

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 469

By Senators Oliverio and Trump

[Introduced January 16, 2024; referred
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §55-22-1, §55-22-2 , §55-22-3, §55-22-4, §55-22-5, §55-22-6, §55-22-7, §55-
 3 22-8, §55-22-9, §55-22-10, §55-22-11, §55-22-12, and §55-22-13, all relating generally to
 4 the Uniform Public Expression Protection Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22. UNIFORM PUBLIC EXPRESSION PROTECTION ACT

§55-22-1. Title.

1 This article may be cited as the Uniform Public Expression Protection Act.

§55-22-2. Definitions.

1 In this article:

2 (1) "Goods or services" does not include the creation, dissemination, exhibition, or
 3 advertisement or similar promotion of a dramatic, literary, musical, political, journalistic, or artistic
 4 work.

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

7 (3) "Person" means an individual, estate, trust, partnership, business or nonprofit entity,
 8 governmental unit, or other legal entity.

§55-22-3. Scope.

1 (a) Except as otherwise provided in subsection (b), this article applies to a claim asserted
 2 in a civil action against a person based on the person's:

3 (1) Communication in a legislative, executive, judicial, administrative, or other
 4 governmental proceeding;

5 (2) Communication on an issue under consideration or review in a legislative, executive,
 6 judicial, administrative, or other governmental proceeding; or

7 (3) Exercise of the right of freedom of speech or of the press, the right to assemble or
 8 petition, or the right of association, guaranteed by the United States Constitution or West Virginia

9 Constitution, on a matter of public concern.

10 (b) This article does not apply to a claim asserted:

11 (1) Against a governmental unit or an employee or agent of a governmental unit acting or
12 purporting to act in an official capacity;

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

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

§55-22-4. Special Motion For Expedited Relief.

1 Not later than 60 days after a party is served with a claim, crossclaim, counterclaim, third-
2 party claim, or other pleading that asserts a claim to which this article applies, or at a later time on a
3 showing of good cause, the party may file a special motion for expedited relief to dismiss the claim.

§55-22-5. Stay.

1 (a) Except as otherwise provided in subsections (d) through (g), on the filing of a motion
2 under §55-22-4 of this code:

3 (1) All other proceedings between the moving party and responding party, including
4 discovery and a pending hearing or motion, are stayed; and

5 (2) On motion by the moving party, the court may stay a hearing or motion involving
6 another party, or discovery by another party, if the hearing or ruling on the motion would
7 adjudicate, or the discovery would relate to, an issue material to the motion under §55-22-4 of this
8 code.

9 (b) A stay under subsection (a) remains in effect until entry of an order ruling on the motion
10 under §55-22-4 of this code and expiration of the time under §55-22-10 of this code for the moving
11 party to appeal the order.

12 (c) Except as otherwise provided in subsections (e), (f), and (g) of this article, if a party

13 appeals from an order ruling on a motion under §55-22-4 of this code of this article, all proceedings
14 between all parties in the action are stayed. The stay remains in effect until the conclusion of the
15 appeal.

16 (d) During a stay under subsection (a), the court may allow limited discovery if a party
17 shows that specific information is necessary to establish whether a party has satisfied or failed to
18 satisfy a burden under §55-22-8(a) of this code and the information is not reasonably available
19 unless discovery is allowed.

20 (e) A motion under §55-22-10 of this code for costs, attorney's fees, and expenses is not
21 subject to a stay under this section.

22 (f) A stay under this section does not affect a party's ability to voluntarily dismiss a claim or
23 move to sever a claim.

24 (g) During a stay under this section, the court, for good cause shown, may hear and rule
25 on:

26 (1) A motion unrelated to the motion under §55-22-4 of this code; and

27 (2) A motion seeking a special or preliminary injunction to protect against an imminent
28 threat to public health or safety.

§55-22-6. Hearing.

1 (a) The court shall hear a motion under §55-22-4 of this code not later than 60 days after
2 filing of the motion, unless the court orders a later hearing:

3 (1) To allow discovery under §55-22-5(d) of this code; or

4 (2) For other good cause.

5 (b) If the court orders a later hearing under subsection (a)(1) of this section, the court shall
6 hear the motion under §55-22-4 of this code not later than 60 days after the court order allowing
7 the discovery, unless the court orders a later hearing under subsection (a)(2) of this section.

§55-22-7. Proof.

1 In ruling on a motion under §55-22-4 of this code, the court shall consider the pleadings,

2 the motion, any reply or response to the motion, and any evidence that could be considered in
3 ruling on a motion for summary judgment under Rule 56 of the West Virginia Rules of Civil
4 Procedure.

§55-22-8. Dismissal of Claim.

1 (a) In ruling on a motion under §55-22-4 of this code, the court shall dismiss with prejudice
2 a claim if:

3 (1) The moving party establishes under §55-22-3(a) of this code applies;

4 (2) The responding party fails to establish under §55-22-3(b) of this code does not apply;

5 and

6 (3) Either:

7 (A) The responding party fails to establish a prima facie case as to each essential element
8 of the claim; or

9 (B) The moving party establishes that:

10 (i) The responding party failed to state a claim upon which relief can be granted; or

11 (ii) There is no genuine issue as to any material fact and the moving party is entitled to
12 judgment as a matter of law on the claim.

13 (b) A voluntary dismissal without prejudice of a responding party's claim, or part of a claim,
14 that is the subject of a motion under §55-22-4 of this code does not affect a moving party's right to
15 obtain a ruling on the motion and seek costs, attorney's fees, and expenses under §55-22-11 of
16 this code.

17 (c) A voluntary dismissal with prejudice of a responding party's claim, or part of a claim,
18 that is the subject of a motion under §55-22-4 of this code establishes for the purpose of §55-22-11
19 of this code that the moving party prevailed on the motion.

§55-22-9. Ruling.

1 The court shall rule on a motion under §55-22-4 of this code not later than 60 days after a
2 hearing under §55-22-6 of this code.

§55-22-10. Appeal.

1 In accordance with the provisions of §51-11-1 et seq. of this code, a moving party may
2 appeal as a matter of right from an order denying, in whole or in part, a motion under §55-22-4 of
3 this code.

§55-22-11. Costs, Attorney's Fees, and Expenses.

1 On a motion under §55-22-4 of this code, the court shall award court costs, reasonable
2 attorney’s fees, and reasonable litigation expenses related to the motion:

- 3 (1) To the moving party if the moving party prevails on the motion; or
- 4 (2) To the responding party if the responding party prevails on the motion and the court
5 finds that the motion was frivolous or filed solely with intent to delay the proceeding.

§55-22-12. Construction.

1 This article must be broadly construed and applied to protect the exercise of the right of
2 freedom of speech and of the press, the right to assemble and petition, and the right of
3 association, guaranteed by the United States Constitution or the West Virginia Constitution.

§55-22-13. Uniformity of Application and Construction.

1 In applying and construing this uniform act, consideration must be given to the need to
2 promote uniformity of the law with respect to its subject matter among states that enact it.

NOTE: The purpose of this bill is to enact the Uniform Public Expression Protection Act which was recommended for passage by the state Uniform Law Commission.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.