

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE DRS65228-RC-4 (3/26)

Short Title: Protect Rights/Motion to Strike.

(Public)

Sponsors: Senator Webster.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROTECT THE RIGHT OF FREEDOM OF SPEECH, TO PETITION
GOVERNMENT, AND ENSURE ACCESS TO PUBLIC DELIBERATIONS BY
PUBLIC BODIES BY CREATING A SPECIAL MOTION TO STRIKE IN CIVIL
PROCEEDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1A-1 of Chapter 1A of the General Statutes is amended by adding a new Rule 56.1 to read:

"Rule 56.1. Special motion to strike.

(a) Motion and proceedings thereon. – A cause of action against a person arising from any act of that person in furtherance of the person's right of petition, free speech, or access to public deliberations under the United States or North Carolina Constitution, or federal or State law and in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established a probability of success on the claim. In making its determination, the court shall consider the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based. If the court determines that the plaintiff has established a probability of success on the claim, neither that determination nor the fact of that determination shall be admissible in evidence at any later stage of the proceeding, and no burden of proof or degree of proof otherwise applicable shall be affected by that determination.

(b) Attorney fees, costs. – In any action brought under subsection (a) of this Rule, a prevailing defendant shall be entitled to recover reasonable attorneys' fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award reasonable attorneys' fees and costs to a plaintiff prevailing on the motion.

1 (c) Time of filing. – The special motion may be filed within 60 days of service of
2 the complaint or, in the court's discretion, at any later time upon terms the court deems
3 proper. The motion shall be noticed for hearing not more than 30 days after service
4 unless the docket conditions of the court require a later hearing.

5 (d) Discovery. – All discovery proceedings in the action shall be stayed upon the
6 filing of a notice of motion under this Rule. The stay of discovery shall remain in effect
7 until notice of entry of the order ruling on the motion. Notwithstanding this subsection
8 of this Rule, the court for good cause shown may order that specified discovery be
9 conducted.

10 (e) Definitions. – As used in this Rule, an act in furtherance of the person's right
11 of petition, free speech, or access to public deliberations includes:

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

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

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

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

24 **SECTION 2.** This act is effective when it becomes law.