

# SENATE BILL 768

D3

9lr0747  
CF HB 412

---

By: **Senator Smith**

Introduced and read first time: February 4, 2019

Assigned to: Judicial Proceedings

---

## 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 providing that a ruling or failure to rule on a certain motion is immediately  
8 appealable; providing for the application of this Act; and generally relating to SLAPP  
9 suits.

10 BY repealing and reenacting, with amendments,  
11 Article – Courts and Judicial Proceedings  
12 Section 5–807 and 12–303  
13 Annotated Code of Maryland  
14 (2013 Replacement Volume and 2018 Supplement)

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

17 **Article – Courts and Judicial Proceedings**

18 5–807.

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

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

23 (1) Brought in bad faith against a party who has communicated with a

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 federal, State, or local government body or the public at large to report on, comment on,  
2 rule on, challenge, oppose, or in any other way exercise rights under the First Amendment  
3 of the U.S. Constitution or Article 10, Article 13, or Article 40 of the Maryland Declaration  
4 of Rights regarding any matter within the authority of a government body or any issue of  
5 public concern;

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

7 (3) Intended to inhibit or inhibits the exercise of rights under the First  
8 Amendment of the U.S. Constitution or Article 10, Article 13, or Article 40 of the Maryland  
9 Declaration of Rights] **BROUGHT IN BAD FAITH AGAINST A PERSON BASED ON AN ACT  
10 OR STATEMENT OF THE PERSON, OR TO PREVENT THE PERSON FROM ACTING OR  
11 MAKING A STATEMENT, IN FURTHERANCE OF THE PERSON'S RIGHT OF PETITION OR  
12 FREE SPEECH UNDER THE UNITED STATES CONSTITUTION OR THE MARYLAND  
13 CONSTITUTION OR DECLARATION OF RIGHTS IN CONNECTION WITH A PUBLIC ISSUE  
14 OR AN ISSUE OF PUBLIC INTEREST, INCLUDING A WRITTEN OR ORAL STATEMENT  
15 MADE:**

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

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

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

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

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

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

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

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

4                   **(2) THE LAWSUIT INVOLVES A DEFENDANT WHO:**

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

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

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

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

16           **[(c)] (D)** A defendant in a SLAPP suit is not civilly liable for communicating with  
17 a federal, State, or local government body or the public at large, if the defendant, without  
18 constitutional malice, [reports on, comments on, rules on, challenges, opposes, or in any  
19 other way exercises rights under the First Amendment of the U.S. Constitution or Article  
20 10, Article 13, or Article 40 of the Maryland Declaration of Rights] **ACTED IN**  
21 **FURTHERANCE OF THE PERSON'S RIGHT OF PETITION OR FREE SPEECH UNDER THE**  
22 **UNITED STATES CONSTITUTION OR THE MARYLAND CONSTITUTION OR**  
23 **DECLARATION OF RIGHTS** regarding any matter within the authority of a government  
24 body or any **PUBLIC** issue **OR ISSUE** of public [concern] **INTEREST.**

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

26                   (1) Dismiss the alleged SLAPP suit, in which case the court shall hold a  
27 hearing on the motion to dismiss as soon as practicable; or

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

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

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

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

1 12–303.

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

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

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

9 (3) An order:

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

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

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

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

20 (v) For the sale, conveyance, or delivery of real or personal property  
21 or the payment of money, or the refusal to rescind or discharge such an order, unless the  
22 delivery or payment is directed to be made to a receiver appointed by the court;

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

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

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

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

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

3                   (xi)    Denying immunity asserted under § 5-525 or § 5-526 of this  
4 article.

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

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

10           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
11 October 1, 2019.