

SENATE BILL 162

D3
SB 1042/20 – JPR

(PRE-FILED)

1lr1034
CF HB 308

By: **Senator Hettleman**

Requested: October 20, 2020

Introduced and read first time: January 13, 2021

Assigned to: Judicial Proceedings

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 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 that a court may order certain discovery under certain
10 circumstances; providing for the award of certain costs and fees in connection with a
11 motion to dismiss; providing for the application of this Act; and generally relating to
12 SLAPP suits.

13 BY repealing and reenacting, with amendments,
14 Article – Courts and Judicial Proceedings
15 Section 5–807
16 Annotated Code of Maryland
17 (2020 Replacement Volume)

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

20 **Article – Courts and Judicial Proceedings**

21 5–807.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

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

23 (3) **IN A PLACE OPEN TO THE PUBLIC OR A PUBLIC FORUM IN
24 CONNECTION WITH AN ISSUE OF PUBLIC INTEREST; OR**

25 (4) **TO A GOVERNMENT OFFICIAL OR AN INDIVIDUAL RUNNING FOR
26 PUBLIC OFFICE.**

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

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

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

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

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

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

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

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

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

18 **2. IN THE COURSE OF DELIVERING THE DEFENDANT'S**
19 **GOODS OR SERVICES IS ALLEGED TO HAVE MADE A STATEMENT OR ENGAGED IN**
20 **CONDUCT THAT DISPARAGES A BUSINESS COMPETITOR'S BUSINESS OPERATIONS,**
21 **GOODS, OR SERVICES.**

22 **[(c)] (D) A defendant in a SLAPP suit is not civilly liable for communicating with**
23 **a federal, State, or local government body or the public at large, if the defendant, without**
24 **constitutional malice, [reports on, comments on, rules on, challenges, opposes, or in any**
25 **other way exercises rights under the First Amendment of the U.S. Constitution or Article**
26 **10, Article 13, or Article 40 of the Maryland Declaration of Rights] ACTED IN**
27 **FURTHERANCE OF THE PERSON'S RIGHT OF PETITION OR FREE SPEECH UNDER THE**
28 **UNITED STATES CONSTITUTION OR THE MARYLAND CONSTITUTION OR**
29 **DECLARATION OF RIGHTS regarding any matter within the authority of a government**
30 **body or any PUBLIC issue OR ISSUE of public [concern] INTEREST.**

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

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

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

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

6 **(3) (I) IF IT APPEARS LIKELY THAT TARGETED DISCOVERY WILL**
7 **ENABLE THE PLAINTIFF TO DEFEAT THE MOTION AND THAT THE DISCOVERY WILL**
8 **NOT BE UNDULY BURDENSOME, THE COURT MAY ORDER THAT SPECIFIED TARGETED**
9 **DISCOVERY BE CONDUCTED.**

10 **(II) AN ORDER UNDER THIS SECTION SHALL BE CONDITIONED**
11 **ON THE PLAINTIFF PAYING ANY EXPENSES INCURRED BY THE DEFENDANT IN**
12 **RESPONDING TO THE DISCOVERY.**

13 **(4) IF THE COURT ORDERS DISMISSAL OF A SLAPP SUIT UNDER THIS**
14 **SECTION, THE COURT SHALL AWARD THE MOVING PARTY COSTS AND REASONABLE**
15 **ATTORNEY'S FEES, INCLUDING THOSE INCURRED IN MAKING THE MOTION TO**
16 **DISMISS.**

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

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

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

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

24 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2021.