



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB3431

Introduced 2/27/2007, by Rep. Jack D. Franks

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Illinois Act Limiting Strategic Litigation Against Public Participation. Makes legislative findings: there has been a disturbing increase in lawsuits brought to chill the rights of freedom of speech and petition for the redress of grievances; such lawsuits, called "Strategic Lawsuits Against public Participation" or "SLAPPS", are typically dismissed as groundless or unconstitutional but not before the defendants are put to expense and harassment; it is in the public interest for citizens to participate in matters of public concern without fear of reprisal through the judicial process; and expedited judicial review would avoid this abuse. Provides that the Act applies to any claim based on an action involving public participation and petition which includes: any statement made or document submitted, in a legislative, executive, or judicial proceeding or concerning an issue under review by a legislative, executive, or judicial proceeding. Provides that the Act shall not apply to any action brought by the Attorney General, a State's Attorney, or a municipal attorney, acting as a public prosecutor. Provides that a party may file a special motion to strike any claim by showing that the claim is based on an action involving public participation. Provides that if the moving party meets this burden, the burden shifts to the responding party to establish a probability of prevailing on the claim. Provides that the court shall award a moving party who prevails on a special motion to strike costs of litigation and any reasonable attorney's fees and additional relief, including sanctions. Effective immediately.

LRB095 09971 AJO 30184 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the  
5 Illinois Act Limiting Strategic Litigation Against Public  
6 Participation.

7 Section 5. Findings and purposes.

8 (a) Findings. The General Assembly finds and declares that:

9 (1) there has been a disturbing increase in lawsuits  
10 brought primarily to chill the valid exercise of the  
11 constitutional rights of freedom of speech and petition for  
12 the redress of grievances;

13 (2) such lawsuits, called "Strategic Lawsuits Against  
14 Public Participation" or "SLAPPs", are typically dismissed  
15 as groundless or unconstitutional, but often not before the  
16 defendants are put to great expense, harassment, and  
17 interruption of their productive activities;

18 (3) the costs associated with defending such suits can  
19 deter individuals and entities from fully exercising their  
20 constitutional rights to petition the government and to  
21 speak out on public issues;

22 (4) it is in the public interest for citizens to  
23 participate in matters of public concern and provide

1 information to public entities and other citizens on public  
2 issues that affect them without fear of reprisal through  
3 abuse of the judicial process; and

4 (5) an expedited judicial review would avoid the  
5 potential for abuse in these cases.

6 (b) Purposes. The purposes of this Act are:

7 (1) to strike a balance between the rights of persons  
8 to file lawsuits and to trial by jury and the rights of  
9 persons to participate in matters of public concern;

10 (2) to establish an efficient, uniform, and  
11 comprehensive method for speedy adjudication of SLAPPs;  
12 and

13 (3) to provide for attorney's fees, costs, and  
14 additional relief where appropriate.

15 Section 10. Definitions. As used in this Act:

16 "Claim" includes any lawsuit, action, claim, cross-claim,  
17 counterclaim, or other judicial pleading or filing requesting  
18 relief.

19 "Government" includes a branch, department, agency,  
20 instrumentality, official, employee, agent, or other person  
21 acting under color of law of the United States, a state or  
22 subdivision of a state, a unit of local government, or any  
23 other public authority.

24 "Moving party" means a person on whose behalf the motion  
25 described in Section 20 is filed seeking dismissal of a claim.

1 "Person" means an individual, corporation, business trust,  
2 estate, trust, partnership, limited liability company,  
3 association, joint venture, or any other legal or commercial  
4 entity.

5 "Responding party" means a person against whom the motion  
6 described in Section 20 is filed.

7 Section 15. Scope; exclusion.

8 (a) Scope. This Act applies to any claim, however  
9 characterized, that is based on an action involving public  
10 participation and petition. As used in this Act, an "action  
11 involving public participation and petition" includes:

12 (1) any oral statement made, or written statement or  
13 other document submitted, in a legislative, executive, or  
14 judicial proceeding or other proceeding authorized by law;

15 (2) any oral statement made, or written statement or  
16 other document submitted, in connection with an issue under  
17 consideration or review by a legislative, executive, or  
18 judicial proceeding or other proceeding authorized by law;

19 (3) any oral statement made, or written statement or  
20 other document submitted, that is reasonably likely to  
21 encourage or to enlist public participation in an effort to  
22 effect consideration or review of an issue in a  
23 legislative, executive, or judicial proceeding or other  
24 proceeding authorized by law;

25 (4) any oral statement made, or written statement or

1 other document submitted, in a place open to the public or  
2 a public forum in connection with an issue of public  
3 concern; or

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

8 (b) Exclusion. This Act does not apply to any action  
9 brought by the Attorney General, a State's Attorney, or a  
10 municipal attorney, acting as a public prosecutor, to enforce  
11 laws aimed at public protection.

12 Section 20. Special motion to strike; burden of proof.

13 (a) A party may file a special motion to strike any claim  
14 that is based on an action involving public participation and  
15 petition, as defined in Section 15.

16 (b) A party filing a special motion to strike under this  
17 Act has the initial burden of making a prima facie showing that  
18 the claim against which the motion is made is based on an  
19 action involving public participation and petition. If the  
20 moving party meets this burden, the burden shifts to the  
21 responding party to establish a probability of prevailing on  
22 the claim by presenting substantial evidence to support a prima  
23 facie case. If the responding party meets this burden, the  
24 court shall deny the motion.

25 (c) In making a determination under subsection (b), the

1 court shall consider pleadings and supporting and opposing  
2 affidavits stating the facts upon which the liability or  
3 defense is based.

4 (d) If the court determines that the responding party has  
5 established a probability of prevailing on the claim:

6 (1) the fact that the determination has been made and  
7 the substance of the determination may not be admitted into  
8 evidence at any later stage of the case; and

9 (2) the determination does not affect the burden of  
10 proof or standard of proof that is applied in the  
11 proceeding.

12 (e) The Attorney General's office or any government body to  
13 which the moving party's acts were directed may intervene to  
14 defend or otherwise support the moving party.

15 Section 25. Required procedures.

16 (a) The special motion to strike may be filed within 60  
17 days after the service of the most recent complaint or, in the  
18 court's discretion, at any later time upon terms it deems  
19 proper. A hearing shall be held on the motion not more than 30  
20 days after the service of the motion unless the docket  
21 conditions of the court require a later hearing.

22 (b) All discovery and any pending hearings or motions in  
23 the action shall be stayed upon the filing of a special motion  
24 to strike under Section 20. The stay of discovery shall remain  
25 in effect until the entry of the order ruling on the motion.

1 Notwithstanding any stay imposed under this subsection, the  
2 court, on motion and for good cause shown, may order that  
3 specified discovery or other hearings or motions be conducted.

4 (c) Any party shall have a right of expedited appeal from a  
5 trial court order on the special motion or from a trial court's  
6 failure to rule on the motion in a timely fashion.

7 Section 30. Attorney's fees, costs, and other relief.

8 (a) The court shall award a moving party who prevails on a  
9 special motion to strike made under Section 20, without regard  
10 to any limits under State law:

11 (1) costs of litigation and any reasonable attorney's  
12 fees incurred in connection with the motion; and

13 (2) such additional relief, including sanctions upon  
14 the responding party and its attorneys or law firms, as the  
15 court determines shall be necessary to deter repetition of  
16 the conduct and comparable conduct by others similarly  
17 situated.

18 (b) If the court finds that the special motion to strike is  
19 frivolous or is solely intended to cause unnecessary delay, the  
20 court shall award reasonable attorney's fees and costs to the  
21 responding party.

22 Section 35. Relationship to other laws. Nothing in this Act  
23 shall limit or preclude any rights the moving party may have  
24 under any other constitutional, statutory, case, or common law,

1 or rule provisions.

2 Section 40. Severability of provisions. If any provision of  
3 this Act or its application to any person or circumstance is  
4 held invalid, the invalidity does not affect other provisions  
5 or applications of this Act which can be given effect without  
6 the invalid provision or application, and to this end the  
7 provisions of this Act are severable.

8 Section 99. Effective date. This Act takes effect upon  
9 becoming law.