

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 221 (Senator Frosh)
Judicial Proceedings

Courts and Judicial Proceedings - Strategic Lawsuits Against Public Participation

This bill makes several changes to the statute pertaining to strategic lawsuits against public participation (SLAPP). The bill (1) removes the definition of a SLAPP suit and redefines a SLAPP suit to mean a claim arising from a written or oral statement made in connection with specified issues or to the public in connection with an issue of public concern; (2) specifies procedural requirements regarding a motion to dismiss a SLAPP suit; (3) authorizes the Office of the Attorney General, or any government body to which the moving party's communication was directed, to intervene to defend or support the moving party; and (4) requires a court to award litigation costs and attorney's fees under specified circumstances.

The bill applies prospectively to causes of action arising on or after the bill's October 1, 2012 effective date.

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 SLAPP suit is a claim arising from:

- a written or oral statement made in connection with an issue under consideration or review by a federal, State, or local government body or to the public in connection with an issue of public concern; or
- any other expression or expressive conduct that involves petitioning the government or communicating to the public in connection with an issue of public concern.

A “claim” includes a civil action, cross-claim, counterclaim, or other judicial pleading or filing requesting relief. An “issue of public concern” means an issue related to (1) health or safety; (2) environmental, economic, or community well-being; (3) federal, State, or local government; (4) a public figure; or (5) a good, product, or service in the marketplace. An issue of public concern does not include private interests, such as protecting the speaker’s commercial interests.

A party bringing a motion to dismiss or a motion to stay a SLAPP suit bears the initial burden of making a *prima facie* showing that the lawsuit is a SLAPP suit. If the moving party meets this burden, the responding party bears the burden of establishing a probability of prevailing in the lawsuit by presenting substantial evidence to support a *prima facie* case. The court must deny the motion to dismiss or stay if the responding party meets this burden. When ruling on a motion to dismiss or a motion to stay, the court must consider pleadings, supporting affidavits, and opposing affidavits that state the facts on which the liability or defense is based.

The court must stay discovery and any pending hearings or motions in the lawsuit when a motion to dismiss or a motion to stay is filed. The stay must remain in effect until the court rules on the motion to dismiss. Notwithstanding a stay ordered by the court pending a motion to dismiss, the court may order discovery or other hearings or motions to be conducted on motion and for good cause shown.

A finding that a responding party has established a probability of prevailing in the lawsuit is not admissible in evidence at any later stage of the lawsuit and may not affect the burden of proof applied in the lawsuit.

The Office of the Attorney General or any government body to which the moving party’s communication was directed may intervene to defend or support the moving party.

A court must award the following to a moving party who prevails on a motion to dismiss: (1) litigation costs and reasonable attorney's fees in connection with the motion to dismiss; and (2) any additional relief, including sanctions on the responding party and its attorneys, as the court finds necessary, to deter repetition of the conduct by others similarly situated. Any such award is not subject to award limits under State law. If the court finds that a motion to dismiss is frivolous or solely intended to cause unnecessary delay, the court must award reasonable litigation costs and attorney's fees to the responding party.

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.

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/protected 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.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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