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CONNECTICUT TRIAL LAWYERS ASSOCIATION

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Raised Bill 981
Public Hearing: 3-27-17

TO: MEMBERS OF JUDICIARY COMMITTEE
FROM: CONNECTICUT TRIAL LAWYERS ASSOCIATION (CTLA)
DATE: MARCH 27, 2017

RE: SUPPORT (WITH AMENDMENT) OF RAISED BILL 981, AN ACT CONCERNING STRATEGIC LITIGATION AGAINST PUBLIC PARTICIPATION AND A SPECIAL MOTION TO DISMISS

Many may be wondering just what is Strategic Litigation Against Public Participation (SLAPP in short)? Wikipedia has a good explanation with some historical examples of these types of lawsuits in the United States. Here is a brief explanation from Wikipedia:

> "A strategic lawsuit against public participation (SLAPP) is a lawsuit that is intended to censor, intimidate, and silence critics by burdening them with the cost of a legal defense until they abandon their criticism or opposition. Such lawsuits have been made illegal in many jurisdictions on the grounds that they impede freedom of speech. The typical SLAPP plaintiff does not normally expect to win the lawsuit. The plaintiff's goals are accomplished if the defendant succumbs to fear, intimidation, mounting legal costs or simple exhaustion and abandons the criticism....A SLAPP may also intimidate others from participating in the debate. A SLAPP is often preceded by a legal threat. There is a difficulty in that plaintiffs do not present themselves to the Court admitting that their intent is to censor, intimidate or silence their critics. Hence, the difficulty in drafting SLAPP legislation, and in applying it, is to craft an approach which affords an early termination to invalid abusive suits, without denying a legitimate day in court to valid good faith claims. Thus, anti-SLAPP laws target tactics used by SLAPP plaintiffs. Common anti-SLAPP laws include measures such as penalties for plaintiffs who file lawsuits ruled frivolous and special procedures where a defendant may ask a judge to consider that a lawsuit is a SLAPP (and usually subsequently dismiss the suit)."
>
> See https://en.wikipedia.org/wiki/Strategic_lawsuit_against_public_participation

In *Wilcox v. Superior Court* (1994) 27 Cal. App. 4th 809, 815-816, the court set forth a description of the typical SLAPP suit:

> "The paradigm SLAPP is a suit filed by a large land developer against environmental activists or a neighborhood association intended to chill the defendants' continued political or legal opposition to the developers' plans. [Citations.] SLAPP's,

however, are by no means limited to environmental issues [citations] . . . .The favored causes of action in SLAPP suits are defamation, various business torts such as interference with prospective economic advantage, nuisance and intentional infliction of emotional distress. [Citations.] Plaintiffs in these actions typically ask for damages which would be ruinous to the defendants. [Citations.] SLAPP suits are brought to obtain an economic advantage over the defendant, not to vindicate a legally cognizable right of the plaintiff. [Citations.] . . . While SLAPP suits 'masquerade as ordinary lawsuits' the conceptual features which reveal them as SLAPP's are that they are generally meritless suits brought by large private interests to deter common citizens from exercising their political or legal rights or to punish them for doing so. [Citation.]"

The concern with anti-SLAPP bills, like Raised Bill 981, is that it must be crafted narrowly so that the law may only be used for its intended purpose and not abused. This Bill must be clear that it does not apply to any other type of lawsuit not specifically defined such as product liability claims, medical negligence or nursing home negligence claims, any claims for personal injury, wrongful death or workers compensation benefits to name a few. California is a good example of a state that passed anti-SLAPP legislation but without sufficient clarity of the types of lawsuits it was meant to apply to and those it did not. It took great legislative effort for California to correct this deficiency.

CTLA believes that anti-SLAPP legislation serves an important public good by preventing the squelching of constitutionally protected rights of free speech, rights to petition the government and rights of association and therefore supports this bill with an amendment to section (h) which adds the following:

(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) Apply to product liability claims, medical negligence or nursing home negligence claims, any claims for personal injury, wrongful death or workers compensation benefits; (~~32~~) 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; (~~43~~) 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; (5) affect the substantive law governing any asserted claim; or (~~65~~) create a private right of action.

With this amendment CTLA urges support for Raised Bill 981 as it has been crafted narrowly to accomplish its intended purpose and to avoid the pitfalls learned from our sister states' experience with similar legislation.