

Good morning, everyone, my name is Tom Haren. I'm an attorney at Frantz Ward and I'm honored to talk with you all about the Ohio Citizen Participation Act. I want to discuss some of the important things that the bill would do for Ohioans, but to do that it's probably helpful to first point out what the bill *does not* do: it does not expand or alter the legal standards governing defamation here in Ohio. This bill *does not* prevent legitimate defamation claims from being filed, and would not prevent victims of defamation from having their day in court.

What this bill *does* is make sure that our justice system is equipped to expedite the review of these types of claims. And the bill does that in several ways:

- It defines a “protected communication” as a statement or communication for which a speaker can't be held liable under the US or state constitution. This is consistent with the current state of the law – a person cannot be held liable in court for engaging in constitutionally-protected speech.
- If a claim is brought against a person based on a protected communication, the defendant can file a “special motion to strike” within 60 days (unless that time frame is extended by the Court)
- If that motion is filed, several things happen:
 - The Court makes several determinations:
 1. Whether the defendant established, by a preponderance of the evidence, that the claim is in fact based upon a protected communication;
 2. If so, whether the plaintiff has shown, by clear and convincing evidence, the prima facie elements of the particular claim, and if so:
 - That determination is inadmissible at later stages of the proceeding;
 - That determination doesn't affect the overall burden of proof at trial;
 - That determination isn't a waiver of any defense based upon personal jurisdiction
 - The Court stays discovery until both of the following things happen:
 1. It rules on the special motion to strike; and
 2. Any appeal of that ruling has been determined
 3. The court may allow limited discovery upon a showing of good cause
 - Issues a briefing schedule so that:
 1. The plaintiff can oppose the defendant's motion
 2. The defendant can file a reply brief;

3. Provide a hearing;
 - Rule on the motion within 30 days after the hearing (or filing of the reply brief)
 - If the Court finds in favor of the defendant, dismiss the action.
 - If the Court denies the motion, that denial is immediately appealable.

One of the most important parts of a successful anti-SLAPP laws is that defendants are entitled to mandatory attorney fees from the other side if the Court agrees that the case is meritless. And Ohio rightfully includes that requirement – but it also takes additional steps to protect SLAPP victims:

- Defendants are entitled to reasonable attorney fees even where their lawyers represented them pro bono or on a contingency basis;
- Court can award punitive or exemplary monetary sanctions to deter filing of similar actions in the future;
- Defendants can counterclaim for any other compensatory damages suffered as a result of the SLAPP suit; *and*
- If the Court awards fees to the defendant, and those fees remain unpaid after 90 days, the court can impose joint and several liability for unpaid amounts against the lawyer who signed the meritless complaint, if the Court finds that the lawyers knew or should have known that the claim was based on a protected communication.

Finally, another important piece of the bill is that it protects Ohio citizens from forum-shopping by SLAPP plaintiffs. In other words, it protects Ohioans in a scenario where a plaintiff files a meritless lawsuit in a state that doesn't have an anti-SLAPP law – forcing the Ohio citizen to defend herself in some far away jurisdiction. In those cases, the Ohioan can file a separate claim here in Ohio – and if the Ohio judge finds that the out-of-state claim would have been dismissed under the OCPA, then the Ohio Court can award attorney fees and other damages to the Ohio citizen.

All in all, the Ohio Citizen Participation Act would including Ohio among the majority of states in the country that have put in place policies supporting freedom of speech. This bill would be among the strongest in the country and I'm so proud to be able to work on such an important piece of legislation.