

**Amendment No. CA11**

Conference Committee Amendment to (BDR 3-1137)  
Senate Bill No. 444 Second Reprint

**Proposed by:** Conference Committee

**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

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SENATE BILL NO. 444—COMMITTEE ON JUDICIARY

MARCH 23, 2015

Referred to Committee on Judiciary

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

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to civil actions; revising provisions relating to special motions to dismiss certain claims based upon the right to petition and the right to free speech under certain circumstances; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law establishes certain provisions to deter frivolous or vexatious lawsuits (Strategic Lawsuits Against Public Participation, commonly known as “SLAPP lawsuits”). (Chapter 387, Statutes of Nevada 1997, p. 1363; NRS 41.635-41.670) A SLAPP lawsuit is characterized as a meritless suit filed primarily to discourage the named defendant’s exercise of First Amendment rights. “The hallmark of a SLAPP lawsuit is that it is filed to obtain a financial advantage over one’s adversary by increasing litigation costs until the adversary’s case is weakened or abandoned.” (*Metabolic Research, Inc. v. Ferrel*, 693 F.3d 795, 796 n.1 (9th Cir. 2012))

Existing law provides that a person who engages in 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 is immune from civil liability for claims based upon that communication. (NRS 41.650) Existing law also provides that if an action is brought against a person based upon such good faith communication, the person may file a special motion to dismiss the claim. If a special motion to dismiss is filed, the court must first 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. If the court determines that the moving party has met this burden, the court must then determine whether the person who brought the claim has established by clear and convincing evidence a probability of prevailing on the claim. While the court’s ruling on the special motion to dismiss is pending and while the disposition of any appeal from that ruling is pending, the court must stay discovery. (NRS 41.660)

**Section 13** of this bill revises provisions governing a special motion to dismiss a claim that 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. **Section 13** increases from 7 days to 20 judicial days the time within which a court must rule on a special motion to dismiss. **Section 13 replaces the determination of whether a person who brought the claim has established by clear and convincing evidence a probability of prevailing on the claim and instead requires a court to determine whether the person has demonstrated with prima facie evidence a probability of prevailing on the claim.** **Section 13** also

31 authorizes limited discovery for the purposes of allowing a party to obtain certain information  
32 necessary to meet or oppose the burden of the party who brought the claim to ~~establish by~~  
33 ~~clear and convincing~~ **demonstrate with prima facie** evidence a probability of prevailing on  
34 the claim. Finally, **section 13** ~~authorizes~~ **requires** the court to modify certain deadlines upon  
35 a finding that such a modification would serve the interests of justice.

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** (Deleted by amendment.)  
2 **Sec. 2.** (Deleted by amendment.)  
3 **Sec. 3.** (Deleted by amendment.)  
4 **Sec. 3.5.** (Deleted by amendment.)  
5 **Sec. 4.** (Deleted by amendment.)  
6 **Sec. 4.5.** (Deleted by amendment.)  
7 **Sec. 5.** (Deleted by amendment.)  
8 **Sec. 6.** (Deleted by amendment.)  
9 **Sec. 7.** (Deleted by amendment.)  
10 **Sec. 8.** (Deleted by amendment.)  
11 **Sec. 9.** (Deleted by amendment.)  
12 **Sec. 9.5.** (Deleted by amendment.)  
13 **Sec. 10.** (Deleted by amendment.)  
14 **Sec. 11.** (Deleted by amendment.)  
15 **Sec. 12.** (Deleted by amendment.)  
16 **Sec. 12.5.** **Chapter 41 of NRS is hereby amended by adding thereto a**  
17 **new section to read as follows:**  
18 **The Legislature finds and declares that:**  
19 **1. NRS 41.660 provides certain protections to a person against whom an**  
20 **action is brought, if the action is based upon a good faith communication in**  
21 **furtherance of the right to petition or the right to free speech in direct connection**  
22 **with an issue of public concern.**  
23 **2. When a plaintiff must demonstrate a probability of success of prevailing**  
24 **on a claim pursuant to NRS 41.660, the Legislature intends that in determining**  
25 **whether the plaintiff “has demonstrated with prima facie evidence a probability**  
26 **of prevailing on the claim” the plaintiff must meet the same burden of proof that**  
27 **a plaintiff has been required to meet pursuant to California’s anti-Strategic**  
28 **Lawuits Against Public Participation law as of the effective date of this act.**  
29 **Sec. 13.** NRS 41.660 is hereby amended to read as follows:  
30 41.660 1. If an action is brought against a person based upon a good faith  
31 communication in furtherance of the right to petition or the right to free speech in  
32 direct connection with an issue of public concern:  
33 (a) The person against whom the action is brought may file a special motion to  
34 dismiss; and  
35 (b) The Attorney General or the chief legal officer or attorney of a political  
36 subdivision of this State may defend or otherwise support the person against whom  
37 the action is brought. If the Attorney General or the chief legal officer or attorney of  
38 a political subdivision has a conflict of interest in, or is otherwise disqualified from,  
39 defending or otherwise supporting the person, the Attorney General or the chief  
40 legal officer or attorney of a political subdivision may employ special counsel to  
41 defend or otherwise support the person.

1 2. A special motion to dismiss must be filed within 60 days after service of  
2 the complaint, which period may be extended by the court for good cause shown.

3 3. If a special motion to dismiss is filed pursuant to subsection 2, the court  
4 shall:

5 (a) Determine whether the moving party has established, by a preponderance of  
6 the evidence, that the claim is based upon a good faith communication in  
7 furtherance of the right to petition or the right to free speech in direct connection  
8 with an issue of public concern;

9 (b) If the court determines that the moving party has met the burden pursuant  
10 to paragraph (a), determine whether the plaintiff has ~~established by clear and~~  
11 ~~convincing~~ demonstrated with prima facie evidence a probability of prevailing on  
12 the claim;

13 (c) If the court determines that the plaintiff has established a probability of  
14 prevailing on the claim pursuant to paragraph (b), ensure that such determination  
15 will not:

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

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

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

22 (e) ~~Stay~~ *Except as otherwise provided in subsection 4, stay* discovery  
23 pending;

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

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

26 (f) Rule on the motion within ~~17~~ 20 judicial days after the motion is served  
27 upon the plaintiff.

28 4. *Upon a showing by a party that information necessary to meet or oppose*  
29 *the burden pursuant to paragraph (b) of subsection 3 is in the possession of*  
30 *another party or a third party and is not reasonably available without discovery,*  
31 *the court shall allow limited discovery for the purpose of ascertaining such*  
32 *information.*

33 5. If the court dismisses the action pursuant to a special motion to dismiss  
34 filed pursuant to subsection 2, the dismissal operates as an adjudication upon the  
35 merits.

36 6. *The court ~~may~~ shall modify any ~~briefing or hearing~~ deadlines*  
37 *pursuant to this section or any other deadlines relating to a complaint filed*  
38 *pursuant to this section ~~upon a finding that~~ if such modification would serve*  
39 *the interests of justice.*

40 7. *As used in this section:*

41 (a) *“Complaint” means any action brought against a person based upon a*  
42 *good faith communication in furtherance of the right to petition or the right to*  
43 *free speech in direct connection with an issue of public concern, including,*  
44 *without limitation, a counterclaim or cross-claim.*

45 (b) *“Plaintiff” means any person asserting a claim, including, without*  
46 *limitation, a counterclaim or cross-claim.*

47 Sec. 14. The amendatory provisions of this act apply to an action commenced  
48 on or after ~~October 1, 2015,~~ the effective date of this act.

49 Sec. 15. (Deleted by amendment.)

50 Sec. 16. This act becomes effective upon passage and approval.