

SENATE BILL 990

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0lr3421
CF HB 1250

By: **Senators Forehand, Madaleno, Pinsky, and Raskin**

Introduced and read first time: February 22, 2010

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Courts and Judicial Proceedings – Strategic Lawsuits Against Public**
3 **Participation**

4 FOR the purpose of altering the remedies available to a defendant in an alleged
5 strategic lawsuit against public participation (SLAPP suit); establishing certain
6 burdens of proof and procedures in an alleged SLAPP suit; requiring a court to
7 consider certain evidence in ruling on a motion to dismiss an alleged SLAPP
8 suit; authorizing the Office of the Attorney General or a government body to
9 intervene to defend or support a certain party in an alleged SLAPP suit;
10 requiring a court to stay any discovery and pending hearings or motions in an
11 alleged SLAPP suit on the filing of a motion to dismiss and until the court rules
12 on the motion; requiring a court to award certain attorney's fees, costs, and
13 other relief under certain circumstances; modifying a defined term; providing
14 for the application of this Act; and generally relating to SLAPP suits.

15 BY repealing and reenacting, with amendments,
16 Article – Courts and Judicial Proceedings
17 Section 5–807
18 Annotated Code of Maryland
19 (2006 Replacement Volume and 2009 Supplement)

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

22 **Article – Courts and Judicial Proceedings**

23 5–807.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

9 (3) Intended to inhibit the exercise of rights under the First
10 Amendment of the U.S. Constitution or Article 10, Article 13, or Article 40 of the
11 Maryland Declaration of Rights].

12 (c) A defendant in a SLAPP suit is not civilly liable for communicating with
13 a federal, State, or local government body or the public at large, if the defendant,
14 without constitutional malice, reports on, comments on, rules on, challenges, opposes,
15 or in any other way exercises rights under the First Amendment of the U.S.
16 Constitution or Article 10, Article 13, or Article 40 of the Maryland Declaration of
17 Rights regarding any matter within the authority of a government body.

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

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

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

23 (2) (I) **A PARTY BRINGING A MOTION TO DISMISS UNDER THIS**
24 **SUBSECTION SHALL BEAR THE INITIAL BURDEN OF MAKING A PRIMA FACIE**
25 **SHOWING THAT THE LAWSUIT IS A SLAPP SUIT.**

26 (II) **IF THE MOVING PARTY MEETS THE INITIAL BURDEN**
27 **DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE RESPONDING**
28 **PARTY SHALL BEAR THE BURDEN OF ESTABLISHING A PROBABILITY OF**
29 **PREVAILING IN THE LAWSUIT BY PRESENTING SUBSTANTIAL EVIDENCE TO**
30 **SUPPORT A PRIMA FACIE CASE.**

31 (III) **IF THE RESPONDING PARTY MEETS THE BURDEN**
32 **DESCRIBED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE COURT SHALL**
33 **DENY THE MOTION TO DISMISS.**

1 **(3) IN RULING ON A MOTION TO DISMISS UNDER THIS**
2 **SUBSECTION, THE COURT SHALL CONSIDER PLEADINGS, SUPPORTING**
3 **AFFIDAVITS, AND OPPOSING AFFIDAVITS THAT STATE THE FACTS ON WHICH THE**
4 **LIABILITY OR DEFENSE IS BASED.**

5 **(4) IF THE COURT FINDS THAT THE RESPONDING PARTY HAS**
6 **ESTABLISHED A PROBABILITY OF PREVAILING IN THE LAWSUIT:**

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

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

12 **(5) THE OFFICE OF THE ATTORNEY GENERAL, OR ANY**
13 **GOVERNMENT BODY TO WHICH THE MOVING PARTY'S COMMUNICATION WAS**
14 **DIRECTED, MAY INTERVENE TO DEFEND OR SUPPORT THE MOVING PARTY.**

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

18 **(2) A STAY UNDER THIS SUBSECTION SHALL REMAIN IN EFFECT**
19 **UNTIL THE COURT RULES ON A MOTION TO DISMISS UNDER SUBSECTION (D) OF**
20 **THIS SECTION.**

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

24 **(F) (1) THE COURT SHALL AWARD A MOVING PARTY WHO PREVAILS**
25 **ON A MOTION TO DISMISS UNDER SUBSECTION (D) OF THIS SECTION, WITHOUT**
26 **REGARD TO ANY LIMITS UNDER STATE LAW:**

27 **(I) LITIGATION COSTS AND REASONABLE ATTORNEY'S FEES**
28 **IN CONNECTION WITH THE MOTION TO DISMISS UNDER SUBSECTION (D) OF THIS**
29 **SECTION; AND**

30 **(II) ANY ADDITIONAL RELIEF, INCLUDING SANCTIONS ON**
31 **THE RESPONDING PARTY AND ITS ATTORNEYS, AS THE COURT FINDS**
32 **NECESSARY TO DETER REPETITION OF THE CONDUCT BY OTHERS SIMILARLY**
33 **SITUATED.**

1 **(2) IF THE COURT FINDS A MOTION TO DISMISS UNDER**
2 **SUBSECTION (D) OF THIS SECTION IS FRIVOLOUS OR SOLELY INTENDED TO**
3 **CAUSE UNNECESSARY DELAY, THE COURT SHALL AWARD REASONABLE**
4 **ATTORNEY'S FEES AND LITIGATION COSTS TO THE RESPONDING PARTY.**

5 **[(e)] (G)** This section:

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

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

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

14 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2010.