AN ACT relative to preventing strategic lawsuits against public participation.

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

1. New Chapter; Anti-SLAPP Substantive Immunity. Amend RSA by inserting after chapter 507-G the following new chapter:

CHAPTER 507-H

ANTI-SLAPP SUBSTANTIVE IMMUNITY

507-H:1 Anti-SLAPP Substantive Immunity.

I. In this chapter, "SLAPP" means a strategic lawsuit against public participation.

II.(a) The purpose of this statute is to ensure full participation by citizens and organizations in the robust discussion of issues in furtherance of the right of petition, and of the rights of freedom of speech and of expression in connection with any matter of public concern. This statute recognizes that such litigation is disfavored and should be resolved quickly with minimum cost to those exercising their rights protected by the First Amendment to the U.S. Constitution or Part I, Article 22 of the New Hampshire Constitution. In furtherance of this purpose, in any case in which a party asserts that the civil claims, counterclaims, cross claims or pre-suit discovery against said party are based, either in whole or in part, on said party’s exercise of its right of petition, or of its rights of freedom of speech or freedom of expression in connection with any matter of public concern under the Constitution of the United States or of the State of New Hampshire, said party may bring a special motion to dismiss.

1. All laws of this state shall be construed to afford 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.
2. This immunity may be invoked by a defendant, respondent, or counter-defendant at any time.
3. This immunity may be invoked by making a showing that a claim or counterclaim or any other proceeding or action is based upon the defendant, respondent, or counter-defendant’s use of the rights afforded under the First Amendment to the U.S. Constitution or Part I, Article 22 of the of the New Hampshire Constitution.
4. This immunity may be invoked so long as a claim, action, proceeding, action, or counter-claim is based upon at least one act in furtherance of these rights, even if the claim, action, proceeding, or counter-claim is also based on acts not in furtherance of these rights.
5. The immunity from suit should upheld if the responding party—

1) fails to present evidence or supportable allegations, sufficient as a matter of law to establish a prima facie case regarding each element of the claim, as if the case were being evaluated on a motion to dismiss or judgment on the pleadings; or,  
2) has presented evidence or supportable allegations establishing a prima facie case regarding each element of the claim under subparagraph (A), but the moving party has established that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law on the claim or complaint as if the court were evaluating a motion for summary judgment under RSA 491:8-a.

3) Neither (f)(1) nor f(2) shall require the court to usurp the role of the jury in evaluation of evidence or credibility of evidence beyond what a Court would do if evaluating a motion to dismiss, a motion for judgment on the pleadings, a motion for summary judgment, or a motion for a directed verdict. Those procedures, as they apply under New Hampshire or Federal Rules are not modified by this qualified immunity except to the extent that qualified immunity guarantees a right to an interlocutory appeal.

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

(2) If the Anti-SLAPP motion is denied by the Court, the moving party may waive the right to interlocutory review and bring an anti-SLAPP counterclaim, which will be evaluated by the jury at trial or the finder of fact if there is no jury. If the jury or finder of fact finds for that the initial claim was a) without merit; and b) had the effect or intent of suppressing First Amendment protected rights; then the jury shall award compensatory damages to the counterclaimant and the Court shall award all costs and reasonable attorneys’ fees to the counterclaimant incurred in both defense of the initial action and in prosecuting the counterclaim.

1. If a defendant, respondent, or counter-defendant successfully invokes this immunity, that defendant or counter-defendant shall be entitled to all actual costs, disbursements and reasonable attorneys' fees expended in the defense of the case as well as all actual costs, disbursements and reasonable attorneys’ fees expended in any successful appeal.
2. The rights and remedies of this statute apply to claims or actions brought by the state of New Hampshire or its subdivisions against any person or entity and, to the fullest extent possible , the State of New Hampshire waives sovereign immunity for any consequences that may be imposed upon the State or any subdivision thereof and thus any defendant or respondent has the right to recover fees, costs, and damages provided in this statute against any government entity as if they were a private entity.
3. If a defendant, respondent or counter-defendant successfully disposes of all claims or counter-claims by a party brought against it under this section, the defendant or counter-defendant shall recover all actual costs, disbursements, and reasonable attorneys’ fees incurred in defending itself from the claims or counter-claims, regardless of whether such costs, disbursements, or attorneys’ fees are directly related to a motion under this section.
4. If fewer than all claims or counterclaims are disposed of under this section, the defendant or counter-defendant may only recover those costs, disbursements, and attorneys’ fees incurred in connection with dismissing the claims that are deemed to be violative of the anti-SLAPP law.
5. This immunity may be exercised either by a motion to dismiss invoking the immunity, a motion for judgment on the pleadings, or an early motion for summary judgment invoking the immunity, or if in an arbitration or administrative proceeding, by their analogous procedures. The party invoking this immunity may also bring a counterclaim for violation of the anti- SLAPP law.
6. No government entity nor government employee acting in their ofﬁcial capacity may enjoy this immunity nor any provision under this statute. However, it may be freely employed against any governmental entity or employee.

507-H:2 Anti-SLAPP Procedural Rules. The purpose of this section is to provide procedures through which [RSA 507-H:1](https://gencourt.state.nh.us/rsa/html/LII/507-H/507-H-1.htm) will apply in all courts in this state.

1. The Anti-SLAPP law is not invoked by separate motion, but may be invoked at any time as part of a motion to dismiss, motion for judgment on the pleadings, or motion for summary judgment.
2. If the motion is denied, given the substantive immunity, an immediate interlocutory appeal is permitted to the moving party.

507-H: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.

1. 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.
2. 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.
3. The elements of this claim:
   1. A claim was ﬁled,
   2. The claim was, or is, without merit,
   3. The claim has, or had, the effect or intent of suppressing First Amendment protected rights,
4. If these elements are met, the court shall:
   1. Award statutory damages of no less than $10,000.
   2. Award compensatory damages.
   3. Award enhanced compensatory damages, if appropriate,
   4. Award reasonable attorneys fees and costs.
5. If any citizen or corporation of this state is sued in another jurisdiction outside this state, and that citizen raises the anti-SLAPP protections in [RSA 507-H](https://gencourt.state.nh.us/rsa/html/LII/507-H/507-H-mrg.htm) but the foreign jurisdiction declines to apply [RSA 507-H](https://gencourt.state.nh.us/rsa/html/LII/507-H/507-H-mrg.htm), but that citizen ultimately prevails in the action, then that citizen shall have a cause of action against the plaintiff or counter-plaintiff in the foreign action if the following are proven:
   1. The claim would have been subject to [RSA 507-H](https://gencourt.state.nh.us/rsa/html/LII/507-H/507-H-mrg.htm), if it had been brought in the state courts in New Hampshire.
   2. The defendant or counter-defendant in the foreign action invoked [RSA 507-H](https://gencourt.state.nh.us/rsa/html/LII/507-H/507-H-mrg.htm).
   3. The foreign court declined to apply [RSA 507-H](https://gencourt.state.nh.us/rsa/html/LII/507-H/507-H-mrg.htm).
   4. The New Hampshire defendant prevailed in that foreign action - including obtaining a dismissal without prejudice or a dismissal for a lack of personal jurisdiction.
   5. The New Hampshire defendant in the foreign action gave the plaintiff in the foreign action notice, in writing, that if the New Hampshire defendant in the foreign action prevailed, the New Hampshire defendant in the foreign action would bring a claim under this section.
   6. If these 5 elements are proven by a preponderance of the evidence, then the plaintiff in this action shall be entitled to:
      1. Statutory damages of between $10,000 and $100,000;
      2. Damages in an amount equal to the actual costs, disbursements and reasonable attorneys’ fees expended in the foreign action, which were incurred after the giving of notice;
      3. All actual costs, disbursements and reasonable attorneys' fees expended in bringing the New Hampshire action; and
      4. Enhanced compensatory damages as the court deems appropriate.

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

1. Effective Date. This act shall take effect January 1, 2025.