

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5783

STATE OF NEW JERSEY

DATED: JUNE 9, 2021

The Assembly Judiciary Committee reports favorably Assembly Bill No. 5783.

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

Section 1 of the bill defines terms, including the term “act in furtherance of the right of advocacy on issues of public interest.” This term is defined as:

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

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

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

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

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

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

The bill provides that “good cause” would include:

(1) whether the party seeking discovery has reasonably identified specific material held or known by the opposing party

that would aid the party seeking discovery in meeting or opposing the burden of proof;

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

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

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

The court would determine whether the responding party has established the existence of prima facie evidence that demonstrates the probability of prevailing on the cause of action which requires that the civil action proceed to trial. If the court finds that the responding party has met this burden, the special motion for dismissal would be denied and the civil action would proceed to trial at the discretion of the court; otherwise, the civil action would be dismissed.

If the court denies a special motion for dismissal:

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

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

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

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

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

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

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

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

b. a SLAPP-back lawsuit; or

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

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

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

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

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

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

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

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

(b) the SLAPP lawsuit was actuated by malice;

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

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

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

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