ALICE Model Anti-SLAPP Act: Act to Stop Strategic
Lawsuits Against Public Participation (SLAPPs)[[1]](#footnote-1)

**Rationale:** There has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. It is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. As well, information provided by citizens concerning potential wrongdoing is vital to effective law enforcement and the efficient operation of government. The threat of a civil action for damages can act as a deterrent to citizens who wish to report information to federal, state, or local agencies or otherwise participate in public forums. The costs of defending against such suits can be severely burdensome.

**Summary:** This [act] provides for expedited motions to dismiss abusive SLAPP lawsuits. Section 2 defines the forms of public participation protected from such SLAPP suits. Section 3 provides for an expedited motion to dismiss such suits, while Section 4 provides for special motions to quash abusive attempts to obtain personal information about individuals via discovery. Section 5 provides for the recovery of attorney’s fees and other costs due to defending against a SLAPP suit as well as ten thousand dollars in statutory damages for suits brought in bad faith. Section 6 prohibits government entities from engaging in SLAPP suits and provides for liability by government entities under the law for doing so. Section 7 exempts purely commercial speech and lawsuits brought in the public interest from provisions of the [act].

**SECTION 1. SHORT TITLE.** This act may be cited as the [Act] to Stop Strategic Lawsuits Against Public Participation (SLAPPs).

**SECTION 2. DEFINITIONS.** For the purposes of the act:

(1) “Act in furtherance of the right of advocacy on issues of public interest” means any of the following:

(A) A written or oral statement made in any of the following circumstances:

(i) In connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law.

(ii) In a place open to the public or a public forum in connection with an issue of public interest.

(B) An expression or expressive conduct that involves petitioning the government or communicating views to members of the public in connection with an issue of public interest.

(2) “Claim” includes a civil lawsuit, claim, complaint, cause of action, cross-claim, counterclaim, or other civil judicial pleading or filing requesting relief.

(5) “Governmental entity” or “government entity” means the state, including the executive, legislative, and the judicial branches of government and the independent establishments of the state, counties, municipalities, corporations primarily acting as instrumentalities of the state, counties, or municipalities, districts, authorities, boards, commissions, or any agencies thereof.

(3) “Issue of public interest” means an issue related to health or safety; environmental, economic, or community well-being; the government; a public figure; or a good, product, or service in the market place. The term “issue of public interest” shall not be construed to include private interests, such as statements directed primarily toward protecting the speaker’s commercial interests rather than toward commenting on or sharing information about a matter of public significance.

(4) “Personal identifying information” includes any of the following:

(A) Name, address, telephone number, date of birth, or mother’s maiden name.

(B) Driver’s license or driver’s license number, or non-driver’s license or non-driver’s license number.

(C) Savings, checking, or other financial account number.

(D) Social security number or tax identification number.

(E) Passport or passport number.

(F) Citizenship status, visa, or alien registration card or number.

(G) Birth certificate or a facsimile of a birth certificate.

(H) Credit or debit card, or credit or debit card number.

(I) Credit history or credit rating.

(J) Signature.

(K) Personal identification number, electronic identification number, password, access code or device, electronic address, electronic identification number, routing information or code, digital signature, or telecommunication identifying information.

(L) Biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation.

(M) Place of employment, employment history, or employee identification number.

(N) Numbers or information not described in pars. (A) to (N) that can be used to access a person’s financial resources, access medical information, obtain identification, act as identification, or obtain property.

(6) “SLAPPback” means a cause of action for malicious prosecution or abuse of process arising from the filing or maintenance of a prior cause of action that has been dismissed pursuant to a special motion to dismiss under this [act].

**SECTION 3. SPECIAL MOTION TO DISMISS.**

(a) A party may file a special motion to dismiss a claim arising from an act in furtherance of the right of advocacy on issues of public interest within [45] days after service of the claim.

(b) If a party filing a special motion to dismiss under this section makes a prima facie showing that the claim at issue arises from an act in furtherance of the right of advocacy on an issue of public interest, then the motion shall be granted unless the responding party demonstrates that the claim is likely to succeed on the merits, in which case the motion shall be denied.

(c) (1) Except as provided in paragraph (2) of this subsection, upon the filing of a special motion to dismiss, discovery proceedings on the claim shall be stayed until the motion has been disposed of.

(2) When it appears likely that targeted discovery will enable the plaintiff to defeat the motion and that the discovery will not be unduly burdensome, the court may order that specified discovery be conducted. Such an order may be conditioned upon the plaintiff paying any expenses incurred by the defendant in responding to such discovery.

(d) The court shall hold an expedited hearing on the special motion to dismiss, and issue a ruling as soon as practicable after the hearing. If the special motion to dismiss is granted, dismissal shall be with prejudice.

(e) The provisions of this act do not apply to a special motion to dismiss a SLAPPback. A party opposing a special motion to strike a SLAPPback may file an ex parte application for a continuance to obtain necessary discovery. If it appears that facts essential to justify opposition to that motion may exist, but cannot then be presented, the court shall grant a reasonable continuance to permit the party to obtain affidavits or conduct discovery or may make any other order as may be just.

**SECTION 4. SPECIAL MOTION TO QUASH.**

(a) A person whose personal identifying information is sought, pursuant to a discovery order, request, or subpoena, in connection with a claim arising from an act in furtherance of the right of advocacy on issues of public interest may make a special motion to quash the discovery order, request, or subpoena.

(b) If a person bringing a special motion to quash under this section makes a prima facie showing that the underlying claim arises from an act in furtherance of the right of advocacy on issues of public interest, then the motion shall be granted unless the party seeking his or her personal identifying information demonstrates that the underlying claim is likely to succeed on the merits, in which case the motion shall be denied.

**SECTION 5. FEES, COSTS AND DAMAGES.**

(a) The court may award a moving party who prevails, in whole or in part, on a motion brought under Section 3 or 4 the costs of litigation, including reasonable attorney fees. In addition, the moving party shall receive statutory damages of ten thousand dollars. Statutory damages may be denied if the court finds that the complaint or information made in an act in furtherance of the right of advocacy on issues of public interest was communicated in bad faith.

**[Policy Option: Damages.[[2]](#footnote-2)]**

(b) The court may award reasonable attorney fees and costs to the responding party only if the court finds that a motion brought under Section 3 or 4 is frivolous or is solely intended to cause unnecessary delay.

(c) If the court finds that a special motion to dismiss a SLAPPback is frivolous or solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney’s fees to a plaintiff prevailing on the motion.

**SECTION 6. SLAPP SUITS BY GOVERNMENTAL ENTITIES PROHIBITED.**

(a) No governmental entity in this state shall file or cause to be filed, through its employees or agents, a claim against a party without merit and solely because the party has exercised the right to peacefully assemble, the right to instruct representatives, or the right to petition for redress of grievances before the various governmental entities of this state, as protected by the First Amendment to the United States Constitution and the State Constitution.

(b) A party subject to an action by a governmental entity in violation of this section has a right to an expeditious resolution of a motion that the claim is in violation of this section. A person or entity may petition the court for an order under this [act] dismissing the claim or granting final judgment in favor of that person or entity.

(c) The court may award the party against whom a claim is made by a governmental entity actual damages arising from the governmental entity’s violation of this act. The court shall award the prevailing party costs, fees and damages as specified in Section 5 of this [act].

(d) In a claim filed by a governmental entity which is found by a court to be in violation of this section, the governmental entity shall report such finding and provide a copy of the court’s order to the Attorney General no later than [30] days after such order is final. The Attorney General shall report a violation of this section by a governmental entity to the Cabinet, the President of the Senate, and the Speaker of the House of Representatives. A copy of the report shall be provided to the affected governmental entity.

**SECTION 7. EXEMPTIONS.**

(a) This [act] does not apply to a claim brought against a person primarily engaged in the business of selling or leasing goods or services, if the statement or conduct from which the claim arises meets all of the following conditions:

(1) The statement or conduct is a representation of fact made for the purpose of promoting, securing, or completing sales or leases of, or commercial transactions in, the person’s goods or services.

(2) The statement or conduct is intended to be directed to an audience that is an actual or potential buyer or customer.

(b) This [act] does not apply to a claim brought solely in the public interest or on behalf of the general public if all of the following conditions exist:

(1) The plaintiff does not seek any relief greater than or different from the relief sought for the general public or a class of which the plaintiff is a member. A claim for attorney’s fees, costs, or penalties does not constitute greater or different relief for purposes of this subdivision.

(2) The claim, if successful, would enforce an important right affecting the public interest, and would confer a significant benefit, whether pecuniary or nonpecuniary, on the general public or a large class of persons.

(3) Private enforcement is necessary and places a disproportionate financial burden on the plaintiff in relation to the plaintiff’s stake in the matter.

**SECTION 8. EFFECTIVE DATE.** This act takes effect immediately upon passage.

**SOURCE LAWS.**

State Anti-SLAPP Laws - <http://www.anti-slapp.org/your-states-free-speech-protection/>

CA CIV. PROC. CODE § 425.16 (as amended 2009) - <http://www.casp.net/california-anti-slapp-first-amendment-law-resources/statutes/c-c-p-section-425-16/>

CA CIV. PROC. CODE § 425.17 - <http://www.casp.net/california-anti-slapp-first-amendment-law-resources/statutes/c-c-p-section-425-17/>

2011 District of Columbia Bill 18-0893 -
<http://dcclims1.dccouncil.us/images/00001/20110105110837.pdf>

**RESOURCES.**

Mark J. Sobczak, “SLAPPed in Illinois: The Scope and Applicability of the Citizen Participation Act,” *Northern Illinois University Law Review* 28 No. 3 (Summer 2008): 559 *available at*:
<http://www.niu.edu/law/organizations/law_review/pdfs/full_issues/28_3/Sobczak.pdf>.

**ORGANIZATIONS.**

Public Participation Project - <http://www.anti-slapp.org/>

First Amendment Project - Anti-SLAAP Resource Center -
<http://www.thefirstamendment.org/slapp.html>

California Anti-SLAAP Project - <http://www.casp.net/>

1. This model was drafted by ALICE staff. [↑](#footnote-ref-1)
2. Policymakers should consider what level of statutory damages will best deter SLAPP suits. This model language is based on Washington State:

*A person prevailing upon the defense provided for in this section is entitled to recover expenses and reasonable attorneys’ fees incurred in establishing the defense and in addition shall receive statutory damages of ten thousand dollars.* 2002 Washington House Bill 2699 [↑](#footnote-ref-2)