

SB162_FAV_Hettleman.pdf

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The Senate of Maryland
ANNAPOLIS, MARYLAND 21401

TESTIMONY OF SENATOR SHELLY HETTMAN
SB 162 – CIVIL ACTIONS – STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION

A SLAPP suit, which stands for Strategic Lawsuit Against Public Participation is intended to shut down free speech by someone who has made a public statement before a public body or a citizen who has spoken out about an issue or provided a review or criticized a powerful public figure. It is intended to silence, inflict financial damage, and intimidate. This bill would assist the defendant in such a lawsuit and make it more difficult for plaintiffs to exert their power in wearing down the defendant.

The bill clarifies that our SLAPP statute extends speech beyond just those before governmental entities to include online and blog reviews, letters to the editor, and other venues commonly used by community members to share thoughts and ideas and to assist the community in choosing goods and services in the marketplace.

The bill makes a number of very important improvements to our current SLAPP statute:

- 1) It eliminates the requirement that a plaintiff demonstrate “bad faith” in bringing forth the suit. This was a unique provision in our law that proved difficult and costly, requiring extensive discovery. The current bill requires focus on a meritless complaint.
- 2) It enables attorneys’ fees to be shifted, providing a deterrent to a deep-pocketed plaintiff.
- 3) It requires courts to act promptly and hold discovery until there are expeditious rulings.

It’s important to note that none of these changes to current law would serve as a chilling effect to legitimate lawsuits since expedited procedures would weed out meritorious claims efficiently.

The bill also includes assurances that certain commercial speech does not qualify under the SLAPP statute, enabling appropriate suits over product liability and deceptive trade to remain outside the SLAPP scope.

We believe these changes to our SLAPP statute will make it among the strongest in the country and for these reasons I ask for your support of SB 162. Thank you.

Anti-SLAPP_State_Table+10_24_17 condensed.pdf

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Position: FAV

Anti-SLAPP Laws

Key: Y- Yes N- No ?-Unclear or has not been addressed

- **Any Forum:** Speech made in any forum is protected. Not restricted to speech made before a governmental body.
- **Any Public Issue:** Protection granted for speech made in connection with any issue of public interest or concern. Not restricted to issues under consideration by a governmental body or speech aimed at procuring government action in favor of the speaker.
- **Mandatory Attorney Fees/Costs:** Award of costs and attorney fees is mandatory for successful anti-SLAPP defendants
- **Additional Burden:** Statute or case law requires overcoming additional burdens, such as the SLAPP suit being brought in “bad faith,” or that the speech was without knowledge or reckless disregard for its falsity.
- **Amendment After Grant:** Pleadings may be amended after an anti-SLAPP motion is granted.
- **Amendment While Pending:** Pleadings may be amended while an anti-SLAPP motion is pending.
- **Immediate Appeal:** Anti-SLAPP motions are immediately appealable after denial.

Jurisdiction	Statute or Case Law?	Any Forum?	Any Public Issue?	Mandatory Attorney Fees/Costs?	Additional Burden?	Amendment After Grant?	Amendment While Pending?	Immediate Appeal?
Alabama	N/A							
Alaska	N/A							
Arizona	Ariz. Rev. Stat. Ann. 12-751 (2011)	Y		Y		?	?	?
Arkansas	Ark. Code. Ann. 16-63-501-8 (2010)	Y		Y	Y	?	?	?
California	Cal. Civ. Proc. Code 425.16	Y	Y	Y		Y/N ¹	N	Y
Colorado	Case Law Only ²	Y				?	?	?
Connecticut	Public Act No. 17-71	Y	Y	Y				

¹ In state courts, claims may not be amended if an anti-SLAPP motion is pending or has been granted. In federal courts, leave to amend may be granted.

² Leading Case: Protect Our Mountain Environment, Inc. v. District Court of County of Jefferson, 677 P.2d 1361 (Colo. 1984).

Jurisdiction	Statute or Case Law?	Any Forum?	Any Public Issue?	Mandatory Attorney Fees/Costs?	Additional Burden?	Amendment After Grant?	Amendment While Pending?	Immediate Appeal?
Delaware	Del. Code. Ann. tit. 10 section 8136 (2011)	Y				Y	Y	?
D.C.	D.C. Law 16-5501 ³	Y	Y	Y ⁴		N	?	Y
Florida	Fla. Stat. 768.295 (2011)	Y ⁵		Y		?	?	?
Georgia	Ga. Code. Ann. 9-11-11.1	Y		Y		?	Y	Y
Hawaii	Haw. Rev. Stat. 634F-1 to 634F-4 (2011)			Y		?	Y	Y
Idaho	N/A							
Illinois	735 Ill. Comp. Stat. 110/15 (2011)	Y	Y	Y		?	?	Y
Indiana	Ind. Code. 34-7-7-1 to 10 (2011)	Y	Y	Y	Y	?	?	?
Iowa	N/A							
Kansas	Public Speech Protection Act (HB 2054) passed March 2016. Added by SB 319, § 1	Y	Y	Y		?	?	Y
Kentucky	N/A							
Louisiana	La. Code. Civ. Proc. Ann. art 971 (2010)	Y	Y	Y		?	N	Y
Maine	Me. Rev. Stat. tit. 14 section 556 (2011)	Y	Y			?	?	Y

³ The D.C. Circuit has held, in *Abbas v. Foreign Policy Group*, 783 F.3d 1328 (D.C. Cir. 2015), that the DC anti-SLAPP statute conflicts with the Federal Rules of Civil Procedure and could not be applied in federal court in a diversity case.

⁴ In *Doe v. Burke*, 133 A.3d 569, 576 (D.C. 2016), the court held that a successful SLAPP movant is presumptively entitled to recover attorney’s fees, without any additional showing of frivolousness or wrongful motivation.

⁵ “Free speech in connection with public issues” means any written or oral statement that is protected under applicable law and is made before a governmental entity in connection with an issue under consideration or review by a governmental entity, or is made in or in connection with a play, movie, television program, radio broadcast, audiovisual work, book, magazine article, musical work, news report, or other similar work.

Jurisdiction	Statute or Case Law?	Any Forum?	Any Public Issue?	Mandatory Attorney Fees/Costs?	Additional Burden?	Amendment After Grant?	Amendment While Pending?	Immediate Appeal?
Maryland	Md. Code Ann., Cts. & Jud. Proc. 5-807 (2011)	Y	Y		Y	?	Y	?
Massachusetts	Mass. Gen. Laws ch. 231 section 59H (2011)	Y		Y		?	Y ⁶	Y
Michigan	N/A							
Minnesota	Minn. Stat. section 554.01 - .05 (1994)	Y		Y		?	?	Y
Mississippi	N/A							
Missouri	Mo. Rev. Stat. section 537.528 (2004)			Y		?	?	N
Montana	N/A							
Nebraska	Neb. Rev. Stat. section 25-21, 243 -6	Y				?	?	?
Nevada	Nev. Rev. Stat. section 41.635-670 (1993)	Y		Y	Y	?	?	N
New Hampshire	N/A							
New Jersey	N/A							
New Mexico	N.M. Stat. section 38-2-9.1 -2 (2001)			Y		?	?	?
New York	N.Y. CLS Civ. R. § 70-a & 76-a (2008); NY CLS CPLR R 3211	Y				?	Y	?
North Carolina	N/A							
North Dakota	N/A							
Ohio	N/A							

⁶ Yes, a pleading can be amended while an anti-SLAPP motion is pending, but denying leave to amend is proper “when the proposed claim will not withstand a motion to dismiss, thus rendering amendment futile.”

SMRH:478648992.1

Jurisdiction	Statute or Case Law?	Any Forum?	Any Public Issue?	Mandatory Attorney Fees/Costs?	Additional Burden?	Amendment After Grant?	Amendment While Pending?	Immediate Appeal?
Oklahoma	2013 OK. HB 2366, the Oklahoma Citizens Participation Act (2014)					?	?	?
Oregon	Or. Rev. Stat. section 31.150 et seq (2001)	Y	Y	Y		Y	?	?
Pennsylvania	27 Pa. Cons. Stat. section 7707 and section 8301-3 (2000)	Y		Y	Y	?	?	Y
Rhode Island	R.I. Gen. Laws section 9-33-1 – 9-33-4 (1995)	Y	Y	Y		?	Y	?
South Carolina	N/A							
South Dakota	N/A							
Tennessee	Tenn. Code. Ann. section 4-21-1001 – 21-1004 (1997)			Y	Y	?	?	?
Texas	Tex. Civ. Prac. & Rem. Code section 27.002-9	Y	Y	Y		?	Y	Y
Utah	Utah Code Ann. section 78B-6-1401 – 5(2001)	Y				?	?	Y
Vermont	12 VSA section 1041	Y	Y	Y		?	? ⁷	Y
Virginia	Section .01Code of VA: § 8.01-223.2.		?	Y				
Washington	RCW 4.24.510 ⁸			Y		?	?	?
West Virginia	Case Law Only ⁹							
Wisconsin	N/A							

⁷ Undecided, but amendment may not be used to avoid responsibility for costs and fees incurred in making a justified anti-SLAPP motion.

⁸ Washington Supreme Court struck down a stronger anti-SLAPP statute, RCW 4.24.525, in 2015 as invalid on its face for violating the state constitutional’s right to a jury trial. The previous law remains intact.

⁹ Leading Case: Harris v. Adkins, 432 S.E.2d 549 (W.Va. 1993).

SMRH:478648992.1

Jurisdiction	Statute or Case Law?	Any Forum?	Any Public Issue?	Mandatory Attorney Fees/Costs?	Additional Burden?	Amendment After Grant?	Amendment While Pending?	Immediate Appeal?
Wyoming	N/A							

MAJ Position HB308 SB162 slapp support.pdf

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Position: FAV



Maryland Association for Justice, Inc.

2021 Position Paper

MAJ Position In Support of HB 308 / SB 162- Courts – Jury Service – Disqualification

Courts – Civil Actions – SLAPP -- SUPPORT

The Maryland Associations for Justice (MAJ) supports HB 308 and SB 162 which modernize the existing SLAPP statute, Courts §5-807, by modifying Maryland's law to be consistent with other SLAPP statutes in other jurisdictions.

During the shortened 2020 Legislature, the MAJ worked with Del. Rosenberg and other supporters to modify the then-proposed SLAPP bill to modify and improve it. HB308 and SB 162 incorporate those changes.

SLAPP actions are, as the acronym implies, a strategic lawsuit against public participation. Some litigants file a SLAPP lawsuit intended to suppress a citizen's expressing free speech and criticism. SLAPP statutes exist in 29 states to protect people from lawsuits that have a purpose of suppressing free speech by providing grounds for dismissal, expedited motions to dismiss, and awards of attorney's fees against the filing party. See <https://anti-slapp.org/your-states-free-speech-protection/#scorecard> [pdf 10/24/2017, attached].

HB 308 and SB 162 update the Maryland law to provide better protection for free speech rights by discouraging litigants from commencing a lawsuit with the suppressive intent.

The MAJ requests a FAVORABLE Committee Report.

SLAP suits - senate testimony - 2021.pdf

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Working to end sexual violence in Maryland

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Testimony Supporting Senate Bill 162
Lisae C. Jordan, Executive Director & Counsel
February 2, 2021

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence. We urge the Judicial Proceedings Committee to report favorably on Senate Bill 162.

Senate Bill 162 -- SLAPP Suits

This bill clarifies and supports the exercise of constitutional rights to petition and exercise free speech by amending the law regarding SLAPP Suits – Strategic Lawsuits Against Public Participation. Sexual assault survivors across the country are increasingly facing lawsuits brought to discourage exercising their rights in college sexual misconduct proceedings and related Title IX actions. Some survivors encouraged to speak out about sexual violence by the #MeToo movement have also been met with lawsuits designed to silence them. While not all of these retaliatory suits will qualify as SLAPP suits, some will and SB162 will help discourage this type of litigation abuse.

**The Maryland Coalition Against Sexual Assault urges the
Judicial Proceedings Committee to
report favorably on Senate Bill 162**

SB 162 - Courts - Civil Actions - Strategic Lawsui

Uploaded by: Siri, Michelle

Position: FAV

BILL NO: Senate Bill 162
TITLE: Courts – Civil Actions – Strategic Lawsuits Against Public Participation
COMMITTEE: Judicial Proceedings
HEARING DATE: February 2, 2021
POSITION: **SUPPORT**

Senate Bill 162 clarifies the exercise of constitutional rights to petition the courts, and exercise free speech, by amending existing law regarding SLAPP Suits – Strategic Lawsuits Against Public Participation. These lawsuits intentionally target survivors, whistleblowers, and advocates who speak out against powerful perpetrators, creating a chilling effect on other victims who may seek to do the same. They have become an all-too common tool at silencing criticism and intimidating victims.

As a statewide legal services organization, we strongly believe in the right to petition the courts. Yet, we also believe a balanced approach is necessary when individuals, particularly those wielding power, utilize the courts as a weapon against those who speak out against abuse. The Women's Law Center has received an alarmingly increasing number of inquiries and requests for support in cases where survivors across the country are facing lawsuits brought to discourage them from exercising their rights in college sexual misconduct proceedings, or for bringing protective orders in response to intimate partner violence. While not all of these retaliatory suits will qualify as SLAPP suits, some will and SB162 will help discourage this type of litigation abuse.

Our courts and judicial system must not be weaponized against victims. Because SB162 will help prevent litigation abuse, the Women's Law Center of Maryland, Inc. SUPPORTS Senate Bill 162.

The Women's Law Center of Maryland is a private, non-profit, legal services organization that serves as a leading voice for justice and fairness for women. It advocates for the rights of women through legal assistance to individuals and strategic initiatives to achieve systemic change, working to ensure physical safety, economic security, and bodily autonomy for women in Maryland.

SB162.UNFAVORABLE.MDRTL.L.Bogley.pdf

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Position: UNF



Opposition Statement SB162

Courts – Civil Actions – Strategic Lawsuits Against Public Participation

By Laura Bogley-Knickman, JD

Director of Legislation, Maryland Right to Life

We Respectfully Oppose SB162

On behalf of our supporters across the state, we respectfully yet strongly object to SB162. The bill actually expands the use of SLAPP suits but simply will not exempt a broad category of frivolous lawsuits from that definition. This bill would restrict free speech and deny legal remedy in direct conflict with the original purpose of the statute, which was enacted to *prevent* Strategic Lawsuits Against Public Participation or “SLAPP” suits. Instead this bill will *enable* SLAPP suits and restrict the exercise of free speech in Maryland.

The bill would create exemptions from the statute, and confuse the public purpose by imposing a subjective set of criteria to deny individuals and organizations legal remedy against SLAPP suits. The language would substitute free speech with subjective or political value judgments. What may or may not be “in the public interest” or what may or may not “confer a significant benefit”, is not a settled matter of law but a matter of opinion.

The bill also would undermine the judicial requirement of **standing**, by allowing legal actions on behalf of the general population or some subset of the population otherwise loosely defined.

The exercise of free speech is one of our most valued benefits of citizenship and must not be curtailed. We specifically object to the following proposed language:

(C)A LAWSUIT IS NOT A SLAPP SUIT IF:(1)THE LAWSUIT IS BROUGHT IN THE PUBLIC INTEREST OR ON BEHALF OF THE GENERAL PUBLIC AND EACH OF THE FOLLOWING CONDITION EXISTS:(I)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;(II)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(III)PRIVATE ENFORCEMENT IS NECESSARY AND PLACES A DISPROPORTIONATE FINANCIAL BURDEN ON THE PLAINTIFF IN RELATION TO THE PLAINTIFF’S STAKE IN THE MATTER.

For the reasons stated, we respectfully urge you to give an unfavorable report on SB162.

Respectfully Submitted,

Laura Bogley-Knickman