

HOUSE No. 2263

The Commonwealth of Massachusetts

PRESENTED BY:

Mark J. Cusack

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to strengthen the Commonwealth's Anti-SLAPP law.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Mark J. Cusack

5th Norfolk

Michelle M. DuBois

10th Plymouth

HOUSE No. 2263

By Mr. Cusack of Braintree, a petition (accompanied by bill, House, No. 2263) of Mark J. Cusack and Michelle M. DuBois for legislation to ensure full participation by citizens and organizations in discussion of issues regarding the right to the freedom of petition, the freedom of speech, the freedom of expression or any matter of public concern. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act relative to strengthen the Commonwealth's Anti-SLAPP law.

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, as appearing in the 2012
2 Official Edition, is hereby amended by striking the section in its entirety and inserting in place
3 there of the following new section:-

4 Section 59H. Strategic Litigation Against Public Participation; Special Motion to Dismiss

5 The purpose of this statute is to ensure full participation by citizens and organizations in
6 the robust discussion of issues in furtherance of the right to the freedom of petition, the freedom
7 of speech, the freedom of expression or in connection with any matter of public concern.

8 Because there has been a disturbing increase in lawsuits brought primarily to chill the valid
9 exercise of constitutional rights of freedom of speech, this statute recognizes that such litigation
10 is disfavored and should be resolved quickly with minimum cost to those exercising their First
11 Amendment rights. In furtherance of this purpose, in any case in which a party asserts that the

12 civil claims, counterclaims, or cross claims against said party are based, either in whole or in
13 part, on said party's exercise of its right to freedom of expression, freedom of speech or freedom
14 of petition under the Constitution of the United States or of the Commonwealth, said party may
15 bring a special motion to dismiss.

16 (a) The court shall advance any such special motion so that it may be heard and
17 determined as expeditiously as possible. For those claims or allegations that are based on
18 protected speech activity, the court shall grant such special motion, unless the party against
19 whom such special motion is made shows that:

20 i. the moving party's exercise of its right to the freedom of petition, the freedom of
21 speech, the freedom of expression or in connection with any matter of public concern, either
22 acting solely or in concert with other citizens, was devoid of any reasonable factual support or
23 any arguable basis in law; and

24 ii. the moving party's acts caused actual injury to the responding party.

25 In making its determination, the court shall consider the pleadings and supporting and
26 opposing affidavits stating the facts upon which the liability or defense is based.

27 (b) The attorney general, on his behalf or on behalf of any government agency or
28 subdivision to which the moving party's acts were directed, may intervene to defend or
29 otherwise support the moving party on such special motion.

30 (c) All discovery proceedings shall be stayed upon the filing of the special motion to
31 dismiss under this section; provided, however, that the court, on motion and after a hearing and
32 for good cause shown, may order that limited, specified discovery on the motion may be

33 conducted. The stay of discovery shall remain in effect until notice of entry of the order ruling
34 on the special motion.

35 (d) Said special motion to dismiss may be filed within sixty days of the service of the
36 complaint or, in the court’s discretion, at any later time upon terms it deems proper.

37 (e) If the court grants such special motion to dismiss, the court shall award the moving
38 party all costs and reasonable attorneys’ fees, including those incurred for the special motion and
39 any related discovery matters. Nothing in this section shall affect or preclude the right of the
40 moving party to any remedy otherwise authorized by law.

41 (f) As used in this section, the phrase “freedom of petition, the freedom of speech, the
42 freedom of expression” shall be defined as those rights are defined under the U.S. Constitution or
43 the Massachusetts Constitution.

44 (g) As used in this section, the term “any matter of public concern” shall be defined as
45 inclusive of any written or verbal statement that is recorded, displayed or distributed in-person or
46 via any form of media, concerning any topic or subject related to:

47 (1) public health or safety;

48 (2) environmental, economic, or community well-being;

49 (3) the government or public policy;

50 (4) a public official or public figure; or

51 (5) a good, product, or service in the marketplace or otherwise offered to the public.