



General Assembly

**Substitute Bill No. 981**

January Session, 2017



**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.*