

**Department of Legislative Services**  
Maryland General Assembly  
2004 Session

**FISCAL AND POLICY NOTE**

Senate Bill 464

(Senator Green)

Judicial Proceedings

Judiciary

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**Qualified Immunity from Civil Liability – SLAPP Suits**

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This bill establishes that a lawsuit is a “strategic lawsuit against public participation” (SLAPP) suit if it is: (1) 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; (2) materially related to the defendant’s communication; and (3) intended to inhibit the exercise of free speech rights. The bill provides immunity from civil liability to a defendant in a SLAPP suit who acts without constitutional malice in exercising rights protected by the first amendment of the U.S. Constitution, and Articles 10, 13, and 40 of the Maryland Declaration of Rights. 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.

The bill applies only to cases filed on or after the October 1, 2004 effective date.

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**Fiscal Summary**

**State Effect:** None. Any effect on the Judiciary’s caseload is expected to be negligible.

**Local Effect:** None.

**Small Business Effect:** None.

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## Analysis

**Current Law:** There are no statutory provisions specifically relating to SLAPP suits. The first amendment to the U.S. Constitution guarantees the rights of free speech and free press, the right to peaceably assemble, and the right to petition the government for a redress of grievances. Article 10 of the Maryland Declaration of Rights, which protects the right of legislators to free speech and debate in the legislature, is the State counterpart of Article I, section 6, clause 1 of the U.S. Constitution. Article 13 of the Maryland Declaration of Rights guarantees citizens the right to petition the legislature for redress of grievances, and Article 40 guarantees the rights of free speech and free press.

Maryland Rule 1-341 provides that if a court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification, the court may require the offending party and/or the party's attorney to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorney's fees, incurred by the adverse party in opposing it.

"Constitutional malice," also known as "actual malice," is the standard established by the Supreme Court in the seminal defamation case of *New York Times v. Sullivan*, 376 U.S. 254 (1964). A person acts with constitutional malice if the person makes a statement that the person knows is false, or acts with reckless disregard as to whether the statement is false or not.

**Background:** SLAPP suit laws protect individuals and groups, many with few assets, from defending costly legal challenges to their lawful exercise of such constitutionally protected rights as free speech, assembly, and the right to petition the government. Covered activities may include writing letters to the editor, circulating petitions, organizing and conducting peaceful protests, reporting unlawful activities, speaking at public meetings, and similar actions.

Plaintiffs in these lawsuits, who typically have far greater resources than defendants, may allege a number of legal wrongs. The more common causes of action include defamation, invasion of privacy, intentional infliction of emotional distress, interference with contract or economic advantage, and abuse of process. Their goal is often not to win the case, but rather to cause the defendants to devote such significant resources to defending it that they are unable to continue the challenged activities.

Approximately 20 states have enacted SLAPP suit laws. There are judicial precedents in other states that accomplish this same result.

## **Additional Information**

**Prior Introductions:** HB 113 of 2003, HB 481 of 1999, HB 12 of 1998, HB 134 of 1997, HB 532 of 1996, and HB 142 of 1995 all passed the House. HB 113 received an unfavorable report from the Senate Judicial Proceedings Committee. HB 481, HB 134, and HB 532 received hearings before the Senate Judicial Proceedings Committee. Otherwise, no further action was taken on any of these bills.

**Cross File:** HB 930 (Delegate Rosenberg, *et al.*) – Judiciary.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Office of the Attorney General, Department of Legislative Services

**Fiscal Note History:** First Reader - February 25, 2004  
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