CLIENT ALERTS & INSIGHTS

Michigan's Long-Awaited Anti-SLAPP Law: An Overview for Litigators

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Key Takeaways

- Michigan's new Uniform Public Expression Protection Act (UPEPA), effective March 24, 2026, gives defendants in SLAPP suits a fast-track procedure for dismissal and fee recovery, expanding protections for free speech and public participation.
- This law exposes Plaintiffs bringing claims based on public participation to the risk of early dismissal and the risk of paying the other side's legal fees. It also introduces uncertainty in federal court, where its procedures may conflict with federal rules.
- Litigants in Michigan should conduct thorough pre-suit investigations and be prepared to present evidence early. Benesch will continue to monitor legal developments and is well-positioned to help clients navigate and defend against challenges brought under anti-SLAPP laws.

Michigan's Uniform Public Expression Protection Act ("UPEPA"), effective March 24, 2026, is designed to combat Strategic Lawsuits Against Public Participation, commonly known as "SLAPP" suits. Until now, Michigan was one of the few remaining states without an anti-SLAPP statute. The new law grants defendants facing SLAPP suits a special procedure for expedited dismissal prior to incurring significant discovery costs.

UPEPA Increases Protections for First Amendment Activities

Michigan's law defines an "eligible cause of action" to include causes of action based on a person's communication in legislative, executive, judicial, administrative or other governmental proceedings, as well as communications about issues under consideration or review in such proceedings. This means that individuals who speak during public comment periods at local government meetings, journalists reporting on government corruption or consumers posting critical reviews online may all be shielded from defamation lawsuits. The statute also protects the exercise of the right of freedom of speech or of the press, the right to assemble or petition the government, and the right of association on matters of public concern. Michigan's UPEPA mirrors the language of the Uniform Law Commission's Uniform model anti-SLAPP statute, which has been adopted in whole or in part by several other states. Courts interpreting similar language have generally construed these protections broadly, casting a broad net over the types of speech and participation covered.

Special Motions Fast-Track Dismissal

Under the new law, defendants targeted by a SLAPP suit may file a special motion for expedited relief to dismiss the action within 60 days of being served. Once the special motion is filed, all other proceedings between the parties, including discovery, are automatically stayed until the court rules on the motion. The court must hear the motion within 60 days of filing and rule on it within 60 days of the hearing. Critically, the statute includes a fee-shifting provision: if the moving party prevails, the court shall award court costs, reasonable attorney fees and reasonable litigation expenses. Defendants also have a right to immediately appeal a trial court's denial of a special motion as a matter of right within 21 days of the order.

Challenges Will Determine UPEPA's Impact in Federal Court

Notably, when ruling on a special motion under section 3 of the UPEPA, courts may consider pleadings, the motion, any reply or response to the motion, affidavits, depositions, admissions, or other documentary evidence. This extends well beyond what courts typically consider in a standard motion to dismiss. Allowing additional evidence may raise unique issues in light of the Supreme Court's recent decision, *Berk v. Choy*. In *Berk*, the Court held that a Delaware state requirement that plaintiffs present evidence supporting their claims at the motion-to-dismiss stage was unenforceable in federal court. The Court observed that under Federal Rules 8 and 12, "evidence of the claim is not required," so a state law requiring such evidence conflicted with the federal rules. With the UPEPA allowing consideration of evidence beyond the pleadings, plaintiffs will likely challenge the law's enforceability in federal cases. Benesch will be actively monitoring challenges raised by plaintiffs under the UPEPA.

What This Means for Michigan Litigants

The UPEPA represents a seismic shift in Michigan state court procedure, particularly for those bringing claims based on another's speech. Plaintiffs must now be prepared to support their claims with evidence shortly after filing a complaint and to conduct robust pre-suit diligence and investigation in anticipation of responding to a UPEPA special motion. Defeating a UPEPA special motion is critical for plaintiffs: failure will not merely result in dismissal-an unsuccessful plaintiff will be required to pay the opposing party's fees.

Benesch's team is available to advise on navigating the procedural complexities in anti-SLAPP statutes nationwide. Our plaintiff-side defamation team has a proven track record of success in defeating anti-SLAPP motions and will continue to monitor developments.