

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 1017

Short Title: GSC Uniform Public Expression Protection Act. (Public)

Sponsors: Representative Davis.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary 1, if favorable, Rules, Calendar, and Operations of the House

May 24, 2022

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE UNIFORM PUBLIC EXPRESSION PROTECTION ACT, AS
3 RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

4 The General Assembly of North Carolina enacts:

5
6 **PART I. UNIFORM PUBLIC EXPRESSION PROTECTION ACT**

7 **SECTION 1.** Chapter 1 of the General Statutes is amended by adding a new Article
8 to read:

9 "Article 54.

10 "Uniform Public Expression Protection Act.

11 "**§ 1-671. Short title.**

12 This Article may be cited as the Uniform Public Expression Protection Act.

13 "**§ 1-672. Scope.**

14 (a) In this section, the following definitions apply:

15 (1) Goods or services. – Does not include the creation, dissemination, exhibition,
16 or advertisement or similar promotion of a dramatic, literary, musical,
17 political, journalistic, or artistic work.

18 (2) Governmental unit. – A public corporation or government or governmental
19 subdivision, agency, or instrumentality.

20 (3) Person. – An individual, estate, trust, partnership, business or nonprofit entity,
21 governmental unit, or other legal entity.

22 (b) Except as otherwise provided in subsection (c) of this section, this Article applies to
23 a cause of action asserted in a civil action against a person based on any of the following:

24 (1) The person's communication in a legislative, executive, judicial,
25 administrative, or other governmental proceeding.

26 (2) The person's communication on an issue under consideration or review in a
27 legislative, executive, judicial, administrative, or other governmental
28 proceeding.

29 (3) The person's exercise of the right of freedom of speech or of the press, the
30 right to assemble or petition, or the right of association, guaranteed by the
31 United States Constitution or North Carolina Constitution, on a matter of
32 public concern.

33 (c) This Article does not apply to any of the following causes of action:

34 (1) A cause of action against a governmental unit or an employee or agent of a
35 governmental unit acting or purporting to act in an official capacity.



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1 (2) A cause of action by a governmental unit or an employee or agent of a
2 governmental unit acting in an official capacity to enforce a law to protect
3 against an imminent threat to public health or safety.

4 (3) A cause of action against a person primarily engaged in the business of selling
5 or leasing goods or services if the cause of action arises out of a
6 communication related to the person's sale or lease of the goods or services.

7 **"§ 1-673. Special motion for expedited relief.**

8 Not later than 60 days after a party is served with a complaint, crossclaim, counterclaim,
9 third-party claim, or other pleading that asserts a cause of action to which this Article applies, or
10 at a later time on a showing of good cause, the party may file a special motion for expedited relief
11 to dismiss the cause of action or part of the cause of action. This motion does not waive any other
12 defense, objection, or motion. A party's failure to consolidate this motion with another motion or
13 pleading does not waive a party's right to file this motion.

14 **"§ 1-674. Stay.**

15 (a) Except as otherwise provided in subsections (d) through (g) of this section, on the
16 filing of a motion under G.S. 1-673, all of the following apply:

17 (1) All other proceedings between the moving party and responding party,
18 including discovery and a pending hearing or motion, are stayed.

19 (2) On motion by the moving party, the court may stay a hearing or motion
20 involving another party, or discovery by another party, if the hearing or ruling
21 on the motion would adjudicate, or the discovery would relate to, an issue
22 material to the motion under G.S. 1-673.

23 (b) A stay under subsection (a) of this section remains in effect until entry of an order
24 ruling on the motion under G.S. 1-673 and expiration of the time under G.S. 1-679 for the moving
25 party to appeal the order.

26 (c) Except as otherwise provided in subsections (e), (f), and (g) of this section, if a party
27 appeals from an order ruling on a motion under G.S. 1-673, all proceedings between all parties
28 in the action are stayed. The stay remains in effect until the conclusion of the appeal.

29 (d) During a stay under subsection (a) of this section, the court may allow limited
30 discovery if a party shows that specific information is necessary to establish whether a party has
31 satisfied or failed to satisfy a burden under G.S. 1-677(a) and the information is not reasonably
32 available unless discovery is allowed.

33 (e) A motion under G.S. 1-680 for costs, attorney's fees, and expenses is not subject to a
34 stay under this section.

35 (f) A stay under this section does not affect a party's ability voluntarily to dismiss a cause
36 of action or part of a cause of action or move to sever a cause of action.

37 (g) During a stay under this section, the court for good cause may hear and rule on the
38 following motions:

39 (1) A motion unrelated to the motion under G.S. 1-673. An unrelated motion
40 includes a motion to dismiss for lack of jurisdiction over the subject matter or
41 person.

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

44 **"§ 1-675. Hearing.**

45 (a) The court shall hear a motion under G.S. 1-673 not later than 60 days after a party
46 submits a calendar request for the motion, unless the court orders a later hearing for any of the
47 following reasons:

48 (1) To allow discovery under G.S. 1-674(d).

49 (2) For other good cause.

1 (b) If the court orders a later hearing under subdivision (a)(1) of this section, the court
2 shall hear the motion under G.S. 1-673 not later than 60 days after the court order allowing the
3 discovery, unless the court orders a later hearing under subdivision (a)(2) of this section.

4 **"§ 1-676. Proof.**

5 In ruling on a motion under G.S. 1-673, the court shall consider the pleadings, the motion,
6 any reply or response to the motion, and any evidence that could be considered in ruling on a
7 motion for summary judgment under G.S. 1A-1, Rule 56.

8 **"§ 1-677. Dismissal of cause of action in whole or part.**

9 (a) In ruling on a motion under G.S. 1-673, the court shall dismiss with prejudice a cause
10 of action, or part of a cause of action, if all of the following requirements are met:

11 (1) The moving party establishes under G.S. 1-672(b) that this Article applies.

12 (2) The responding party fails to establish under G.S. 1-672(c) that this Article
13 does not apply.

14 (3) Any of the following:

15 a. The responding party fails to establish a prima facie case as to each
16 essential element of the cause of action.

17 b. The moving party establishes any of the following:

18 1. The responding party failed to state a cause of action upon
19 which relief can be granted.

20 2. There is no genuine issue as to any material fact and the
21 moving party is entitled to judgment as a matter of law on the
22 cause of action or part of the cause of action.

23 (b) A voluntary dismissal without prejudice of a responding party's cause of action, or
24 part of a cause of action, that is the subject of a motion under G.S. 1-673 does not affect a moving
25 party's right to obtain a ruling on the motion and seek costs, attorney's fees, and expenses under
26 G.S. 1-680.

27 (c) A voluntary dismissal with prejudice of a responding party's cause of action, or part
28 of a cause of action, that is the subject of a motion under G.S. 1-673 establishes for the purpose
29 of G.S. 1-680 that the moving party prevailed on the motion.

30 **"§ 1-678. Ruling.**

31 The court shall rule on a motion under G.S. 1-673 not later than 60 days after a hearing under
32 G.S. 1-675.

33 **"§ 1-679. Appeal.**

34 A moving party may appeal as a matter of right from an order denying, in whole or in part, a
35 motion under G.S. 1-673. The appeal must be filed not later than 30 days after entry of the order.

36 **"§ 1-680. Costs, attorney's fees, and expenses.**

37 On a motion under G.S. 1-673, the court shall award court costs, reasonable attorney's fees,
38 and reasonable litigation expenses related to the motion as follows:

39 (1) To the moving party if the moving party prevails on the motion.

40 (2) To the responding party if the responding party prevails on the motion and the
41 court finds that the motion was frivolous or filed solely with intent to delay
42 the proceeding.

43 **"§ 1-681. Construction.**

44 This Article must be broadly construed and applied to protect the exercise of the right of
45 freedom of speech and of the press, the right to assemble and petition, and the right of association,
46 guaranteed by the United States Constitution or North Carolina Constitution.

47 **"§ 1-682. Uniformity of application and construction.**

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

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51 **PART II. CONFORMING CHANGES**

1 **SECTION 2.** G.S. 7A-27 reads as rewritten:

2 "**§ 7A-27. Appeals of right from the courts of the trial divisions.**

3 ...

4 (b) Except as provided in subsection (a) of this section, appeal lies of right directly to the
5 Court of Appeals in any of the following cases:

6 ...

7 (3) From any interlocutory order or judgment of a superior court or district court
8 in a civil action or proceeding that does any of the following:

9 ...

10 g. Denies, in whole or in part, a special motion for expedited relief under
11 G.S. 1-673.

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14 **PART III. SEVERABILITY, COMMENTS, AND EFFECTIVE DATE**

15 **SECTION 3.(a)** If any provision of this act or its application to any person or
16 circumstance is held invalid, the invalidity does not affect other provisions or applications of this
17 act that can be given effect without the invalid provision or application, and to this end the
18 provisions of this act are severable.

19 **SECTION 3.(b)** The Revisor of Statutes shall cause to be printed, as annotations to
20 the published General Statutes, all relevant portions of the Official Comments to the Uniform
21 Public Expression Protection Act and all explanatory comments of the drafters of this act as the
22 Revisor may deem appropriate.

23 **SECTION 3.(c)** This act becomes effective October 1, 2022, and applies to a civil
24 action filed or cause of action asserted in a civil action on or after that date.