

ASSEMBLY, No. 5783

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JUNE 1, 2021

Sponsored by:

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Assemblyman PAUL D. MORIARTY

District 4 (Camden and Gloucester)

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

SYNOPSIS

Authorizes special motion and hearing for dismissal of “Strategic Lawsuit Against Public Participation” (“SLAPP”).

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/8/2021)

1 **AN ACT** concerning certain civil actions and supplementing Title
2 2A of the New Jersey Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Definitions.

8 As used in this act:

9 a. “Act in furtherance of the right of advocacy on issues of
10 public interest” means:

11 (1) a written or oral statement made in connection with an issue
12 of public interest in, under consideration or review by, or that is
13 reasonably likely to encourage or to enlist public participation in an
14 effort to effect consideration or review by, a legislative, executive,
15 or judicial body, or any other State or local government proceeding
16 authorized by law;

17 (2) an expression or expressive conduct that involves petitioning
18 State or local government or communicating views to members of
19 the public in connection with an issue of public interest;

20 (3) any written or oral statement made or submitted in a place
21 open to the public or a public forum in connection with an issue of
22 public concern; or

23 (4) any other conduct in furtherance of the exercise of the
24 constitutional right of free speech or right of petition in connection
25 with an issue of public interest.

26 b. “Issue of public interest” means an issue related to: health or
27 safety; environmental, economic, or community well-being; the
28 government; a public figure; or a good, product, or service in the
29 marketplace. “Issue of public interest” shall not be construed to
30 include private interests, such as statements directed primarily
31 toward protecting the speaker’s commercial interests rather than
32 toward commenting on or sharing information about a matter of
33 public significance.

34 c. “Governmental entity” includes any branch, department,
35 agency, instrumentality, official, employee, or agent of the State of
36 New Jersey or local government of the State of New Jersey.

37 d. “Moving party” means a person who is the defendant in a
38 civil action alleged to be a SLAPP lawsuit, and who is seeking
39 dismissal of a SLAPP lawsuit.

40 e. “Person” means an individual, corporation, business trust,
41 estate, trust, partnership, limited liability company, association,
42 joint venture, or any other legal or commercial entity, except that
43 the term does not include any individual or agency acting on behalf
44 of a governmental entity.

45 f. “Responding party” means a person who is the plaintiff in an
46 alleged SLAPP lawsuit and against whom a moving party has filed
47 a special motion seeking dismissal of the lawsuit.

1 g. “SLAPP lawsuit” means a Strategic Lawsuit Against Public
2 Participation, which is a civil action intended to deter or suppress
3 the desire of any citizen to act in furtherance of the right of
4 advocacy on issues of public interest. While sometimes difficult to
5 identify, these lawsuits often take the forms of lawsuits for
6 defamation, tortious interference with business or contract, civil
7 conspiracy or abuse of process, constitutional or civil rights
8 violations, or nuisance, and similar causes of action.

9 h. “SLAPP-back lawsuit” is a civil action in which the moving
10 party seeks compensatory damages based on a claim such as
11 frivolous litigation, malicious use of process, or other process
12 authorized by law in response to a SLAPP lawsuit that has been
13 dismissed in favor of the moving party pursuant to the provisions of
14 P.L. , c. (C.) (pending before the Legislature as this bill) or
15 other process authorized by the Rules of Court.

16

17 2. Special Motion to Dismiss.

18 a. A moving party may file a special motion with the court
19 seeking dismissal of a civil action on the basis that it is a SLAPP
20 lawsuit within 45 days after service of the claim.

21 b. Upon the filing of the special motion for dismissal of a
22 SLAPP lawsuit pursuant to this section, the court shall stay all
23 discovery and any pending proceedings in the civil action. The stay
24 shall remain in effect until the entry of judgment ruling on the
25 special motion for dismissal. Notwithstanding a stay imposed by
26 this subsection, the court, on request of a party for good cause
27 shown, may order that specified discovery or other proceedings be
28 conducted if necessary to allow the parties to meet or oppose the
29 burden of proof established in subsection c. of this section.

30 For the purposes of this subsection, “good cause” shall include:

31 (1) whether the party seeking discovery has reasonably
32 identified specific material held or known by the opposing party
33 that would aid the party seeking discovery in meeting or opposing
34 the burden of proof established in subsection c. of this section;

35 (2) whether the specific materials sought in discovery are
36 available from a source other than the opposing party; and

37 (3) other relevant factors at the court’s discretion.

38 c. A moving party filing a special motion pursuant to
39 subsection a. of this section has the initial burden of presenting
40 prima facie evidence showing that the cause of action at issue arises
41 from an act in furtherance of the right of advocacy on an issue of
42 public interest. If the moving party meets this requirement, the
43 burden shifts to the responding party to establish the existence of
44 prima facie evidence that demonstrates the probability of prevailing
45 on the cause of action.

46 The court shall determine whether the responding party has
47 established the existence of prima facie evidence that demonstrates
48 the probability of prevailing on the cause of action which requires

1 that the civil action proceed to trial. If the court finds that the
2 responding party has met this burden, the special motion for
3 dismissal shall be denied and the civil action shall proceed to trial at
4 the discretion of the court; otherwise, the civil action shall be
5 dismissed.

6 d. If the court denies a special motion for dismissal pursuant to
7 this section:

8 (1) the fact that the determination has been made and the
9 substance of the determination shall not be admitted into evidence
10 at any subsequent proceeding; and

11 (2) the determination shall not affect the burden of proof or
12 standard of proof that is applied during any subsequent proceeding.

13 e. (1) The court shall award a moving party who prevails on a
14 special motion for dismissal of the SLAPP lawsuit reasonable costs
15 of litigation and any attorney's fees incurred in defending the
16 SLAPP lawsuit. In addition, the court may order additional relief
17 including sanctions against the responding party as the court deems
18 necessary to deter repetition of comparable conduct by the
19 responding party or others similarly situated.

20 (2) If the court finds that the special motion for dismissal of the
21 SLAPP lawsuit was frivolous or that it was solely intended to cause
22 unnecessary delay, the court shall award the responding party
23 reasonable costs of litigation and attorney's fees related to the
24 opposition of the special motion for dismissal of the SLAPP
25 lawsuit.

26 (3) Unless the right to judgment is waived by the moving party,
27 reasonable attorney fees and costs in connection with the special
28 motion for dismissal of the SLAPP lawsuit shall be awarded, as
29 appropriate, notwithstanding the fact that the responding party
30 requested the dismissal of the civil action subsequent to the filing of
31 the moving party's special motion for dismissal, but prior to the
32 issuance of the judgment of dismissal by the court.

33 f. A party aggrieved by the trial court's decision regarding a
34 special motion to dismiss a civil action alleged to be a SLAPP
35 lawsuit may appeal that decision pursuant to the Rules of Court. To
36 the extent possible, the court shall give calendar preference to an
37 appeal of a dismissal of a civil action determined to be a SLAPP
38 lawsuit. In any appeal of a dismissal pursuant to this act, the court
39 may award reasonable attorney fees and costs of litigation to the
40 prevailing party.

41
42 3. Exemptions.

43 This act shall not apply to the following causes of action:

44 a. any civil action brought by a governmental entity to enforce
45 any law aimed at the protection of the public safety, health or
46 welfare;

47 b. a SLAPP-back lawsuit;

1 c. a claim brought against a person primarily engaged in the
2 business of selling or leasing goods or services, if the statement or
3 conduct from which the claim arises:

4 (1) is a representation of fact made for the purpose of
5 promoting, securing, or completing sales or leases of, or
6 commercial transactions in, the person's goods or services; and

7 (2) is intended to be directed to an audience that is an actual or
8 potential buyer or customer.

9
10 4. Potential Award of Damages through SLAPP-back
11 Litigation.

12 a. The defendant in a SLAPP lawsuit may initiate an action,
13 claim, cross-claim, or counterclaim to recover compensatory
14 damages from the plaintiff of a SLAPP lawsuit or the plaintiff's
15 attorney, or both, pursuant to:

16 (1) the provisions of P.L.1988, c.46 (C.2A:15-59.1);

17 (2) the Rules of Court regarding frivolous litigation; or

18 (3) a civil action based on the common law tort of malicious
19 abuse of process and relevant case law. In order to prevail in a civil
20 action pursuant to this paragraph, the plaintiff must prove the
21 following elements:

22 (a) a SLAPP lawsuit was instituted by the defendant against the
23 plaintiff who is seeking damages under the SLAPP-back lawsuit;

24 (b) the SLAPP lawsuit was actuated by malice;

25 (c) there was an absence of probable cause for the SLAPP
26 lawsuit;

27 (d) the SLAPP lawsuit was terminated in favor of the plaintiff in
28 the SLAPP-back lawsuit; and

29 (e) the plaintiff in the SLAPP-back lawsuit suffered a special
30 grievance, specifically interference with the plaintiff's liberty or
31 property or severe and permanent economic damages.

32 b. Nothing in this act shall prevent a party from seeking
33 compensatory damages related to a SLAPP lawsuit that was
34 terminated in favor of a moving party through any other legal
35 process authorized by law or the Rules of Court.

36
37 5. This act shall take effect on the first day of the fourth month
38 following enactment and shall apply to any special motion for
39 dismissal of a SLAPP lawsuit filed on or after the effective date of
40 this act.

41

42

43 STATEMENT

44

45 This bill would authorize a special motion to dismiss a "Strategic
46 Lawsuit Against Public Participation" (a "SLAPP"). "SLAPP" suits
47 are meritless actions brought against individuals who speak out
48 about public issues.

1 Section 1 of the bill defines terms, including the term “act in
2 furtherance of the right of advocacy on issues of public interest.”

3 This term is defined as:

4 (1) a written or oral statement made in connection with an issue
5 of public interest in, under consideration or review by, or that is
6 reasonably likely to encourage or to enlist public participation in an
7 effort to effect consideration or review by, a legislative, executive,
8 or judicial body, or any other State or local government proceeding
9 authorized by law;

10 (2) an expression or expressive conduct that involves petitioning
11 State or local government or communicating views to members of
12 the public in connection with an issue of public interest;

13 (3) any written or oral statement made or submitted in a place
14 open to the public or a public forum in connection with an issue of
15 public concern; or

16 (4) any other conduct in furtherance of the exercise of the
17 constitutional right of free speech or right of petition in connection
18 with an issue of public interest.

19 Section 2 of the bill authorizes a special motion to seek dismissal
20 of a SLAPP lawsuit. This section provides that a moving party may
21 file a special motion with the court seeking dismissal of a civil
22 action on the basis that it is a SLAPP lawsuit within 45 days after
23 service of the claim.

24 Upon the filing of a special motion for dismissal of a SLAPP
25 lawsuit, the court would stay all discovery and any pending
26 proceedings in the civil action. Notwithstanding the stay, the court,
27 on request of a party for good cause shown, may order that
28 specified discovery or other proceedings be conducted if necessary
29 to allow the parties to meet or oppose the burden of proof.

30 The bill provides that “good cause” would include:

31 (1) whether the party seeking discovery has reasonably
32 identified specific material held or known by the opposing party
33 that would aid the party seeking discovery in meeting or opposing
34 the burden of proof;

35 (2) whether the specific materials sought in discovery are
36 available from a source other than the opposing party; and

37 (3) other relevant factors at the court’s discretion.

38 Under subsection c. of section 2, a moving party filing a special
39 motion seeking dismissal would have the initial burden of
40 presenting prima facie evidence showing that the cause of action at
41 issue arises from an act in furtherance of the right of advocacy on
42 an issue of public interest. If the moving party meets this
43 requirement, the burden shifts to the responding party to establish
44 the existence of prima facie evidence that demonstrates the
45 probability of prevailing on the cause of action.

46 The court would determine whether the responding party has
47 established the existence of prima facie evidence that demonstrates
48 the probability of prevailing on the cause of action which requires

1 that the civil action proceed to trial. If the court finds that the
2 responding party has met this burden, the special motion for
3 dismissal would be denied and the civil action would proceed to
4 trial at the discretion of the court; otherwise, the civil action would
5 be dismissed.

6 If the court denies a special motion for dismissal:

7 (1) the fact that the determination has been made and the
8 substance of the determination could not be admitted into evidence
9 at any subsequent proceeding; and

10 (2) the determination could not affect the burden of proof or
11 standard of proof that is applied during any subsequent proceeding.

12 The bill provides that the court would award a moving party who
13 prevails on a special motion for dismissal of the SLAPP lawsuit
14 reasonable costs of litigation and any attorney's fees incurred in
15 defending the SLAPP lawsuit. In addition, the court may order
16 additional relief including sanctions against the responding party as
17 the court deems necessary to deter repetition of comparable conduct
18 by the responding party or others similarly situated.

19 Under the bill, if the court finds that the special motion for
20 dismissal of the SLAPP lawsuit was frivolous or that it was solely
21 intended to cause unnecessary delay, the court would award the
22 responding party reasonable costs of litigation and attorney's fees
23 related to the opposition of the special motion for dismissal of the
24 SLAPP lawsuit.

25 The bill further provides that unless the right to judgment is
26 waived by the moving party, reasonable attorney fees and costs in
27 connection with the special motion for dismissal of the SLAPP
28 lawsuit would be awarded, as appropriate, notwithstanding the fact
29 that the responding party requested the dismissal of the civil action
30 subsequent to the filing of the moving party's special motion for
31 dismissal, but prior to the issuance of the judgment of dismissal by
32 the court.

33 The bill provides that a party aggrieved by the trial court's
34 decision regarding a special motion to dismiss a civil action alleged
35 to be a SLAPP lawsuit may appeal that decision pursuant to the
36 Rules of Court. To the extent possible, the court would give
37 calendar preference to an appeal of a dismissal of a civil action
38 determined to be a SLAPP lawsuit. The bill provides that in any
39 appeal of a dismissal, the court may award reasonable attorney fees
40 and costs of litigation to the prevailing party.

41 Section 3 provides that the bill would not be applicable to the
42 following causes of action:

43 a. any civil action brought by a governmental entity to enforce
44 any law aimed at the protection of the public safety, health or
45 welfare;

46 b. a SLAPP-back lawsuit; or

1 c. a claim brought against a person primarily engaged in the
2 business of selling or leasing goods or services, if the statement or
3 conduct from which the claim arises:

4 (1) is a representation of fact made for the purpose of
5 promoting, securing, or completing sales or leases of, or
6 commercial transactions in, the person's goods or services; and

7 (2) is intended to be directed to an audience that is an actual or
8 potential buyer or customer.

9 Section 4 authorizes the defendant in a SLAPP lawsuit to file a
10 "SLAPP-back" suit. Specifically, the defendant in a SLAPP lawsuit
11 could initiate an action, claim, cross-claim, or counterclaim to
12 recover compensatory damages from the plaintiff of a SLAPP
13 lawsuit or the plaintiff's attorney, or both, pursuant to:

14 (1) the provisions of P.L.1988, c.46 (C.2A:15-59.1);

15 (2) the Rules of Court regarding frivolous litigation; or

16 (3) a civil action based on the common law tort of malicious
17 abuse of process and relevant case law. In order to prevail in such a
18 civil action, the plaintiff must prove the following elements:

19 (a) a SLAPP lawsuit was instituted by the defendant against the
20 plaintiff who is seeking damages under the SLAPP-back lawsuit;

21 (b) the SLAPP lawsuit was actuated by malice;

22 (c) there was an absence of probable cause for the SLAPP
23 lawsuit;

24 (d) the SLAPP lawsuit was terminated in favor of the plaintiff in
25 the SLAPP-back lawsuit; and

26 (e) the plaintiff in the SLAPP-back lawsuit suffered a special
27 grievance, specifically interference with the plaintiff's liberty or
28 property or severe and permanent economic damages.

29 Section 4 of the bill further provides that nothing in the bill
30 would prevent a party from seeking compensatory damages related
31 to a SLAPP lawsuit that was terminated in favor of a moving party
32 through any other legal process authorized by law or the Rules of
33 Court.