

ACT 187

H.B. NO. 741

A Bill for an Act Relating to Civil Liability.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that:

- (1) The framers of our constitutions, recognizing citizen participation in government as an inalienable right essential to the survival of democracy, secured its protection through the right to petition the government for redress of grievances in the First Amendment to the U.S. Constitution and article I, section 4 of the state constitution;
- (2) Communication, testimony, claims, and arguments provided by citizens to their government are essential to wise government decisions and public policy, the public health, safety, and welfare, effective law enforcement, the efficient operation of government programs, the credibility and trust afforded government, and the continuation of America's republican form of government through representative democracy;
- (3) Civil lawsuits and counterclaims, often claiming millions of dollars, have been and are being filed against thousands of citizens, businesses, and organizations based on their valid exercise of their right to petition, including seeking relief, influencing action, informing, communicat-

- ing, and otherwise participating with government bodies, officials, employees, or the electorate;
- (4) Such lawsuits, called "strategic lawsuits against public participation" or "SLAPPs," are typically dismissed as unconstitutional, but often not before the defendants are put to great expense, harassment, and interruption of their productive activities;
 - (5) The number of SLAPPs has increased significantly over the past thirty years;
 - (6) SLAPPs are an abuse of the judicial process; they are used to censor, chill, intimidate, or punish citizens, businesses, or organizations for involving themselves in public affairs, and controlling SLAPPs will make a major contribution to lawsuit reform;
 - (7) The threat of financial liability, litigation costs, destruction of one's business, loss of one's home, and other personal losses from groundless lawsuits seriously affects government, commerce, and individual rights by significantly diminishing public participation in government, in public issues, and in voluntary service;
 - (8) While courts have recognized and discouraged SLAPPs, protection of these important rights has not been uniform or comprehensive; and
 - (9) While some citizen communications to the government inevitably will be incorrect, unsound, self-interested, or not in good faith, it is essential in our democracy that the constitutional rights of citizens to participate fully in the process of government be uniformly, consistently, and comprehensively protected and encouraged.

The purpose of this Act is to:

- (1) Protect and encourage citizen participation in government to the maximum extent permitted by law;
- (2) Create a more equitable balance between the rights of persons to file lawsuits and to trial by jury, and the rights of persons to petition, speak out, associate, and otherwise participate in their governments;
- (3) Support the operations of and assure the continuation of representative government in America, including the protection and regulation of public health, safety, and welfare by protecting public participation in government programs, public policy decisions, and other actions;
- (4) Establish a balanced, uniform, and comprehensive process for speedy adjudication of SLAPPs as a major contribution to lawsuit reform; and
- (5) Provide for attorney fees, costs, and damages for persons whose citizen participation rights have been violated by the filing of a SLAPP against them.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
CITIZEN PARTICIPATION IN GOVERNMENT ACT**

§ -1 **Definitions.** As used in this chapter, unless the context otherwise requires:

“Governmental body” includes 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.

“Judicial claim” or “claim” includes any lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing requesting relief.

“Lacks substantial justification” means substantially frivolous, substantially groundless, or substantially vexatious.

“Motion” includes any motion to dismiss, for summary judgment, for judgment on the pleadings or to strike, a demurrer, or any other judicial pleading filed to dispose of a judicial claim.

“Moving party” means any person on whose behalf the motion described in section -2 is filed seeking dismissal of the judicial claim.

“Person” includes any individual, corporation, association, organization, partnership, two or more persons having a joint or common interest, or other legal entity.

“Public participation” means any oral or written testimony submitted or provided to a governmental body during the course of a governmental proceeding.

“Responding party” means any person against whom the motion described in section -2 is filed.

“SLAPP” means a strategic lawsuit against public participation and refers to a lawsuit that lacks substantial justification or is interposed for delay or harassment and that is solely based on the party’s public participation before a governmental body.

§ -2 Required procedures; motion. Notwithstanding any law to the contrary, including rules of court, upon the filing of any motion to dispose of a claim in a judicial proceeding on the grounds that the claim is based on, relates to, or involves public participation and is a SLAPP lawsuit:

- (1) The motion shall be treated as a motion for judgment on the pleadings, matters outside the pleadings shall be excluded by the court, and the court shall expedite the hearing of the motion;
- (2) The moving party shall have a right:
 - (A) To an immediate appeal from a court order denying the motion; and
 - (B) To file an application for a writ of mandamus if the court fails to rule on the motion in an expedited fashion;
- (3) Discovery shall be suspended, pending decision on the motion and appeals;
- (4) The responding party shall:
 - (A) Without leave of court, have seven days to amend its pleadings to be pled with specificity, and shall include such supporting particulars as are peculiarly within the supporting pleader’s knowledge; and
 - (B) Have the burden of proof and persuasion on the motion;
- (5) The court shall make its determination based upon the allegations contained in the pleadings;
- (6) The court shall grant the motion and dismiss the judicial claim, unless the responding party has demonstrated that more likely than not, the respondent’s allegations do not constitute a SLAPP lawsuit as defined in section -1;
- (7) Any governmental body to which the moving party’s acts were directed or the attorney general in the case of a state governmental body, or the county attorney or corporation counsel in the case of a county governmental body may intervene to defend or otherwise support the moving party in the lawsuit;
- (8) The court shall award a moving party who prevails on the motion, without regard to any limits under state law:
 - (A) Actual damages or \$5,000, whichever is greater;

- (B) Costs of suit, including reasonable attorneys' and expert witness fees, incurred in connection with the motion; and
 - (C) Such additional sanctions upon the responding party, its attorneys, or law firms as the court determines shall be sufficient to deter repetition of the conduct and comparable conduct by others similarly situated; and
- (9) Any person damaged or injured by reason of a claim filed in violation of their rights under this chapter may seek relief in the form of a claim for actual or compensatory damages, as well as punitive damages, attorneys' fees, and costs, from the person responsible.

§ -3 **Relationship to other laws.** Nothing in this chapter shall limit or preclude any rights the moving party may have under any other constitutional, statutory, case or common law, or rule provisions.

§ -5¹ **Rule of construction.** This chapter shall be construed liberally to fully effectuate its purposes and intent."

SECTION 3. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 25, 2002.)

Note

- 1. Should be "§ -4".