

HB 391-FN - AS INTRODUCED

2025 SESSION

25-0386
09/02

HOUSE BILL

391-FN

AN ACT relative to preventing strategic lawsuits against public participation.

SPONSORS: Rep. Corcoran, Hills. 28; Rep. Osborne, Rock. 2

COMMITTEE: Judiciary

ANALYSIS

This bill establishes a legal process for preventing strategic lawsuits against public participation (anti-SLAPP) by granting qualified immunity from suit, prosecution, and from liability for any defendant or counter-defendant in any action, case, claim, administrative proceeding, arbitration, or any other legal process that impacts their First Amendment rights.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

In the Year of Our Lord Two Thousand Twenty Five

Be it Enacted by the Senate and House of Representatives in General Court convened:

(d) This immunity may be invoked by making a showing that a claim or counterclaim is based upon the defendant, respondent, or counter-defendant's use of the rights afforded under the First Amendment to the United States Constitution or Part I, Article 22 of the of the New Hampshire constitution.

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1 (e) This immunity may be invoked so long as a claim, action, proceeding, or counter-
2 claim is based upon at least one act in furtherance of these rights, even if the claim, action,
3 proceeding, or counter-claim is also based on acts not in furtherance of these rights.

4 (f) This immunity may only be overcome by a showing by the plaintiff, respondent, or
5 counter-plaintiff that the claim or counterclaim is of sufficient merit, with prima facie evidence, that
6 there is a probability of prevailing on the claim or counterclaim. If invoked in federal court or in a
7 court outside the State of New Hampshire, the plaintiff must show that the claim can survive a
8 motion to dismiss or a motion for summary judgment, or analogous motion, as applicable.

9 (g) Given that this is a substantive immunity from suit, not just liability, any denial of a
10 motion invoking this immunity shall be appealable on an interlocutory basis in the state courts of
11 New Hampshire and, to the fullest extent permissible, in the jurisdiction in which the matter is
12 pending.

13 (h) If a defendant or counter-defendant successfully invokes this immunity, that
14 defendant or counter-defendant shall be entitled to all actual costs, disbursements, and reasonable
15 attorneys' fees expended in the defense of the case as well as all actual costs, disbursements, and
16 reasonable attorneys' fees expended in any successful appeal. The rights and remedies of this
17 statute apply to claims or actions brought by the state of New Hampshire or its subdivisions against
18 any person or entity and, to the fullest extent possible, sovereign immunity for the recovery by such
19 defendant or respondent of fees, costs, and damages provided in this statute is hereby waived.

20 (i) If a defendant, respondent, or counter-defendant successfully disposes of all claims or
21 counter-claims by a party brought against it under this section, the defendant or counter-defendant
22 may recover all actual costs, disbursements, and reasonable attorneys' fees incurred in defending
23 itself from the claims or counter-claims, regardless of whether such costs, disbursements, or
24 attorneys' fees are related to a motion under this section.

25 (j) If fewer than all claims or counterclaims are disposed of under this section, the
26 defendant or counter-defendant may only recover those costs, disbursements, and attorneys' fees
27 incurred in connection with dismissing the claims that are deemed to be violative of the anti-SLAPP
28 law.

29 (k) This immunity may be exercised either by a motion to dismiss invoking the
30 immunity, a motion for judgment on the pleadings, or an early motion for summary judgment
31 invoking the immunity, or if in an arbitration or administrative proceeding, by their analogous
32 procedures. The party invoking this immunity may also bring a counterclaim for violation of the
33 anti-SLAPP law.

34 (l) No government entity nor government employee acting in their official capacity may
35 enjoy this immunity nor any provision under this statute. However, it may be freely employed
36 against any governmental entity or employee.

1 507-I:2 Anti-SLAPP Procedural Rules. The purpose of this section is to provide procedures
2 through which RSA 507-I:1 will apply in all courts in this state.

3 I. In federal courts and in foreign jurisdictions, these procedural rules are severable from
4 the anti-SLAPP substantive immunity established in the foregoing section. In New Hampshire state
5 courts, and wherever these rules are not in conflict with those of the tribunal, if an action is brought
6 against a person in violation of the substantive immunity from anti-SLAPP litigation, the person
7 against whom the action is brought may bring a special motion to dismiss or an anti-SLAPP
8 counterclaim, or both.

9 II. A special motion to dismiss may be filed 7 days after notice of an intent to bring an anti-
10 SLAPP motion is served upon the plaintiff or counter-plaintiff (or other authority bringing the
11 claim).

12 III. If a special motion to dismiss is filed, the court shall:

13 (a) Determine whether the moving party has established by a preponderance of the
14 evidence that the claim fits within the substantive immunity protections;

15 (b) If the court determines that the moving party has met the burden pursuant to
16 subparagraph (a), determine whether the non-moving party has demonstrated with prima facie
17 evidence a probability of prevailing on the claim;

18 (c) If the court determines that the non-moving party has established a probability of
19 prevailing on the claim pursuant to subparagraph (b), ensure that such determination will not:

20 (1) Be admitted into evidence at any later stage of the underlying action or
21 subsequent proceeding; or

22 (2) Affect the burden of proof that is applied in the underlying action or subsequent
23 proceeding;

24 (d) Consider such evidence, written or oral, by witnesses or affidavits, as may be
25 material in making a determination pursuant to subparagraphs (a) and (b);

26 (e) Except as otherwise provided in paragraph IV, stay all other portions of the case,
27 including discovery and motion practice pending:

28 (1) A ruling by the court on the motion; and

29 (2) The disposition of any appeal from the ruling on the motion; and

30 (f) Rule on the motion within 30 judicial days after the motion is served upon the
31 plaintiff, with such time to be extended by good cause shown or as the court's schedule requires.

32 IV. Upon a showing by a party that information necessary to meet or oppose the burden
33 pursuant to paragraph III is in the possession of another party or a third party and is not reasonably
34 available without discovery, the court shall allow limited discovery for the purpose of ascertaining
35 such information.

36 (a) This showing shall be demonstrated by separate motion, and shall be accompanied by
37 an affidavit, signed under penalty of perjury, by the moving party and the moving party's attorney.

(b) This motion shall lay out, with specificity, the discovery requested, the reason the specific discovery is necessary, and why it cannot be gathered in any other way.

(c) If the motion lacks such specificity, it shall be denied and the reasonable attorneys' fees incurred in opposing it shall be awarded to the non-moving party.

(d) Before bringing such discovery motion, the prospective moving party shall meet and confer with the non-moving party in order to resolve the matter without a motion. If the non-moving party has unreasonably declined to agree to the discovery, the moving party shall be entitled to the reasonable attorneys' fees incurred in bringing the motion.

V. If the court dismisses the action pursuant to a special motion to dismiss, the dismissal operates as an adjudication upon the merits.

VI. If the plaintiff or counter-plaintiff notices dismissal or moves to dismiss the action, or seeks to amend the complaint, after a special motion to dismiss is filed:

(a) Such notice of dismissal or motion to dismiss shall function as an admission that the special motion was meritorious, and thus the court shall grant the motion.

(b) Such motion to amend shall function as an admission that the special motion was meritorious as to any claims that the amendment would remove.

VII. The court may modify any deadlines pursuant to this section or any other deadlines relating to a complaint filed pursuant to this section if such modification would serve the interests of justice.

507-I:3 Separate Action or Counterclaim. The purpose of this section is to provide a positive cause of action for persons who have been aggrieved by a SLAPP suit, but require additional remedies to be made whole.

I. If any claim, action, administrative proceeding, arbitration, or any similar process of any kind is brought against a party, and that party wishes to invoke the anti-SLAPP law by way of separate action or counterclaim rather than by separate motion, they may do so. Alternatively, this claim may be brought after the conclusion of the matter similar to a malicious prosecution claim.

II. If an action is brought and a party successfully invokes the anti-SLAPP statute, that person may bring a subsequent separate action to recover any costs and fees that the trial court failed to grant.

III. The elements of this claim:

(a) A claim was filed,

(b) There was an anti-SLAPP motion filed (or an equivalent in federal court), and

(c) The motion was successful.

IV. If the claim is successful, the court shall:

(a) Award statutory damages of no less than \$10,000.

(b) Award compensatory damages.

(c) Award the prevailing plaintiff attorneys' fees and costs.

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1 V.(a) If any citizen of this state is sued in another jurisdiction outside this state, and that
2 citizen raises the anti-SLAPP protections in RSA 507-I but the foreign jurisdiction declines to apply
3 RSA 507-I, but that citizen ultimately prevails in the action, then that citizen shall have a cause of
4 action against the plaintiff or counter-plaintiff in the foreign action if the following are proven:

5 (1) The claim would have been subject to RSA 507-I, if it had been brought in the
6 state courts in New Hampshire.

7 (2) The defendant or counter-defendant in the foreign action invoked RSA 507-I.

8 (3) The foreign court declined to apply RSA 507-I.

9 (4) The New Hampshire defendant prevailed in that foreign action including
10 obtaining a dismissal without prejudice or a dismissal for a lack of personal jurisdiction.

11 (5) The New Hampshire defendant in the foreign action gave the plaintiff in the
12 foreign action notice, in writing, that if the New Hampshire defendant in the foreign action
13 prevailed, the New Hampshire defendant in the foreign action would bring a claim under this
14 section.

15 (b) If the 5 elements in subparagraph (a) are proven by a preponderance of the evidence,
16 then the plaintiff in this action shall be entitled to:

17 (1) Statutory damages of between \$10,000 and \$100,000;

18 (2) Damages in an amount equal to the actual costs, disbursements, and reasonable
19 attorneys' fees expended in the foreign action, which were incurred after the giving of notice; and

20 (3) All actual costs, disbursements, and reasonable attorneys' fees expended in
21 bringing the New Hampshire action.

22 507-I:4 Retroactivity. The provisions of this chapter shall apply to all actions pending in the
23 state of New Hampshire on the effective date of this chapter and, to the fullest extent permissible, to
24 actions pending in federal courts and foreign jurisdictions.

25 2 Effective Date. This act shall take effect January 1, 2026.

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**HB 391-FN- FISCAL NOTE
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AN ACT relative to preventing strategic lawsuits against public participation.

FISCAL IMPACT:

The Legislative Budget Assistant has determined that this legislation has a total fiscal impact of less than \$10,000 in each of the fiscal years 2025 through 2028.

AGENCIES CONTACTED:

Judicial Branch