

SENATE No. 1618

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to strengthening the Anti-Slapp Law..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 59H of Chapter 231 of the General Laws, as appearing in the 2006
2 Official Edition is hereby amended by striking the section in its entirety and inserting in place
3 thereof the following new section:- Section 59H. Strategic litigation against public participation;
4 special motion to dismiss

5 The purpose of this statute is to ensure full participation by citizens and organizations in
6 the robust discussion of issues before legislative, judicial, and administrative bodies and in other
7 public fora, including the ability of citizens to bring matters of public concern to the attention of
8 legislative, judicial, and administrative bodies, which is so essential to the democratic process.
9 Because there has been a disturbing increase in lawsuits brought primarily to chill the valid
10 exercise of constitutional rights of freedom of speech and petition for the redress of grievances,
11 this statute recognizes that such litigation is disfavored and should be resolved quickly with
12 minimum cost to citizens that have participated in matters of public concern. In furtherance of
13 this purpose, in any case in which a party asserts that the civil claims, counterclaims, or cross
14 claims against said party are based, either in whole or in part, on said party's exercise of its right

15 of petition under the constitution of the United States or of the commonwealth, said party may
16 bring a special motion to dismiss. (a) The court shall advance any such special motion so
17 that it may be heard and determined as expeditiously as possible. For those claims or allegations
18 that are based on protected petitioning activity, the court shall grant such special motion, unless
19 the party against whom such special motion is made shows that: (1) the moving party's exercise
20 of its right to petition, either acting solely or in concert with other citizens, was devoid of any
21 reasonable factual support or any arguable basis in law and (2) the moving party's acts caused
22 actual injury to the responding party. In making its determination, the court shall consider the
23 pleadings and supporting and opposing affidavits stating the facts upon which the liability or
24 defense is based.

25 (b) The attorney general, on his behalf or on behalf of any government
26 agency or subdivision to which the moving party's acts were directed, may intervene to defend
27 or otherwise support the moving party on such special motion. (c) All discovery
28 proceedings shall be stayed upon the filing of the special motion under this section; provided,
29 however, that the court, on motion and after a hearing and for good cause shown, may order that
30 specified discovery be conducted. The stay of discovery shall remain in effect until notice of
31 entry of the order ruling on the special motion. (d) Said special motion to dismiss may
32 be filed within sixty days of the service of the complaint or, in the court's discretion, at any later
33 time upon terms it deems proper. (e) If the court grants such special motion to
34 dismiss, the court shall award the moving party costs and reasonable attorney's fees, including
35 those incurred for the special motion and any related discovery matters. Nothing in this section
36 shall affect or preclude the right of the moving party to any remedy otherwise authorized by
37 law. (f) As used in this section, the words "a party's exercise of its right of petition"

38 shall mean: [1] any written or oral statement made before or submitted to a legislative, executive,
39 or judicial body, or any other governmental proceeding; [2] any written or oral statement made in
40 connection with an issue under consideration or review by a legislative, executive, or judicial
41 body, or any other governmental proceeding; [3] any statement reasonably likely to encourage
42 consideration or review of an issue by a legislative, executive, or judicial body or any other
43 governmental proceeding regardless of whether there has been any previous, or presently is any,
44 ongoing governmental proceeding on that issue; [4] any statement reasonably likely to enlist
45 public participation in an effort to effect such consideration, including but not limited to
46 statements made to journalists or other citizens; or [5] any other statement falling within
47 constitutional protection of the right to petition government.