

HOUSE BILL 263

D3

6lr0489

By: **Delegate Rosenberg**

Introduced and read first time: January 25, 2016

Assigned to: Judiciary

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 deemed to be a
4 strategic lawsuit against public participation (SLAPP suit); altering the conditions
5 under which a defendant in a SLAPP suit is not civilly liable for certain
6 communications; altering the remedies available to a defendant in an alleged SLAPP
7 suit; requiring a court to hear and rule on a motion to dismiss an alleged SLAPP suit
8 within certain time periods; providing that a motion to dismiss shall be deemed
9 denied if the court fails to rule on the motion within a certain time period; requiring
10 a court to dismiss a SLAPP suit under certain circumstances; providing for the
11 admissibility and effect of a certain finding; requiring a court to stay discovery and
12 other pending hearings or motions in an alleged SLAPP suit until a certain time;
13 providing a certain exception; requiring a court to award costs and reasonable
14 attorney's fees under certain circumstances; providing that a ruling or failure to rule
15 on a certain motion is immediately appealable; providing for the application of this
16 Act; and generally relating to SLAPP suits.

17 BY repealing and reenacting, with amendments,
18 Article – Courts and Judicial Proceedings
19 Section 5–807 and 12–303
20 Annotated Code of Maryland
21 (2013 Replacement Volume and 2015 Supplement)

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

24 **Article – Courts and Judicial Proceedings**

25 5–807.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) In this section, "SLAPP suit" means a strategic lawsuit against public
2 participation.

3 (b) A lawsuit is a SLAPP suit if it is[:

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

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

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

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

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

24 (3) **A WRITTEN OR ORAL STATEMENT MADE IN A PLACE OPEN TO THE
25 PUBLIC OR A PUBLIC FORUM IN CONNECTION WITH AN ISSUE OF PUBLIC INTEREST.**

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

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

1 (1) Dismiss] **DISMISS** the alleged SLAPP suit[, in which case the court
2 shall hold a hearing on the motion to dismiss as soon as practicable; or

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

5 **(2) THE COURT SHALL:**

6 **(I) HOLD A HEARING ON A MOTION TO DISMISS AS SOON AS**
7 **PRACTICABLE, BUT NOT MORE THAN 30 DAYS AFTER THE MOTION IS FILED; AND**

8 **(II) RULE ON THE MOTION WITHIN 60 DAYS AFTER THE**
9 **HEARING.**

10 **(3) IF THE COURT FAILS TO RULE ON A MOTION TO DISMISS WITHIN**
11 **THE TIME REQUIRED UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE MOTION**
12 **SHALL BE DEEMED TO HAVE BEEN DENIED.**

13 **(4) IF, AFTER A HEARING, THE COURT FINDS THAT THE LAWSUIT IS A**
14 **SLAPP SUIT, THE COURT SHALL DISMISS THE SLAPP SUIT UNLESS THE COURT**
15 **FINDS THAT THE PLAINTIFF HAS ESTABLISHED A PROBABILITY THAT THE PLAINTIFF**
16 **WILL PREVAIL IN THE LAWSUIT.**

17 **(5) IF THE COURT FINDS THAT THE PLAINTIFF HAS ESTABLISHED A**
18 **PROBABILITY OF PREVAILING IN THE LAWSUIT:**

19 **(I) THE FACT THAT THE FINDING HAS BEEN MADE AND THE**
20 **SUBSTANCE OF THE FINDING IS NOT ADMISSIBLE IN EVIDENCE AT ANY LATER STAGE**
21 **IN THE LAWSUIT; AND**

22 **(II) THE FINDING MAY NOT AFFECT THE BURDEN OF PROOF**
23 **APPLIED IN THE LAWSUIT.**

24 **(E) (1) THE COURT SHALL STAY DISCOVERY AND ANY OTHER PENDING**
25 **HEARINGS OR MOTIONS IN THE LAWSUIT ON THE FILING OF A MOTION TO DISMISS**
26 **UNDER SUBSECTION (D) OF THIS SECTION.**

27 **(2) A STAY UNDER THIS SUBSECTION SHALL REMAIN IN EFFECT**
28 **UNTIL THE COURT RULES ON THE MOTION TO DISMISS.**

29 **(3) NOTWITHSTANDING A STAY ORDERED UNDER THIS SUBSECTION,**
30 **THE COURT ON MOTION AND FOR GOOD CAUSE SHOWN MAY ORDER SPECIFIED**
31 **DISCOVERY OR OTHER HEARINGS OR MOTIONS TO BE CONDUCTED.**

1 **(F) (1) THE COURT SHALL AWARD A DEFENDANT WHO PREVAILS ON A**
2 **MOTION TO DISMISS UNDER SUBSECTION (D) OF THIS SECTION COSTS AND**
3 **REASONABLE ATTORNEY'S FEES INCURRED IN CONNECTION WITH THE MOTION TO**
4 **DISMISS.**

5 **(2) IF THE COURT FINDS THAT A MOTION TO DISMISS UNDER**
6 **SUBSECTION (D) OF THIS SECTION IS FRIVOLOUS OR SOLELY INTENDED TO CAUSE**
7 **UNNECESSARY DELAY, THE COURT SHALL AWARD COSTS AND REASONABLE**
8 **ATTORNEY'S FEES TO THE PREVAILING PLAINTIFF.**

9 **(G) A RULING OR FAILURE TO RULE ON A MOTION TO DISMISS UNDER THIS**
10 **SECTION IS IMMEDIATELY APPEALABLE UNDER § 12-303 OF THIS ARTICLE.**

11 **[(e)] (H) This section:**

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

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

15 12-303.

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

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

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

23 (3) An order:

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

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

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

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

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

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

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

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

15 (ix) Granting a petition to stay arbitration pursuant to § 3-208 of this
16 article;

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

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

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

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

26 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 2016.