

**First Regular Session
Sixty-third General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 01-0012.01 Debbie Haskins

HOUSE BILL 01-1150

HOUSE SPONSORSHIP

Sinclair, and Dean

SENATE SPONSORSHIP

Dyer (Durango),

House Committees
Civil Justice & Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE ENACTMENT OF THE "CITIZEN PARTICIPATION IN**
102 **GOVERNMENT ACT OF 2001".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Establishes an immunity protection for public participation by citizens in government that protects a person who seeks relief or who petitions the government to influence action, communicate, or otherwise participate in the processes of government from strategic lawsuits against public participation, otherwise referred to as SLAPPs. Allows a person who is the subject of a SLAPP action to file a motion to dismiss or otherwise dispose of the case brought against the person. Suspends discovery, shifts the burden of proof to the SLAPP filer, and authorizes

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

HOUSE
Amended 2nd Reading
February 20, 2001

the involved government body or the attorney general to participate. Directs the court to dismiss the SLAPP action unless the court finds clear and convincing evidence that the acts of the moving party are not immunized.

Authorizes a person damaged or injured by reason of a SLAPP claim to seek relief for actual or compensatory damages, punitive damages, attorney fees, and costs from the person responsible. Defines "person" for purposes of the act as an individual, corporation, association, organization, partnership, two or more persons having a joint or common interest, or other legal entity.

Allows a person against whom a SLAPP action was filed in federal court to bring an action in state district court seeking damages and attorney fees and costs.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** Article 21 of title 13, Colorado Revised Statutes, is
3 amended BY THE ADDITION OF A NEW PART to read:

4 **PART 10**

5 **CITIZEN PARTICIPATION IN GOVERNMENT ACT OF 2001**

6 **13-21-1001. Short title.** THIS PART 10 MAY BE KNOWN AND SHALL
7 BE CITED AS THE "CITIZEN PARTICIPATION IN GOVERNMENT ACT OF 2001".

8 **13-21-1002. Legislative findings and declaration of purposes.**

9 (1) **Findings.** THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

10 (a) THE FRAMERS OF THE UNITED STATES CONSTITUTION AND THE
11 STATE CONSTITUTION, RECOGNIZING CITIZEN PARTICIPATION IN
12 GOVERNMENT AS AN INALIENABLE RIGHT ESSENTIAL TO THE SURVIVAL OF
13 DEMOCRACY, SECURED ITS PROTECTION THROUGH THE RIGHT TO PETITION
14 THE GOVERNMENT FOR REDRESS OF GRIEVANCES IN THE FIRST AMENDMENT
15 TO THE U.S. CONSTITUTION AND SECTION 24 OF ARTICLE II OF THE
16 CONSTITUTION OF THIS STATE;

17 (b) THE COMMUNICATIONS, INFORMATION, OPINIONS, REPORTS,
18 TESTIMONY, CLAIMS, AND ARGUMENTS PROVIDED BY CITIZENS TO THEIR

1 GOVERNMENT ARE ESSENTIAL TO WISE GOVERNMENT DECISIONS AND
2 PUBLIC POLICY; THE PUBLIC HEALTH, SAFETY, AND WELFARE; EFFECTIVE
3 LAW ENFORCEMENT; THE EFFICIENT OPERATION OF GOVERNMENT
4 PROGRAMS; THE CREDIBILITY AND TRUST AFFORDED GOVERNMENT; AND
5 THE CONTINUATION OF AMERICA'S REPUBLICAN FORM OF GOVERNMENT
6 THROUGH REPRESENTATIVE DEMOCRACY;

7 (c) CIVIL LAWSUITS AND COUNTERCLAIMS HAVE BEEN AND ARE
8 BEING FILED AGAINST CITIZENS, BUSINESSES, AND ORGANIZATIONS BASED
9 ON THE VALID EXERCISE OF THEIR RIGHT TO PETITION, INCLUDING SEEKING
10 RELIEF, INFLUENCING ACTION, INFORMING, COMMUNICATING, AND
11 OTHERWISE ENGAGING IN PUBLIC PARTICIPATION WITH GOVERNMENT
12 BODIES, OFFICIALS, OR EMPLOYEES;

13 (d) SUCH LAWSUITS, CALLED "STRATEGIC LAWSUITS AGAINST
14 PUBLIC PARTICIPATION" OR "SLAPPS", ARE TYPICALLY DISMISSED, BUT
15 OFTEN NOT BEFORE THE DEFENDANTS ARE SUBJECT TO GREAT EXPENSE,
16 HARASSMENT, AND INTERRUPTION OF THEIR PRODUCTIVE ACTIVITIES.

17

18 (2) **Purposes.** THE PURPOSES OF THIS PART 10 ARE:

19 (a) TO PROTECT AND ENCOURAGE CITIZEN PARTICIPATION IN
20 GOVERNMENT TO THE MAXIMUM EXTENT PERMITTED BY LAW;

21 (b) TO CREATE A MORE EQUITABLE BALANCE BETWEEN THE RIGHTS
22 OF PERSONS TO FILE LAWSUITS AND TO TRIAL BY JURY AND THE RIGHTS OF
23 PERSONS TO PETITION, SPEAK OUT, ASSOCIATE, AND OTHERWISE
24 PARTICIPATE IN THEIR GOVERNMENT;

25 (c) TO SUPPORT THE OPERATIONS OF AND ASSURE THE
26 CONTINUATION OF REPRESENTATIVE GOVERNMENT IN AMERICA, INCLUDING
27 THE PROTECTION AND REGULATION OF PUBLIC HEALTH, SAFETY, AND

1 WELFARE BY PROTECTING PUBLIC PARTICIPATION IN GOVERNMENT
2 PROGRAMS, PUBLIC POLICY DECISIONS, AND OTHER ACTIONS;

3 (d) TO PROVIDE FOR ATTORNEY FEES, COSTS, AND DAMAGES FOR
4 PERSONS WHOSE CITIZEN PARTICIPATION RIGHTS HAVE BEEN VIOLATED BY
5 THE FILING OF A SLAPP.

6 **13-21-1003. Definitions.** AS USED IN THIS PART 10, UNLESS THE
7 CONTEXT OTHERWISE REQUIRES:

8 (1) "GOVERNMENT" MEANS A BRANCH, DEPARTMENT, AGENCY,
9 OFFICIAL, EMPLOYEE, AGENT, OR OTHER PERSON WITH AUTHORITY TO ACT
10 ON BEHALF OF THE FEDERAL GOVERNMENT, THIS STATE, OR ANY POLITICAL
11 SUBDIVISION OF THIS STATE OR OTHER PUBLIC AUTHORITY.

12 (2) "JUDICIAL CLAIM" OR "CLAIM" MEANS ANY CIVIL LAWSUIT,
13 CAUSE OF ACTION, CLAIM, CROSS-CLAIM, COUNTERCLAIM, OR OTHER
14 JUDICIAL PLEADING OR FILING SEEKING DAMAGES OR REQUESTING RELIEF.

15 (3) "MOTION" MEANS ANY MOTION TO DISMISS, MOTION FOR
16 SUMMARY JUDGMENT, OR ANY OTHER JUDICIAL PLEADING FILED TO DISPOSE
17 OF A JUDICIAL CLAIM.

18 (4) "MOVING PARTY" MEANS ANY PERSON ON WHOSE BEHALF THE
19 MOTION DESCRIBED IN SECTION 13-21-1004 IS FILED SEEKING DISMISSAL OF
20 THE JUDICIAL CLAIM.

21 (5) "PERSON" MEANS ANY INDIVIDUAL, CORPORATION,
22 ASSOCIATION, ORGANIZATION, PARTNERSHIP, TWO OR MORE PERSONS
23 HAVING A JOINT OR COMMON INTEREST, OR OTHER LEGAL ENTITY.

24 (6) "PUBLIC PARTICIPATION" MEANS SPEECH, INCLUDING BUT NOT
25 LIMITED TO ORAL, WRITTEN, AND ELECTRONIC COMMUNICATION, OR
26 LAWFUL CONDUCT DIRECTED TO AN OFFICIAL GOVERNMENT BODY OR ITS
27 REPRESENTATIVE THAT IS GENUINELY AIMED IN WHOLE OR IN PART AT

1 PROCURING FAVORABLE GOVERNMENT ACTION.

2 (7) "RESPONDING PARTY" MEANS ANY PERSON AGAINST WHOM THE
3 MOTION DESCRIBED IN SECTION 13-21-1004 IS FILED.

4 (8) "SLAPPS" OR "SLAPP" MEANS STRATEGIC LAWSUITS AGAINST
5 PUBLIC PARTICIPATION.

6 **13-21-1004. Protection of citizens to participate in government**

7 **- applicability - procedures.** (1) THIS SECTION APPLIES TO ANY MOTION
8 IN A JUDICIAL PROCEEDING TO DISMISS OR OTHERWISE DISPOSE OF A
9 JUDICIAL CLAIM ON THE GROUNDS THAT THE CLAIM MATERIALLY RELATES
10 TO AN ACT OF THE MOVING PARTY THAT INVOLVES PUBLIC PARTICIPATION.

11 (2) ON THE FILING OF ANY MOTION AS DESCRIBED IN SUBSECTION
12 (1) OF THIS SECTION:

13 (a) DISCOVERY SHALL BE SUSPENDED, PENDING THE FINAL
14 DISPOSITION OF THE MOTION, INCLUDING ANY APPEAL; EXCEPT THAT THE
15 COURT MAY, ON MOTION AND AFTER A HEARING AND FOR GOOD CAUSE
16 SHOWN, ORDER THAT SPECIFIED AND LIMITED DISCOVERY BE CONDUCTED;

17 (b) THE RESPONDING PARTY SHALL HAVE THE BURDEN OF PROOF,
18 OF GOING FORWARD WITH THE EVIDENCE, AND OF PERSUASION ON THE
19 MOTION;

20 (c) THE COURT SHALL GRANT THE MOTION AND DISMISS THE
21 JUDICIAL CLAIM UNLESS THE COURT FINDS THAT THE RESPONDING PARTY
22 HAS PRODUCED CLEAR AND CONVINCING EVIDENCE THAT THE ACTS OF THE
23 MOVING PARTY ARE NOT IMMUNIZED FROM LIABILITY UNDER SECTION
24 13-21-1005; AND

25 (d) ANY GOVERNMENTAL BODY TO WHICH THE MOVING PARTY'S
26 ACTS WERE DIRECTED OR THE ATTORNEY GENERAL MAY INTERVENE IN,
27 DEFEND, OR OTHERWISE SUPPORT THE MOVING PARTY IN THE SLAPP.

1 **13-21-1005. Immunity.** PUBLIC PARTICIPATION THROUGH LAWFUL
2 CONDUCT OR SPEECH IS IMMUNE FROM LIABILITY EXCEPT WHERE NOT
3 AIMED AT PROCURING ANY FAVORABLE GOVERNMENTAL ACTION, RESULT,
4 OR OUTCOME.

5 **13-21-1006. Attorney fees and damages.** (1) THE COURT SHALL
6 AWARD A MOVING PARTY WHO PREVAILS IN A MOTION TO DISMISS FILED
7 PURSUANT TO SECTION 13-21-1004 REASONABLE ATTORNEY FEES AND
8 COSTS ASSOCIATED WITH THE BRINGING OF THE MOTION.

9 (2) A MOVING PARTY MAY PETITION THE COURT FOR DAMAGES
10 UNDER THIS SECTION IN CONJUNCTION WITH A MOTION FILED PURSUANT TO
11 SECTION 13-21-1004.

12 (3) IF A MOTION FILED PURSUANT TO SECTION 13-21-1004 IS
13 GRANTED AND THE MOVING PARTY DEMONSTRATES THAT THE RESPONDENT
14 BROUGHT THE CAUSE OF ACTION IN THE UNDERLYING JUDICIAL CLAIM FOR
15 THE PURPOSE OF HARASSMENT, TO INHIBIT THE MOVING PARTY'S PUBLIC
16 PARTICIPATION, TO INTERFERE WITH THE MOVING PARTY'S EXERCISE OF
17 PROTECTED CONSTITUTIONAL RIGHTS, OR OTHERWISE TO INJURE
18 WRONGFULLY THE MOVING PARTY, THE COURT SHALL AWARD THE MOVING
19 PARTY ACTUAL DAMAGES.

20 **13-21-1007. Action in district court for a claim brought in**
21 **federal court.** A PERSON MAY BRING AN ACTION UNDER THIS PART 10 IN
22 ANY DISTRICT COURT IN THIS STATE AGAINST A RESPONDENT WHO HAS
23 BROUGHT A SLAPP [REDACTED] IN FEDERAL COURT THAT MATERIALLY RELATES
24 TO PUBLIC PARTICIPATION BY THE PERSON. IF THE MOVING PARTY
25 DEMONSTRATES THAT THE RESPONDENT'S ACTION IN FEDERAL COURT WAS
26 BROUGHT FOR THE PURPOSE OF HARASSMENT, TO INHIBIT THE PERSON'S
27 PUBLIC PARTICIPATION, TO INTERFERE WITH THE PERSON'S EXERCISE OF

1 PROTECTED CONSTITUTIONAL RIGHTS, OR OTHERWISE WRONGFULLY TO
2 INJURE THE PERSON, THE COURT SHALL AWARD THE PERSON ACTUAL
3 DAMAGES AND REASONABLE ATTORNEY FEES AND COSTS. ■ ■

4 **13-21-1008. Relationships to other law.** NOTHING IN THIS PART
5 10 LIMITS OR PRECLUDES ANY RIGHTS THE MOVING PARTY OR THE
6 RESPONDING PARTY MAY HAVE UNDER ANY OTHER CONSTITUTIONAL LAW,
7 STATUTORY PROVISION, CASE LAW, COMMON LAW, OR UNDER THE
8 "COLORADO RULES OF CIVIL PROCEDURE".

9 **SECTION 2. Effective date - applicability.** (1) This act shall
10 take effect at 12:01 a.m. on the day following the expiration of the
11 ninety-day period after final adjournment of the general assembly that is
12 allowed for submitting a referendum petition pursuant to article V, section
13 1 (3) of the state constitution; except that, if a referendum petition is filed
14 against this act or an item, section, or part of this act within such period,
15 then the act, item, section, or part, if approved by the people, shall take
16 effect on the date of the official declaration of the vote thereon by
17 proclamation of the governor.

18 (2) The provisions of this act shall apply to any causes of action
19 filed on or after the applicable effective date of this act.