

Fifteenth Congress of the Republic)
Of the Philippines)
Second Regular Session)



Senate
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SENATE

S. B. No. 3080

RECEIVED BY: 

Introduced by Senator Ramon Bong Revilla, Jr.

EXPLANATORY NOTE

The past several years have witnessed the proliferation of a special kind of harassment suit called Strategic Lawsuits against Public Participation (SLAPP) as a powerful mechanism for stifling the cognate rights of freedom of speech, expression, or of the press, and the right of the people peaceably to assemble and petition the government for redress of grievances.

SLAPPs defy simple definition. They are initiated by influential entities like corporations, government officials, politicians, landlords, or employers against community residents, indigenous peoples, environmentalists, members of the press, peasants, workers, students, or even against ordinary citizens to prevent them from fully exercising their right to participate in matters of public concern.

The term SLAPP was coined in the 1980s by University of Denver professors Penelope Canan and George W. Pring. It was originally defined as "a lawsuit involving communications made to petition for a governmental action or outcome, which resulted in a baseless suit filed against individuals or non-governmental organizations, on a substantive issue of some public interest or social significance." It has since been defined more broadly to include suits arising from speech on any public issue.

Essentially, SLAPPs are designed and intended to intimidate and silence certain public constituencies by burdening them with the cost of a legal defense until they abandon their advocacies and concerns. Winning the lawsuit is not necessarily the intent of the plaintiff or complainant. Their goals are accomplished if the defendant, respondent or accused succumbs to fear, intimidation, mounting legal costs or simple exhaustion and thereby abandons the public advocacy.

According to New York Supreme Court Judge J. Nicholas Colabella, "Short of a gun to the head, a greater threat to First Amendment expression can scarcely be imagined."

SLAPPs are cloaked as claims or accusations for multi-million libel suits, slander, grave coercion, nuisance, illegal assembly, direct assault, resistance and disobedience, and injunction, to name a few.

For all the diversity of SLAPPs, however, their unifying features make them a dangerous force: they are brought not in pursuit of justice, but rather to ensnare their targets in costly litigation that distracts them from the controversy at hand, and to deter them and others from engaging in their rights of speech and petition on issues of public concern.

Hence, the poor and the marginalized sectors, who have become the usual victims of SLAPPs, find it difficult to continue their work or pursue their livelihood, engage in social and participative actions, and assert their civil, political, economic, social, and

cultural rights as they are being burdened, restrained, threatened, or distressed by SLAPPs.

In short, even if the judiciary and the rules of court lives up to its declaration to fairness and equality for all, it cannot provide substantial justice to those that are already hampered by lack of resources, lack of lawyers, and disempowerment even before they file their first pleading under a system where laws favor the rich and other vested economic interests. Levelling “the playing field” requires more than equal footing for both parties where one party comes from the marginalized and underrepresented sectors. The inequality of wealth and resources between the rich and the poor, the abuse of power and processes, the lack of independence and impartiality of prosecutors and judges, among other reasons, bring about these SLAPPs.

In other jurisdictions, particularly in Canada, Europe, and twenty-six (26) States and one (1) territory of the Unites States, to name a few, the disturbing increase in SLAPPs has led said jurisdictions to either enact anti-SLAPP legislations or promulgate rules against SLAPPs.

Hence, this proposed measure is being filed as a concrete step to address the societal problems caused by SLAPPs in the Philippines, particularly the achievement of the following purposes:

- (a) Promote and protect the constitutional rights of freedom of speech, expression, and of the press, and the right of the people peaceably to assembly, and petition the government for redress of grievances;
- (b) Encourage and strengthen the participation of individuals in matters of public concern;
- (c) Prevent any abuse of the judicial process that shall curtail such participation;
- (d) Prohibit the filing of SLAPPs;
- (e) Establish the speedy dismissal of SLAPPs;
- (f) Award damages, litigation costs, attorney’s fees, and other relief to the defendant, respondent, or accused, as the case may be, upon the final and executory dismissal of SLAPPs; and
- (g) Provide the defendant, respondent, or accused, as the case may be, the right to recover separate damages, litigations costs, attorney’s fees, and other relief by filing a SLAPP Back action against the complainant of a SLAPP upon the final and executory dismissal of such SLAPP.

It is in this light that the approval of this proposed measure is earnestly sought.


RAMON BONG REVILLA, JR.


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AN ACT
DEFINING STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION,
PROHIBITING THE FILING THEREOF, PROVIDING MEASURES
FOR ITS DISMISSAL, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

Section 1: Title. – This Act shall be known as the “*Anti-Strategic Lawsuits Against Public Participation Act of 2011*” or the “*Anti-SLAPP Act of 2011*”.

Sec. 2. Statement of Policy. – It is the declared policy of the State to promote and protect the freedom of speech, expression, and of the press, and the right of the people peaceably to assemble, and petition the government for redress of grievances. The State hereby finds and declares that it is in the public interest for people to participate in matters of public concern and provide information to the public on issues that affect them, and that this participation should not be impeded through abuse of the judicial process. Thus, lawsuits that are intended to harass, vex, or silence critics or individuals or groups, or exert undue pressure on them, or deplete their resources, thereby deterring them from fully exercising such constitutional rights shall not be allowed. To this end, this Act shall be construed broadly in favor of the exercise of such constitutional rights.

Sec. 3. Purposes. – The purposes of this Act shall be the following:

1. Promote and protect the constitutional rights of freedom of speech, expression, and of the press, and the right of the people peaceably to assembly, and petition the government for redress of grievances;
2. Encourage and strengthen the participation of individuals in matters of public concern;
3. Prevent any abuse of the judicial process that shall curtail such participation;
4. Prohibit the filing of SLAPPs;
5. Establish the speedy dismissal of SLAPPs;
6. Award damages, litigation costs, attorney’s fees, and other relief to the defendant, respondent, or accused, as the case may be, upon the final and executory dismissal of SLAPPs; and
7. Provide the defendant, respondent, or accused, as the case may be, the right to recover separate damages, litigations costs, attorney’s fees, and other relief by filing a SLAPPback action against the complainant of a SLAPP upon the final and executory dismissal of such SLAPP.

Sec. 4. Definition of Terms. – For purposes of this Act, the following terms shall be defined as follows:

1. “*Strategic Lawsuit Against Public Participation*” or SLAPP includes any civil complaint, counter-claim, cross-claim, third (fourth, etc.) – party complaint, or complaint-in-intervention, criminal complaint or information, or administrative complaint filed against individual or individuals, groups, labor unions, entity or associations, community residents, or the like by reason or arising out of their exercise of freedom of speech, expression, or of the press, or of the right of the people peaceably to assemble, or petition the government for redress of grievances in matters of public concern, and is intended to harass, vex, or silence individual or individuals, groups, labor unions, entity or associations, community residents, or the like, or exert undue pressure on them, or deplete their resources.
2. “*Public Concern*” means anything that involves matters of public, social, or community issue, significance, interest, importance, or welfare.
3. “*Claim*” means any civil complaint, counter-claim, cross-claim, third (fourth, etc.) – party complaint, or complaint-in-intervention.
4. “*Plaintiff*” refers to the claiming party, the counter-claimant, the cross-claimant, or the third (fourth, etc.) – party plaintiff.
5. “*Defendant*” refers to the original defending party, the defendant in counter-claim, the cross-defendant, or the third (fourth, etc.) – party defendant.
6. “*SLAPPback*” means an action for damages filed by the defendant, respondent, or accused, as the case may be, of a SLAPP against the plaintiff or complainant thereof arising from the final and executory dismissal of the said SLAPP.

Sec. 5. Prohibition on Strategic Lawsuits Against Public Participation. – It is hereby prohibited to file a Strategic Lawsuit Against Public Participation (SLAPP) as defined in this Act. The courts, prosecutors and public or private officer, as the case may be, with the duty to act and decide on civil, criminal or administrative complaint or information, as the case may be, shall immediately order the dismissal of suits determined by them to be SLAPPs.

Sec. 6. Duty of the Court. – Upon receipt of any complaint or pleading asserting a claim or any complaint or information, the court shall have the duty to immediately make a determination whether the same is a SLAPP.

If the court finds the same to be a SLAPP, it shall order its dismissal and award to the defendant or accused, as the case may be, damages, litigation costs, attorney’s fees, and other relief as warranted by the circumstances of the case.

Subject to the right of appeal, an order dismissing the complaint or pleading asserting a claim determined to be a SLAPP shall bar the refilling of the same action or claim, and an order dismissing the complaint or information determined to be a SLAPP shall bar another prosecution for the same offense.

(a) **Motion to Dismiss.** – In civil cases, the duty of the court to make such determination does not preclude the defendant from filing a motion to dismiss on the ground that the complaint or pleading asserting a claim is a SLAPP. Such ground shall not be deemed waived even if not included in a motion to dismiss.

(b) *Motion for Judicial Determination.* – In criminal cases, the duty of the court to make such determination does not preclude the accused from filing a motion for judicial determination of the complaint or information as a SLAPP within a reasonable period of time upon the receipt of the complaint or information by the court.

Sec. 7. Duty of the Prosecutor. – Upon receipt of any complaint, or in the conduct of inquest proceedings of a person validly arrested without a warrant, the investigating or inquest prosecutor, as the case may be, shall have the duty to immediately make a determination whether the complaint is a SLAPP. If the investigating or inquest prosecutor, as the case may be, finds the same to be a SLAPP, he shall order its dismissal. Subject to the right of appeal, an order dismissing the complaint determined to be a SLAPP shall bar another prosecution for the same offense.

(a) *Motion for Determination.* – The duty of the investigating prosecutor to make such determination does not preclude the respondent from filing a motion for determination of the complaint as a SLAPP prior to the submission of his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense.

(b) *Release for Further Investigation.* – If the inquest prosecutor is not certain whether the complaint is a SLAPP but that there is a possibility that the same may be a SLAPP as reasonably shown during the inquest proceedings by the person arrested, the inquest prosecutor shall order the further investigation of the same, and the immediate release of the person arrested.

The duties of the investigating prosecutor and the rights of the respondent as stated in this section shall be performed and observed with in the conduct of such further investigation.

Sec. 8. Administrative Cases. – In every administrative case, whether in the public or private sector, the public or private officer, as the case may be, having the duty to decide the complaint shall have the duty to immediately make a determination whether the same is a SLAPP.

In case of a public officer, if he finds the same to be a SLAPP, he shall order its dismissal and award to the respondent damages, litigation costs, attorney's fees, and other relief as warranted by the circumstances of the case.

In case of a private officer, if he finds the same to be a SLAPP, he shall order its dismissal.

Subject to the right of appeal, an order dismissing the complaint determined to be a SLAPP shall bar the refiling of the same complaint.

The duty of the public or private officer, as the case may be, to make such determination does not preclude the respondent from filing a motion to dismiss on the ground that the complaint is a SLAPP.

Sec. 9. Non-applicability to action involving public interest. – The right to file such motion to dismiss or motion for determination, as the case may be, shall not be applicable against any action brought solely and certainly in the public interest or involving public concern.

Sec. 10. Right to file legal action and recover separate damages, litigation costs, attorney's fees, and other reliefs. – Upon the final and executory dismissal of a SLAPP, the defendant, respondent, or accused thereof, as the case may be, shall have the right to file a SLAPPback, as defined in Section 4 (f) hereof, for damages against the plaintiff or complainant, as the case may be, of the SLAPP, and recover separate damages, litigation costs, attorney's fees, and other relief as warranted by the circumstances of the case.

The court shall consider only the fact of the final and executory dismissal of the SLAPP in granting the right to file legal action. *Provided, That the court shall consider the circumstances of the case in the determination of the amount of damages, litigation costs, attorney's costs, and other relief that shall be awarded to the plaintiff thereof.*

Sec. 11. Motion to dismiss SLAPPback. – The defendant in a SLAPPback action may file a motion to dismiss a SLAPPback action on the ground that the dismissal of the SLAPP from which the former arises is not final and executory, among other grounds that may be available upon the defendant under the Rules of Court.

Provided, That if the motion to dismiss a SLAPPback action on any ground is found to be frivolous or solely intended for delay, the court shall deny the motion and award to the plaintiff damages, litigation costs, attorney's fees, and other relief as warranted by the circumstances of the filing and denial of the motion. Provided further, That the same are separate from the damages, litigation costs, attorney's fees, and other relief that shall be awarded to the plaintiff in the SLAPPback action upon the favorable judgment therein becoming final and executory.

Sec. 12. Prohibition of Appeal. – The denial of (a) a motion to dismiss on the ground that the complaint or pleading asserting a claim is a SLAPP, (b) a motion for determination of the complaint or information as a SLAPP, or (c) a motion to dismiss a SLAPPback action on the ground that the dismissal of the SLAPP is not final and executory, is not appealable. *Provided, that the movant may file an appropriate special civil action under Rule 65 of the Rules of Court.*

Sec. 13. Rules and Regulations . – The Supreme Court shall promulgate the rules and regulations, administrative orders, and circulars for this purpose.

Sec. 14. Repealing Clause. – All laws, acts, decrees, executive orders, issuances, and rules and regulations or parts thereof which are contrary to and inconsistent with any provisions of this Act are hereby repealed, amended or modified accordingly.

Sec. 15. Separability Clause. – If any provision of this Act is subsequently declared unconstitutional, the validity of the remaining provisions hereof shall remain in full force and effect.

Sec. 16. Effectivity Clause. - This Act shall take effect fifteen (15) days after its complete publication either in the Official Gazette or in a newspaper of general circulation in the Philippines.

Approved,