

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 241

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

AN ACT

RELATING TO CIVIL ACTIONS; PROVIDING FOR PROTECTION OF CONDUCT
IN FURTHERANCE OF A PERSON'S RIGHTS TO PETITION THE GOVERNMENT
AND FREE SPEECH IN CONNECTION WITH A PUBLIC ISSUE; ESTABLISHING
PROCEDURES, STAY OF DISCOVERY, AWARD OF COSTS AND ATTORNEY
FEES; ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. FINDINGS AND PURPOSE. -- The legislature finds
that civil lawsuits often claiming millions of dollars have
been filed against persons for exercising their right to free
speech and to petition the government and to seek relief from,
influence action by, inform or otherwise participate in the
processes of government is subject to a special motion to
dismiss that shall be considered by the trial court on an

1 expedited basis; these lawsuits are an abuse of the legal
2 process because they chill and punish participation in public
3 affairs and the institutions of democratic government. The
4 legislature declares that it is in the public interest to
5 encourage continued public participation in matters of public
6 significance and to restore balance between the right of access
7 to courts and the rights of citizens to petition, speak out,
8 associate and otherwise participate in the political process
9 without fear of litigation.

10 Section 2. SPECIAL MOTION TO DISMISS UNWARRANTED OR
11 SPECIOUS LAWSUITS--PROCEDURES--SANCTIONS--SEVERABILITY. --

12 A. An action arising from conduct or speech that
13 has as its primary purpose informing, communicating with,
14 influencing or otherwise participating in the process of
15 government is subject to a special motion to dismiss that shall
16 be considered by the trial court on an expedited basis, which
17 the court shall grant, unless the party against whom the motion
18 is made shows that:

19 (1) the moving party's exercise of its right
20 to petition or speech was devoid of any reasonable factual
21 support and any arguable basis in law; and

22 (2) the moving party's acts caused actual
23 injury to the responding party.

24 B. The responding party to the special motion to
25

1 dismiss shall have the burden of going forward with the
2 evidence and of persuasion on the motion. Discovery shall be
3 suspended pending decision on the motion and any appeal from a
4 decision on the motion; provided that the court may, on motion
5 and after hearing with good cause shown, order specified and
6 limited discovery be conducted on the motion.

7 C. As used in this section, "conduct or speech that
8 has as its primary purpose informing, communicating with,
9 influencing or otherwise participating in the process of
10 government" includes:

11 (1) any written or oral statement or writing
12 made before a legislative, executive or judicial proceeding or
13 any other official proceeding authorized by law;

14 (2) any written or oral statement or writing
15 made in connection with an issue under consideration or review
16 by a legislative, executive or judicial body or any other
17 official proceeding authorized by law;

18 (3) any written or oral statement or writing
19 made in a place open to the public or a public forum in
20 connection with an issue of public interest; and

21 (4) any other conduct in furtherance of the
22 exercise of the constitutional right of petition or the
23 constitutional right of free speech in connection with a public
24 issue or an issue of public interest.

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1 D. A governmental entity to which the party that is
2 moving to dismiss has directed its actions, or the attorney
3 general, may intervene to defend or otherwise support the
4 moving party.

5 E. If the special motion to dismiss is granted, the
6 court shall award reasonable attorney fees and costs to the
7 moving party. If the court finds that a special motion to
8 dismiss is frivolous or solely intended to cause unnecessary
9 delay, the court shall award costs and reasonable attorney fees
10 to the party prevailing on the motion.

11 F. If the court grants the special motion to
12 dismiss, the court shall impose such additional sanctions,
13 including disciplinary referrals, upon the party responding to
14 the motion to dismiss and the party's attorneys or law firm as
15 the court deems sufficient to deter repetition of the conduct
16 and comparable conduct by others similarly situated.

17 G. The special motion to dismiss may be filed
18 within sixty days of the complaint or at a later time that the
19 court deems proper; provided that no special motion to dismiss
20 may be filed within ninety days prior to the date scheduled for
21 trial on the merits.

22 H. The moving party shall have the right to an
23 expedited interlocutory appeal from a trial court order denying
24 the special motion to dismiss or from a trial court's failure
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underscored material = new
[bracketed material] = delete

1 to rule on the motion on an expedited basis.

2 I. Nothing in this section limits a right or remedy
3 of a party granted pursuant to another constitutional,
4 statutory, common law or administrative provision.

5 J. If any provision of this section or the
6 application of any provision of this section to a person or
7 circumstance is held invalid, the invalidity shall not affect
8 other provisions or applications of this section that can be
9 given effect without the invalid provision or application, and
10 to this end the provisions of this section are severable.