

STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION

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House Bill 5036

Sponsor: Rep. Kate Ebli

Committee: Judiciary

Complete to 3-3-10

A REVISED SUMMARY OF HOUSE BILL 5036 AS INTRODUCED 6-3-09

The bill would require, with some exceptions, a court to dismiss what is known as *strategic lawsuits against public participation*, or SLAPPs.

According to online legal dictionaries, strategic lawsuits against public participation (SLAPPs) are "retaliatory lawsuits intended to silence, intimidate, or punish those who have used public forums to speak, petition, or otherwise move for government action on an issue."

House Bill 5036 would add a new section to the Revised Judicature Act. Under the bill, on motion of a defendant, a court would have to dismiss a civil action against the defendant if both of the following apply:

** The action were based on the individual's (defendant's) communication with a governmental unit, a public official, or another person in the individual's exercise of his or her right to petition, including seeking relief, influencing action, informing, or otherwise participating in the process of government and the communication had been aimed at procuring a governmental or electoral action, result, or outcome.

** By a preponderance of the evidence, the court found that the action had been initiated with the primary purpose of harassing or intimidating the individual (defendant) or otherwise hindering his or her participation in the process of government.

Exception. An action could not be dismissed if the communication that gave rise to the action:

- Was made by the individual (defendant) with knowledge that it was false or with reckless disregard for whether the communication was false; or,
- Included information that the individual (defendant) was prohibited by law from disseminating.

Awards. A court would be required to award all of the following to a moving defendant in an action that was dismissed under the bill:

- Three times the amount of damages sustained by the defendant as a result of the action.
- Court costs of the action.
- Reasonable attorney fees and other expenses incurred in defending against the action.

- If the amounts awarded under the above provisions total less than \$5,000, the difference between the total and \$5,000.
- Additional sanctions against the plaintiff (person initiating the lawsuit) and the attorney or law firm representing the plaintiff as the court determined to be sufficient to deter the plaintiff and the attorney or law firm from filing similar SLAPP suits.

Ability to countersue. If the action were dismissed, the defendant could bring a separate action, cross-claim, or counterclaim to recover any item described above. However, the defendant would not be entitled to a double recovery of the same item.

Definitions. The bill would add several definitions. "Communication" would mean an oral statement, writing, electronic transmission, photograph, depiction, peaceful demonstration, or other expression.

"Governmental unit" would mean the State of Michigan, a municipality, a political subdivision or agency of the state, the federal government, or a public authority, board, or commission.

"Person" would mean an individual, a corporation, a partnership, a limited liability company, an association, an organization, two or more persons who have a joint or common interest, or another legal entity.

"Public official" would mean a person who was elected or appointed to any of the following:

- An office established by the state constitution.
- A public office of a Michigan city, village, township, or county.
- A department, board, agency, institution, commission, authority, division, council, college, university, school district, intermediate school district, special district, or other public entity of the state or a city, village, township, or county in the state.

MCL 600.2977

FISCAL IMPACT:

House Bill 5036 would have an indeterminate, but likely positive, overall fiscal impact on the judicial branch. The existence of a summary and expedited procedure for terminating SLAPPs would provide a positive fiscal impact to the court system by quickly bringing SLAPPs to final disposition in the early trial stage of the suit and by acting as a deterrent for the filing of new SLAPPs. The provisions may also force the judicial branch to incur costs associated with new court filings, post-judgment motions for costs, motions for attorney's fees and damages, litigation to interpret various provisions, and minimal appeals.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.