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# A BILL FOR AN ACT

RELATING TO CIVIL PARTICIPATION IN GOVERNMENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Chapter 634F, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "§634F-       Immunized acts.   Any act by a person in  
5 furtherance of the constitutional right to petition under the  
6 United States Constitution or the Constitution of the State of  
7 Hawaii, including seeking relief, influencing action, informing,  
8 communicating, and otherwise participating in the process of  
9 government, shall be immune from civil liability, regardless of  
10 intent or purpose, except where not aimed at procuring any  
11 governmental or electoral action, result, or outcome."

12           SECTION 2. Section 634F-1, Hawaii Revised Statutes, is  
13 amended by amending the definition of "SLAPP" to read as  
14 follows:

15           "SLAPP" means a strategic lawsuit against public  
16 participation [~~and refers to a lawsuit~~] that [~~lacks~~]:

17           (1) Lacks substantial justification or is interposed for  
18           delay or harassment; and [~~that is solely based on the~~



1 ~~party's public participation before a governmental~~  
2 ~~body.]~~

3 (2) Is brought against any act by a person in furtherance  
4 of the constitutional right to petition under the  
5 United States Constitution or Constitution of the  
6 State of Hawaii, including seeking relief, influencing  
7 action, informing, communicating, and otherwise  
8 participating in the process of government to procure  
9 any governmental or electoral action, result, or  
10 outcome."

11 SECTION 3. Section 634F-2, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "~~[+]§634F-2[+]~~ **Required procedures; motion.**

14 Notwithstanding any law to the contrary, including rules of  
15 court, upon the filing of any motion to dispose of a claim in a  
16 judicial proceeding on the grounds that the claim is based on,  
17 relates to, ~~[or involves public participation and is a SLAPP~~  
18 ~~lawsuit:]~~ or is in response to, any act of the moving party in  
19 furtherance of the moving party's rights under section 634F- :

20 (1) The motion shall be treated as ~~[a motion for judgment~~  
21 ~~on the pleadings, matters outside the pleadings shall~~  
22 ~~be excluded by the court,]~~ a motion for summary



1           judgment and the court shall expedite the hearing of  
2           the motion;

3           (2) The moving party shall have a right:

4           (A) To an immediate appeal from a court order denying  
5           the motion; and

6           (B) To file an application for a writ of mandamus if  
7           the court fails to rule on the motion in an  
8           expedited fashion;

9           (3) Discovery shall be suspended, pending decision on the  
10          motion and appeals;

11          (4) The responding party shall:

12          (A) Without leave of court, have seven days to amend  
13          its pleadings to be pled with specificity, and  
14          shall include such supporting particulars as are  
15          peculiarly within the supporting pleader's  
16          knowledge; and

17          (B) Have the burden of proof [~~and~~] of going forward  
18          with the evidence, and of persuasion on the  
19          motion;

20          (5) The court shall make its determination based upon the  
21          allegations contained in the pleadings[+] and



1           supporting and opposing affidavits stating the facts  
2           upon which the liability or defense is based;

3           (6) The court shall grant the motion and dismiss the  
4           judicial claim, unless the responding party has  
5           demonstrated that, more likely than not, [the  
6           ~~respondent's allegations do not constitute a SLAPP~~  
7           ~~lawsuit as defined in section 634F-1,] the acts of the  
8           moving party are not immunized by section 634F- ;~~

9           (7) Any governmental body to which the moving party's acts  
10           were directed or the attorney general in the case of a  
11           state governmental body, or the county attorney or  
12           corporation counsel in the case of a county  
13           governmental body may intervene to defend or otherwise  
14           support the moving party in the lawsuit;

15           (8) The court shall award a moving party who prevails on  
16           the motion, without regard to any limits under state  
17           law:

18           (A) Actual damages or \$5,000, whichever is greater;

19           (B) Costs of suit, including reasonable attorneys'  
20           and expert witness fees, incurred in connection  
21           with the motion; and



1           (C) Such additional sanctions upon the responding  
 2                   party, its attorneys, or law firms as the court  
 3                   determines shall be sufficient to deter  
 4                   repetition of the conduct and comparable conduct  
 5                   by others similarly situated; and

6           (9) Any person damaged or injured by reason of a claim  
 7                   filed in violation of their rights under this chapter  
 8                   may seek relief in the form of a claim for actual or  
 9                   compensatory damages, as well as punitive damages,  
 10                  attorneys' fees, and costs, from the person  
 11                  responsible."

12           SECTION 4. If any provision of this Act, or the  
 13                  application thereof to any person or circumstance is held  
 14                  invalid, the invalidity does not affect other provisions or  
 15                  applications of the Act, which can be given effect without the  
 16                  invalid provision or application, and to this end the provisions  
 17                  of this Act are severable.

18           SECTION 5. Statutory material to be repealed is bracketed  
 19                  and stricken. New statutory material is underscored.

20           SECTION 6. This Act shall take effect upon its approval.

21  
 INTRODUCED BY:           *Young Wata*

**Report Title:**

Anti-SLAPP; Citizen Participation in Government

**Description:**

Immunizes from liability any act by a person in furtherance of the constitutional right to petition to procure governmental or electoral action. Amends SLAPP definition to add immunized act language. Allows court to decide on a motion to dispose a claim, based on the pleadings and affidavits filed.

