statute are well-advised to consider the Uniform Public Expression Protection Act (UPEPA) as proposed by the Uniform Law Commission.

In 2020, the Uniform Law Commission (ULC), a nonprofit and nonpartisan organization of state commissioners on uniform laws that recommends and drafts model state legislation, adopted UPEPA as a model anti-SLAPP statute.

More information about UPEPA is available above.

Minnesota

Overall Grade: F

Subgrades

Covered Speech: F

Anti-SLAPP Procedures: F

*Minnesota's anti-SLAPP statute was found unconstitutional; the Supreme Court of Minnesota found that the statute deprived litigants of their right to a jury trial.*⁵⁵

How to Improve Minnesota's Score:

Policymakers who seek to enact an anti-SLAPP statute are well-advised to consider the Uniform Public Expression Protection Act (UPEPA) as proposed by the Uniform Law Commission.

In 2020, the Uniform Law Commission (ULC), a nonprofit and nonpartisan organization of state commissioners on uniform laws that recommends and drafts model state legislation, adopted UPEPA as a model anti-SLAPP statute.

⁵⁵ *Leiendecker v. Asian Women United of Minnesota*, 895 N.W.2d 623, 635-37 (Minn. 2017).



More information about UPEPA is available above.

Mississippi

Overall Grade: F

Subgrades

Covered Speech: F

Anti-SLAPP Procedures: F

Mississippi appears to have no anti-SLAPP statute.

How to Improve Mississippi’s Score:

Policymakers who seek to enact an anti-SLAPP statute are well-advised to consider the Uniform Public Expression Protection Act (UPEPA) as proposed by the Uniform Law Commission.

In 2020, the Uniform Law Commission (ULC), a nonprofit and nonpartisan organization of state commissioners on uniform laws that recommends and drafts model state legislation, adopted UPEPA as a model anti-SLAPP statute.

More information about UPEPA is available above.

Missouri

Overall Grade: D-

Subgrades

Covered Speech: D-

Anti-SLAPP Procedures: C

Missouri’s anti-SLAPP statute⁵⁶ protects conduct or speech undertaken or made in connection with a public hearing or public meeting, in a quasi-judicial proceeding or any other meeting of a decision-making government body of the state, or any political subdivision of the state. Missouri caselaw suggests that an anti-SLAPP motion will fail unless it is shown that the original action was retaliatory.⁵⁷ Discovery is suspended when an anti-SLAPP motion is filed. Unlike many anti-SLAPP statutes, the Missouri statute does not shift the burden of proof on an anti-SLAPP motion to the respondent at any point before the court must decide whether to grant or deny the motion. Any party has the right to an expedited appeal of an order based on an anti-SLAPP motion, as well as the right to appeal a court’s failure to rule on the motion on an expedited basis; however, Missouri caselaw appears to prevent interlocutory appeal of the denial of an anti-SLAPP motion.⁵⁸ The court must award costs and attorney fees related to the action to the prevailing movant on an anti-SLAPP motion. Conversely, if the court finds the motion to be frivolous or solely intended to cause unnecessary delay, then it must award costs and attorney fees related to the motion to the prevailing respondent.

⁵⁶ Mo. Rev. Stat. § 537.528.

⁵⁷ *Moschenross v. St. Louis County*, 188 S.W.3d 13 (Mo. Ct. App. Jan. 17, 2006).

⁵⁸ *Cedar Green Land Acquisition, L.L.C. v. Baker*, 212 S.W.3d 225 (Mo. Ct. App. Jan. 30, 2007).

How to Improve Missouri’s Score:

The most important part of anti-SLAPP law is the scope of speech that the statute covers. After all, strong statutory procedural protections are of no help to a speaker if the scope of the statute excludes the speech at issue.

The fundamental flaw in Missouri’s anti-SLAPP statute is that it covers too little speech. If Missouri simply expanded the scope of its statute to cover the same kinds of speech recommended by the Uniform Law Commission’s model Act, the overall grade would rise to B+.

The Uniform Law Commission’s model law protects any speech about a matter of public importance in any forum. The model is explained in the full report and is available above.

Missouri’s law could also be significantly improved if it included a clear right to an “interlocutory” appeal for an anti-SLAPP motion. Speaking generally, an interlocutory appeal is a request to a higher court for it to decide a particular issue immediately. In most litigation, interlocutory appeals are difficult to obtain, so this right of appeal is an important feature of an anti-SLAPP law. Without it, a defendant who loses an anti-SLAPP motion would be forced to continue to litigate the entire trial before the finding on the motion could ever be appealed.

As attorney Ken White has eloquently explained, the provision of a right of interlocutory appeal creates a strong protection for First Amendment liberties, because it “dramatically reduces the coercive effect of filing a lawsuit targeting speech.”

Finally, the Uniform Law Commission’s [model law](#) and most anti-SLAPP laws put the burden of proof on the plaintiff to show a prima facie case. Yet Missouri’s law does not contain this feature. That is a serious deficiency in the statute.

Montana

Overall Grade: F

Subgrades

Covered Speech: F

Anti-SLAPP Procedures: F

Montana appears to have no anti-SLAPP statute.

How to Improve Montana’s Score:

Policymakers who seek to enact an anti-SLAPP statute are well-advised to consider the Uniform Public Expression Protection Act (UPEPA) as proposed by the Uniform Law Commission.

In 2020, the Uniform Law Commission (ULC), a nonprofit and nonpartisan organization of state commissioners on uniform laws that recommends and drafts model state legislation, adopted UPEPA as a model anti-SLAPP statute.

More information about UPEPA is available above.

Nebraska

**Overall Grade:** D-Subgrades**Covered Speech:** F**Anti-SLAPP Procedures:** D-

Nebraska's anti-SLAPP statute⁵⁹ is relatively narrow in scope: it may only be used by a "public applicant or permittee" (that is, someone who has applied for or received a zoning change, license, or other government entitlement) or someone who is materially connected to the entitlement. The statute does not provide for the stay of discovery in the event of an anti-SLAPP filing, although the court must expedite or grant preference in the hearing of the relevant motion. To prevail against an anti-SLAPP motion, the respondent must show that the action has a substantial basis in law or is supported by a substantial argument for an extension, modification, or reversal of existing law. The statute contains no provision for interlocutory appeal of an order on an anti-SLAPP motion. A court may award costs and attorney fees to the prevailing movant on an anti-SLAPP motion if the movant demonstrates that the action 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. A court may award costs and attorney fees to the respondent only if it is established by clear and convincing evidence that any communication that is material to the cause of action and which gave rise to it was made with knowledge of its falsity or with reckless disregard of whether it was false.

How to Improve Nebraska's Score:

The most important part of anti-SLAPP law is the scope of speech that the statute covers. After all, strong statutory procedural protections are of no help to a speaker if the scope of the statute excludes the speech at issue.

The fundamental flaw in Nebraska's anti-SLAPP statute is it covers too little speech. If Nebraska simply expanded the scope of its statute to cover the same kinds of speech recommended by the Uniform Law Commission's model Act, the overall grade would rise to B-.

The Uniform Law Commission's model law protects any speech about a matter of public importance in any forum. The model is explained in the full report and is available above.

Nebraska should also consider including a right to an "interlocutory" appeal as part of its law. Speaking generally, that is a request to a higher court for it to decide a particular issue immediately. In most litigation, interlocutory appeals are difficult to obtain, so this right of appeal is an important feature of an anti-SLAPP law. Without it, a defendant who loses an anti-SLAPP motion would be forced to continue to litigate the entire trial before the finding on the motion could ever be appealed.

As attorney Ken White has eloquently explained, the provision of a right of interlocutory appeal creates a strong protection for First Amendment liberties, because it "dramatically reduces the coercive effect of filing a lawsuit targeting speech."

⁵⁹Neb. Rev. Stat. § 25-21,243 through § 25-21,246.

Strong anti-SLAPP laws impose notable costs on plaintiffs with weak or frivolous cases. One important feature of strong anti-SLAPP statutes is that they make losing plaintiffs liable for reasonable attorney fees and court costs originally borne by the speaker.

Unfortunately, Nebraska gives the court the option, not the requirement, of awarding reasonable attorney fees and court costs to prevailing defendants.

A mandatory fee-shifting provision would make it more likely that a defendant with limited financial resources who faces a SLAPP will be represented by an attorney. The prospect of fee-shifting encourages attorneys to provide such defendants with representation – especially when defendants face weak or frivolous claims.

The best anti-SLAPP laws enable defendants to recoup the money they spent on legal costs. Requiring payment of reasonable attorney fees and court costs to prevailing speakers would provide deterrent effects against strategic lawsuits of dubious merit.

The Uniform Law Commission's model law and several state statutes also suspend all court proceedings when an anti-SLAPP motion is filed; the statutes of most states with anti-SLAPP statutes suspend discovery once an anti-SLAPP motion is filed.

Unfortunately, Nebraska's law does not automatically suspend proceedings or discovery upon the filing of an anti-SLAPP motion. This failure drives up the cost of litigation to defend against a SLAPP. The state can improve its protections for free speech by adding this provision to the law.

Nevada**Overall Grade:** ASubgrades**Covered Speech:** A+**Anti-SLAPP Procedures:** A-

Nevada's anti-SLAPP statute⁶⁰ protects any statement that is truthful or that is made without knowledge of its falsehood that is "(1) Communication that is aimed at procuring any governmental or electoral action, result or outcome; (2) Communication of information or a complaint to a Legislator, officer or employee of the Federal Government, [Nevada] or a political subdivision of [Nevada], regarding a matter reasonably of concern to the respective governmental entity; (3) Written or oral statement made in direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law; or (4) Communication made in direct connection with an issue of public interest in a place open to the public or in a public forum." Although discovery is stayed once an anti-SLAPP motion is filed, a court may nonetheless order limited discovery to be conducted upon a showing that information relevant to issues raised by the motion is in the possession of another party or a third party and is not reasonably available without discovery. To prevail on an anti-SLAPP motion after the movant has established that the communication at issue is covered by the anti-SLAPP statute, the respondent must demonstrate with prima

⁶⁰Nev. Rev. Stat. § 41.635 through 41.670.



facie evidence a probability of prevailing on the claim. The statute provides for interlocutory appeal of an order denying an anti-SLAPP motion. The court must award costs and attorney fees related to the action to the prevailing movant on an anti-SLAPP motion. Conversely, if the court finds the motion to be frivolous or vexatious, then it must award costs and attorney fees related to the motion to the prevailing respondent.

New Hampshire

Overall Grade: F

Subgrades

Covered Speech: F

Anti-SLAPP Procedures: F

New Hampshire appears to have no anti-SLAPP statute.

How to Improve New Hampshire's Score:

Policymakers who seek to enact an anti-SLAPP statute are well-advised to consider the Uniform Public Expression Protection Act (UPEPA) as proposed by the Uniform Law Commission.

In 2020, the Uniform Law Commission (ULC), a nonprofit and nonpartisan organization of state commissioners on uniform laws that recommends and drafts model state legislation, adopted UPEPA as a model anti-SLAPP statute.

More information about UPEPA is available above.

New Jersey

Overall Grade: A

Subgrades

Covered Speech: A+

Anti-SLAPP Procedures: A-

Enacted in 2023, New Jersey's anti-SLAPP law⁶¹ hews closely to the Uniform Law Commission's model law UPEPA, in both name and substance (the New Jersey law is entitled "Uniform Public Expression Protection Act"). It protects "the right of freedom of speech or of the press, the right to assembly or petition, or the right of association, guaranteed by the United State Constitution or the New Jersey Constitution, on a matter of public concern"; and the law states that it shall be "broadly construed" in favor of freedom of speech and of the press. The law does not require courts to issue a stay of proceedings once an anti-SLAPP motion is filed. Instead, the statute states that "the court may order" such a stay and that "there shall be a presumption that such a stay shall be granted." A court may also order limited discovery "if a party shows that specific information is necessary to establish whether a party has satisfied or failed to satisfy" the burden of proof related to the order and that information is not reasonably available without discovery. A voluntary dismissal of the lawsuit by the respon-

⁶¹P.L.2023, c.155.

dent "does not affect a moving party's right to obtain a ruling" and to "seek costs, attorney's fees, and expenses." The statute provides for interlocutory appeal of an order denying an anti-SLAPP motion. The court must award costs and attorney fees related to the action to the prevailing movant on an anti-SLAPP motion. Conversely, if the court finds the motion to be "frivolous or filed solely with intent to delay the proceeding," then it must award costs and attorney fees related to the motion to the prevailing respondent. New Jersey did not previously have an anti-SLAPP statute on its books.

New Mexico

Overall Grade: D

Subgrades

Covered Speech: D-

Anti-SLAPP Procedures: B-

New Mexico's anti-SLAPP statute⁶² protects statements made in connection with a meeting established and held by a government entity. The statute does not provide for the stay of discovery in the event of an anti-SLAPP filing, although the court must consider the motion "on a priority or expedited basis." Unlike many anti-SLAPP statutes, the New Mexico statute does not shift the burden of proof on an anti-SLAPP motion to the respondent at any point before the court must decide whether to grant or deny the motion. Any party has the right to an expedited interlocutory appeal on an anti-SLAPP motion when it is granted or denied, as well as the right to appeal a court's failure to rule on the motion on an expedited basis. The court must award costs and attorney fees related to the action to the prevailing movant on an anti-SLAPP motion; conversely, if the court finds the motion to be frivolous or solely intended to cause unnecessary delay, then it must award costs and attorney fees related to the motion to the prevailing respondent.

How to Improve New Mexico's Score:

The most important part of anti-SLAPP law is the scope of speech that the statute covers. After all, strong statutory procedural protections are of no help to a speaker if the scope of the statute excludes the speech at issue.

The fundamental flaw in New Mexico's anti-SLAPP statute is it covers too little speech. If New Mexico simply expanded the scope of its statute to cover the same kinds of speech recommended by the Uniform Law Commission's model Act, the overall grade would rise to A-.

The Uniform Law Commission's model law protects any speech about a matter of public importance in any forum. The model is explained in the full report and is available above.

The Uniform Law Commission's model law and several state statutes also suspend all court proceedings when an anti-SLAPP motion is filed; the statutes of most states with anti-SLAPP statutes suspend discovery once an anti-SLAPP motion is filed.

Unfortunately, New Mexico's statute does not automatically suspend proceedings or discovery upon the filing of an anti-SLAPP motion. This failure drives up the cost of litigation to

⁶²N.M. Stat. § 38-2-9.1 through § 38-2-9.2.



defend against a SLAPP. The state can improve its protections for free speech by adding this provision to the law.

Finally, the Uniform Law Commission's [model law](#) and most anti-SLAPP laws put the burden of proof on the plaintiff to show a prima facie case. But New Mexico's law does not contain this feature. That is a serious deficiency in the statute.

New York

Overall Grade: A+

Subgrades

Covered Speech: A+

Anti-SLAPP Procedures: A

New York State's anti-SLAPP statute⁶³ protects any communication in a place open to the public or a public forum in connection with an issue of public interest. It also protects lawful conduct that furthers either the exercise of free speech in connection with an issue of public interest or the exercise of the right of petition. The scope of the statute was broadened in late 2020, making a significant portion of caselaw that had interpreted its previous iteration largely irrelevant. Although discovery, pending hearings, and motions are stayed once an anti-SLAPP motion is filed, a court may nonetheless order limited discovery to be conducted if the respondent shows that the stay prevents the presentation of essential facts. To prevail against an anti-SLAPP motion, the respondent must show either that the action has a substantial basis in fact and law or that it is supported by a substantial argument for an extension, modification, or reversal of existing law. Although the statute itself does not provide for the interlocutory appeal of a decision on an anti-SLAPP motion, another provision of New York law guarantees a general right to such an appeal.⁶⁴ The court must award costs and attorney fees to the prevailing party if it finds that the action 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; other compensatory and punitive damages are allowed if the court finds additional aggravating circumstances.

North Carolina

Overall Grade: F

Subgrades

Covered Speech: F

Anti-SLAPP Procedures: F

North Carolina appears to have no anti-SLAPP statute.

How to Improve North Carolina's Score:

Policymakers who seek to enact an anti-SLAPP statute are well-advised to consider the Uni-

⁶³ N.Y. Civ. Rights Law § 70-a and § 76-a; *see also* NY CPLR Rule 3211.

⁶⁴ N.Y. CPLR Rule 5701.

form Public Expression Protection Act (UPEPA) as proposed by the Uniform Law Commission.

In 2020, the Uniform Law Commission (ULC), a nonprofit and nonpartisan organization of state commissioners on uniform laws that recommends and drafts model state legislation, adopted UPEPA as a model anti-SLAPP statute.

More information about UPEPA is available above.

North Dakota

Overall Grade: F

Subgrades

Covered Speech: F

Anti-SLAPP Procedures: F

North Dakota appears to have no anti-SLAPP statute.

How to Improve North Dakota's Score:

Policymakers who seek to enact an anti-SLAPP statute are well-advised to consider the Uniform Public Expression Protection Act (UPEPA) as proposed by the Uniform Law Commission.

In 2020, the Uniform Law Commission (ULC), a nonprofit and nonpartisan organization of state commissioners on uniform laws that recommends and drafts model state legislation, adopted UPEPA as a model anti-SLAPP statute.

More information about UPEPA is available above.

Ohio

Overall Grade: F

Subgrades

Covered Speech: F

Anti-SLAPP Procedures: F

Ohio appears to have no anti-SLAPP statute.

How to Improve Ohio's Score:

Policymakers who seek to enact an anti-SLAPP statute are well-advised to consider the Uniform Public Expression Protection Act (UPEPA) as proposed by the Uniform Law Commission.

In 2020, the Uniform Law Commission (ULC), a nonprofit and nonpartisan organization of state commissioners on uniform laws that recommends and drafts model state legislation, adopted UPEPA as a model anti-SLAPP statute.



More information about UPEPA is available above.

Oklahoma

Overall Grade: A

Subgrades

Covered Speech: A+

Anti-SLAPP Procedures: A-

Oklahoma’s anti-SLAPP statute,⁶⁵ the Oklahoma Citizens Participation Act, protects the exercise of the right of free speech, right to petition, and right to association; the statute defines those terms broadly and extensively, and says that the law “shall be construed liberally to effectuate its purpose and intent fully.” Although discovery is suspended once an anti-SLAPP motion is filed, a court may nonetheless allow specified and limited discovery relevant to the motion to dismiss, if good cause is shown. To prevail against an anti-SLAPP motion, the respondent must show by clear and specific evidence a prima facie case for each essential element of the claim. The statute requires an appellate court to “expedite an appeal or other writ, whether interlocutory or not” from a court order on an anti-SLAPP motion or from the court’s failure to rule on that motion. The court “shall award to the moving party... reasonable attorney fees and other expenses incurred in defending against the legal action as justice and equity may require.” Oklahoma courts have interpreted that portion of the statute to mean that an award of attorney fees to a prevailing defendant is mandatory. The phrase “as justice and equity may require” applies only to “other expenses incurred in defending against the legal action” and not the award of fees.⁶⁶ The statute also says that if the anti-SLAPP motion is frivolous or solely intended to delay, the court may award costs and attorney fees to the respondent. The statute also allows for “[s]anctions against the party who brought the legal action as the court determines sufficient to deter the party who brought the legal action from bringing similar actions.”

Oregon

Overall Grade: A+

Subgrades

Covered Speech: A+

Anti-SLAPP Procedures: A

Oregon’s anti-SLAPP statute⁶⁷ protects (1) “Any oral statement made, or written statement or other document submitted, in a legislative, executive or judicial proceeding or other proceeding authorized by law;” (2) “Any oral statement made, or written statement or other document submitted, in connection with an issue under consideration or review by a legislative, executive or judicial body or other proceeding authorized by law;” (3) “Any oral statement made, or written statement or other document presented, in a place open to the public or a

⁶⁵ Okla. Stat. tit. 12, § 1430 through § 1440.

⁶⁶ *Thacker v. Walton*, 491 P.3d 756, 2021 OK Civ. App. 5 (Okla. Civ. App. 2021).

⁶⁷ Or. Rev. Stat. § 31.150 through § 31.155.

public forum in connection with an issue of public interest;” or (4) “Any other conduct in furtherance of the exercise of the constitutional right of assembly, petition or association, or the constitutional right of free speech or freedom of the press in connection with a public issue or an issue of public interest.” The May 2023 amendments to the already robust law expanded the rights covered by the statute (to include the rights of “assembly” and “association,” and the “freedom of the press”). Although discovery is stayed once an anti-SLAPP motion is filed, a court may nonetheless order specified discovery to be conducted if good cause is shown. After an anti-SLAPP motion is filed, the movant must make a prima facie showing that the claim arises from conduct encompassed by the anti-SLAPP statute; if the movant is successful, then the burden shifts to the respondent to establish the probability of prevailing through the presentation of substantial evidence to support a prima facie case. The May 2023 amendments also strengthened the law by remedying the principal previous defect of the statute. The amended law now explicitly guarantees a right to an immediate (interlocutory) appeal. The court must award costs and attorney fees to the anti-SLAPP movant if it orders dismissal of an action; alternatively, if it finds that the anti-SLAPP motion is frivolous or solely intended to cause unnecessary delay, it must award costs and attorney fees to the respondent. The 2023 amendments also ensure that a plaintiff cannot avoid paying attorney fees and costs to the speaker defendant by voluntarily dismissing the litigation after an anti-SLAPP motion has been filed. In general, the anti-SLAPP statute instructs courts that interpret its language to do so “liberally,” an instruction presumably designed to foil cramped or narrow readings of the statute that would exclude marginal cases.

Pennsylvania

Overall Grade: D-

Subgrades

Covered Speech: F

Anti-SLAPP Procedures: C+

Pennsylvania’s anti-SLAPP statute⁶⁸ is relatively narrow; it is limited to the protection of certain statements and conduct that pertain to environmental law or environmental regulation, so long as those statements are neither false, malicious, nor constitute an interference with contracts or an abuse of process. Discovery is stayed only when the movant makes an interlocutory appeal from the denial of an anti-SLAPP motion. Unlike many anti-SLAPP statutes, the Pennsylvania statute does not shift the burden of proof on an anti-SLAPP motion to the respondent at any point before the court must decide whether to grant or deny the motion. The statute provides for the right of an interlocutory appeal of a decision on an anti-SLAPP motion by the movant. The statute requires the award of costs and attorney fees to a party who successfully defends against an action falling under the state’s anti-SLAPP statute.

How to Improve Pennsylvania’s Score:

The most important part of anti-SLAPP law is the scope of speech that the statute covers. After all, strong statutory procedural protections are of no help to a speaker if the scope of the statute excludes the speech at issue.

⁶⁸ 27 Pa. Consol. Stat. §§ 7707 and 8301 through § 8305.



The fundamental flaw in Pennsylvania’s anti-SLAPP statute is it covers too little speech. If Pennsylvania simply expanded the scope of its statute to cover the same kinds of speech recommended by the Uniform Law Commission’s model Act, the overall grade would rise to A-.

The Uniform Law Commission’s model law protects any speech about a matter of public importance in any forum. The model is explained in the full report and is available above.

The Uniform Law Commission’s model law and several state statutes also suspend all court proceedings when an anti-SLAPP motion is filed; the statutes of most states with anti-SLAPP statutes suspend discovery once an anti-SLAPP motion is filed.

Unfortunately, Pennsylvania’s law does not automatically suspend proceedings or discovery upon the filing of an anti-SLAPP motion. This failure drives up the cost of litigation to defend against a SLAPP. The state can improve its protections for free speech by adding this provision to the law.

Finally, the Uniform Law Commission’s model law and most anti-SLAPP laws put the burden of proof on the plaintiff to show a prima facie case. But Pennsylvania’s law does not contain this feature. That is a serious deficiency in the statute.

Rhode Island

Overall Grade: B

Subgrades

Covered Speech: A-

Anti-SLAPP Procedures: C

Rhode Island’s anti-SLAPP statute⁶⁹ gives “conditional immunity” to the exercise of the right of petition or free speech, meaning “any written or oral statement made before or submitted to a legislative, executive, or judicial body, or any other governmental proceeding; any written or oral statement made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other governmental proceeding; or any written or oral statement made in connection with an issue of public concern.” However, the statute also contains a notable gap in its scope: a communication that is found to be a “sham” does not qualify for statutory protection.⁷⁰ Although discovery is stayed once an anti-SLAPP motion is filed, a court may nonetheless order specified discovery to be conducted if good cause is shown. Unlike many anti-SLAPP statutes, the Rhode Island statute does not shift the burden of proof on an anti-SLAPP motion to the respondent at any point before the court must decide whether to grant or deny the motion. The statute does not provide for the interlocutory appeal of a decision on an anti-SLAPP motion. The court must award costs and attorney fees to the prevailing anti-SLAPP movant; it must also award costs and fees if that movant ultimately prevails at trial.

How to Improve Rhode Island’s Score:

⁶⁹ R.I. Gen. Laws § 9-33-1 through § 9-33-4.

⁷⁰ R.I. Gen. Laws § 9-33-2. To be a “sham,” the communication in question must satisfy a detailed set of criteria so that it is both “objectively baseless” and “subjectively baseless.”

While the state already has a reasonably strong anti-SLAPP law, it could be significantly improved with two minor changes. The law does not include a right to an “interlocutory” appeal. Speaking generally, that is a request to a higher court for it to decide a particular issue immediately. In most litigation, interlocutory appeals are difficult to obtain, so this right of appeal is an important feature of an anti-SLAPP law. Without it, a defendant who loses an anti-SLAPP motion would be forced to continue to litigate the entire trial before the finding on the motion could ever be appealed.

As attorney Ken White has eloquently explained, the provision of a right of interlocutory appeal creates a strong protection for First Amendment liberties, because it “dramatically reduces the coercive effect of filing a lawsuit targeting speech.”

With this one change, the anti-SLAPP procedures subgrade would rise to A- and the overall grade would rise to “A-.”

Finally, the Uniform Law Commission’s [model law](#) and most anti-SLAPP laws put the burden of proof on the plaintiff to show a prima facie case. But Rhode Island’s law does not contain this feature. That is a serious deficiency in the statute.

South Carolina

Overall Grade: F

Subgrades

Covered Speech: F

Anti-SLAPP Procedures: F

South Carolina appears to have no anti-SLAPP statute.

How to Improve South Carolina’s Score:

Policymakers who seek to enact an anti-SLAPP statute are well-advised to consider the Uniform Public Expression Protection Act (UPEPA) as proposed by the Uniform Law Commission.

In 2020, the Uniform Law Commission (ULC), a nonprofit and nonpartisan organization of state commissioners on uniform laws that recommends and drafts model state legislation, adopted UPEPA as a model anti-SLAPP statute.

More information about UPEPA is available above.

South Dakota

Overall Grade: F

Subgrades

Covered Speech: F

Anti-SLAPP Procedures: F

South Dakota appears to have no anti-SLAPP statute.

**How to Improve South Dakota’s Score:**

Policymakers who seek to enact an anti-SLAPP statute are well-advised to consider the Uniform Public Expression Protection Act (UPEPA) as proposed by the Uniform Law Commission.

In 2020, the Uniform Law Commission (ULC), a nonprofit and nonpartisan organization of state commissioners on uniform laws that recommends and drafts model state legislation, adopted UPEPA as a model anti-SLAPP statute.

More information about UPEPA is available above.

Tennessee

Overall Grade: A

Subgrades

Covered Speech: A+

Anti-SLAPP Procedures: A

Tennessee’s anti-SLAPP statute⁷¹ protects the exercise of the right of free speech in connection with a matter of public concern, the right to petition government, and the right to join together to take action on a matter of public concern. Although discovery is suspended once an anti-SLAPP motion is filed, a court may nonetheless order specified and limited discovery that is relevant to the motion to be conducted if good cause is shown. To prevail against an anti-SLAPP motion, the respondent must establish a prima facie case for each essential element of the claim. The anti-SLAPP statute provides for an interlocutory appeal if the court dismisses or refuses to dismiss an anti-SLAPP motion. A court must award costs and attorney fees to the prevailing movant on an anti-SLAPP motion; conversely, if the court finds that the motion is frivolous or solely intended to delay, it may award costs and attorney fees to the respondent.

Texas

Overall Grade: A-

Subgrades

Covered Speech: A-

Anti-SLAPP Procedures: A

Texas’s anti-SLAPP statute⁷² protects the exercise of the right of free speech, right to petition, and the right to association, as well as the exercise of various kinds of communication generally; the statute defines those terms broadly and extensively. However, the statute also carves out several content-related exemptions from the broad principles stated above, such as those related to selling or leasing goods and services. Although discovery is suspended once an anti-SLAPP motion is filed, a court may nonetheless order specified discovery to be conducted

⁷¹ Tenn. Code. Ann. § 20-17-101 through § 20-17-110; *see also* § 4-21- 1001 through § 4-21-1004.

⁷² Tex. Civ. Prac. & Rem. Code § 27.001 through § 27.011.

if good cause is shown. To prevail against an anti-SLAPP motion, the respondent must show by clear and specific evidence a prima facie case for each essential element of the claim. The anti-SLAPP statute provides for an interlocutory appeal of an order on an anti-SLAPP motion; if a court does not rule on the motion by a specified deadline, the statute treats this inaction as a denial of the motion, which itself triggers the right to an interlocutory appeal. A court must award costs and attorney fees to the prevailing movant on an anti-SLAPP motion; conversely, if the court finds that the motion is frivolous or solely intended to delay, it may award costs and attorney fees to the respondent. In general, the statute instructs courts that its language “shall be construed liberally to effectuate its purpose and intent.”

Utah

Overall Grade: A+

Subgrades

Covered Speech: A+

Anti-SLAPP Procedures: A+

Signed into law in 2023, Utah’s Public Expression Act⁷³ “enacts the Uniform Public Expression Protection Act,” and hews closely to the Uniform Law Commission’s model law. The new statute covers any exercise of First Amendment rights on a matter of public concern and instructs courts to interpret the law broadly to protect such rights. Although discovery is stayed once an anti-SLAPP motion is filed, a court may nonetheless order limited discovery “if a party shows that specific information is necessary to establish whether a party has satisfied or failed to satisfy” the burden of proof related to the order and that information is not reasonably available without discovery. A voluntary dismissal of the lawsuit by the respondent “does not affect a moving party’s right to obtain a ruling” and to “seek costs, attorney’s fees, and expenses.” The statute provides for interlocutory appeal of an order denying an anti-SLAPP motion. The court must award costs and attorney fees related to the action to the prevailing movant on an anti-SLAPP motion. Conversely, if the court finds the motion to be “frivolous or filed solely with intent to delay the proceeding,” then it must award costs and attorney fees related to the motion to the prevailing respondent. This new law represents a dramatic improvement for Utah, which previously received a “D-” grade in our 2022 Anti-SLAPP Report Card.

Vermont

Overall Grade: A

Subgrades

Covered Speech: A+

Anti-SLAPP Procedures: A-

Vermont’s anti-SLAPP statute⁷⁴ protects the exercise, “in connection with a public issue, of the right to freedom of speech or to petition the government;” the scope and boundaries of

⁷³ Utah Code § 78B-25.

⁷⁴ Vt. Stat. Ann. tit. 12 § 1041.



these rights are defined extensively. Although discovery is stayed once an anti-SLAPP motion is filed, a court may nonetheless order limited discovery to be conducted if good cause is shown. To prevail against an anti-SLAPP motion, the respondent must show that the movant's communications were devoid of any reasonable factual support and any arguable basis in law and that the movant's acts caused actual injury to the responding party. If the court grants or denies the anti-SLAPP motion, the statute provides for a right to file an interlocutory appeal. A court must award costs and attorney fees to the prevailing movant on an anti-SLAPP motion; conversely, if the court finds that the motion is frivolous or intended solely to cause unnecessary delay, it must award costs and attorney fees to the respondent.

Virginia

Overall Grade: C+

Subgrades

Covered Speech: A+

Anti-SLAPP Procedures: D-

Virginia's anti-SLAPP statute⁷⁵ protects "statements (i) regarding matters of public concern that would be protected under the First Amendment to the United States Constitution made by that person that are communicated to a third party or (ii) made at a public hearing before the governing body of any locality or other political subdivision, or the boards, commissions, agencies and authorities thereof, and other governing bodies of any local governmental entity concerning matters properly before such body." The footprint of this anti-SLAPP statute is relatively sparse when compared to those of other jurisdictions: it provides for no impact on discovery proceedings, it creates no burden that the respondent must meet when faced with an anti-SLAPP claim, and it contains no provisions for interlocutory appeal of an order on an anti-SLAPP motion. In the event a court provides relief under the statute, the court may award costs and attorney fees to the prevailing party.

How to Improve Virginia's Score:

Virginia's anti-SLAPP law protects as many types of speech as any other state. Where the law falls short is in its weak statutory procedures to protect speakers facing weak or frivolous lawsuits. If Virginia adopted the procedural protections in the Uniform Law Commission's model law, it would be one of just a few states in the nation to have a perfect 100% score.

More information about the model UPEPA law is available above.

Washington

Overall Grade: A-

Subgrades

Covered Speech: A-

Anti-SLAPP Procedures: A+

⁷⁵ Va. Code Ann. § 8.01-223.2.

Washington State's anti-SLAPP statute⁷⁶ protects (with some specified exceptions) "(a) communication in a legislative, executive, judicial, administrative, or other governmental proceeding; (b) Communication on an issue under consideration or review in a legislative, executive, judicial, administrative, or other governmental proceeding; [and] (c) 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 Washington state Constitution, on a matter of public concern." As a general matter, either the filing of an anti-SLAPP motion or a notice that such a motion will be filed stays almost all proceedings between the movant and the respondent, including discovery and most pending motions and hearings; however, in some limited circumstances, a court may nonetheless allow discovery. The anti-SLAPP motion will prevail if the respondent fails to establish a prima facie case for each essential element of the claim. If the court denies the anti-SLAPP motion, the movant has the right to file an interlocutory appeal. A court must award costs and attorney fees to the prevailing movant on an anti-SLAPP motion; conversely, if the respondent prevails on the motion, the court must award costs and attorney fees to the respondent, but only if the court finds that the anti-SLAPP motion was dilatory or not substantially justified. In general, the anti-SLAPP statute instructs courts that interpret its language to do so "broadly" – an instruction presumably designed to foil readings of the statute in a cramped or narrow way that would exclude marginal cases. Notably, this description summarizes the *current* version of the state's anti-SLAPP statute; the *previous* version of the state's anti-SLAPP statute was determined by the Supreme Court of Washington to be unconstitutional in 2015.⁷⁷

West Virginia

Overall Grade: F

Subgrades

Covered Speech: F

Anti-SLAPP Procedures: F

West Virginia appears to have no anti-SLAPP statute.

How to Improve West Virginia's Score:

Policymakers who seek to enact an anti-SLAPP statute are well-advised to consider the Uniform Public Expression Protection Act (UPEPA) as proposed by the Uniform Law Commission.

In 2020, the Uniform Law Commission (ULC), a nonprofit and nonpartisan organization of state commissioners on uniform laws that recommends and drafts model state legislation, adopted UPEPA as a model anti-SLAPP statute.

More information about UPEPA is available above.

Wisconsin

Overall Grade: F

⁷⁶ Revised Code of Washington Chapter 4.105.

⁷⁷ *Davis v. Cox*, 351 P.3d 862, 875. (Wash. 2015).



Subgrades

Covered Speech: F

Anti-SLAPP Procedures: F

Wisconsin appears to have no anti-SLAPP statute.

How to Improve Wisconsin’s Score:

Policymakers who seek to enact an anti-SLAPP statute are well-advised to consider the Uniform Public Expression Protection Act (UPEPA) as proposed by the Uniform Law Commission.

In 2020, the Uniform Law Commission (ULC), a nonprofit and nonpartisan organization of state commissioners on uniform laws that recommends and drafts model state legislation, adopted UPEPA as a model anti-SLAPP statute.

More information about UPEPA is available above.

Wyoming

Overall Grade: F

Subgrades

Covered Speech: F

Anti-SLAPP Procedures: F

Wyoming appears to have no anti-SLAPP statute.

How to Improve Wyoming’s Score:

Policymakers who seek to enact an anti-SLAPP statute are well-advised to consider the Uniform Public Expression Protection Act (UPEPA) as proposed by the Uniform Law Commission.

In 2020, the Uniform Law Commission (ULC), a nonprofit and nonpartisan organization of state commissioners on uniform laws that recommends and drafts model state legislation, adopted UPEPA as a model anti-SLAPP statute.

More information about UPEPA is available above.

About the Authors

Dan Greenberg is a Senior Attorney at the Competitive Enterprise Institute. He is a former senior policy advisor at the U.S. Department of Labor as well as a former Arkansas state legislator. He holds degrees from Brown University, Bowling Green State University, and UALR's Bowen School of Law.



David Keating is President of the Institute for Free Speech. Prior to joining the Institute in 2012, he was the Founder and President of SpeechNow.org, which won a major court ruling for First Amendment rights. He has previously been the Executive Director of the Club for Growth, Executive Vice President of the National Taxpayers Union, and Washington Director of Americans for Fair Taxation.

Helen Knowles-Gardner is the Research Director at the Institute for Free Speech. She previously worked for almost 20 years as a political science professor. She has written extensively about various aspects of American law and politics, including co-editing/co-authoring two books about freedom of speech. Her third expressive freedom book is under contract with Lexington Books and will be published in 2024.



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1150 Connecticut Ave. NW, Suite 801
Washington, DC 20036
(202) 301-3300
www.ifs.org