HOUSE DOCKET, NO. 3837 FILED ON: 1/18/2019

HOUSE . . . . . No. 3263

The Commonwealth of Massachusetts

PRESENTED BY:

Mark J. Cusack

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 strengthen the Commonwealth's Anti-SLAPP law.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Mark J. Cusack	*5th Norfolk*	*1/18/2019*
David Henry Argosky LeBoeuf	*17th Worcester*	*1/31/2019*
James Arciero	*2nd Middlesex*	*2/1/2019*

HOUSE DOCKET, NO. 3837 FILED ON: 1/18/2019

HOUSE . . . . . No. 3263

By Mr. Cusack of Braintree, a petition (accompanied by bill, House, No. 3263) of Mark J. Cusack, David Henry Argosky LeBoeuf and James Arciero for legislation to ensure full participation by citizens and organizations in discussion of issues regarding the right to the freedom of petition, the freedom of speech, the freedom of expression or any matter of public concern. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *2263* OF 2017-2018.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act relative to strengthen the Commonwealth's 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:

SECTION 1. Section 59H of Chapter 231 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by striking the section in its entirety and inserting in place there of the following new section:-

Section 59H. Strategic Litigation Against Public Participation; Special Motion to Dismiss

The purpose of this statute is to ensure full participation by citizens and organizations in the robust discussion of issues in furtherance of the right to the freedom of petition, the freedom of speech, the freedom of expression or in connection with any matter of public concern. Because there has been a disturbing increase in lawsuits brought primarily to chill the valid

exercise of constitutional rights of freedom of speech, this statute recognizes that such litigation is disfavored and should be resolved quickly with minimum cost to those exercising their First Amendment rights. In furtherance of this purpose, in any case in which a party asserts that the civil claims, counterclaims, or cross claims against said party are based, either in whole or in part, on said party's exercise of its right to freedom of expression, freedom of speech or freedom of petition under the Constitution of the United States or of the Commonwealth, said party may bring a special motion to dismiss.

(a) The court shall advance any such special motion so that it may be heard and determined as expeditiously as possible. For those claims or allegations that are based on protected speech activity, the court shall grant such special motion, unless the party against whom such special motion is made shows that:

i. the moving party's exercise of its right to the freedom of petition, the freedom of speech, the freedom of expression or in connection with any matter of public concern, either acting solely or in concert with other citizens, was devoid of any reasonable factual support or any arguable basis in law; and

ii. the moving party's acts caused actual injury to the responding party.

In making its determination, the court shall consider the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

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

(c) All discovery proceedings shall be stayed upon the filing of the special motion to dismiss under this section; provided, however, that the court, on motion and after a hearing and for good cause shown, may order that limited, specified discovery on the motion may be conducted. The stay 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 all costs and reasonable attorneys' 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 phrase "freedom of petition, the freedom of speech, the freedom of expression" shall be defined as those rights are defined under the U.S. Constitution or the Massachusetts Constitution.

(g) As used in this section, the term "any matter of public concern" shall be defined as inclusive of any written or verbal statement that is recorded, displayed or distributed in-person or via any form of media, concerning any topic or subject related to:

(1) public health or safety;

(2) environmental, economic, or community well-being;

(3) the government or public policy;

(4) a public official or public figure; or

(5) a good, product, or service in the marketplace or otherwise offered to the public.