

ASSEMBLY BILL NO. 375—ASSEMBLYWOMAN DICKMAN

MARCH 22, 2023

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to Strategic Lawsuits Against Public Participation. (BDR 3-672)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to civil actions; revising the definition of “good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern”; clarifying the burden of proof in a special motion to dismiss based upon the right to petition and the right to free speech under certain circumstances; authorizing the recovery of treble damages under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law establishes certain provisions to deter frivolous or vexatious
2 lawsuits, also known as Strategic Lawsuits Against Public Participation, or
3 “SLAPP lawsuits.” (NRS 41.635-41.670) Under existing law, a person who
4 engages in good faith communication in furtherance of the right to petition or the
5 right to free speech in direct connection with an issue of public concern is immune
6 from civil liability for claims based upon that communication. (NRS 41.650)
7 Existing law also defines good faith communication as communications made by a
8 person: (1) in connection with certain governmental actions, officers, employees or
9 entities; or (2) in direct connection with an issue of public interest in certain places.
10 (NRS 41.637) With certain exceptions, **section 1** of this bill excludes within the
11 meaning of such communication any defamatory written or oral statement that
12 concerns a relative or close friend of a candidate during an electoral campaign.
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14 Under existing law, if an action is brought against a person who engages in
15 good faith communication in furtherance of the right to petition or the right to free
16 speech in direct connection with an issue of public concern, the person may file a
17 special motion to dismiss the claim. Existing law provides that after a special
18 motion to dismiss is filed, the court must first determine whether the person who
19 filed the special motion to dismiss has established, by a preponderance of the
evidence, that the claim is based upon a good faith communication in furtherance of



20 the right to petition or the right to free speech in direct connection with an issue of
21 public concern. (NRS 41.660) Under existing law, if the court determines that the
22 person who filed the special motion to dismiss has met this burden, the court must
23 then determine whether the person who brought the claim has demonstrated, with
24 prima facie evidence, a probability of prevailing on the claim pursuant to the same
25 burden of proof required by California’s anti-SLAPP law as of June 8, 2015. (NRS
26 41.665) **Section 2** of this bill clarifies that to meet that burden of proof, the person
27 who brought the claim must demonstrate that the complaint is legally sufficient.
28 **Section 2** also requires a court to accept as true all evidence that is favorable to the
29 person who brought the claim and evaluate the evidence provided by the person
30 who filed the special motion to dismiss only insofar as to determine whether the
31 evidence defeats the claim as a matter of law.

32 Existing law provides that if a court grants a special motion to dismiss and
33 finds that the motion was frivolous or vexatious, the court shall award the
34 prevailing party reasonable costs and attorney’s fees and may award an amount of
35 up to \$10,000 and any such additional relief as the court deems proper to punish
36 and deter the filing of frivolous or vexatious motions. (NRS 41.670) **Section 3** of
37 this bill additionally authorizes the person who brought the claim to recover treble
38 damages if the person ultimately prevails on the claim.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 41.637 is hereby amended to read as follows:

2 41.637 **1.** “Good faith communication in furtherance of the
3 right to petition or the right to free speech in direct connection with
4 an issue of public concern” means any:

5 ~~[1-]~~ **(a)** Communication that is aimed at procuring any
6 governmental or electoral action, result or outcome;

7 ~~[2-]~~ **(b)** Communication of information or a complaint to a
8 Legislator, officer or employee of the Federal Government, this state
9 or a political subdivision of this state, regarding a matter reasonably
10 of concern to the respective governmental entity;

11 ~~[3-]~~ **(c)** Written or oral statement made in direct connection with
12 an issue under consideration by a legislative, executive or judicial
13 body, or any other official proceeding authorized by law; or

14 ~~[4-]~~ **(d)** Communication made in direct connection with an issue
15 of public interest in a place open to the public or in a public forum,
16 ↪ which is truthful or is made without knowledge of its falsehood.

17 **2.** *The term does not include any defamatory written or oral
18 statement made during an electoral campaign that concerns a
19 relative or close friend of a candidate, unless the statement is:*

20 *(a) Truthful or is made without knowledge of its falsehood;
21 and*

22 *(b) An issue of public concern.*

23 **3.** *As used in this section, “relative” means any person who is
24 related by blood, adoption, marriage or domestic partnership
25 within the third degree of consanguinity or affinity.*



1 **Sec. 2.** NRS 41.665 is hereby amended to read as follows:

2 41.665 The Legislature finds and declares that:

3 1. NRS 41.660 provides certain protections to a person against
4 whom an action is brought, if the action is based upon a good faith
5 communication in furtherance of the right to petition or the right to
6 free speech in direct connection with an issue of public concern.

7 2. When a plaintiff must demonstrate a probability of success
8 of prevailing on a claim pursuant to NRS 41.660, the Legislature
9 intends that in determining whether the plaintiff “has demonstrated
10 with prima facie evidence a probability of prevailing on the claim”
11 the ~~[plaintiff must meet the same burden of proof that a plaintiff has
12 been required to meet pursuant to California’s anti Strategic
13 Lawsuits Against Public Participation law as of June 8, 2015.]~~ :

14 (a) *Plaintiff must demonstrate that the complaint is legally
15 sufficient; and*

16 (b) *Court shall:*

17 (1) *Accept as true all evidence that is favorable to the
18 plaintiff; and*

19 (2) *Evaluate the evidence provided by the defendant only
20 insofar as to determine whether the evidence defeats the claim as a
21 matter of law.*

22 **Sec. 3.** NRS 41.670 is hereby amended to read as follows:

23 41.670 1. If the court grants a special motion to dismiss filed
24 pursuant to NRS 41.660:

25 (a) The court shall award reasonable costs and attorney’s fees to
26 the person against whom the action was brought, except that the
27 court shall award reasonable costs and attorney’s fees to this State or
28 to the appropriate political subdivision of this State if the Attorney
29 General, the chief legal officer or attorney of the political
30 subdivision or special counsel provided the defense for the person
31 pursuant to NRS 41.660.

32 (b) The court may award, in addition to reasonable costs and
33 attorney’s fees awarded pursuant to paragraph (a), an amount of up
34 to \$10,000 to the person against whom the action was brought.

35 (c) The person against whom the action is brought may bring a
36 separate action to recover:

37 (1) Compensatory damages;

38 (2) Punitive damages; and

39 (3) Attorney’s fees and costs of bringing the separate action.

40 2. If the court denies a special motion to dismiss filed pursuant
41 to NRS 41.660 and finds that the motion was frivolous or vexatious
42 ~~[, the]~~ :

43 (a) *The* court shall award to the prevailing party reasonable
44 costs and attorney’s fees incurred in responding to the motion ~~[]~~ ;
45 *and*



1 ***(b) The person who brought the action may recover treble***
2 ***damages if the person ultimately prevails in the action.***

3 3. In addition to reasonable costs and attorney's fees awarded
4 pursuant to subsection 2, the court may award:

5 (a) An amount of up to \$10,000; and

6 (b) Any such additional relief as the court deems proper to
7 punish and deter the filing of frivolous or vexatious motions.

8 4. If the court denies the special motion to dismiss filed
9 pursuant to NRS 41.660, an interlocutory appeal lies to the Supreme
10 Court.

11 **Sec. 4.** This act becomes effective on July 1, 2023.

