

HOUSE BILL 379

D3

0lr1615
CF 0lr1625

By: **Delegates Rosenberg and Cardin**

Introduced and read first time: January 22, 2020

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Courts – 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 establishing a plaintiff's burden in responding to a motion to dismiss an alleged
8 SLAPP suit; providing for the award of certain costs and fees in connection with a
9 motion to dismiss; providing that a ruling or failure to rule on a certain motion is
10 immediately appealable; 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 and 12–303
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 A 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; 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.

(3) (I) IF THE COURT ORDERS DISMISSAL OF A SLAPP SUIT

1 UNDER THIS SECTION, THE COURT SHALL AWARD THE MOVING PARTY COSTS AND
2 REASONABLE ATTORNEY'S FEES, INCLUDING THOSE INCURRED IN MAKING THE
3 MOTION TO DISMISS.

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

8 [(e)] (F) This section:

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

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

12 12-303.

13 (A) A party may appeal from any of the following interlocutory orders entered by
14 a circuit court in a civil case:

15 (1) An order entered with regard to the possession of property with which
16 the action is concerned or with reference to the receipt or charging of the income, interest,
17 or dividends therefrom, or the refusal to modify, dissolve, or discharge such an order;

18 (2) An order granting or denying a motion to quash a writ of attachment;
19 and

20 (3) An order:

21 (i) Granting or dissolving an injunction, but if the appeal is from an
22 order granting an injunction, only if the appellant has first filed his answer in the cause;

23 (ii) Refusing to dissolve an injunction, but only if the appellant has
24 first filed his answer in the cause;

25 (iii) Refusing to grant an injunction; and the right of appeal is not
26 prejudiced by the filing of an answer to the bill of complaint or petition for an injunction on
27 behalf of any opposing party, nor by the taking of depositions in reference to the allegations
28 of the bill of complaint to be read on the hearing of the application for an injunction;

29 (iv) Appointing a receiver but only if the appellant has first filed his
30 answer in the cause;

31 (v) For the sale, conveyance, or delivery of real or personal property
32 or the payment of money, or the refusal to rescind or discharge such an order, unless the

1 delivery or payment is directed to be made to a receiver appointed by the court;

2 (vi) Determining a question of right between the parties and
3 directing an account to be stated on the principle of such determination;

4 (vii) Requiring bond from a person to whom the distribution or
5 delivery of property is directed, or withholding distribution or delivery and ordering the
6 retention or accumulation of property by the fiduciary or its transfer to a trustee or receiver,
7 or deferring the passage of the court's decree in an action under Title 10, Chapter 600 of
8 the Maryland Rules;

9 (viii) Deciding any question in an insolvency proceeding brought
10 under Title 15, Subtitle 1 of the Commercial Law Article;

11 (ix) Granting a petition to stay arbitration pursuant to § 3–208 of this
12 article;

13 (x) Depriving a parent, grandparent, or natural guardian of the care
14 and custody of his child, or changing the terms of such an order; and

15 (xi) Denying immunity asserted under § 5–525 or § 5–526 of this
16 article.

17 **(B) A PARTY MAY APPEAL FROM A RULING OR A FAILURE TO RULE ON A**
18 **MOTION TO DISMISS AN ALLEGED SLAPP SUIT UNDER § 5–807 OF THIS ARTICLE.**

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

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