



General Assembly

January Session, 2017

***Raised Bill No. 981***

LCO No. 4928



Referred to Committee on JUDICIARY

Introduced by:  
(JUD)

***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 from passage and applicable to any civil*  
2 *action pending on or filed after the effective date of this section*) (a) As used  
3 in this section:

4 (1) "Matter of public concern" means an issue related to (A) health or  
5 safety, (B) environmental, economic or community well-being, (C) the  
6 government, (D) a public official or public figure, or (E) a good,  
7 product or service in the marketplace;

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

11 (3) "Right to petition the government" means (A) communication in  
12 connection with an issue under consideration or review by a  
13 legislative, executive, administrative, judicial or other governmental

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

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

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

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

32 (c) Any party filing a special motion to dismiss shall file such  
33 motion not later than sixty days after the date of service of the  
34 complaint, counterclaim or cross claim. The court, upon a showing of  
35 good cause by a party seeking to file a special motion to dismiss, may  
36 extend the time to file a 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 service 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 this 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>from passage and applicable to any civil action pending on or filed after the effective date of this section</i>	New section

***Statement of Purpose:***

To establish a special motion to dismiss in civil proceedings involving a strategic lawsuit against public participation.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*