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Health Occupations and
Long-Term Care Subcommittee

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Testimony of Delegate Samuel I Rosenberg

Before the Appropriations Committee

In Support of

House Bill 650

Civil Actions - Maryland Uniform Public Expression Protection Act

Chair Bartlett and Members of the Committee:

SLAPP or Strategic Litigation Against Public Participation lawsuits are meant to punish speech on matters of public concern through abusive and expensive legal retaliation. SLAPP suits can come in the form of defamation, invasion of privacy, or other claims, but the real goal is to entangle the defendant in fees, and stifle First Amendment participation.

House Bill 650, the Maryland Uniform Public Expression Protection Act (“UPEPA”) is a response to SLAPP suits. This legislation was drafted by the Uniform Law Commission. It would allow a SLAPP defendant to file a “special motion for expedited relief,” ensuring that defendants do not have to endure costly litigation before challenging and hopefully halting a retaliatory lawsuit.

Once a special motion is filed, all discovery proceedings are automatically stayed between the parties, preventing financial drain on defendants. To prevent years of litigation, this bill requires that in SLAPP suits, a hearing must be held within 60 days, with limited exceptions. Courts may dismiss a case with prejudice if the defendant shows the case involves protected expression, there is no issue of material fact, or the plaintiff fails to establish a prima facie case for each essential element. This bill also guarantees attorney’s fees to prevailing defendants and provides an immediate right to repeal.

How would this legislation alter Maryland’s existing SLAPP law? Our existing “bad faith” provision [Md. Code, Cts. & Jud. Proc. § 5-807(b)(1)] seriously limits the effectiveness of the statute because it requires the defendant to show the underlying lawsuit was brought in “bad faith,” which is nearly impossible to do without significant discovery.

In addition, the existing statute permits, but does not require, a stay upon the filing of an anti-SLAPP motion. The statute also does not expressly limit discovery or include a fee-shifting provision, which are key features of the uniform law. Finally, the uniform act offers a clear burden-shifting framework (Section 5-1307 of the bill), which makes it easy for the parties and the court to understand how this special motion process functions.

Fifteen states of varying partisan leanings have adopted UPEPA, 8 of which have done so within the past three years. In 2004 I helped pass our current anti-SLAPP statute, and while that was an important step for Maryland free speech, we are once again falling behind. [The Institute for Free Speech](#) has given Maryland a D grade overall and a D- for anti-SLAPP protections.

House Bill 650 is a necessary step towards ensuring free speech for Marylanders. **I urge the committee to give a favorable report to HB 650.**

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