



Model Anti-SLAPP Legislation¹

August 18, 2011

100.1 Findings. The Legislature finds that:

- (1) "Strategic Lawsuits Against Public Participation" (SLAPP) suits are lawsuits brought to chill the exercise of the constitutional right to freedom of speech and right to petition the government for the redress of grievances;
- (2) SLAPP suits are typically dismissed as groundless or unconstitutional, but often not before the defendant is put to great expense, harassment, and interruption of their productive activities, and thus ought to be avoided from the outset when possible;
- (3) the costs associated with defending such suits chill speech and deter individuals from exercising their constitutional rights to petition the government and to speak on public issues;
- (4) it is in the public interest for citizens to speak openly and participate in matters of public concern without fear of reprisal through abuse of the judicial process; and
- (5) early and expedited judicial review of a plaintiff's claims in a SLAPP suit will reduce the potential for abuse in such suits.

100.2 Purposes. This chapter's purposes are:

- (1) to balance the right of a person to settle disputes in court and the rights of a person to speak freely and participate in matters of public concern;
- (2) to deter frivolous and costly lawsuits directed at suppressing speech and public participation;
- (3) to establish an efficient, uniform, and comprehensive method for adjudication of SLAPP suits; and
- (4) to provide for attorneys fees, costs, and additional relief, where appropriate.

¹ The Institute for Justice acknowledges and thanks the Society of Professional Journalists for its contribution to this model legislation.

100.3 Definitions.

Subdivision 1. Scope. As used in this chapter, the terms defined in this section have the meaning given.

Subd. 2. Claim. "Claim" means any lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing requesting relief.

Subd. 3. Expression. "Expression" means any oral, written, or electronic statement or document made in furtherance of the exercise of the constitutional right to free speech or right to petition the government for redress of grievances.

Subd. 3. Government. "Government" means a branch, department, agency, instrumentality, official, employee, agent, or other person acting under color of law of the United States, a state, or subdivision of a state or other public authority.

Subd. 4. Moving Party. "Moving party" means a person on whose behalf the motion described in section 100.6 is filed seeking to strike a claim.

Subd. 5. Person. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity.

Subd. 6. Responding party. "Responding party" means a person against whom a motion to strike described in section 100.6 is filed.

100.4 Action Involving Public Participation and Petition. This chapter applies to any claim that is based on an action involving public participation and petition. An action involving public participation and petition includes any expression:

- (1) in a government proceeding, public forum, or place open to the public; and
- (2) regarding an issue, finding, determination, ruling, interpretation, law, rule, policy, program, activity or contract that was or is being considered, enacted, decided, executed or administered by the government.

100.5 Verification.

Subd. 1. Verification. Any party asserting a claim in a civil action against a person that arises from that person's expression shall include in the pleadings written verification under oath certifying that:

- (1) the party and the attorney of record, if any, have read the claim;
- (2) to the best of the party and the attorney's belief formed after reasonable inquiry, the claim is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and the asserted injury is actual, concrete, and redressable by the court; and
- (3) the claim is not asserted for any improper purpose such as to suppress the right of free speech or right to petition government of a person or entity, to harass, or to cause unnecessary delay or needless increase in the cost of litigation.

Subd. 2. Failure to verify. If a claim governed by section 100.4 is not verified as required by this subdivision, the claim shall be stricken unless it is verified within 10 days after the omission is called to the attention of the party asserting the claim or the attorney of record.

Subd. 3. Violation. If a verified claim is in violation of this subdivision, the court, upon motion or upon its own initiative, shall impose upon the persons who signed the verification, a represented party, or both, an appropriate sanction, which may include dismissal of the claim and any other relief provided in section 100.8 at the discretion of the court.

100.6 Motion to strike.

Subd. 1. Motion. A party may bring a motion to strike any civil claim that is based on an action involving public participation and petition.

Subd. 2. Burdens. A party bringing a motion to strike has the initial burden of making a prima facie showing the claim against which the motion is based concerns an action involving public participation and petition. If the moving party meets the burden, the burden shifts to the responding party to establish a likelihood of prevailing on the claim by presenting substantial evidence to support a prima facie case. If the responding party meets this burden, the court shall deny the motion.

Subd. 3. Evidence. In making its determination, the court shall consider pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

Subd. 4. Further proceedings. If the court determines the responding party established a likelihood of prevailing on the claim, (a) the fact that the court made that determination and the substance of the determination may not be admitted into evidence later in the case, and (b) the determination does not affect the burden or standard of proof in the proceeding.

100.7 Procedures for motion to strike.

Subd. 1. Schedule. The motion to strike may be filed within 60 days of the service of the most recent complaint or, in the court's discretion, at any later time upon terms it deems proper. A hearing shall be held on the motion not more than 30 days after the service of the motion.

Subd. 2. Discovery. All discovery, motions, or other pending hearings shall be stayed upon the filing of a motion to strike. The stay of discovery shall remain in effect until the entry of the order ruling on the motion. Notwithstanding the stay imposed by this subsection, the court, on motion and for good cause shown, may order that specified discovery, motions or other pending hearings be conducted.

Subd. 3. Additional motions. The movant in a motion to strike has the right (a) to petition for a writ of mandamus if the court fails to rule on the motion in an expedited fashion or (b) to file an interlocutory appeal from a trial court order denying the motion to strike.

100.8 Costs and relief.

Subd. 1. Award. The court shall award (a) a defending party upon a determination that a claim was not verified as required by section 100.5 or (b) a moving party that prevails on a motion to strike made under section 100.6, without regard to any limits under state law:

(1) costs of litigation and reasonable attorneys' fees; and

(2) such additional relief, including punitive damages and other sanctions, upon the responding party and its attorneys and law firms as the court determines necessary to deter repetition of the conduct and comparable conduct by others similarly situated.

Subd. 2. Alternative award. If the court finds the motion to strike is frivolous or is solely intended to cause delay, the court shall award to the responding party reasonable attorneys' fees and costs related to the motion.

100.9 Reporting. In any case filed by a government contractor that is found by a court to be in violation of sections 100.5 or 100.6, the court shall provide for its ruling to be sent to the head of the relevant governmental entity doing business with the contractor.

100.10 Application and construction. This chapter shall be applied and construed liberally to effectuate its general purposes.

100.11 Severability of provisions. If any provision of this chapter or its application is held invalid, the invalidity does not affect other provisions or applications that can be given effect without the invalid provision or application.

100.12 Short title. This chapter may be cited as the Public Speech Protection Act.

100.13 Effective date. This chapter takes effect _____.