

# HOUSE BILL 70

D3  
HB 308/21 – JUD

(PRE-FILED)

2lr0308  
CF 2lr0309

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By: **Delegate Rosenberg**

Requested: July 26, 2021

Introduced and read first time: January 12, 2022

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Courts – Strategic Lawsuits Against Public Participation**

3 FOR the purpose of altering the conditions under which a lawsuit is a strategic lawsuit  
4 against public participation (SLAPP suit); altering the conditions under which a  
5 defendant in a SLAPP suit is not civilly liable for certain communications;  
6 establishing certain standards and requirements relating to a motion to dismiss an  
7 alleged SLAPP suit; and generally relating to SLAPP suits.

8 BY repealing and reenacting, with amendments,  
9 Article – Courts and Judicial Proceedings  
10 Section 5–807  
11 Annotated Code of Maryland  
12 (2020 Replacement Volume and 2021 Supplement)

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

15 **Article – Courts and Judicial Proceedings**

16 5–807.

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

19 (b) **[A] SUBJECT TO SUBSECTION (C) OF THIS SECTION, A lawsuit is a SLAPP**  
20 **suit if it is[**:

21 (1) Brought in bad faith against a party who has communicated with a  
22 federal, State, or local government body or the public at large to report on, comment on,

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 rule on, challenge, oppose, or in any other way exercise rights under the First Amendment  
2 of the U.S. Constitution or Article 10, Article 13, or Article 40 of the Maryland Declaration  
3 of Rights regarding any matter within the authority of a government body or any issue of  
4 public concern;

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

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

14 (1) **BEFORE A LEGISLATIVE, EXECUTIVE, OR JUDICIAL PROCEEDING,  
15 OR ANY OTHER OFFICIAL PROCEEDING AUTHORIZED BY LAW;**

16 (2) **IN CONNECTION WITH AN ISSUE UNDER CONSIDERATION OR  
17 REVIEW BY A LEGISLATIVE, EXECUTIVE, OR JUDICIAL BODY, OR ANY OTHER  
18 OFFICIAL PROCEEDING AUTHORIZED BY LAW;**

19 (3) **IN A PLACE OPEN TO THE PUBLIC OR A PUBLIC FORUM IN  
20 CONNECTION WITH AN ISSUE OF PUBLIC INTEREST; OR**

21 (4) **TO A GOVERNMENT OFFICIAL OR AN INDIVIDUAL RUNNING FOR  
22 PUBLIC OFFICE.**

23 (C) **A LAWSUIT IS NOT A SLAPP SUIT IF:**

24 (1) **THE LAWSUIT IS BROUGHT IN THE PUBLIC INTEREST OR ON  
25 BEHALF OF THE GENERAL PUBLIC AND EACH OF THE FOLLOWING CONDITIONS  
26 EXISTS:**

27 (I) **EXCEPT FOR CLAIMS FOR ATTORNEY'S FEES, COSTS, OR  
28 PENALTIES, THE PLAINTIFF DOES NOT SEEK ANY RELIEF GREATER THAN OR  
29 DIFFERENT FROM THE RELIEF SOUGHT FOR THE GENERAL PUBLIC OR A CLASS OF  
30 WHICH THE PLAINTIFF IS A MEMBER;**

31 (II) **THE LAWSUIT, IF SUCCESSFUL, WOULD ENFORCE AN  
32 IMPORTANT RIGHT AFFECTING THE PUBLIC INTEREST AND WOULD CONFER A  
33 SIGNIFICANT BENEFIT, PECUNIARY OR NONPECUNIARY, TO THE GENERAL PUBLIC  
34 OR A LARGE CLASS OF PERSONS; AND**

1                   **(III) PRIVATE ENFORCEMENT IS NECESSARY AND PLACES A**  
2 **DISPROPORTIONATE FINANCIAL BURDEN ON THE PLAINTIFF IN RELATION TO THE**  
3 **PLAINTIFF'S STAKE IN THE MATTER; OR**

4                   **(2) THE LAWSUIT INVOLVES A DEFENDANT WHO:**

5                   **(I) PRIMARILY ENGAGES IN THE BUSINESS OF SELLING OR**  
6 **LEASING GOODS OR SERVICES, INCLUDING INSURANCE, SECURITIES, OR FINANCIAL**  
7 **INSTRUMENTS; AND**

8                   **(II) 1. MADE A STATEMENT OR ENGAGED IN CONDUCT THAT**  
9 **CONSISTED OF REPRESENTATIONS OF FACT ABOUT THE DEFENDANT'S OR A**  
10 **BUSINESS COMPETITOR'S BUSINESS OPERATIONS, GOODS, OR SERVICES FOR THE**  
11 **PURPOSE OF OBTAINING APPROVAL FOR, PROMOTING, OR SECURING SALES OR**  
12 **LEASES OF OR COMMERCIAL TRANSACTIONS IN THE DEFENDANT'S GOODS OR**  
13 **SERVICES; OR**

14                   **2. IN THE COURSE OF DELIVERING THE DEFENDANT'S**  
15 **GOODS OR SERVICES IS ALLEGED TO HAVE MADE A STATEMENT OR ENGAGED IN**  
16 **CONDUCT THAT DISPARAGES A BUSINESS COMPETITOR'S BUSINESS OPERATIONS,**  
17 **GOODS, OR SERVICES.**

18                   **[(c)] (D) A defendant in a SLAPP suit is not civilly liable for communicating with**  
19 **a federal, State, or local government body or the public at large, if the defendant, without**  
20 **constitutional malice, [reports on, comments on, rules on, challenges, opposes, or in any**  
21 **other way exercises rights under the First Amendment of the U.S. Constitution or Article**  
22 **10, Article 13, or Article 40 of the Maryland Declaration of Rights] ACTED IN**  
23 **FURTHERANCE OF THE PERSON'S RIGHT OF PETITION OR FREE SPEECH UNDER THE**  
24 **UNITED STATES CONSTITUTION OR THE MARYLAND CONSTITUTION OR**  
25 **DECLARATION OF RIGHTS regarding any matter within the authority of a government**  
26 **body or any PUBLIC issue OR ISSUE of public [concern] INTEREST.**

27                   **[(d)] (E) (1) A defendant in an alleged SLAPP suit may move to:**

28                   **[(1)] (I) Dismiss the alleged SLAPP suit, in which case the court shall**  
29 **hold a hearing on the motion to dismiss as soon as practicable AND RULE EXPEDITIOUSLY;**  
30 **or**

31                   **[(2)] (II) Stay all court proceedings until the matter about which the**  
32 **defendant communicated to the government body or the public at large is resolved.**

33                   **(2) IT IS THE PLAINTIFF'S BURDEN IN RESPONDING TO A MOTION TO**  
34 **DISMISS TO SHOW THAT THE ALLEGED SLAPP SUIT HAS SUBSTANTIAL**  
35 **JUSTIFICATION IN LAW AND FACT.**

1           **(3) (I) IF IT APPEARS LIKELY THAT DISCOVERY WILL ENABLE THE**  
2 **PLAINTIFF TO DEFEAT A MOTION TO DISMISS AND THAT THE DISCOVERY WILL NOT**  
3 **BE UNDULY BURDENSOME, THE COURT MAY ORDER THAT SPECIFIED DISCOVERY BE**  
4 **CONDUCTED.**

5           **(II) AN ORDER UNDER THIS PARAGRAPH SHALL BE**  
6 **CONDITIONED ON THE PLAINTIFF PAYING ANY EXPENSES INCURRED BY THE**  
7 **DEFENDANT IN RESPONDING TO THE DISCOVERY.**

8           **(4) (I) IF THE COURT GRANTS AN ANTI-SLAPP MOTION, THE**  
9 **COURT SHALL AWARD COSTS AND REASONABLE ATTORNEY’S FEES TO THE MOVING**  
10 **PARTY IF THE COURT DETERMINES THAT JUSTICE AND EQUITY REQUIRE IT.**

11           **(II) IF THE COURT FINDS THAT A MOTION TO DISMISS IS**  
12 **FRIVOLOUS OR SOLELY INTENDED TO CAUSE UNNECESSARY DELAY, THE COURT MAY**  
13 **AWARD COSTS AND REASONABLE ATTORNEY’S FEES TO THE RESPONDING PARTY.**

14           **[(e)] (F)**       This section:

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

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

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

21           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
22 October 1, 2022.