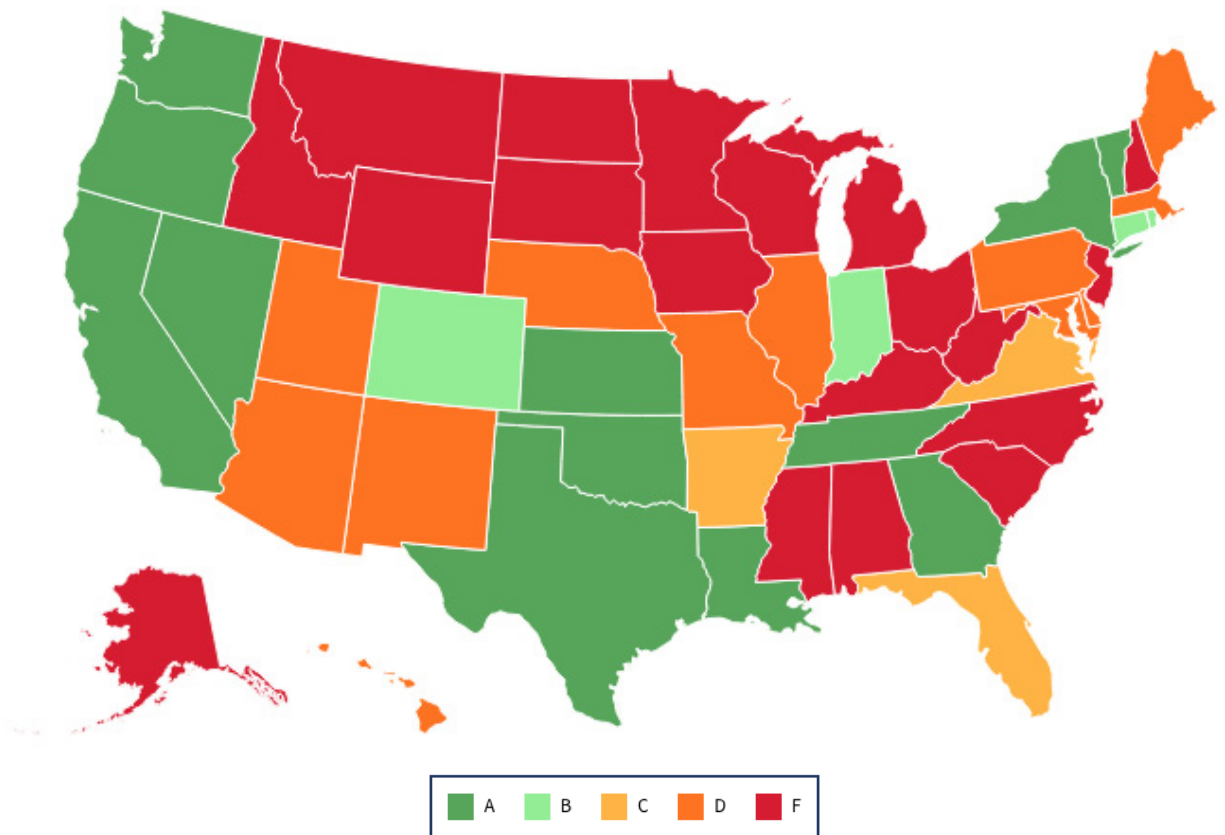




INSTITUTE FOR  
FREE SPEECH

# Anti-SLAPP Statutes: A Report Card

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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 32 jurisdictions – 31 states and the District of Columbia. (The other 19 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; 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; 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 degree of judgment and subjectivity, this report explains in detail the rationale of those ratings and grades.

Additionally, the report 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 case law.



## How Anti-SLAPP Statutes Help Protect Free Speech

Anti-SLAPP statutes are designed to address a structural problem within American law: namely, 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 others to harass them, silence them, or force them to bear significant litigation costs. Those who are faced with such a lawsuit (sometimes called a “SLAPP”<sup>1</sup> 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. Either choice may entail 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 solely 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. Importantly, however, 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.

In contrast, an 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

<sup>1</sup> Penelope Canan and George W. Pring, two professors at the University of Denver, 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.

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 done nothing more than exercise their First Amendment rights. Anti-SLAPP statutes are intended to provide a relatively quick, cheap, and effective way to dispose of a certain kind 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?,”<sup>2</sup> 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?,”<sup>3</sup> 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?,”<sup>4</sup> which, as the title suggests, provides many examples of effective and ineffective state statutes.

<sup>2</sup> 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. Available at: <https://popehat.substack.com/p/what-is-an-anti-slapp-anyway-a-lawsplainer> (Oct. 26, 2020).

<sup>3</sup> 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. Available at: <https://popehat.substack.com/p/what-is-an-anti-slapp-anyway-a-lawsplainer-44b> (Oct. 29, 2020).

<sup>4</sup> 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. Available at: <https://popehat.substack.com/p/what-is-an-anti-slapp-anyway-a-lawsplainer-46c> (July 8, 2021).



### The Structure of Anti-SLAPP Statutes

This report surveys 51 jurisdictions (the 50 states and the District of Columbia), finding that 32 of those jurisdictions have functioning anti-SLAPP statutes enacted prior to October 1, 2021. The details of these statutes vary, but by and large an anti-SLAPP statute includes or requires the following 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.

Importantly, the above outline provides an abstract and general portrait of the process that is 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 32 jurisdictions. It assigns an “A+,” “A,” or “A-” grade to statutes in 12 jurisdictions. The remaining jurisdictions received a grade of “B+” or “B” (five jurisdictions), “C+,” “C,” or “C-” (three jurisdictions), or “D+,” “D,” or “D-” (12 jurisdictions). Jurisdictions without an anti-SLAPP statute (18 jurisdictions) and jurisdictions with an anti-SLAPP statute struck down by a court (one jurisdiction) received a grade of “F.”

**Rankings of Jurisdictions with Anti-SLAPP Laws**

| Jurisdiction         | Overall Points | Overall Grade |
|----------------------|----------------|---------------|
| California           | 99             | A+            |
| Nevada               | 98             | A             |
| Tennessee            | 98             | A             |
| Vermont              | 98             | A             |
| Georgia              | 98             | A             |
| Oklahoma             | 98             | A             |
| Kansas               | 93             | A-            |
| Washington           | 93             | A-            |
| Texas                | 93             | A-            |
| Oregon               | 91             | A-            |
| New York             | 91             | A-            |
| Louisiana            | 90             | A-            |
| Indiana              | 86             | B+            |
| Connecticut          | 83             | B+            |
| Colorado             | 82             | B             |
| Rhode Island         | 81             | B             |
| District of Columbia | 78             | B             |
| Virginia             | 70             | C+            |
| Arkansas             | 61             | C             |
| Florida              | 50             | C-            |
| Illinois             | 46             | D+            |
| Massachusetts        | 43             | D+            |
| Hawaii               | 39             | D             |
| Maryland             | 37             | D             |
| Maine                | 33             | D             |
| New Mexico           | 32             | D             |
| Arizona              | 29             | D-            |
| Missouri             | 28             | D-            |
| Pennsylvania         | 26             | D-            |
| Utah                 | 22             | D-            |
| Delaware             | 11             | D-            |
| Nebraska             | 11             | D-            |





The following 19 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             |
| Kentucky                         | 0              | F             |
| Michigan                         | 0              | F             |
| Minnesota                        | 0              | F             |
| Mississippi                      | 0              | F             |
| Montana                          | 0              | F             |
| New Hampshire                    | 0              | F             |
| New Jersey                       | 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             |

## 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 California’s 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. However, the coverage of some other anti-SLAPP statutes is narrow. Some anti-SLAPP statutes – Hawaii’s is one example – only protect speech that is both directly addressed to a government body and that pertains to an action under consideration by that government body. Other anti-SLAPP statutes (*see* Arizona’s) protect speech whether it is addressed to a government body or not, but require that the speech pertains to an issue that is being considered by a government body. A few anti-SLAPP statutes protect speech only about a relatively 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. One jurisdiction (Utah) suspends discovery unless the court orders otherwise, but appears to provide no tests or constraints on that judicial decision. Indiana’s statute suspends all discovery, except for discovery that is 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, California and Georgia's statutes operate in this manner. 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 Hawaii, the respondent must prove by a preponderance of the evidence that the lawsuit at issue does not constitute a SLAPP suit under state 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 summarize, 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 such circumstances, 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.<sup>5</sup>

<sup>5</sup> "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." This quote is from White's article, "What Is An Anti-SLAPP, Anyway? A Lawspainer Series – Chapter 3." Available at: <https://popehat.substack.com/p/what-is-an-anti-slapp-anyway-a-lawspainer-46c>.

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. Arizona and California's statutes, 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 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 that interpret it to do so 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. Conversely, 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 contains a detailed account of each jurisdiction's anti-SLAPP statute within its scope; in some instances, these summaries include notes about the interaction of relevant case law with the statute's operations.



## *The Uniform Law Commission's Uniform Public Expression Protection Act*

In 2020, the Uniform Law Commission (ULC),<sup>6</sup> 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).<sup>7</sup> UPEPA is a model anti-SLAPP statute.

When evaluated by our ratings of each state's law, as described in the subsequent 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 that is 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).
- Commands the court that interprets the Act to apply and construe it broadly to protect First Amendment rights under the federal 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 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.

<sup>6</sup> 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. Available at: <https://www.uniformlaws.org/aboutulc/overview> (2021).

<sup>7</sup> "Public Expression Protection Act," Uniform Law Commission. Available at: <https://www.uniformlaws.org/committees/community-home?CommunityKey=4f486460-199c-49d7-9fac-05570be1e7b1> (2020).





## Ratings and Grades of Anti-SLAPP Statutes

Of the 51 jurisdictions examined in this report, 32 currently have functioning anti-SLAPP statutes. Eighteen of the remaining 19 jurisdictions are without an anti-SLAPP statute, while one jurisdiction's anti-SLAPP statute 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 that is 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 case law that interprets the statute if the case law appears to have changed the meaning of the statute. In most circumstances, 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 58. Two-thirds of 100 is 66.67 and one-third of 58 is 19.33. The sum of 66.67 and 19.33 is 86, Indiana's overall score. The jurisdiction's overall grade is simply a function of its overall score.<sup>8</sup>

### Scoring Rubric Summary

This report evaluates six different aspects of anti-SLAPP statutes in the 32 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

<sup>8</sup> Here 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.

in any forum.

The anti-SLAPP procedures section contains five subscores that evaluate the effectiveness of each procedure contained in or required by the law in protecting First Amendment rights. The maximum subscore for each of the five procedural aspects ranged from 3 to 40; the minimum subscore for each aspect was 0. If a state's anti-SLAPP procedures provided the highest First Amendment protections for each of the five aspects, it would be assigned 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 discussed at greater length 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 are derived from these subscores. The resulting two subgrades should not be confused with the overall grade ultimately assigned to each statute. Each subgrade only evaluates 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.

Notably, 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 is free to 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; other anti-SLAPP statutes have a more limited scope. For instance, some anti-SLAPP statutes are limited to the protection of speech that is related to matters that a government body is considering or reviewing, some anti-SLAPP statutes are limited to the protection of speech that is expressed during a government meet-





ing or directly to a government body, and some 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 sub-score 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 its 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 case law that analyzes the scope of speech protected by the law; therefore, 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 such, the law received a subscore of 50 points.
- 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; these states each received a subscore of 30.
- The Illinois statute confines its reach to matters involving government action and received a subscore of 20 points.
- Arizona’s statute covers two domains: it protects both speech that is made as part of an initiative, referendum, or recall effort and speech that is made before a governmental (but non-judicial) body in connection with an issue under review or consideration for the purpose of influencing a governmental action, decision, or result. That statute received a subscore of 15.
- 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.
- Similarly, Hawaii’s statute only applies to lawsuits that are “solely based” on “public participation before a governmental body; that statute received a subscore of 10.

- Utah’s statute is confined to lawsuits that (a) target acts that are performed while participating in the process of government and (b) are done primarily to harass the defendant; that statute received a subscore of 7.
- 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 received 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 may have the effect of limiting 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.
  - Maryland’s statute allows the target of a SLAPP suit to file various motions which 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 in the event that 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).** In the event that 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 there is no right to an interlocutory appeal, the statute received a subscore of 0.

- Although Missouri’s statute appears to provide for rights of interlocutory appeal, its case law suggests that a court’s denial of an anti-SLAPP motion is not itself appealable;<sup>9</sup> 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.

- 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.
- Oklahoma’s statute mandates the payment “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 there-

fore received a subscore of 38 points.<sup>10</sup>

- 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 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.

<sup>9</sup> See the discussion of Missouri’s law in the Appendix.

<sup>10</sup> 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              | 29             | D-            |
| Arkansas             | 61             | C             |
| California           | 99             | A+            |
| Colorado             | 82             | B             |
| Connecticut          | 83             | B+            |
| Delaware             | 11             | D-            |
| District of Columbia | 78             | B             |
| Florida              | 50             | C-            |
| Georgia              | 98             | A             |
| Hawaii               | 39             | D             |
| Idaho                | 0              | F             |
| Illinois             | 46             | D+            |
| Indiana              | 86             | B+            |
| Iowa                 | 0              | F             |
| Kansas               | 93             | A-            |
| Kentucky             | 0              | F             |
| Louisiana            | 90             | A-            |
| Maine                | 33             | D             |
| Maryland             | 37             | D             |
| Massachusetts        | 43             | D+            |
| Michigan             | 0              | F             |
| Minnesota            | 0              | F             |
| Mississippi          | 0              | F             |
| Missouri             | 28             | D-            |

| Jurisdiction   | Overall Points | Overall Grade |
|----------------|----------------|---------------|
| Montana        | 0              | F             |
| Nebraska       | 11             | D-            |
| Nevada         | 98             | A             |
| New Hampshire  | 0              | F             |
| New Jersey     | 0              | F             |
| New Mexico     | 32             | D             |
| New York       | 91             | A-            |
| North Carolina | 0              | F             |
| North Dakota   | 0              | F             |
| Ohio           | 0              | F             |
| Oklahoma       | 98             | A             |
| Oregon         | 91             | A-            |
| Pennsylvania   | 26             | D-            |
| Rhode Island   | 81             | B             |
| South Carolina | 0              | F             |
| South Dakota   | 0              | F             |
| Tennessee      | 98             | A             |
| Texas          | 93             | A-            |
| Utah           | 22             | D-            |
| Vermont        | 98             | A             |
| Virginia       | 70             | C+            |
| Washington     | 93             | A-            |
| West Virginia  | 0              | F             |
| Wisconsin      | 0              | F             |
| Wyoming        | 0              | F             |

### The Scope of Protected Speech (Maximum Subscore: 100)

As explained previously, 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 which specify that they 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.

### The Scope of Protected Speech (Two-Thirds of Overall Grade)

| Jurisdiction         | Covered Speech Points | Covered Speech Subgrade |
|----------------------|-----------------------|-------------------------|
| Alabama              | 0                     | F                       |
| Alaska               | 0                     | F                       |
| Arizona              | 15                    | D-                      |
| Arkansas             | 70                    | C+                      |
| California           | 100                   | A+                      |
| Colorado             | 75                    | B-                      |
| Connecticut          | 90                    | A-                      |
| Delaware             | 3                     | F                       |
| District of Columbia | 90                    | A-                      |
| Florida              | 65                    | C                       |
| Georgia              | 97                    | A                       |
| Hawaii               | 10                    | D-                      |
| Idaho                | 0                     | F                       |
| Illinois             | 20                    | D-                      |
| Indiana              | 100                   | A+                      |
| Iowa                 | 0                     | F                       |
| Kansas               | 90                    | A-                      |
| Kentucky             | 0                     | F                       |
| Louisiana            | 100                   | A+                      |
| Maine                | 30                    | D                       |
| Maryland             | 50                    | C-                      |
| Massachusetts        | 30                    | D                       |
| Michigan             | 0                     | F                       |
| Minnesota            | 0                     | F                       |
| Mississippi          | 0                     | F                       |
| Missouri             | 10                    | D-                      |

| Jurisdiction   | Covered Speech Points | Covered Speech Subgrade |
|----------------|-----------------------|-------------------------|
| Montana        | 0                     | F                       |
| Nebraska       | 3                     | F                       |
| Nevada         | 100                   | A+                      |
| New Hampshire  | 0                     | F                       |
| New Jersey     | 0                     | F                       |
| 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           | 7                     | F                       |
| 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 explained previously, 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.

**Anti-SLAPP Law Procedures (One-Third of Overall Grade)**

| Jurisdiction         | Total Anti-SLAPP Procedures Points | Anti-SLAPP Procedures Subgrade | Jurisdiction   | Total Anti-SLAPP Procedures Points | Anti-SLAPP Procedures Subgrade |
|----------------------|------------------------------------|--------------------------------|----------------|------------------------------------|--------------------------------|
| Alabama              | 0                                  | F                              | Montana        | 0                                  | F                              |
| Alaska               | 0                                  | F                              | Nebraska       | 27                                 | D-                             |
| Arizona              | 57                                 | C-                             | Nevada         | 95                                 | A                              |
| Arkansas             | 42                                 | D+                             | New Hampshire  | 0                                  | F                              |
| California           | 98                                 | A                              | New Jersey     | 0                                  | F                              |
| Colorado             | 95                                 | A                              | New Mexico     | 76                                 | B-                             |
| Connecticut          | 70                                 | C+                             | New York       | 72                                 | B-                             |
| Delaware             | 27                                 | D-                             | North Carolina | 0                                  | F                              |
| District of Columbia | 55                                 | C-                             | North Dakota   | 0                                  | F                              |
| Florida              | 21                                 | D-                             | Ohio           | 0                                  | F                              |
| Georgia              | 100                                | A+                             | Oklahoma       | 93                                 | A-                             |
| Hawaii               | 98                                 | A                              | Oregon         | 73                                 | B-                             |
| Idaho                | 0                                  | F                              | Pennsylvania   | 73                                 | B-                             |
| Illinois             | 98                                 | A                              | Rhode Island   | 64                                 | C                              |
| Indiana              | 58                                 | C-                             | South Carolina | 0                                  | F                              |
| Iowa                 | 0                                  | F                              | South Dakota   | 0                                  | F                              |
| Kansas               | 100                                | A+                             | Tennessee      | 95                                 | A                              |
| Kentucky             | 0                                  | F                              | Texas          | 98                                 | A                              |
| Louisiana            | 70                                 | C+                             | Utah           | 53                                 | C-                             |
| Maine                | 40                                 | D+                             | Vermont        | 95                                 | A                              |
| Maryland             | 10                                 | D-                             | Virginia       | 10                                 | D-                             |
| Massachusetts        | 70                                 | C+                             | Washington     | 100                                | A+                             |
| Michigan             | 0                                  | F                              | West Virginia  | 0                                  | F                              |
| Minnesota            | 0                                  | F                              | Wisconsin      | 0                                  | F                              |
| Mississippi          | 0                                  | F                              | Wyoming        | 0                                  | F                              |
| Missouri             | 63                                 | C                              |                |                                    |                                |





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              | 5   | 12  | 0                            | 40                               | 0  | 57       |
| Arkansas             | 20  | 12  | 0                            | 10                               | 0  | 42       |
| California           | 18  | 12  | 25                           | 40                               | 3  | 98       |
| Colorado             | 18  | 12  | 25                           | 40                               | 0  | 95       |
| Connecticut          | 18  | 12  | 0                            | 40                               | 0  | 70       |
| Delaware             | 5   | 12  | 0                            | 10                               | 0  | 27       |
| District of Columbia | 18  | 12  | 0                            | 25                               | 0  | 55       |
| Florida              | 5   | 6   | 0                            | 10                               | 0  | 21       |
| Georgia              | 20  | 12  | 25                           | 40                               | 3  | 100      |
| Hawaii               | 18  | 12  | 25                           | 40                               | 3  | 98       |
| Illinois             | 18  | 12  | 25                           | 40                               | 3  | 98       |
| Indiana              | 18  | 0   | 0                            | 40                               | 0  | 58       |
| Kansas               | 20  | 12  | 25                           | 40                               | 3  | 100      |
| Louisiana            | 18  | 12  | 0                            | 40                               | 0  | 70       |
| Maine                | 18  | 12  | 0                            | 10                               | 0  | 40       |
| Maryland             | 10  | 0   | 0                            | 0                                | 0  | 10       |
| Massachusetts        | 18  | 12  | 0                            | 40                               | 0  | 70       |
| Missouri             | 18  | 0   | 5                            | 40                               | 0  | 63       |
| Nebraska             | 5   | 12  | 0                            | 10                               | 0  | 27       |
| Nevada               | 18  | 12  | 25                           | 40                               | 0  | 95       |
| New Mexico           | 5   | 6   | 25                           | 40                               | 0  | 76       |
| New York             | 20  | 12  | 0                            | 40                               | 0  | 72       |
| Oklahoma             | 18  | 12  | 25                           | 38                               | 0  | 93       |
| Oregon               | 18  | 12  | 0                            | 40                               | 3  | 73       |
| Pennsylvania         | 2   | 6   | 25                           | 40                               | 0  | 73       |
| Rhode Island         | 18  | 6   | 0                            | 40                               | 0  | 64       |
| Tennessee            | 18  | 12  | 25                           | 40                               | 0  | 95       |
| Texas                | 18  | 12  | 25                           | 40                               | 3  | 98       |
| Utah                 | 18  | 0   | 25                           | 10                               | 0  | 53       |
| Vermont              | 18  | 12  | 25                           | 40                               | 0  | 95       |
| 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 – namely, the scope of the statute covers too little speech. Eleven of the 12 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 a nutshell, the Uniform Law Commission’s model law protects any speech about a matter of public importance in any forum. The model is described at some length in a previous section.)

Eight of those 12 states would reach “B+” or better, including two “A+” grades and three “A-” grades. Every one of the 12 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       | 29             | D-    | 86                             | B+    |
| Delaware      | 11             | D-    | 76                             | B-    |
| Hawaii        | 39             | D     | 99                             | A+    |
| Illinois      | 46             | D+    | 99                             | A+    |
| Maine         | 33             | D     | 80                             | B     |
| Maryland      | 37             | D     | 70                             | C+    |
| Massachusetts | 43             | D+    | 90                             | A-    |
| Missouri      | 28             | D-    | 88                             | B+    |
| Nebraska      | 11             | D-    | 76                             | B-    |
| New Mexico    | 32             | D     | 92                             | A-    |
| Pennsylvania  | 26             | D-    | 91                             | A-    |
| Utah          | 22             | D-    | 84                             | B+    |



## 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 some anti-SLAPP statute will find that there is no substitute for a direct examination of the statutory text. These summaries attempt 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 particular jurisdictional circumstances.

- 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.<sup>11</sup>
- 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 case law 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.

<sup>11</sup> 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).

### Alabama

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| F             | F              | F                     |

Alabama appears to have no anti-SLAPP statute.

### Alaska

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| F             | F              | F                     |

Alaska appears to have no anti-SLAPP statute.

### Arizona

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| D-            | D-             | C-                    |

Arizona’s anti-SLAPP statute<sup>12</sup> covers two classes of statements: (1) statements that are “made as part of an initiative, referendum, or recall effort,”<sup>13</sup> and (2) statements that are “made before or submitted to a legislative or executive body or any other governmental proceeding,” “made in connection with an issue that is under consideration or review by a legislative or executive body or any other governmental proceeding,” and “made for the purpose of influencing a governmental action, decision, or result.” Its coverage is therefore confined to speech that pertains to an issue being considered in certain future elections or by a government body. Although the filing of an anti-SLAPP motion does not appear to suspend discovery or other aspects of litigation, the statute requires the court to give “calendar preference” to the action and to conduct an expedited hearing. An Arizona court shall grant a motion to dismiss under the statute unless the respondent shows that the movant’s statements “did not contain any reasonable factual support or any arguable basis in law and that the moving party’s acts caused actual compensable injury to the responding party.” The statute does not appear to provide for interlocutory appeal of an

<sup>12</sup> Ariz. Rev. Stat. Ann. §§ 12-751, 12-752.

<sup>13</sup> However, Arizona case law suggests that statements made that allegedly violate state election law are not protected by the state’s anti-SLAPP statute. *Tennenbaum v. Ariz. City Sanitary Dist.*, 799 F. Supp. 2d 1083 (D. Ariz. 2011).



order granting or denying 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 must award costs and attorney fees to the respondent.

**Arkansas**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| C             | C+             | D+                    |

Arkansas’s anti-SLAPP statute,<sup>14</sup> 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 “All 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 may be conducted if good cause is shown. In the event that the anti-SLAPP statute governs the action, that 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.

<sup>14</sup> Ark. Code Ann. § 16-63-501 through § 16-63-508.

**California**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| A+            | A+             | A                     |

California’s anti-SLAPP statute<sup>15</sup> 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.”<sup>16</sup> 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 case law 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.<sup>17</sup> The statute provides for interlocutory appeal of an order granting or denying an anti-SLAPP motion. Except in narrow circumstances,<sup>18</sup> 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. The scope of California’s anti-SLAPP statute was subsequently modified in minor respects;<sup>19</sup> 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 cramped or narrow way that would exclude marginal cases.

**Colorado**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| B             | B-             | A                     |

Colorado’s anti-SLAPP statute<sup>20</sup> 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

<sup>15</sup> Cal. Civ. Proc. Code § 425.16 through § 425.18.

<sup>16</sup> California case law 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).

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

<sup>18</sup> Cal. Civ. Proc. Code § 425.16 (c)(2).

<sup>19</sup> Cal. Civ. Proc. Code § 425.17.

<sup>20</sup> Col. Rev. Stat. Ann. § 13-20-1101.



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. (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 may be conducted if good cause is shown. In order to prevail against an anti-SLAPP motion, the respondent must establish that there is a reasonable likelihood 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 | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| B+            | A-             | C+                    |

Connecticut’s anti-SLAPP statute<sup>21</sup> 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 (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 may be conducted upon its own motion or if good cause is shown. In order 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. The statute does not provide for a general right of interlocutory appeal of an anti-SLAPP motion: although it requires that any stay of discovery “shall remain in effect until the court grants or denies the special motion to dismiss and any interlocutory appeal thereof,” this language presumably refers only to those special and unusual circumstances in which the movant is permitted an interlocutory appeal.<sup>22</sup> 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.

<sup>21</sup> Conn. Gen. Stat. Ann. § 52-196a.

<sup>22</sup> See *State v. Kemah*, 289 Conn. 411, 423, n.13 (2008).

**Delaware**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| D-            | F              | D-                    |

Delaware’s anti-SLAPP statute<sup>23</sup> 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.

**District of Columbia**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| B             | A-             | C-                    |

The District of Columbia’s anti-SLAPP statute<sup>24</sup> 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.)

<sup>23</sup> Del. Code Ann. tit. 10, § 8136 through § 8138.

<sup>24</sup> D.C. Code § 16-5501 through § 16-5505.





Although discovery is stayed once an anti-SLAPP motion is filed, a court may nonetheless order that specified discovery may be conducted “when it appears likely that targeted discovery will enable the plaintiff to defeat the motion and that the discovery will not be unduly burdensome”; the court may condition this order upon a requirement that the plaintiff pay any expenses incurred by the defendant in responding to such discovery. 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. The statute does not provide for an interlocutory appeal of an order granting or denying an anti-SLAPP motion. 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.<sup>25</sup>

**Florida**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| C-            | C              | D-                    |

Florida’s anti-SLAPP statute<sup>26</sup> 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. 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.

**Georgia**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| A             | A              | A+                    |

<sup>25</sup> 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.

<sup>26</sup> Fla. Stat. Ann. §§ 720.304, 768.295.

Georgia’s anti-SLAPP statute<sup>27</sup> protects “(1) Any written or oral statement or writing or petition 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 case law, however, suggests that the scope of the statute should be read narrowly,<sup>28</sup> 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. In the event that the respondent is a public figure, that 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 | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| D             | D-             | A                     |

Hawaii’s anti-SLAPP statute,<sup>29</sup> the Citizen Participation in Government Act, is relatively narrow in scope, as it only protects statements provided to a government body during a government proceeding. Discovery is suspended once an anti-SLAPP motion is filed. To prevail against an anti-SLAPP motion, the respondent must establish that, more likely than not, the claim is not covered by the anti-SLAPP statute. If the anti-SLAPP motion is denied, the movant has a right to an interlocutory appeal on the motion. The court must award damages to the successful anti-SLAPP movant, including (1) the greater of actual damages or \$5,000, (2) costs of suit, including expert fees and attorney fees, and (3) additional damages sufficient to deter repetition of the conduct and comparable conduct. 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.

<sup>27</sup> Ga. Code. Ann. § 9-11-11.1.

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

<sup>29</sup> Haw. Rev. Stat. § 634F-1 through § 634F-4.



**Idaho**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| F             | F              | F                     |

Idaho appears to have no anti-SLAPP statute.

**Illinois**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| D+            | D-             | A                     |

Illinois’s anti-SLAPP statute,<sup>30</sup> 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 case law suggests that the statute operates only on meritless or retaliatory claims with no other basis that are “solely based on” protected speech.<sup>31</sup>) Although discovery is suspended once an anti-SLAPP motion is filed, a court may nonetheless order that discovery may 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 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.

<sup>30</sup> 735 Ill. Comp. Stat. 110/15 through 110/99.

<sup>31</sup> *Sandholm v. Kuecker*, 962 N.E.2d 418, 2012 IL 111443 (Ill. Jan. 20, 2012).

**Indiana**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| B+            | A+             | C-                    |

Indiana’s anti-SLAPP statute<sup>32</sup> 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 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 case law 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.<sup>33</sup>

**Iowa**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| F             | F              | F                     |

Iowa appears to have no anti-SLAPP statute.

**Kansas**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| A-            | A-             | A+                    |

Kansas’s anti-SLAPP statute,<sup>34</sup> 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

<sup>32</sup> Ind. Code § 34-7-7-1 through § 34-7-7-10.

<sup>33</sup> *Hamilton v. Prewett*, 860 N.E.2d 1234 (Ind. Ct. App. Feb. 6, 2007).

<sup>34</sup> Kan. Stat. Ann § 60-5320.



exemptions from the broad principles stated above, such as those related to selling or leasing goods and services.) Although discovery, motions, and pending hearings 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 | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| F             | F              | F                     |

Kentucky appears to have no anti-SLAPP statute.

**Louisiana**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| A-            | A+             | C+                    |

Louisiana’s anti-SLAPP statute<sup>35</sup> protects the acts of any person in furtherance of the right of free speech in connection with a public issue. 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.

<sup>35</sup> La. Code Civ. Proc. Ann. art. 971.

**Maine**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| D             | D              | D+                    |

Maine’s anti-SLAPP statute<sup>36</sup> 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.” 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 provide for interlocutory appeal of an order granting or denying an anti-SLAPP motion. If the anti-SLAPP motion is granted, the court may award the movant costs and attorney fees.

**Maryland**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| D             | C-             | D-                    |

Maryland’s anti-SLAPP statute<sup>37</sup> 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

<sup>36</sup> Me. Rev. Stat. Ann. tit. 14, § 556.

<sup>37</sup> Md. Code Ann., Cts. & Jud. Proc. § 5-807.



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.

**Massachusetts**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| D+            | D              | C+                    |

Massachusetts’s anti-SLAPP statute 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 case law has underscored that the protection of the anti-SLAPP statute does not typically extend to statements that are unrelated to the right of petition;<sup>38</sup> 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.<sup>39</sup> 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 statute contains no provision for interlocutory appeal of an order on an anti-SLAPP motion. A court must award costs and attorney fees to the prevailing movant on an anti-SLAPP motion.

<sup>38</sup> 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).

<sup>39</sup> *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.

**Michigan**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| F             | F              | F                     |

Michigan appears to have no anti-SLAPP statute.

**Minnesota**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| F             | F              | 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.*<sup>40</sup>

**Mississippi**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| F             | F              | F                     |

Mississippi appears to have no anti-SLAPP statute.

**Missouri**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| D-            | D-             | C                     |

Missouri’s anti-SLAPP statute<sup>41</sup> 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-

<sup>40</sup> *Leiendecker v. Asian Women United of Minnesota*, 895 N.W.2d 623, 635-37 (Minn. 2017).

<sup>41</sup> Mo. Rev. Stat. § 537.528.





making government body of the state, or any political subdivision of the state. Missouri case law suggests that an anti-SLAPP motion will fail unless it is shown that the original action was retaliatory.<sup>42</sup> 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 case law appears to prevent interlocutory appeal of the denial of an anti-SLAPP motion.<sup>43</sup> 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.

**Montana**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| F             | F              | F                     |

Montana appears to have no anti-SLAPP statute.

**Nebraska**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| D-            | F              | D-                    |

Nebraska’s anti-SLAPP statute<sup>44</sup> 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

<sup>42</sup> *Moschenross v. St. Louis County*, 188 S.W.3d 13 (Mo. Ct. App. Jan. 17, 2006).

<sup>43</sup> *Cedar Green Land Acquisition, L.L.C. v. Baker*, 212 S.W.3d 225 (Mo. Ct. App. Jan. 30, 2007).

<sup>44</sup> Neb. Rev. Stat. § 25-21,243 through § 25-21,246.

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.

**Nevada**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| A             | A+             | A                     |

Nevada’s anti-SLAPP statute<sup>45</sup> 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 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 | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| F             | F              | F                     |

New Hampshire appears to have no anti-SLAPP statute.

<sup>45</sup> Nev. Rev. Stat. § 41.635 through 41.670.



**New Jersey**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| F             | F              | F                     |

New Jersey appears to have no anti-SLAPP statute.

**New Mexico**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| D             | D-             | B-                    |

New Mexico’s anti-SLAPP statute<sup>46</sup> 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.

**New York**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| A-            | A+             | B-                    |

New York State’s anti-SLAPP statute<sup>47</sup> 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

<sup>46</sup> N.M. Stat. § 38-2-9.1 through § 38-2-9.2.

<sup>47</sup> N.Y. Civ. Rights Law § 70-a and § 76-a; *see also* NY CPLR Rule 3211.

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 case law 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. In order 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. 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 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 | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| F             | F              | F                     |

North Carolina appears to have no anti-SLAPP statute.

**North Dakota**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| F             | F              | F                     |

North Dakota appears to have no anti-SLAPP statute.

**Ohio**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| F             | F              | F                     |

Ohio appears to have no anti-SLAPP statute.

**Oklahoma**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| A             | A+             | A-                    |

Oklahoma’s anti-SLAPP statute,<sup>48</sup> 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. 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. In order 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.<sup>49</sup> 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 | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| A-            | A+             | B-                    |

Oregon’s anti-SLAPP statute<sup>50</sup> 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 public forum in connection with an issue of public interest; or (4) Any

<sup>48</sup> Okla. Stat. tit. 12, § 1430 through § 1440.

<sup>49</sup> *Thacker v. Walton*, 2021 OK CIV APP 5, ¶ 3, 491 P.3d 756.

<sup>50</sup> Or. Rev. Stat. § 31.150 through § 31.155.

other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.” 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 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 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. 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.

**Pennsylvania**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| D-            | F              | B-                    |

Pennsylvania’s anti-SLAPP statute<sup>51</sup> 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.

**Rhode Island**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| B             | A-             | C                     |

Rhode Island’s anti-SLAPP statute<sup>52</sup> gives “conditional immunity” to the exercise of the right of peti-

<sup>51</sup> 27 Pa. Consol. Stat. §§ 7707 and 8301 through § 8305.

<sup>52</sup> R.I. Gen. Laws § 9-33-1 through § 9-33-4.



tion 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.<sup>53</sup> 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.

**South Carolina**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| F             | F              | F                     |

South Carolina appears to have no anti-SLAPP statute.

**South Dakota**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| F             | F              | F                     |

South Dakota appears to have no anti-SLAPP statute.

**Tennessee**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| A             | A+             | A                     |

<sup>53</sup> 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.”

Tennessee’s anti-SLAPP statute<sup>54</sup> 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. In order 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 | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| A-            | A-             | A                     |

Texas’s anti-SLAPP statute<sup>55</sup> 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 if good cause is shown. In order 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.”

<sup>54</sup> Tenn. Code. Ann. § 20-17-101 through § 20-17-110; *see also* § 4-21-1001 through § 4-21-1004.

<sup>55</sup> Tex. Civ. Prac. & Rem. Code § 27.001 through § 27.011.





**Utah**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| D-            | F              | C-                    |

Utah’s anti-SLAPP statute<sup>56</sup> protects a defendant against an action that “is primarily based on, relates to, or is in response to an act of the defendant while participating in the process of government and is done primarily to harass the defendant.” Utah case law suggests that its anti-SLAPP statute does not apply to political speech that seeks to influence voters in a future election.<sup>57</sup> Although discovery is stayed once an anti-SLAPP motion is filed, a court may nonetheless order otherwise. Unlike many anti-SLAPP statutes, the Utah statute forces the movant to bear a relatively heavy burden in order to prevail: the movant must show by clear and convincing evidence that the primary reason for the filing of the complaint was to interfere with First Amendment rights of the defendant. If the court denies the 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 also has the right to an interlocutory appeal. The statute allows the movant to maintain an action for costs and attorney fees if it is demonstrated 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.

**Vermont**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| A             | A+             | A                     |

Vermont’s anti-SLAPP statute<sup>58</sup> 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 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. In order 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

<sup>56</sup> Utah Code § 78B-6-1401 through § 78B-6-1405.

<sup>57</sup> *Jacob v. Bezzant*, 2009 UT 37, 212 P.3d 535 (Utah June 16, 2009).

<sup>58</sup> Vt. Stat. Ann. tit. 12 § 1041.

cause unnecessary delay, it must award costs and attorney fees to the respondent.

**Virginia**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| C+            | A+             | D-                    |

Virginia’s anti-SLAPP statute<sup>59</sup> 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.

**Washington**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| A-            | A-             | A+                    |

Washington State’s anti-SLAPP statute<sup>60</sup> 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

<sup>59</sup> Va. Code Ann. § 8.01-223.2.

<sup>60</sup> Substitute Senate Bill 5009, 2021 Reg. Session. Enacted: May 12, 2021. Effective Date: July 25, 2021.



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.<sup>61</sup>

**West Virginia**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| F             | F              | F                     |

West Virginia appears to have no anti-SLAPP statute.

**Wisconsin**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| F             | F              | F                     |

Wisconsin appears to have no anti-SLAPP statute.

**Wyoming**

| Overall Grade | Subgrades      |                       |
|---------------|----------------|-----------------------|
|               | Covered Speech | Anti-SLAPP Procedures |
| F             | F              | F                     |

Wyoming appears to have no anti-SLAPP statute.

<sup>61</sup> *Davis v. Cox*, 351 P.3d 862, 875. (Wash. 2015).

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2022 Institute for Free Speech

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