

SENATE BILL 1042

D3
SB 768/19 – JPR

0lr1625
CF HB 379

By: **Senators Hettleman, Sydnor, and Smith**
Introduced and read first time: February 19, 2020
Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Civil Actions – Strategic Lawsuits Against Public Participation**

3 FOR the purpose of altering the conditions under which a lawsuit is considered a strategic
4 lawsuit against public participation (SLAPP suit); specifying the conditions under
5 which a lawsuit is not considered a SLAPP suit; altering the conditions under which
6 a defendant in a SLAPP suit is not civilly liable for certain communications;
7 requiring a court to rule expeditiously on a certain motion to dismiss an alleged
8 SLAPP suit; establishing a plaintiff's burden in responding to a motion to dismiss an
9 alleged SLAPP suit; providing for the award of certain costs and fees in connection
10 with a motion to dismiss; providing for the application of this Act; and generally
11 relating to SLAPP suits.

12 BY repealing and reenacting, with amendments,
13 Article – Courts and Judicial Proceedings
14 Section 5–807
15 Annotated Code of Maryland
16 (2013 Replacement Volume and 2019 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
18 That the Laws of Maryland read as follows:

19 **Article – Courts and Judicial Proceedings**

20 5–807.

21 (a) In this section, “SLAPP suit” means a strategic lawsuit against public
22 participation.

23 (b) **[A] SUBJECT TO SUBSECTION (C) OF THIS SECTION**, A lawsuit is a SLAPP
24 suit if it is[:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



(1) Brought in bad faith against a party who has communicated with a federal, State, or local government body or the public at large to report on, comment on, rule on, challenge, oppose, or in any other way exercise rights under the First Amendment of the U.S. Constitution or Article 10, Article 13, or Article 40 of the Maryland Declaration of Rights regarding any matter within the authority of a government body or any issue of public concern;

(2) Materially related to the defendant's communication; and

(3) Intended to inhibit or inhibits the exercise of rights under the First Amendment of the U.S. Constitution or Article 10, Article 13, or Article 40 of the Maryland Declaration of Rights] **BROUGHT AGAINST A PERSON BASED ON AN ACT OR STATEMENT OF THE PERSON THAT WAS DONE OR MADE IN FURTHERANCE OF THE PERSON'S RIGHT OF PETITION OR FREE SPEECH UNDER THE UNITED STATES CONSTITUTION OR THE MARYLAND CONSTITUTION OR DECLARATION OF RIGHTS IN CONNECTION WITH A PUBLIC ISSUE OR AN ISSUE OF PUBLIC INTEREST, INCLUDING A WRITTEN OR ORAL STATEMENT MADE:**

(1) BEFORE A LEGISLATIVE, EXECUTIVE, OR JUDICIAL PROCEEDING, OR ANY OTHER OFFICIAL PROCEEDING AUTHORIZED BY LAW;

(2) IN CONNECTION WITH AN ISSUE UNDER CONSIDERATION OR REVIEW BY A LEGISLATIVE, EXECUTIVE, OR JUDICIAL BODY, OR ANY OTHER OFFICIAL PROCEEDING AUTHORIZED BY LAW; OR

(3) IN A PLACE OPEN TO THE PUBLIC OR A PUBLIC FORUM IN CONNECTION WITH AN ISSUE OF PUBLIC INTEREST.

(c) A LAWSUIT IS NOT A SLAPP SUIT IF:

(1) THE LAWSUIT IS BROUGHT IN THE PUBLIC INTEREST OR ON BEHALF OF THE GENERAL PUBLIC AND EACH OF THE FOLLOWING CONDITIONS EXISTS:

(i) EXCEPT FOR CLAIMS FOR ATTORNEY'S FEES, COSTS, OR PENALTIES, THE PLAINTIFF DOES NOT SEEK ANY RELIEF GREATER THAN OR DIFFERENT FROM THE RELIEF SOUGHT FOR THE GENERAL PUBLIC OR A CLASS OF WHICH THE PLAINTIFF IS A MEMBER;

(ii) THE LAWSUIT, IF SUCCESSFUL, WOULD ENFORCE AN IMPORTANT RIGHT AFFECTING THE PUBLIC INTEREST AND WOULD CONFER A SIGNIFICANT BENEFIT, PECUNIARY OR NONPECUNIARY, TO THE GENERAL PUBLIC OR A LARGE CLASS OF PERSONS; AND

(III) PRIVATE ENFORCEMENT IS NECESSARY AND PLACES A DISPROPORTIONATE FINANCIAL BURDEN ON THE PLAINTIFF IN RELATION TO THE PLAINTIFF'S STAKE IN THE MATTER; OR

(2) THE LAWSUIT INVOLVES A DEFENDANT WHO:

(I) PRIMARILY ENGAGES IN THE BUSINESS OF SELLING OR LEASING GOODS OR SERVICES, INCLUDING INSURANCE, SECURITIES, OR FINANCIAL INSTRUMENTS; AND

(II) MADE A STATEMENT OR ENGAGED IN CONDUCT THAT CONSISTED OF REPRESENTATIONS OF FACT ABOUT THE DEFENDANT'S OR A BUSINESS COMPETITOR'S BUSINESS OPERATIONS, GOODS, OR SERVICES:

1. FOR THE PURPOSE OF OBTAINING APPROVAL FOR, PROMOTING, OR SECURING SALES OR LEASES OF OR COMMERCIAL TRANSACTIONS IN THE DEFENDANT'S GOODS OR SERVICES; OR

2. IN THE COURSE OF DELIVERING THE DEFENDANT'S GOODS OR SERVICES.

[(c)] (D) A defendant in a SLAPP suit is not civilly liable for communicating with a federal, State, or local government body or the public at large, if the defendant, without constitutional malice, [reports on, comments on, rules on, challenges, opposes, or in any other way exercises rights under the First Amendment of the U.S. Constitution or Article 10, Article 13, or Article 40 of the Maryland Declaration of Rights] **ACTED IN FURTHERANCE OF THE PERSON'S RIGHT OF PETITION OR FREE SPEECH UNDER THE UNITED STATES CONSTITUTION OR THE MARYLAND CONSTITUTION OR DECLARATION OF RIGHTS** regarding any matter within the authority of a government body or any **PUBLIC** issue **OR ISSUE** of public [concern] **INTEREST**.

[(d)] (E) (1) A defendant in an alleged SLAPP suit may move to:

[(1)] (I) Dismiss the alleged SLAPP suit, in which case the court shall hold a hearing on the motion to dismiss as soon as practicable **AND RULE EXPEDITIOUSLY;** or

[(2)] (II) Stay all court proceedings until the matter about which the defendant communicated to the government body or the public at large is resolved.

(2) IT IS THE PLAINTIFF'S BURDEN IN RESPONDING TO A MOTION TO DISMISS TO SHOW THAT THE ALLEGED SLAPP SUIT HAS SUBSTANTIAL JUSTIFICATION IN LAW AND FACT.

1 **(3) (I) IF THE COURT ORDERS DISMISSAL OF A SLAPP SUIT**
2 **UNDER THIS SECTION, THE COURT SHALL AWARD TO THE MOVING PARTY COSTS AND**
3 **REASONABLE ATTORNEY’S FEES, INCLUDING THOSE INCURRED IN MAKING THE**
4 **MOTION TO DISMISS.**

5 **(II) IF THE COURT FINDS THAT A MOTION TO DISMISS IS**
6 **FRIVOLOUS AND SOLELY INTENDED TO CAUSE UNNECESSARY DELAY, THE COURT**
7 **SHALL AWARD COSTS AND REASONABLE ATTORNEY’S FEES TO THE PARTY OPPOSING**
8 **THE MOTION.**

9 **[(e)] (F)** This section:

10 (1) Is applicable to SLAPP suits notwithstanding any other law or rule; and

11 (2) Does not diminish any equitable or legal right or remedy otherwise
12 available to a defendant in a SLAPP suit.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
14 apply only prospectively and may not be applied or interpreted to have any effect on or
15 application to any cause of action arising before the effective date of this Act.

16 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2020.