HOUSE . . . . . No. 3033

By Mr. Cohen of Newton, petition of David B. Cohen and other members of the General Court for legislation to limit strategic litigation against public participation under the rights of freedom of speech. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Three.

AN ACT LIMITING STRATEGIC LITIGATION AGAINST PUBLIC PARTICIPATION.

Whereas, the deferred operation of this act would tend to defeat its purpose, which is to immediately limit strategic litigation against public participation, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Whereas, the legislature finds and declares that full participation by persons and organizations and robust discussion of issues of public concern before the legislative, judicial, and administrative bodies and in other public fora are essential to the democratic process, that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances, that such litigation is disfavored and should be resolved quickly with minimum cost to citizens who have participated in matters of public concern.

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. Chapter 231 of the General Laws is hereby amended by inserting after section 59G the following section: —

Section 59H. In any case in which a party asserts that the civil claims, counterclaims, or cross claims against said party are based on said party's lawful exercise of its right of petition or of free speech under the constitution of the United States or of the commonwealth in connection with a matter of public concern,

said party may bring a special motion to dismiss. The court shall advance any such special motion so that it may be heard and determined with as little delay as possible. The court shall grant such special motion, unless the party against whom such special motion is made shows that: 1) the moving party's petitioning or speech were devoid of any reasonable factual support and any cognizable basis in law and 2) the moving party's acts caused actual legal injury to the responding party. Where the moving party's speech was alleged to constitute libel or slander, the respondent must also show by substantial evidence that the moving party published the statements with knowledge of their falsity or with reckless disregard of their falsity. 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.

Any government agency or subdivivision to which the moving party's acts were directed or the attorney general may intervene to defend or otherwise support the moving party on such special motion.

The court shall stay all discovery proceedings in the action upon the filing of a special motion made under this section; provided, however, that the court, on motion and after a hearing and for good cause shown, may order that specified discovery be conducted. The stay of discovery shall remain in effect until notice of entry of the order ruling on the special motion.

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.

If the court grants such special motion to dismiss, the court shall award the moving party costs and reasonable attorney's fees, including those incurred for the special motion and any related discovery matters. The court shall award compensatory damages and may award punitive damages upon a showing by the moving party that the responding party's claims, counterclaims, or cross claims where frivolous or were brought with an intent to harass the moving party or otherwise inhibit the moving party's exercise of its right to petition or free speech under the constitutions of the United States or the commonwealth. Nothing in this section shall affect or preclude the right of the moving party to any remedy otherwise authorized by law.

48 As used in this section, "a party's exercise of its right of petition
49 or of free speech" shall mean any written or oral statement made
50 before or submitted to a legislative, executive, or judicial body,
51 or any other governmental proceeding; any written or oral
52 statement made in connection with an issue under consideration
53 or review by a legislative, executive, or judicial body, or any other
54 governmental proceeding; or any written or oral statement made
55 in connection with an issue of public concern.

1 SECTION 2. The provisions of this act shall apply to all
2 claims, counterclaims, and cross claims that have not been fully
3 adjudicated on, or subsequent to, the effective date of this act.
4 A party may file a special motion to dismiss a claim, counterclaim,
5 or cross claim in existence on the effective date of this act within
6 sixty days of the effective date of this act.