



Substitute Senate Bill No. 981

Public Act No. 17-71

**AN ACT CONCERNING STRATEGIC LITIGATION AGAINST
PUBLIC PARTICIPATION AND A SPECIAL MOTION TO DISMISS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective January 1, 2018, and applicable to any civil action filed on or after said date*) (a) As used in this section:

(1) "Matter of public concern" means an issue related to (A) health or safety, (B) environmental, economic or community well-being, (C) the government, zoning and other regulatory matters, (D) a public official or public figure, or (E) an audiovisual work;

(2) "Right of free speech" means communicating, or conduct furthering communication, in a public forum on a matter of public concern;

(3) "Right to petition the government" means (A) communication in connection with an issue under consideration or review by a legislative, executive, administrative, judicial or other governmental body, (B) communication that is reasonably likely to encourage consideration or review of a matter of public concern by a legislative, executive, administrative, judicial or other governmental body, or (C) communication that is reasonably likely to enlist public participation in an effort to effect consideration of an issue by a legislative,

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executive, administrative, judicial or other governmental body;

(4) "Right of association" means communication among individuals who join together to collectively express, promote, pursue or defend common interests; and

(5) "Special motion to dismiss" means the motion permitted pursuant to this section.

(b) In any civil action in which a party files a complaint, counterclaim or cross claim against an opposing party that is based on the opposing party's exercise of its right of free speech, right to petition the government, or right of association under the Constitution of the United States or the Constitution of the state in connection with a matter of public concern, such opposing party may file a special motion to dismiss the complaint, counterclaim or cross claim.

(c) Any party filing a special motion to dismiss shall file such motion not later than thirty days after the date of return of the complaint, or the filing of a counterclaim or cross claim described in subsection (b) of this section. The court, upon a showing of good cause by a party seeking to file a special motion to dismiss, may extend the time to file a special motion to dismiss.

(d) The court shall stay all discovery upon the filing of a special motion to dismiss. The stay of discovery shall remain in effect until the court grants or denies the special motion to dismiss and any interlocutory appeal thereof. Notwithstanding the entry of an order to stay discovery, the court, upon motion of a party and a showing of good cause, or upon its own motion, may order specified and limited discovery relevant to the special motion to dismiss.

(e) (1) The court shall conduct an expedited hearing on a special motion to dismiss. The expedited hearing shall be held not later than sixty days after the date of filing of such special motion to dismiss,

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unless, (A) the court orders specified and limited discovery pursuant to subsection (d) of this section, in which case, the expedited hearing shall be held not later than sixty days after the date on which such specified and limited discovery must be completed, (B) the parties agree to a hearing date that is beyond the sixty-day period, or (C) the court, for good cause shown, is unable to schedule the hearing during the sixty-day period.

(2) When ruling on a special motion to dismiss, the court shall consider pleadings and supporting and opposing affidavits of the parties attesting to the facts upon which liability or a defense, as the case may be, is based.

(3) The court shall grant a special motion to dismiss if the moving party makes an initial showing, by a preponderance of the evidence, that the opposing party's complaint, counterclaim or cross claim is based on the moving party's exercise of its right of free speech, right to petition the government, or right of association under the Constitution of the United States or the Constitution of the state in connection with a matter of public concern, unless the party that brought the complaint, counterclaim or cross claim sets forth with particularity the circumstances giving rise to the complaint, counterclaim or cross claim and demonstrates to the court that there is probable cause, considering all valid defenses, that the party will prevail on the merits of the complaint, counterclaim or cross claim.

(4) The court shall rule on a special motion to dismiss as soon as practicable.

(f) (1) If the court grants a special motion to dismiss under this section, the court shall award the moving party costs and reasonable attorney's fees, including such costs and fees incurred in connection with the filing of the special motion to dismiss.

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(2) If the court denies a special motion to dismiss under this section and finds that such special motion to dismiss is frivolous and solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to the party opposing such special motion to dismiss.

(g) The findings or determinations made pursuant to subsections (e) and (f) of this section shall not be admitted into evidence at any later stage of the proceeding or in any subsequent action.

(h) The provisions of this section shall not: (1) Apply to an enforcement action that is brought in the name of the state or a political subdivision of the state by the Attorney General; (2) affect or limit the authority of a court to award sanctions, costs, attorney's fees or any other relief available under any statute, court rule or other authority; (3) affect, limit or preclude the right of a party filing a special motion to dismiss to any defense, remedy, immunity or privilege otherwise authorized by law; (4) affect the substantive law governing any asserted claim; (5) create a private right of action; or (6) apply to a common law or statutory claim for bodily injury or wrongful death, except the exclusion provided in this subdivision shall not apply to claims for (A) emotional distress unrelated to bodily injury or wrongful death or conjoined with a cause of action other than for bodily injury or wrongful death, or (B) defamation, libel or slander. The provisions of this subdivision shall not prohibit a plaintiff who brings a claim for bodily injury or wrongful death from filing a special motion to dismiss a counterclaim under the provisions of this section.

Approved June 30, 2017