Department of Legislative Services

Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 70 (Delegate Rosenberg)
Judiciary Judicial Proceedings

Courts – Strategic Lawsuits Against Public Participation

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 authorizing a court to order specified discovery to enable a plaintiff to defeat a motion to dismiss, requiring a court to rule expeditiously on a defendant's motion to dismiss, and awards for costs and reasonable attorney's fees. The bill applies prospectively to causes of action arising on or after October 1, 2022.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing State resources.

Local Effect: The bill's requirements can be handled with existing local resources.

Small Business Effect: None.

Analysis

Bill Summary: A lawsuit is a SLAPP suit if it is brought against a person (the defendant) based on an act or statement of the person that was done or made in furtherance of the person's federal or State constitutional right of petition or free speech 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 or in connection with an issue under consideration or review in these

proceedings; (2) in a public place or a public forum in connection with an issue of public interest; or (3) to a government official or an individual running for public office.

A lawsuit is not a SLAPP suit if the lawsuit is brought in the public interest or on behalf of the general public and specified conditions exist. These conditions relate to (1) the relief sought by the plaintiff; (2) the connection between success of the lawsuit and enforcement of an important right affecting the public interest and the granting of a significant benefit to the general public or a large class of persons; (3) the need for private enforcement and the financial burden of private enforcement on the plaintiff; and (4) the defendant's status as a seller or lessor of goods or services and the nature of the defendant's statement or conduct.

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 federal or State right of petition or free speech regarding any matter within the authority of a government body or any public issue or issue of public interest.

In responding to a motion to dismiss, the bill places the burden on plaintiffs to show that their alleged SLAPP suits have substantial justification in law and fact. A court may allow discovery if it appears likely that discovery will enable a plaintiff to defeat a motion to dismiss and not be unduly burdensome. However, an order allowing such discovery must be conditioned on the plaintiff paying any expenses incurred by the defendant in responding to the discovery.

If the court grants an anti-SLAPP motion, the court must award costs and reasonable attorney's fees to the movant if the court determines that justice and equity require the award of such costs and fees. If the court finds that a motion to dismiss is frivolous or solely intended to cause unnecessary delay, the court may award costs and reasonable 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.

Additional Information

Prior Introductions: HB 308 of 2021 passed the House with amendments and was scheduled for a hearing in the Senate Judicial Proceedings Committee. The hearing was canceled. Its cross file, SB 162, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. HB 379 of 2020 passed the House with amendments and was referred to the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, SB 1042, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Similar bills were also introduced in 2019 and 2016.

Designated Cross File: SB 315 (Senator Hettleman, *et al.*) - Judicial Proceedings.

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

Fiscal Note History: First Reader - January 17, 2022
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