

# SENATE . . . . . No. 823

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## The Commonwealth of Massachusetts

PRESENTED BY:

*Joseph A. Boncore*

*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 protecting free speech through the anti-slaap law.

PETITION OF:

NAME:

*Joseph A. Boncore*

DISTRICT/ADDRESS:

*First Suffolk and Middlesex*

# SENATE . . . . . No. 823

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By Mr. Boncore, a petition (accompanied by bill, Senate, No. 823) of Joseph A. Boncore for legislation to protect free speech through the anti-slaap law. The Judiciary.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 756 OF 2017-2018.]

## The Commonwealth of Massachusetts

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

An Act relative to protecting free speech through the anti-slaap 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 2016  
2   Official Edition, is hereby amended by striking the section in its entirety and inserting in place  
3   there of the following new section:-

4           Section 59H. Strategic Litigation Against Public Participation; 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 in furtherance of the right of petition, and of the rights of freedom  
7   of speech and of expression in connection with any matter of public concern. Because there has  
8   been a disturbing increase in lawsuits brought primarily to chill the valid exercise of First  
9   Amendment rights to speak on public issues, this statute recognizes that such litigation is  
10   disfavored and should be resolved quickly with minimum cost to those exercising their rights

protected by the First Amendment to the U.S. Constitution or Article 16 of the Massachusetts Declaration of Rights. In furtherance of this purpose, in any case in which a party asserts that the civil claims, counterclaims, cross claims or pre-suit discovery against said party are based, either in whole or in part, on said party's exercise of its right of petition, or of its rights of freedom of speech or freedom of expression in connection with any matter of public concern 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. 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 of petition, or of the freedom of speech or freedom of expression in connection with any matter of public concern, either acting solely or in connection with others, 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.

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

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

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

42 (f) If the court denies such special motion to dismiss, the moving party shall  
43 be entitled to an interlocutory appeal of such denial. If such an interlocutory appeal is filed, the  
44 discovery stay shall remain in effect until the appeal is decided.

45 (g) As used in this section, the phrases "freedom of speech" and "freedom of  
46 expression" shall be defined as those rights are defined under the U.S. Constitution or the  
47 Massachusetts Constitution, whichever provides greater protection for the moving party.

48 (h) As used in this section, the words "right of petition" shall mean any written  
49 or oral statement made before or submitted to a legislative, executive, or judicial body, or any  
50 other governmental proceeding; any written or oral statement made in connection with an issue  
51 under consideration or review by a legislative, executive, or judicial body, or any other  
52 governmental proceeding; any statement reasonably likely to encourage consideration or review

of an issue by a legislative, executive, or judicial body or any other governmental proceeding;  
any statement reasonably likely to enlist public participation in an effort to effect such  
consideration; or any other statement falling within constitutional protection of the right to  
petition government.

(i) As used in this section, the term “matter of public concern” shall be  
defined as inclusive of any written or oral statement that is recorded, displayed or distributed in-  
person or via any form of media, concerning any matter of political, social or other concern to  
the community, including but not limited 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.