

SENATE No. 734

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia S. Creem

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to strengthening the anti-slapp law.

PETITION OF:

NAME:

Cynthia S. Creem

DISTRICT/ADDRESS:

SENATE No. 734

By Ms. Creem, a petition (accompanied by bill, Senate, No. 734) of Cynthia S. Creem for legislation to strengthen the Anti-Slapp Law. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1618 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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
2 the 2008 Official Edition, is hereby amended by striking the section in its entirety and inserting
3 in place there of the following new section:-

4 Section 59H. Strategic litigation against public participation; special motion to
5 dismiss

6 The purpose of this statute is to ensure full participation by citizens and organizations in
7 the robust discussion of issues before legislative, judicial, and administrative bodies and in other
8 public fora, including the ability of citizens to bring matters of public concern to the attention of
9 legislative, judicial, and administrative bodies, which is so essential to the democratic process.

10 Because there has been a disturbing increase in lawsuits brought primarily y to chill the valid

11 exercise of constitutional rights of freedom of speech and petition for the redress of grievances,
12 this statute recognizes that such litigation is disfavored and should be resolved quickly with
13 minimum cost to citizens that have participated in matters of public concern. In furtherance of
14 this purpose, in any case in which a party asserts that the civil claims, counterclaims, or cross
15 claims against said party are based, either in whole or in part, on said party's exercise of its right
16 of petition under the constitution of the United States or of the commonwealth, said party may
17 bring a special motion to dismiss.

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

26 (b) The attorney general, on his behalf or on behalf of any government
27 agency or subdivision to which the moving party's acts were directed, may intervene to defend
28 or otherwise support the moving party on such special motion.

29 (c) All discovery proceedings shall be stayed upon the filing of the
30 special motion under this section; provide d, however, that the court, on motion and after a
31 hearing and for good cause shown, may order that specified discovery be conducted. The stay
32 of discovery shall remain in effect until notice of entry of the order ruling on the special motion.

(d) Said special motion to dismiss may be filed within sixty days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper.

(e) If the court grants such special motion to dismiss, the court shall award the moving party costs and reasonable attorney's fees, including those incurred for the special motion and any related discovery matters. Nothing in this section shall affect or preclude the right of the moving party to any remedy otherwise authorized by law.

(f) As used in this section, the words "a party's exercise of its right of petition" shall mean: [1] any written or oral statement made before or submitted to a legislative, executive, or judicial body, or any other governmental proceeding;

[2] any written or oral statement made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other governmental proceeding;

[3] any statement reasonably likely to encourage consideration or review of an issue by a legislative, executive, or judicial body or any other governmental proceeding regardless of whether there has been any previous, or presently is any, ongoing governmental proceeding on that issue;

[4] any statement reasonably likely to enlist public participation in an effort to effect such consideration, including but not limited to statements made to journalists or other citizens; or

53 [5] any other statement falling within constitutional protection of the
54 right to petition government.