

SENATE, NO. 2530

[SIMILAR MATTER FILED DURING PAST SESSION
SEE NO. OF]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND EIGHT

AN ACT RELATIVE TO STRENGTHENING THE ANTI-SLAPP LAW

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 SECTION 1. Section 59H of Chapter 231 of the General Laws, as appearing in the 2006 Official
2 Edition is hereby amended by striking the section in its entirety and inserting in place thereof the
3 following new section:-

4 **Section 59H. Strategic litigation against public participation; special motion to dismiss**

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6 The purpose of this statute is to ensure full participation by citizens and organizations in the robust
7 discussion of issues before legislative, judicial, and administrative bodies and in other public fora,
8 including the ability of citizens to bring matters of public concern to the attention of legislative,
9 judicial, and administrative bodies, which is so essential to the democratic process. Because there has
10 been a disturbing increase in lawsuits brought primarily to chill the valid exercise of constitutional

11 rights of freedom of speech and petition for the redress of grievances, this statute recognizes that such
12 litigation is disfavored and should be resolved quickly with minimum cost to citizens that have
13 participated in matters of public concern. In furtherance of this purpose, in any case in which a party
14 asserts that the civil claims, counterclaims, or cross claims against said party are based, either in whole
15 or in part, on said party's exercise of its right of petition under the constitution of the United States or
16 of the commonwealth, said party may bring a special motion to dismiss.

17 (a) The court shall advance any such special motion so that it may be heard and determined as
18 expeditiously as possible. The court shall grant such special motion, unless the party against whom
19 such special motion is made shows that: (1) the moving party's exercise of its right to petition, either
20 acting solely or in concert with other citizens, was devoid of any reasonable factual support or any
21 arguable basis in law and (2) the moving party's acts caused actual injury to the responding party. In
22 making its determination, the court shall consider the pleadings and supporting and opposing affidavits
23 stating the facts upon which the liability or defense is based. If the court determines that the alleged
24 conduct that forms the basis of the civil claims, counterclaims, or cross claims against the moving
25 party is based in whole or in part on petitioning activity, as defined by this statute, and that petitioning
26 was not devoid of any reasonable factual support or any basis in law, it shall dismiss those claims or
27 allegations that are based on the protected petitioning activity.

28 (b) The attorney general, on his behalf or on behalf of any government agency or
29 subdivision to which the moving party's acts were directed, may intervene to defend or otherwise
30 support the moving party on such special motion.

31 (c) All discovery proceedings shall be stayed upon the filing of the special motion under
32 this section; provided, however, that the court, on motion and after a hearing and for good cause
33 shown, may order that specified discovery be conducted. The stay of discovery shall remain in effect
34 until notice of entry of the order ruling on the special motion.

35 (d) Said special motion to dismiss may be filed within sixty days of the service of the
36 complaint or, in the court's discretion, at any later time upon terms it deems proper.

37 (e) If the court grants such special motion to dismiss, the court shall award the moving
38 party costs and reasonable attorney's fees, including those incurred for the special motion and any
39 related discovery matters. Nothing in this section shall affect or preclude the right of the moving party
40 to any remedy otherwise authorized by law.

41 (f) As used in this section, the words "a party's exercise of its right of petition" shall mean:

42 [1] any written or oral statement made before or submitted to a legislative, executive, or
43 judicial body, or any other governmental proceeding;

44 [2] any written or oral statement made in connection with an issue under consideration or
45 review by a legislative, executive, or judicial body, or any other governmental proceeding;

46 [3] any statement reasonably likely to encourage consideration or review of an issue by a
47 legislative, executive, or judicial body or any other governmental proceeding regardless of
48 whether there has been any previous, or presently is any, ongoing governmental proceeding on
49 that issue;

50 [4] any statement reasonably likely to enlist public participation in an effort to effect such
51 consideration, including but not limited to statements made to journalists or other citizens; or

52 [5] any other statement falling within constitutional protection of the right to petition
53 government.

54 The right of petition is not dependent on whether a citizen's or group of citizens' statements
55 are likely to bring about the reversal or nullification of a governmental vote, policy, program or
56 action. The right to petition naturally involves the constitutional rights of freedom of speech
57 and freedom of association. As such, protected petitioning activity includes citizens
58 associating and speaking with each other for the purpose of researching, discussing or planning
59 how to make any oral or written statement identified in clauses 1 through 5 of this section.

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