

By Ms. Resor, a petition (accompanied by bill, Senate, No. 1038) of Pamela P. Resor and Ralph S. Tyler for legislation to strengthen the protection of the Massachusetts "anti-slapp" statute. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT TO STRENGTHEN THE PROTECTION OF THE MASSACHUSETTS "ANTI-SLAPP" STATUTE.

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,
2 as appearing in the 2002 Official Edition, is hereby amended by
3 striking the first paragraph, and inserting in place thereof, the
4 following:—
5 In any case in which a party asserts that the civil claims, coun-
6 terclaims, or cross claims against said party are based on said par-
7 ty's exercise of its right of petition under the constitution of the
8 United States or of the Commonwealth, said party may bring a
9 special motion to dismiss. The court shall advance any such
10 special motion so that it may be heard and determined as expedi-
11 tiously as possible. The court shall grant such special motion, if
12 the party making the special motion demonstrates that the claims
13 against it arise from its exercise of the right to petition unless the
14 party against whom such special motion is made shows either
15 that: (1) the claims against the moving party are based on a sub-
16 stantial basis or other than or in addition to the exercise of the
17 moving parties constitutionally protected right to petition or
18 (2) (a) that the moving party's exercise of its right to petition was
19 devoid of any reasonable factual support or any arguable basis in
20 law and (b) the moving party's acts caused actual injury to the
21 responding party. In making its determination, the court shall
22 consider the pleadings and supporting and opposing affidavits
23 stating the facts upon which the liability of the defense is based.

1 SECTION 2. Section 59H of chapter 231 of the General Laws,
2 as so appearing, is hereby amended by striking the fifth paragraph
3 and inserting in place thereof the following three paragraphs:—

4 If the court grants such special motion to dismiss the court shall
5 award the moving party any actual damages suffered as a result of
6 the claim, as well as attorney's fees and related costs incurred in
7 defending against the claim and any related discovery matters.
8 The only exception to the use of attorney's fees and costs as
9 incurred by the movant shall be if the court shall find that in the
10 totality, considering the complexity of the case, the skill of the
11 attorney, and the claimed damages, said attorneys fees and costs
12 are clearly excessive. The court shall grant any pro se party, not
13 represented by an attorney, any actual damages suffered as a result
14 of the claim and any related discovery matters so that the
15 opposing party or parties do not receive a windfall from targeting
16 those unable to secure legal representation. The reasonable hours
17 of effort expended by the pro se defendant when their special
18 motion to dismiss is granted shall be judged considering the com-
19 plexity of the case, the skill if the defense, and the claimed dam-
20 ages. In deciding the value of the hours expended by a pro se
21 party, the court shall take special notice of the billing rates of the
22 opposing attorney or attorneys which, except for good cause, shall
23 become the basis for compensating the effort of the pro se party.

24 In addition, the court shall double the award for any damages,
25 legal fees, costs, or effort to a party from the time that they served
26 their answer on the party bringing the claims against them where
27 in said answer, for each claim against them, they assert the activi-
28 ties that were the basis of the claim are constitutionally protected
29 petitioning activity. In lieu of said answer, they may serve a
30 notice on the party bringing the claims against them which states
31 for each claim against them the activities that were the basis of the
32 claim are constitutionally protected petitioning activity.

33 Nothing in this section shall affect or preclude the right of the
34 moving party to any remedy otherwise authorized by law. To
35 facilitate the speedy resolution of any damage claim by a party
36 whose special motion to dismiss granted they may file a claim for
37 damages arising from having been targeted by said litigation any-
38 time, but no later than 30 days following the granting of their
39 special motion to dismiss in the same court where their special

40 motion to dismiss was granted. Any such claim shall then be
41 promptly heard and decided.

1 SECTION 3. The amended and new provisions of the Act shall
2 apply to all claims, counter claims, and cross claims that have not
3 been fully adjudicated on, or subsequent to, effective date of this
4 act. The party with a claim, counterclaim, and cross claim not
5 fully adjudicated on the effective data of this act shall have 60
6 days in which to file supplemental cross claims which reflect the
7 amended or new provisions added by these amendments and when
8 so filed they shall be treated as having been timely filed in accor-
9 dance with all rules of Civil or Appellate procedure.

