

1 HOUSE BILL 169

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO COURTS; ENACTING THE PUBLIC EXPRESSION PROTECTION
12 ACT; ENACTING AND REPEALING SECTIONS OF THE NMSA 1978.
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14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
16 cited as the "Public Expression Protection Act".

17 SECTION 2. [NEW MATERIAL] SCOPE.--

18 A. Except as otherwise provided in Subsection B of
19 this section, the Public Expression Protection Act applies to a
20 cause of action asserted in a civil action against a person
21 based on the person's:

22 (1) communication in a legislative, executive,
23 judicial, administrative or other governmental proceeding;

24 (2) communication on an issue under
25 consideration or review in a legislative, executive, judicial,

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1 administrative or other governmental proceeding; or

2 (3) exercise of the right of freedom of speech
3 or of the press, the right to assemble or petition or the right
4 of association, guaranteed by the United States constitution or
5 the constitution of New Mexico, on a matter of public concern.

6 B. The Public Expression Protection Act does not
7 apply to a cause of action asserted:

8 (1) against a governmental unit or an employee
9 or agent of a governmental unit acting or purporting to act in
10 an official capacity;

11 (2) by a governmental unit or an employee or
12 agent of a governmental unit acting in an official capacity to
13 enforce a law to protect against an imminent threat to public
14 health or safety; or

15 (3) against a person primarily engaged in the
16 business of selling or leasing goods or services if the cause
17 of action arises out of a communication related to the person's
18 sale or lease of the goods or services.

19 C. The Public Expression Protection Act is intended
20 to confer substantive immunity from suit, and not merely
21 immunity from liability, for any cause of action concerning
22 protected speech or communication pursuant to that act.

23 D. As used in this section:

24 (1) "goods or services" does not include the
25 creation, dissemination, exhibition or advertisement or similar

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1 promotion of a dramatic, literary, musical, political,
2 journalistic or artistic work; and

3 (2) "governmental unit" means a public
4 corporation or government or governmental subdivision, agency
5 or instrumentality.

6 SECTION 3. [NEW MATERIAL] SPECIAL MOTION FOR EXPEDITED
7 RELIEF.--Not later than sixty days after a party is served with
8 a complaint, petition, cross claim, counterclaim, third-party
9 claim or other pleading that asserts a cause of action to which
10 the Public Expression Protection Act applies, or at a later
11 time on a showing of good cause, the party may file a special
12 motion for expedited relief to dismiss the cause of action or
13 part of the cause of action.

14 SECTION 4. [NEW MATERIAL] STAY.--

15 A. Except as otherwise provided in Subsections D
16 through G of this section, upon the filing of a motion pursuant
17 to Section 3 of the Public Expression Protection Act:

18 (1) all other proceedings between the moving
19 party and responding party, including discovery and a pending
20 hearing or motion, are stayed; and

21 (2) on motion by the moving party, the court
22 may stay a hearing or motion involving another party, or
23 discovery by another party, if the hearing or ruling on the
24 motion would adjudicate, or the discovery would relate to, an
25 issue material to the motion pursuant to Section 3 of the

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1 Public Expression Protection Act.

2 B. A stay pursuant to Subsection A of this section
3 remains in effect until entry of an order ruling on the motion
4 pursuant to that section and expiration of the time pursuant to
5 Section 9 of the Public Expression Protection Act for the
6 moving party to appeal the order.

7 C. Except as otherwise provided in Subsections E, F
8 and G of this section, if a party appeals from an order ruling
9 on a motion pursuant to Section 3 of the Public Expression
10 Protection Act, all proceedings between all parties in the
11 action are stayed. The stay remains in effect until the
12 conclusion of the appeal.

13 D. During a stay pursuant to Subsection A of this
14 section, the court may allow limited discovery if a party shows
15 that specific information is necessary to establish whether a
16 party has satisfied or failed to satisfy a burden pursuant to
17 Subsection A of Section 7 of the Public Expression Protection
18 Act and the information is not reasonably available unless
19 discovery is allowed.

20 E. A motion pursuant to Section 10 of the Public
21 Expression Protection Act for costs, attorney fees and expenses
22 is not subject to a stay pursuant to this section.

23 F. A stay pursuant to this section does not affect
24 a party's ability to voluntarily dismiss a cause of action or
25 part of a cause of action or move to sever a cause of action.

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1 G. During a stay pursuant to this section, the
2 court for good cause may hear and rule on:

3 (1) a motion unrelated to the motion pursuant
4 to Section 3 of the Public Expression Protection Act; and

5 (2) a motion seeking a special or preliminary
6 injunction to protect against an imminent threat to public
7 health or safety.

8 SECTION 5. [NEW MATERIAL] HEARING.--

9 A. The court shall hear a motion pursuant to
10 Section 3 of the Public Expression Protection Act not later
11 than sixty days after filing of the motion, unless the court
12 orders a later hearing:

13 (1) to allow discovery pursuant to Subsection
14 D of Section 4 of the Public Expression Protection Act; or

15 (2) for other good cause.

16 B. If the court orders a later hearing pursuant to
17 Paragraph (1) of Subsection A of this section, the court shall
18 hear the motion pursuant to Section 3 of the Public Expression
19 Protection Act not later than sixty days after the court order
20 allowing the discovery, unless the court orders a later hearing
21 pursuant to Paragraph (2) of Subsection A of this section.

22 SECTION 6. [NEW MATERIAL] PROOF.--In ruling on a motion
23 pursuant to Section 3 of the Public Expression Protection Act,
24 the court shall consider the pleadings, the motion, any reply
25 or response to the motion and any evidence that could be

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1 considered in ruling on a motion to dismiss, motion for
2 judgment on the pleadings or motion for summary judgment.

3 SECTION 7. [NEW MATERIAL] DISMISSAL OF CAUSE OF ACTION IN
4 WHOLE OR IN PART.--

5 A. In ruling on a motion pursuant to Section 3 of
6 the Public Expression Protection Act, the court shall dismiss
7 with prejudice a cause of action or part of a cause of action
8 if:

9 (1) the moving party establishes pursuant to
10 Subsection A of Section 2 of that act that the Public
11 Expression Protection Act applies;

12 (2) the responding party fails to establish
13 pursuant to Subsection B of Section 2 of that act that the
14 Public Expression Protection Act does not apply; and

15 (3) either:

16 (a) the responding party fails to
17 establish a prima facie case as to each essential element of
18 the cause of action; or

19 (b) the moving party establishes that:
20 1) the responding party failed to state a cause of action upon
21 which relief can be granted; or 2) there is no genuine issue as
22 to any material fact and the moving party is entitled to
23 judgment as a matter of law on the cause of action or part of
24 the cause of action.

25 B. A voluntary dismissal without prejudice of a

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1 responding party's cause of action or part of a cause of action
2 that is the subject of a motion pursuant to Section 3 of the
3 Public Expression Protection Act does not affect a moving
4 party's right to obtain a ruling on the motion and seek costs,
5 attorney fees and expenses pursuant to Section 10 of that act.

6 C. A voluntary dismissal with prejudice of a
7 responding party's cause of action or part of a cause of action
8 that is the subject of a motion pursuant to Section 3 of the
9 Public Expression Protection Act establishes for the purpose of
10 Section 10 of that act that the moving party prevailed on the
11 motion.

12 SECTION 8. [NEW MATERIAL] RULING.--The court shall rule
13 on a motion pursuant to Section 3 of the Public Expression
14 Protection Act not later than sixty days after a hearing
15 pursuant to Section 5 of that act.

16 SECTION 9. [NEW MATERIAL] APPEAL.--A moving party may
17 appeal as a matter of right from an order denying, in whole or
18 in part, a motion pursuant to Section 3 of the Public
19 Expression Protection Act. The appeal must be filed not later
20 than thirty days after entry of the order.

21 SECTION 10. [NEW MATERIAL] COSTS, ATTORNEY FEES AND
22 EXPENSES.--On a motion pursuant to Section 3 of the Public
23 Expression Protection Act, the court shall award court costs,
24 reasonable attorney fees and reasonable litigation expenses
25 related to the motion:

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1 A. to the moving party if the moving party prevails
2 on the motion; or

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

6 **SECTION 11. [NEW MATERIAL] CONSTRUCTION.**--The Public
7 Expression Protection Act shall be broadly construed and
8 applied to protect the exercise of the right of freedom of
9 speech and of the press, the right to assemble and petition and
10 the right of association, guaranteed by the United States
11 constitution and the constitution of New Mexico.

12 **SECTION 12. [NEW MATERIAL] UNIFORMITY OF APPLICATION AND**
13 **CONSTRUCTION.**--In applying and construing the Public Expression
14 Protection Act, consideration shall be given to the need to
15 promote uniformity of the law with respect to its subject
16 matter among states that enact it.

17 **SECTION 13. [NEW MATERIAL] APPLICABILITY.**--The Public
18 Expression Protection Act applies to a civil action filed or
19 cause of action asserted in a civil action on or after the
20 effective date of that act.

21 **SECTION 14. [NEW MATERIAL] SAVING CLAUSE.**--The Public
22 Expression Protection Act does not affect a cause of action
23 asserted before the effective date of that act in a civil
24 action or a motion pursuant to Section 38-2-9.1 NMSA 1978.

25 **SECTION 15. REPEAL.**--Sections 38-2-9.1 and 38-2-9.2 NMSA
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1 1978 (being Laws 2001, Chapter 218, Sections 2 and 1) are
2 repealed.

3 SECTION 16. EFFECTIVE DATE.--The effective date of the
4 provisions of this act is July 1, 2025.