



Senate

General Assembly

File No. 675

January Session, 2017

Substitute Senate Bill No. 981

Senate, April 20, 2017

The Committee on Judiciary reported through SEN. DOYLE of the 9th Dist. and SEN. KISSEL of the 7th Dist., Chairpersons of the Committee on the part of the Senate, that the substitute bill ought to pass.

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:

1 Section 1. (NEW) (*Effective October 1, 2017, and applicable to any civil*
2 *action filed on or after said date*) (a) As used in this section:

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

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

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

15 executive, administrative, judicial or other governmental body, or (C)
16 communication that is reasonably likely to enlist public participation
17 in an effort to effect consideration of an issue by a legislative,
18 executive, administrative, judicial or other governmental body;

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

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

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

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

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

44 (e) (1) The court shall conduct an expedited hearing on a special
45 motion to dismiss. The expedited hearing shall be held not later than

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

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

58 (3) The court shall grant a special motion to dismiss if the moving
59 party makes an initial showing, by a preponderance of the evidence,
60 that the opposing party's complaint, counterclaim or cross claim is
61 based on the moving party's exercise of its right of free speech, right to
62 petition the government, or right of association under the Constitution
63 of the United States or the Constitution of the state in connection with
64 a matter of public concern, unless the party that brought the
65 complaint, counterclaim or cross claim sets forth with particularity the
66 circumstances giving rise to the complaint, counterclaim or cross claim
67 and demonstrates to the court by a preponderance of the evidence, a
68 probability of prevailing on the merits of the complaint, counterclaim
69 or cross claim.

70 (4) Notwithstanding the provisions of subdivision (3) of this
71 subsection, the court shall grant a special motion to dismiss if the
72 moving party establishes each element of a valid defense to the
73 complaint, counterclaim or cross claim.

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

76 (f) (1) If the court grants a special motion to dismiss under this
77 section, the court shall award the moving party costs and reasonable

78 attorney's fees, including such costs and fees incurred in connection
79 with the filing of the special motion to dismiss.

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

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

88 (h) The provisions of this section shall not: (1) Apply to an
89 enforcement action that is brought in the name of the state or a
90 political subdivision of the state by the Attorney General; (2) affect or
91 limit the authority of a court to award sanctions, costs, attorney's fees
92 or any other relief available under any statute, court rule or other
93 authority; (3) affect, limit or preclude the right of a party filing a
94 special motion to dismiss to any defense, remedy, immunity or
95 privilege otherwise authorized by law; (4) affect the substantive law
96 governing any asserted claim; or (5) create a private right of action.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2017, and applicable to any civil action filed on or after said date</i>	New section

Statement of Legislative Commissioners:
In Section 1(e) "service" was changed to "filing" for accuracy and consistency.

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill makes changes that only involve private parties in civil proceedings and does not result in a fiscal impact to the state or municipalities.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**sSB 981*****AN ACT CONCERNING STRATEGIC LITIGATION AGAINST PUBLIC PARTICIPATION AND A SPECIAL MOTION TO DISMISS.*****SUMMARY**

This bill enables a party in a civil action to file a special motion to dismiss a claim, counterclaim, or cross claim that is based on the party, in connection with a matter of public concern, exercising its right (1) of free speech, (2) to petition the government, or (3) of association. With limited exceptions, the court must stay discovery upon receiving such a motion and provide an expedited hearing on it. The court must also issue a ruling as soon as practicable.

The bill requires the court to award costs and reasonable attorney's fees to the (1) moving party, including costs and fees related to the filing, if it grants the motion and (2) opposing party if it denies the motion and finds it frivolous and solely intended to cause unnecessary delay.

The bill does not:

1. apply to an enforcement action the attorney general brings in the name of the state or one of its subdivisions (e.g., a city or borough);
2. affect or limit the court's authority 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 the party filing the motion to any defense, remedy, immunity, or privilege otherwise authorized by law;

4. affect the substantive law governing any asserted claim; or
5. create a private right of action.

EFFECTIVE DATE: October 1, 2017 and applicable to any civil action filed on or after that date.

DEFINITIONS

For the bill's purposes:

1. "matters of public concern" include issues related to (a) health or safety; (b) environmental, economic, or community well-being; (c) government, zoning, and other regulatory matters; or a (d) public official or figure;
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 communication (a) in connection with an issue under consideration or review by a government body or (b) that is reasonably likely to encourage consideration or review of a matter of public concern by such an entity or (c) that is reasonably likely to enlist public participation in an effort to cause such an entity to consider an issue; and
4. "right of association" means communication between individuals who join together to collectively express, promote, pursue, or defend common interests.

SPECIAL MOTION TO DISMISS

Filing

Under the bill, any party filing a special motion to dismiss must do so within 60 days of the date the complaint, counterclaim, or cross claim was served. The court may extend this deadline if the party seeking the motion shows good cause.

Discovery

The court must stay all discovery when the motion is filed and the stay remains in effect until the court grants or denies the motion and any interlocutory appeal. But it may order specified and limited discovery upon (1) its own motion or (2) a party's motion and a showing of good cause.

Expedited Hearing

The court must conduct an expedited hearing on a special motion to dismiss. The hearing must be held within 30 days after the motion is filed unless:

1. the parties agree to a later hearing date;
2. the court, for good cause shown, is unable to schedule the hearing during the 30-day period; or
3. the court ordered specified and limited discovery, in which case the hearing must be held within 30 days after the discovery must be completed.

Ruling

When ruling on a special motion to dismiss, the court must consider the parties' pleadings and supporting and opposing affidavits attesting to the facts upon which the liability or defense is based.

The court must grant such a motion 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, in connection with a matter of public concern, exercising its right under the state or U.S. Constitution (1) to free speech, (2) to petition the government, or (3) of association.

The court must also grant such a motion if the moving party establishes each element of a valid defense to the complaint, counterclaim, or cross claim.

Under the bill, the court's findings and determinations on the

motion are not admissible as evidence at any later stage of the proceeding or in a subsequent action.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 39 Nay 0 (03/31/2017)