

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 162 (Senator Hettleman)
Judicial Proceedings

Courts - Civil Actions - Strategic Lawsuits Against Public Participation

This bill (1) redefines a strategic lawsuit against public participation (SLAPP suit) under § 5-807 of the Courts and Judicial Proceedings Article; (2) alters the conditions under which a defendant in a SLAPP suit is not civilly liable for certain communications; and (3) contains specified provisions regarding motions to dismiss a SLAPP suit, including authorizing a court to order specified targeted discovery to enable a plaintiff to defeat a motion to dismiss, requiring a court to rule expeditiously on a defendant’s motion to dismiss, and awards for costs and reasonable attorney’s fees. The bill applies prospectively to causes of action arising on or after October 1, 2021.

Fiscal Summary

State Effect: None. The bill’s requirements can be handled with existing State resources.

Local Effect: None. The bill’s requirements can be handled with existing local resources.

Small Business Effect: None.

Analysis

Bill Summary: A lawsuit is a SLAPP suit if it is brought against a person (the defendant) based on an act or statement of the person that was done or made in furtherance of the person’s federal or State constitutional right of petition or free speech in connection with a public issue or an issue of public interest. This includes a written or oral statement made (1) before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law or in connection with an issue under consideration or review in these proceedings; (2) in a public place or a public forum in connection with an issue of public interest; or (3) to a government official or an individual running for public office.

A lawsuit is not a SLAPP suit if the lawsuit is brought in the public interest or on behalf of the general public and specified conditions exist. These conditions relate to (1) the relief sought by the plaintiff; (2) the connection between success of the lawsuit and enforcement of an important right affecting the public interest and the granting of a significant benefit to the general public or a large class of persons; (3) the need for private enforcement and the financial burden of private enforcement on the plaintiff; and (4) the defendant's status as a seller or lessor of goods or services and the nature of the defendant's statement or conduct.

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, acted in furtherance of the person's federal or State right of petition or free speech regarding any matter within the authority of a government body or any public issue or issue of public interest.

The bill places the burden on plaintiffs to show that their alleged SLAPP suits have substantial justification in law and fact and requires a court to award costs and reasonable attorney's fees to the movant if a motion to dismiss a SLAPP lawsuit is granted. A court may allow targeted discovery if it appears likely that such discovery will enable a plaintiff to defeat a motion to dismiss and not be unduly burdensome. However, an order allowing such discovery must be conditioned on the plaintiff paying any expenses incurred by the defendant in responding to the discovery.

Current Law: A lawsuit is a SLAPP suit if it (1) is brought in bad faith against a party who has exercised specified federal or State constitutional rights of free speech in communicating with a government body or the public at large regarding any matter within the authority of the government body or any issue of public concern; (2) is materially related to the defendant's communication; and (3) inhibits or is intended to inhibit the exercise of federal or State constitutional rights of free speech. A defendant in a SLAPP suit is not civilly liable for communicating with a government body or the public at large if the defendant acts without constitutional malice in exercising rights protected by federal or State constitutional rights of free speech regarding any matter within the authority of a government body or any issue of public concern.

A defendant in an alleged SLAPP suit may move to dismiss the suit or move to stay all court proceedings until the matter about which the defendant communicated to the government body or the public at large is resolved.

Additional Information

Prior Introductions: Similar bills have been introduced in previous legislative sessions. HB 379 of 2020 passed the House with amendments and was referred to the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, SB 1042, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. HB 412 of 2019 received a hearing in the House Judiciary Committee but was subsequently withdrawn. Its cross file, SB 768, received an unfavorable report from the Senate Judicial Proceedings Committee. HB 263 of 2016 passed the House with amendments and received an unfavorable report from the Senate Judicial Proceedings Committee

Designated Cross File: HB 308 (Delegates Rosenberg and Cardin) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Legislative Services

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