

S.151

Introduced by Senator Clarkson

Referred to Committee on

Date:

Subject: Court procedure; special motion to strike; action arising from
volunteer work for nonprofit organization or governmental entity

Statement of purpose of bill as introduced: This bill proposes to permit a
defendant to file a special motion to strike in an action arising from the
defendant's work as an unpaid volunteer for a nonprofit organization or a
governmental entity.

An act relating to special motions to strike in an action arising from unpaid
volunteer work for a nonprofit organization or governmental entity

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. APPLICATION AND CONSTRUCTION

In applying and construing this act, consideration shall be given to the
following:

(1) There has been a disturbing increase in meritless lawsuits having the
effect of discouraging the efforts of volunteers who dedicate their time and
energy to advancing the missions of Vermont's nonprofit organizations and
Vermont governmental entities.

1 (2) The willingness of volunteers to offer their services to Vermont's
2 nonprofit organizations and Vermont governmental entities is deterred by the
3 potential for meritless liability actions against them. As a result:

4 (A) Vermont's nonprofit organizations and Vermont governmental
5 entities have been adversely affected by the withdrawal of volunteers from
6 boards of directors and service in other capacities; and

7 (B) the contribution of these organizations and entities to their
8 communities has been diminished, resulting in fewer and higher cost programs
9 than would be obtainable if volunteers were participating.

10 (3) It is in the public interest to encourage continued volunteer efforts
11 for Vermont's nonprofit organizations and Vermont governmental entities, and
12 such efforts should not be chilled through abuse of the judicial process.

13 Sec. 2. 12 V.S.A. § 1041a is added to read:

14 § 1041a. UNCOMPENSATED VOLUNTEER WORK FOR NONPROFIT
15 ORGANIZATION OR GOVERNMENTAL ENTITY; SPECIAL
16 MOTION TO STRIKE

17 (a) A defendant in an action arising from the defendant's uncompensated
18 volunteer work for a nonprofit organization or governmental entity may file a
19 special motion to strike under this section.

20 (b) A special motion to strike under this section shall be filed with the court
21 and served on all parties not more than 60 days after the filing of the

1 complaint. A party may file a response to the motion not more than 15 days
2 after the motion is served on the party. The court may extend the time limits of
3 this subsection for good cause shown.

4 (c)(1) The filing of a special motion to strike under this section shall stay
5 all discovery proceedings in the action. Except as provided in subdivision (2)
6 of this subsection, the stay of discovery shall remain in effect until the court
7 rules on the special motion to strike.

8 (2) The court, on motion and for good cause shown, may order that
9 limited discovery be conducted for the purpose of assisting its decision on the
10 special motion to strike.

11 (d) The court shall hold a hearing on a special motion to strike not more
12 than 30 days after service of the motion unless good cause exists for an
13 extension.

14 (e)(1) The court shall grant the special motion to strike, unless the plaintiff
15 shows that:

16 (A)(i) the defendant was acting outside the scope of the defendant's
17 responsibilities as a volunteer for the nonprofit organization or governmental
18 entity at the time of the act or omission; or

19 (ii) the alleged harm was caused by the defendant's recklessness,
20 gross negligence, or intentional misconduct; and

21 (B) the defendant's acts caused actual injury to the plaintiff.

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

4 (f)(1) If the court grants the special motion to strike, the court shall award
5 costs and reasonable attorney's fees to the defendant. If the court denies the
6 special motion to strike and finds the motion is frivolous or is intended solely
7 to cause unnecessary delay, the court shall award costs and reasonable
8 attorney's fees to the plaintiff.

9 (2) Neither the court's ruling on the special motion to strike nor the fact
10 that it made such a ruling shall be admissible in evidence at any later stage of
11 the case, and no burden of proof or degree of proof otherwise applicable shall
12 be affected by the ruling.

13 (g) An order granting or denying a special motion to strike shall be
14 appealable in the same manner as an interlocutory order under Rule 5 of the
15 Vermont Rules of Appellate Procedure.

16 (h) This section shall not apply to:

17 (1) any enforcement action or criminal proceeding brought by the State
18 of Vermont or any political subdivision thereof; or

19 (2) a case involving tortious interference with legally protected health
20 care as provided in section 7302 of this title.

21 (i) As used in this section:

1 (1) “Governmental entity” means any agency, board, department,
2 commission, committee, branch, instrumentality, or authority of the State or
3 any agency, board, committee, department, branch, instrumentality,
4 commission, or authority of any political subdivision of the State.

5 (2) “Nonprofit organization” means a nonprofit organization qualified as
6 tax-exempt under Section 501(c) of the Internal Revenue Code of 1986, as
7 from time to time amended, or classified as a public benefit corporation under
8 11B V.S.A. § 17.05.

9 (3) “Uncompensated volunteer work” means acts or omissions by a
10 person performing services, including services as a director, officer, trustee, or
11 direct service volunteer, for a nonprofit organization or a governmental entity
12 if the person does not receive:

13 (A) compensation other than reasonable reimbursement or allowance
14 for expenses actually incurred; or

15 (B) any other thing of value in lieu of compensation, in excess of
16 \$500.00 per year.

17 Sec. 3. REPORT

18 On or before July 1, 2026, the Court Administrator shall report to the Senate
19 and House Committees on Judiciary on the frequency and outcomes of special
20 motions to strike made pursuant to this act.

- 1 Sec. 4. EFFECTIVE DATE
- 2 This act shall take effect on passage.