

State of Arkansas  
83rd General Assembly  
Regular Session, 2001

# A Bill

HOUSE BILL 2327

By: Representative Judy

## For An Act To Be Entitled

AN ACT TO AMEND ARKANSAS CODE TITLE 16, CHAPTER 63 TO  
ADD AN ADDITIONAL SUBCHAPTER 5 TO ESTABLISH A JUDICIAL  
PROCEDURE TO PROTECT THE RIGHTS OF ARKANSAS' CITIZENS  
TO PARTICIPATE IN GOVERNMENT ACTIONS AND DECISIONS;  
AND FOR OTHER PURPOSES.

## Subtitle

TO ESTABLISH A JUDICIAL PROCEDURE TO  
PROTECT THE RIGHTS OF ARKANSAS' CITIZENS  
TO PARTICIPATE IN GOVERNMENT ACTIONS AND  
DECISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 16, Chapter 63, is amended to add an  
additional subchapter to read as follows:

Subchapter 5 - Citizen Participation in Government Act

16-63-501. Title.

This subchapter shall be known as and may be cited as the "Citizen  
Participation in Government Act."

16-63-502. Purpose.

The purpose of this subchapter is:

(1) To protect and encourage citizen participation in government to the  
maximum extent permitted by law;

(2) To create a more equitable balance between the rights of a person  
to file a lawsuit and to a trial by jury and the right of a person to

petition, speak out, associate, and otherwise participate in government;

(3) To support the operation of and assure the continuation of representative government in America by protecting the participation of the public in government programs, in public policy decisions, and in other deliberative actions of governing bodies;

(4) To establish a balanced, uniform, comprehensive process for speedy adjudication of a particular kind of lawsuits called "strategic lawsuits against public participation" or "SLAPPs" which will also act as a major contribution to lawsuit reform; and

(5) To provide for attorney fees, costs, and damages for persons whose citizen participation rights have been violated by someone filing a strategic lawsuit against public participation against the citizen.

#### 16-63-503. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Government" means a branch, department, agency, instrumentality, official, employee, agent, or other person acting under color of law of the United States, a state, or a political subdivision of a state or other public authority, including the electorate;

(2) "Judicial claim" means any lawsuit, cause of action, claim, cross-claim, counterclaim, or other court pleading or petition seeking damages or requesting relief;

(3) "Motion" means any motion to dismiss, for summary judgment, for judgment on the pleadings, to strike, or any other judicial pleading filed to dispose of a judicial claim;

(4) "Moving party" means any person on whose behalf the motion described in § 16-63-505 is filed seeking dismissal of the judicial claim;

(5) "Person" means any individual, corporation, association, organization, partnership, two (2) or more persons having a joint or common interest, or other legal entity;

(6) "Responding party" means any person against whom the motion described in § 16-63-505 is filed;

(7) "State" means a state government of the United States, and any of its agencies, or departments, including the District of Columbia, the Commonwealth of Puerto Rico, and each territory and possession of the United States; and

1       (8) "Trial court" means a circuit court in Arkansas.

2  
3       16-63-504. Immunity from suit.

4       (a) Any person who in furtherance of the person's right of free speech  
5 or right of petition under the Arkansas or United States constitutions in  
6 connection with a public or governmental issue communicates information  
7 regarding another person or entity to any agency or any governing body of the  
8 federal, state or local government regarding a matter of concern to that  
9 agency or governing body shall be immune from civil liability on any judicial  
10 claims based upon the communication to the agency or governing body.

11       (b) The immunity conferred by this section shall not attach if the  
12 person communicating the information:

13               (1) Knew the information to be false; or

14               (2) Communicated the information in willful or reckless disregard  
15 of its falsity.

16  
17       16-63-505. Motion and required procedures.

18       (a) This section applies to any motion disposing of a judicial claim  
19 in a proceeding on the grounds that the judicial claim is based on, relates  
20 to, or is in response to any action of the moving party in furtherance of the  
21 moving party's rights as described in § 16-63-504.

22       (b) On the filing of any motion described in subsection (a) of this  
23 section;

24               (1) The motion shall be treated by the trial court as one for  
25 summary judgment and the court shall use a time period appropriate to an  
26 expedited motion to speed the proceedings;

27               (2) The moving party shall have a right of expedited appeal from  
28 a trial court order denying a motion or from a trial court's failure to rule  
29 on a motion in expedited fashion;

30               (3) Discovery in the judicial claim shall be suspended until a  
31 decision is made on the final disposition of the motion, including any appeals  
32 that are made;

33               (4) A responding party shall have the burden of proof, the burden  
34 of going forward with the evidence, and the burden of persuasion on the  
35 motion; and

36               (5) The court shall make its determination on the motion based

1 upon the facts contained in the pleadings and affidavits filed.

2 (b) The court shall grant the motion and dismiss the judicial claim,  
3 unless the responding party has produced clear and convincing evidence that  
4 the actions of the moving party are not immunized from liability by § 16-63-  
5 504.

6 (c) Any government body to which the moving party's action was directed  
7 or the Attorney General may intervene to defend or otherwise support the  
8 moving party in the judicial claim against the responding party.

9  
10 16-63-506. Attorney fees and damages.

11 (a) If the moving party prevails on a motion, the court shall award a  
12 moving party, whose judicial claim was dismissed, the costs of litigation and  
13 any reasonable attorney fees associated with bringing the motion.

14 (b) The court may award additional sanctions upon the responding party  
15 and the party's attorneys or law firms which the trial court determines will  
16 be sufficient to deter repetition of the conduct or comparable conduct by  
17 others.

18 (c) A prevailing person damaged or injured by reason of a judicial  
19 claim filed in violation of the person's rights under § 16-63-504 may seek  
20 relief in the form of a claim for actual or compensatory damages, as well as  
21 punitive damages, attorney fees, and costs of litigation, from the person or  
22 persons responsible.

23  
24 16-63-507. Additional provisions.

25 (a) Nothing in this subchapter shall limit or preclude any rights the  
26 moving party may have under any other constitutional, statutory, case or  
27 common law, or rule provisions.

28 (b) This subchapter shall be construed liberally to effectuate its  
29 purposes and intent fully.

30 (c) This subchapter shall take effect January 1, 2002.