

**HOUSE . . . . . No. 3263**

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**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:
<i>Mark J. Cusack</i>	<i>5th Norfolk</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>

**HOUSE . . . . . No. 3263**

By Mr. Cusack of Braintree, a petition (accompanied by bill, House, No. 3263) of Mark J. Cusack, David Henry Argosky LeBoeuf and James Arciero 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.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 2263 OF 2017-2018.]

**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninety-First General Court  
(2019-2020)**  
\_\_\_\_\_

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 2016  
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.