

SENATE BILL 315

D3
SB 162/21 – JPR

2lr0309
CF HB 70

By: **Senators Hettleman, Smith, and Waldstreicher**

Introduced and read first time: January 20, 2022

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Courts – Strategic Lawsuits Against Public Participation**

3 FOR the purpose of altering the conditions under which a lawsuit is a strategic lawsuit
4 against public participation (SLAPP suit); altering the conditions under which a
5 defendant in a SLAPP suit is not civilly liable for certain communications;
6 establishing certain standards and requirements relating to a motion to dismiss an
7 alleged SLAPP suit; and generally relating to SLAPP suits.

8 BY repealing and reenacting, with amendments,
9 Article – Courts and Judicial Proceedings
10 Section 5–807
11 Annotated Code of Maryland
12 (2020 Replacement Volume and 2021 Supplement)

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

15 **Article – Courts and Judicial Proceedings**

16 5–807.

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

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

21 (1) Brought in bad faith against a party who has communicated with a
22 federal, State, or local government body or the public at large to report on, comment on,
23 rule on, challenge, oppose, or in any other way exercise rights under the First Amendment

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 of the U.S. Constitution or Article 10, Article 13, or Article 40 of the Maryland Declaration
2 of Rights regarding any matter within the authority of a government body or any issue of
3 public concern;

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

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

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

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

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

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

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

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

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

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

34 (iii) **PRIVATE ENFORCEMENT IS NECESSARY AND PLACES A**

1 DISPROPORTIONATE FINANCIAL BURDEN ON THE PLAINTIFF IN RELATION TO THE
2 PLAINTIFF'S STAKE IN THE MATTER; OR

3 (2) THE LAWSUIT INVOLVES A DEFENDANT WHO:

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

7 (II) 1. MADE A STATEMENT OR ENGAGED IN CONDUCT THAT
8 CONSISTED OF REPRESENTATIONS OF FACT ABOUT THE DEFENDANT'S OR A
9 BUSINESS COMPETITOR'S BUSINESS OPERATIONS, GOODS, OR SERVICES FOR THE
10 PURPOSE OF OBTAINING APPROVAL FOR, PROMOTING, OR SECURING SALES OR
11 LEASES OF OR COMMERCIAL TRANSACTIONS IN THE DEFENDANT'S GOODS OR
12 SERVICES; OR

13 2. IN THE COURSE OF DELIVERING THE DEFENDANT'S
14 GOODS OR SERVICES IS ALLEGED TO HAVE MADE A STATEMENT OR ENGAGED IN
15 CONDUCT THAT DISPARAGES A BUSINESS COMPETITOR'S BUSINESS OPERATIONS,
16 GOODS, OR SERVICES.

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

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

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

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

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

1 **(3) (I) IF IT APPEARS LIKELY THAT DISCOVERY WILL ENABLE THE**
2 **PLAINTIFF TO DEFEAT A MOTION TO DISMISS AND THAT THE DISCOVERY WILL NOT**
3 **BE UNDULY BURDENSOME, THE COURT MAY ORDER THAT SPECIFIED DISCOVERY BE**
4 **CONDUCTED.**

5 **(II) AN ORDER UNDER THIS PARAGRAPH SHALL BE**
6 **CONDITIONED ON THE PLAINTIFF PAYING ANY EXPENSES INCURRED BY THE**
7 **DEFENDANT IN RESPONDING TO THE DISCOVERY.**

8 **(4) (I) IF THE COURT GRANTS AN ANTI-SLAPP MOTION, THE**
9 **COURT SHALL AWARD COSTS AND REASONABLE ATTORNEY'S FEES TO THE MOVING**
10 **PARTY IF THE COURT DETERMINES THAT JUSTICE AND EQUITY REQUIRE IT.**

11 **(II) IF THE COURT FINDS THAT A MOTION TO DISMISS IS**
12 **FRIVOLOUS OR SOLELY INTENDED TO CAUSE UNNECESSARY DELAY, THE COURT MAY**
13 **AWARD COSTS AND REASONABLE ATTORNEY'S FEES TO THE RESPONDING PARTY.**

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

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

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

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

21 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 2022.