

1 HOUSE BILL NO. 788  
 2 INTRODUCED BY L. SHELDON-GALLOWAY  
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 4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS PROTECTING CONSTITUTIONAL  
 5 RIGHTS OF PETITION AND FREE SPEECH; AUTHORIZING A PERSON SUBJECT TO A LAWSUIT  
 6 ARISING FROM AN ACT IN FURTHERANCE OF A CONSTITUTIONAL RIGHT OF PETITION OR FREE  
 7 SPEECH TO FILE A SPECIAL MOTION TO STRIKE A CLAIM IN A CIVIL ACTION; PROVIDING A  
 8 DEFINITION; AND PROVIDING FOR THE AWARD OF COSTS AND REASONABLE ATTORNEY FEES TO A  
 9 PARTY PREVAILING ON A SPECIAL MOTION TO STRIKE."

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 11 WHEREAS, the Legislature finds and declares that there has been a disturbing increase in lawsuits  
 12 that have been brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and  
 13 to petition for the redress of grievances; and

14 WHEREAS, the Legislature finds and declares that it is in the public interest to encourage continued  
 15 participation in matters of public significance and that this participation should not be chilled through abuse of  
 16 the judicial process; and

17 WHEREAS, the Legislature intends that, in the furtherance of these constitutional rights, the provisions  
 18 of this bill must be construed broadly.

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 20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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 22 **NEW SECTION. Section 1. Lawsuit against person asserting constitutional right regarding a**  
 23 **public issue -- motion to strike.** (1) A civil cause of action against a person arising from any act by that  
 24 person in furtherance of the person's right of petition or right of free speech under the federal or state  
 25 constitutions in connection with a public issue is subject to a special motion to strike the claim unless the court  
 26 determines that the plaintiff has established a probability that the plaintiff will prevail on the claim.

27 (2) In making its determination, the court shall consider the pleadings and the supporting and  
 28 opposing affidavits stating the facts on which the liability or defense is based.

1           (3)     If the court determines the plaintiff has established a probability that the plaintiff will prevail on  
 2 the claim, the determination is not admissible as evidence at a later stage of the case or in a subsequent action.  
 3 The applicable burden of proof or degree of proof is not affected by a court's determination under this  
 4 subsection (3) at a later stage of the case or in a subsequent proceeding.

5           (4)     The special motion to strike may be filed within 60 days of the service of the complaint or, in the  
 6 court's discretion, at any later time that the court determines is proper. A hearing on the motion must be  
 7 scheduled within 30 days after the service of the motion unless the docket conditions of the court require a later  
 8 hearing.

9           (5)     All discovery proceedings in the action must be stayed on filing of a notice of a motion to strike  
 10 made pursuant to subsection (1). Notwithstanding this subsection (5), the court may order that specified  
 11 discovery be conducted on noticed motion and for good cause shown.

12           (6)     As used in this section, an "act in furtherance of a person's right of petition or free speech  
 13 under the federal or state constitutions in connection with a public issue" includes:

- 14           (a)     a written or oral statement made before a legislative, executive, or judicial proceeding or any  
 15 other official proceeding authorized by law;
- 16           (b)     a written or oral statement or writing made in connection with an issue under consideration or  
 17 review by a legislative, executive, or judicial body or any other official proceeding authorized by law;
- 18           (c)     a written or oral statement or writing made in a place open to the public or a public forum in  
 19 connection with an issue of public interest; or
- 20           (d)     any other conduct in furtherance of the exercise of the constitutional right of petition or  
 21 constitutional right of free speech in connection with a public issue or an issue of public interest.

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23           NEW SECTION. **Section 2. Costs and attorney fees.** (1) In an action subject to [section 1], a  
 24 defendant who prevails on a special motion to strike is entitled to recover costs and reasonable attorney fees.

25           (2)     If the court finds that a special motion to strike under [section 1] is frivolous or is solely intended  
 26 to cause unnecessary delay, the court shall award costs and reasonable attorney fees to the plaintiff prevailing  
 27 on the motion.

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