



# Judicial Impact Statement

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## SB 215 – Anti-SLAPP

SB 215

Sen. Huffman

### Title Information

To enact the Ohio Citizen Participation Act to provide protections to persons who engage in specified protected communications.

### Background

The bill aims to create a remedy for what have been termed “SLAPPs” or strategic lawsuits against public participation. Such a lawsuit is characterized as using the legal system as a sword rather than a shield, not meant to win a specific case but really meant to suppress criticism and discourage opposition. The argument for the need for the bill is that critics of entities that can afford to file such lawsuits are deterred from speech that would normally be protected under the Constitution because they know they’ll be subjected to the stress and cost of a protracted legal battle.

Several other states have adopted anti-SLAPP legislation, but many have subsequently revisited their initial legislative efforts, and Ohio might learn from their experiences.

### Judicial Impact

The bill creates significant procedural problems which result in a considerable burden for courts. The bill anticipates a very accelerated review by a trial judge, which can be compounded by accelerated discovery requiring additional court supervision. The bill addresses discovery by saying it shall be stayed, at R.C. 2305.58(C)(5). This provision violates the Modern Courts Amendment that guarantees pretrial discovery and may also result in genuine unfairness if the parties cannot make reasonable discovery before the hearing with the trial court.

#### What is a Judicial Impact Statement?

A Judicial Impact Statement describes as objectively and accurately as possible the probable, practical effects on Ohio’s court system of the adoption of the particular bill. The court system includes people who use the courts (parties to suits, witnesses, attorneys and other deputies, probation officials, judges and others). The Ohio Judicial Conference prepares these statements pursuant to R.C. 105.911.

Trial judges are asked, with varying burdens of proof, to essentially hold a trial within a trial, and must rule within 30 days. If the special motion to dismiss the case is denied by the judge, the party seeking the dismissal has the right to an immediate interlocutory appeal. This right is not available to the other party if the special motion is not denied. From a practical standpoint, interlocutory appeals will add 9 to 12 months of delay into a lawsuit, which runs counter to the goal of the bill.

Attorney advocacy is effectively chilled by the remedies provided in R.C. 2305.59(A)(2) and (4), which guarantee a civil fine of up to \$10,000 in addition to an award of attorney’s fees and costs. This becomes an award against attorneys who signed the pleadings if the fees award remains unpaid for 90 days.

**Conclusion**

Ohio already has a frivolous litigation statute which can provide relief in extreme cases and which has been applied by courts for over a decade. Other states that have adopted anti-SLAPP legislation have subsequently corrected some of their statutory provisions and, if Ohio decides it needs legislation beyond its frivolous litigation statute, it should look to examples from other states that have refined their anti-SLAPP laws, not to examples of initial efforts.