

Committee Action:
Do Pass _____
Amend & Do Pass _____
Other _____

Assembly Committee on Judiciary

This measure may be considered for action during today's work session.

May 15, 2015

SENATE BILL 444

Revises provisions governing civil actions. (BDR 3-1137)

Sponsored by: Committee on Judiciary
Date Heard: April 24, 2015
Fiscal Impact: Effect on Local Government: No.
Effect on the State: No.

Senate Bill 444 defines, in relation to Strategic Lawsuits Against Public Participation, or "SLAPP lawsuits," an issue of "public concern" as any topic that concerns the general public beyond a mere curiosity or general interest and provides that any cause of action arising out of communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern is subject to a special motion to dismiss.

The bill also sets forth timelines and other requirements concerning such a motion, including conditions under which such a motion will be denied, when discovery must be allowed, and when appeals can be made. If a court finds that a motion to dismiss has been filed in bad faith, the court must award the plaintiff reasonable attorney's fees and costs. Finally, the bill deletes from statute additional compensatory awards relating to the dismissal of these claims. The bill's provisions apply only to an action commenced on or after October 1, 2015.

Amendments: An amended was proposed by C. Todd Mason, Wynn Resorts.

Proposed Amendment to SB 444 – Anti-SLAPP Reform (Summary of Revised Amendment)

Submitted by: C. Todd Mason, Wynn Resorts; todd.mason@wynnresorts.com

Date Submitted: 05/15/15 (1:25 p.m.)

Intent of the Amendment

The attached amendment addresses specific Issues raised by opponents of the bill and concerns shared by Committee members. The revised amendment:

- 1) Changes the timeline for filing a motion to dismiss under the Anti-SLAPP statute from 20 days in the original bill to 60 days. **This now matches the current statute.**
- 2) Changes the standard of evidence for a plaintiff to meet in response to a motion from “prima facie” evidence in the original bill to “clear and convincing evidence.” **This language now matches current statute.**
- 3) Changes the type of speech covered by the Anti-SLAPP statute from an item of “public concern” to an issue “in the public interest,” removing the definition of “public concern” in the original bill. **This language now matches current statute.**
- 4) Allows for limited, reciprocal discovery by a respondent or moving party on a motion to dismiss under the statute. Any discovery is limited to “ascertaining such information necessary to meet or oppose the special motion to dismiss.”
- 5) Alters the timeline for a response and ruling on the motion to dismiss from 7 days in the current statute to 20 judicial days.
- 6) Restores the awarding of attorneys costs and fees and the potential award of additional award up to \$10,000. **This reverts to language in the current statute.**
- 7) All other provisions of the original bill are deleted.

Thank you for your consideration of this amendment and please contact me should you have any questions.

Proposed Amendment – Revision 2 to SB 444

New text not in the original bill is formatted in **green and bolded**.

NRS 41.635 is amended as follows:

NRS 41.635 Definitions. As used in [NRS 41.635](#) to [41.670](#), inclusive, unless the context otherwise requires, the words and terms defined in [NRS 41.637](#) and [41.640](#) have the meanings ascribed to them in those sections. ***“Plaintiff” shall include a counterclaimant or other party asserting a claim. “Defendant” shall include a counterdefendant or other party against whom a claim is asserted. “Complaint” shall include a counterclaim or other pleading in which a claim is asserted.***

NRS 41.660 is amended as follows:

NRS 41.660 Attorney General or chief legal officer of political subdivision may defend or provide support to person sued for engaging in right to petition or free speech in direct connection with an issue of public concern; special counsel; filing special motion to dismiss; stay of discovery; adjudication upon merits.

1. If an action is brought against a person based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern:
 - (a) The person against whom the action is brought may file a special motion to dismiss; and
 - (b) The Attorney General or the chief legal officer or attorney of a political subdivision of this State may defend or otherwise support the person against whom the action is brought. If the Attorney General or the chief legal officer or attorney of a political subdivision has a conflict of interest in, or is otherwise disqualified from, defending or otherwise supporting the person, the Attorney General or the chief legal officer or attorney of a political subdivision may employ special counsel to defend or otherwise support the person.
2. A special motion to dismiss must be filed within 60 days after service of the complaint, which period may be extended by the court for good cause shown.
3. If a special motion to dismiss is filed pursuant to subsection 2, the court shall:
 - (a) Determine whether the moving party has established, by a preponderance of the evidence, that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern;
 - (b) If the court determines that the moving party has met the burden pursuant to paragraph (a), determine whether the plaintiff has established by clear and convincing evidence a probability of prevailing on each element of the claim.
 - (c) If the court determines that the plaintiff has established a probability of prevailing on the claim pursuant to paragraph (b), ensure that such determination will not:
 - (1) Be admitted into evidence at any later stage of the underlying action or subsequent proceeding; or
 - (2) Affect the burden of proof that is applied in the underlying action or subsequent proceeding;
 - (d) Consider such evidence, written or oral, by witnesses or affidavits, as may be material in making a determination pursuant to paragraphs (a) and (b);
 - (e) Stay discovery pending:
 - (1) A ruling by the court on the motion; and
 - (2) The disposition of any appeal from the ruling on the motion; and
 - (3) ***Upon a showing by a party that information necessary to meet or oppose the burden set forth in subsection (b) is in the possession of another party or a third party and is not reasonably available without discovery, the court shall allow limited specified discovery for the purpose of ascertaining such***

information. (f) Rule on the motion *within 20 judicial days* after the motion is served upon the plaintiff.

(4) If the court dismisses the action pursuant to a special motion to dismiss filed pursuant to subsection 2, the dismissal operates as an adjudication upon the merits.

(5) The court may modify briefing and hearing schedules or other deadlines set forth in this Section upon a finding that doing so serves the interests of justice.

Note: All other provisions of the original bill are deleted.