



Maryland Association for Justice, Inc.

2020 Position Paper

HB 379 - Courts – Civil Actions – SLAPP UNFAVORABLE

The Maryland Associations for Justice (MAJ) opposes HB 379 which would completely rewrite the existing SLAPP statute, Courts §5-807, to limit Defendant’s lawsuit dismissal rights by narrowly defining what constitutes a SLAPP lawsuit. That means that people who speak out, write critically, act in other ways about a person or product or business would be forced to litigate rather than getting the case dismissed as a SLAPP suit. Examples of actions leading to SLAPP lawsuits include letters to the editor, circulating flyers or petitions, demonstrating outside a business, filing governmental complaints, and defamation accusations. HB 379 section B would not protect these latter actions.

SLAPP statutes exist in 29 states but vary in the breadth of protected activity, special motion to dismiss procedures, and attorney’s fees awards. See <https://anti-slapp.org/your-states-free-speech-protection/#scorecard> [pdf 10/24/2017, attached].

HB 379 Subsection C(1) defines what is NOT a SLAPP lawsuit. It covers a plaintiff who sues in the public interest and meets the other criteria of benefitting the public through private enforcement. Examples might include: 1) a religious organization suing an abortion clinic or doctor providing palliative end of life care; 2) a liberal group suing a gun shop to stop selling guns.

HB 379 Subsection C(2) alternatively defines what is NOT a SLAPP lawsuit. It covers a lawsuit supposedly in the public interest against a defendant selling products or services such as insurance, etc., who made a statement about its own services or goods to sell those products or services. That appears to be every business or professional person providing a service. Examples might include: 1) insurance agents selling insurance for gun shops; 2) attorneys representing immigrants in immigration court; or 3) a gun shop selling guns.

Subsection C would permit too many cases to proceed in litigation while suppressing a defendant’s statements or conduct with the ulterior motive of causing that defendant economic harm.

In contrast, D.C. Code 16-5501 defines a SLAPP lawsuit as one that attempt so suppress any expression that petitions the government or communicates views about any public interest issue related to health or safety; environmental, economic, or community well-being; government; public figure; or a good, product, or service in the market place --- a much broader definition of protected activity than HB 379.

At least 4 different “model” SLAPP statutes exist – 3 by organizations and 1 federal that was not adopted. These should be studied to determine what might work in Maryland.

HB 379 subsection D for awarding attorney’s fees to the defendants who succeed in a motion to dismiss is similar some other state laws. See attached chart. But the provision that the court SHALL award attorney’s fees for a frivolous motion to dismiss is not needed because Maryland Rule 1-341 addresses this issue and permits the court to award costs and attorney’s fees for a pleading filed in bad faith. If Subsection D is adopted, there may be contradictory court decisions between this standard and Rule 1-341.

This is a complex subject that should be studied further.

The MAJ requests an UNFAVORABLE Committee Report.