

Department of Legislative Services  
Maryland General Assembly  
2020 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 1042

(Senator Hettleman, *et al.*)

Judicial Proceedings

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Civil Actions – Strategic Lawsuits Against Public Participation

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This bill (1) redefines a strategic lawsuit against public participation (SLAPP suit) under § 5-807 of the Courts and Judicial Proceedings Article; (2) alters the conditions under which a defendant in a SLAPP suit is not civilly liable for certain communications and (3) contains specified provisions regarding motions to dismiss a SLAPP suit, including awards for costs and reasonable attorney’s fees and requiring a court to rule expeditiously on a defendant’s motion to dismiss. The bill applies prospectively to causes of action arising on or after October 1, 2020.

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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.

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Analysis

**Bill Summary:** A lawsuit is a SLAPP suit if it is brought against a person based on an act or statement of the person that was done or made in furtherance of the person’s right of petition or free speech under the U.S. Constitution, the Maryland Constitution, or the Maryland Declaration of Rights in connection with a public issue or an issue of public interest. This includes a written or oral statement made (1) before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; or (3) in a place open to the public or a public forum in connection with an issue of public interest. A lawsuit is not a SLAPP suit

if the lawsuit is brought in the public interest or on behalf of the general public and each of the following conditions exist:

- except for claims for attorney's fees, costs, or penalties, the plaintiff does not seek any relief greater than or different from the relief sought for the general public or a class of which the plaintiff is a member; the lawsuit, if successful, would enforce an important right affecting the public interest and would confer a significant benefit, pecuniary or nonpecuniary, to the general public or a large class of persons; and private enforcement is necessary and places a disproportionate financial burden on the plaintiff in relation to the plaintiff's stake in the matter; or
- the lawsuit involves a defendant who (1) primarily engages in the business of selling or leasing goods or services, including insurance, securities, or financial instruments and (2) made a statement or engaged in conduct that consisted of representations of fact about the defendant's or a business competitor's business operations, goods, or services in the course of delivering the defendant's goods or services or for the purpose of obtaining approval for, promoting, or securing sales or leases of or commercial transactions in the defendant's goods or services.

A defendant in a SLAPP suit is not civilly liable for communicating with a federal, State, or local government body or the public at large, if the defendant, without constitutional malice, acted in furtherance of the person's right of petition or free speech under the U.S. Constitution, the Maryland Constitution, or the Maryland Declaration of Rights regarding any matter within the authority of a government body or any public issue or issue of public interest.

It is the plaintiff's burden in responding to a motion to dismiss to show that the alleged SLAPP suit has substantial justification in law and fact. If the court orders dismissal of a SLAPP suit, the court must award to the moving party costs and reasonable attorney's fees, including those incurred in making the motion to dismiss. However, if the court finds that a motion to dismiss a SLAPP suit is frivolous and solely intended to cause unnecessary delay, the court must award costs and reasonable attorney's fees to the party opposing the motion.

**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.

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### Additional Information

**Prior Introductions:** HB 412 of 2019, a similar bill, received a hearing in the House Judiciary Committee but was subsequently withdrawn. Its cross file, SB 768, received an unfavorable report from the Senate Judicial Proceedings Committee. HB 263 of 2016, a similar bill, passed the House with amendments and received an unfavorable report from the Senate Judicial Proceedings Committee.

**Designated Cross File:** HB 379 (Delegate Rosenberg, *et al.*) - Judiciary.

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

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