

SENATE, No. 815

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator JOSEPH A. LAGANA

District 38 (Bergen and Passaic)

SYNOPSIS

Authorizes application for dismissal of a “Strategic Lawsuit Against Public Participation” (“SLAPP”).

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning certain civil actions and supplementing Title
2 2A of the New Jersey Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Definitions.

8 As used in this act:

9 a. “Act in furtherance of the right of advocacy on issues of
10 public interest” means:

11 (1) a written or oral statement made in connection with an issue
12 of public interest in, under consideration or review by, or that is
13 reasonably likely to encourage or to enlist public participation in an
14 effort to effect consideration or review by, a legislative, executive,
15 or judicial body, or any other State or local government proceeding
16 authorized by law;

17 (2) an expression or expressive conduct that involves petitioning
18 State or local government or communicating views to members of
19 the public in connection with an issue of public interest;

20 (3) any written or oral statement made or submitted in a place
21 open to the public or a public forum in connection with an issue of
22 public concern; or

23 (4) any other conduct in furtherance of the exercise of the
24 constitutional right of free speech or right of petition in connection
25 with an issue of public interest.

26 b. “Issue of public interest” means an issue related to: health or
27 safety; environmental, economic, or community well-being; the
28 government; a public figure; or a good, product, or service in the
29 marketplace. “Issue of public interest” shall not be construed to
30 include private interests, such as statements directed primarily
31 toward protecting the speaker’s commercial interests rather than
32 toward commenting on or sharing information about a matter of
33 public significance.

34 c. “Governmental entity” includes any branch, department,
35 agency, instrumentality, official, employee, or agent of the State of
36 New Jersey or local government of the State of New Jersey.

37 d. “Moving party” means a person who is the defendant in a
38 civil action alleged to be a SLAPP lawsuit, and who is seeking
39 dismissal of a SLAPP lawsuit.

40 e. “Person” means an individual, corporation, business trust,
41 estate, trust, partnership, limited liability company, association,
42 joint venture, or any other legal or commercial entity, except that
43 the term does not include any individual or agency acting on behalf
44 of a governmental entity.

45 f. “Responding party” means a person who is the plaintiff in an
46 alleged SLAPP lawsuit and against whom a moving party has filed
47 an application seeking dismissal of the lawsuit.

1 g. “SLAPP lawsuit” means a Strategic Lawsuit Against Public
2 Participation, which is a civil action intended to deter or suppress
3 the desire of any citizen to act in furtherance of the right of
4 advocacy on issues of public interest. While sometimes difficult to
5 identify, these lawsuits often take the forms of lawsuits for
6 defamation, tortious interference with business or contract, civil
7 conspiracy or abuse of process, constitutional or civil rights
8 violations, or nuisance, and similar causes of action.

9 h. “SLAPP-back lawsuit” is a civil action in which the moving
10 party seeks compensatory damages based on a claim such as
11 frivolous litigation, malicious use of process, or other process
12 authorized by law in response to a SLAPP lawsuit that has been
13 dismissed in favor of the moving party pursuant to the provisions of
14 P.L. , c. (C.) (pending before the Legislature as this bill) or
15 other process authorized by the Rules of Court.

16
17 2. Effect of Signature on Pleadings in Civil Actions.

18 a. In addition to any requirements within the Rules of Court
19 regarding the effect of a signature on pleadings, the signature of a
20 party or attorney on any pleading submitted to the court in a civil
21 action shall constitute a certification that the signatory has read the
22 pleading and certifies that, to the best of the person’s or attorney’s
23 knowledge, information, and belief, formed after reasonable inquiry
24 under the circumstances, that the pleading is not being presented for
25 any improper purpose, such as to harass, cause unnecessary delay in
26 judicial proceedings or to cause needless increase in the cost of
27 litigation with the purpose of suppressing another person’s act in
28 furtherance of the right of advocacy on issues of public interest.

29 b. If, at any time during a civil proceeding, the court finds that
30 a pleading was signed with willful intent to suppress a person’s act
31 in furtherance of the right of advocacy on issues of public interest,
32 the court may strike the pleading, dismiss the civil action, or grant
33 other relief as provided by the Rules of Court or by law, which may
34 include an award of reasonable attorney fees and costs to the
35 opposing party.

36
37 3. Application to Dismiss SLAPP Lawsuit.

38 a. A moving party may file an application with the court
39 seeking dismissal of a civil action on the basis that it is a SLAPP
40 lawsuit. The application shall be filed and the pleadings served in
41 accordance with the Rules of Court. To the extent possible, the
42 court shall give expedited calendar preference to an application for
43 dismissal filed under this section to promote prompt disposition of
44 the issues raised in the application to prevent the unnecessary
45 expense of protracted litigation.

46 b. Upon the filing of an application for dismissal of a SLAPP
47 lawsuit pursuant to this section, the court shall stay all discovery
48 and any pending proceedings in the civil action. The stay shall

1 remain in effect until the entry of judgment on the application for
2 dismissal. Notwithstanding a stay imposed by this subsection, the
3 court, on request of a party for good cause shown, may order that
4 specified discovery or other proceedings be conducted if necessary
5 to allow the parties to meet or oppose the burden of proof
6 established in subsection c. of this section.

7 For the purposes of this subsection, “good cause” shall include:

8 (1) whether the party seeking discovery has reasonably
9 identified specific material held or known by the opposing party
10 that would aid the party seeking discovery in meeting or opposing
11 the burden of proof established in subsection c. of this section;

12 (2) whether the specific materials sought in discovery are
13 available from a source other than the opposing party; and

14 (3) other relevant factors at the court’s discretion.

15 c. A moving party filing an application pursuant to subsection
16 a. of this section has the initial burden of presenting prima facie
17 evidence showing that the cause of action at issue arises from an act
18 in furtherance of the right of advocacy on an issue of public
19 interest. If the moving party meets this requirement, the burden
20 shifts to the responding party to establish the existence of prima
21 facie evidence that demonstrates the probability of prevailing on the
22 cause of action, including evidence to support each essential
23 element of the cause of action, evidence showing that the moving
24 party’s application for dismissal based on an act in furtherance of
25 the right of advocacy on issues of public interest is devoid of any
26 reasonable factual support or any arguable basis of law, and
27 evidence showing that the moving party’s acts caused actual
28 compensable harm to the responding party.

29 After considering pleadings and supporting and opposing
30 affidavits stating the facts on which the liability or defense is based,
31 the court shall determine whether the responding party has
32 established the existence of prima facie evidence that demonstrates
33 the probability of prevailing on the cause of action which requires
34 that the civil action proceed to trial. If the court finds that the
35 responding party has met this burden, the application for dismissal
36 shall be denied and the civil action shall proceed to trial at the
37 discretion of the court; otherwise, the civil action shall be
38 dismissed.

39 d. If the court denies an application for dismissal pursuant to
40 this section:

41 (1) the fact that the determination has been made and the
42 substance of the determination shall not be admitted into evidence
43 at any subsequent proceeding; and

44 (2) the determination shall not affect the burden of proof or
45 standard of proof that is applied during any subsequent proceeding.

46 e. (1) The court shall award a moving party who prevails on an
47 application for dismissal of the SLAPP lawsuit reasonable costs of
48 litigation and any attorney’s fees incurred in defending the SLAPP

1 lawsuit. In addition, the court may order additional relief including
2 sanctions against the responding party as the court deems necessary
3 to deter repetition of comparable conduct by the responding party or
4 others similarly situated.

5 (2) If the court finds that the application for dismissal of the
6 SLAPP lawsuit was frivolous or that it was solely intended to cause
7 unnecessary delay, the court shall award the responding party
8 reasonable costs of litigation and attorney's fees related to the
9 opposition of the application for dismissal of the SLAPP lawsuit.

10 (3) Unless the right to judgment is waived by the moving party,
11 reasonable attorney fees and costs in connection with the
12 application for dismissal of the SLAPP lawsuit shall be awarded, as
13 appropriate, notwithstanding the fact that the responding party
14 requested the dismissal of the civil action subsequent to the filing of
15 the moving party's application for dismissal, but prior to the
16 issuance of the judgment of dismissal by the court.

17 f. A party aggrieved by the trial court's decision regarding an
18 application to dismiss a civil action alleged to be a SLAPP lawsuit
19 may appeal that decision pursuant to the Rules of Court. To the
20 extent possible, the court shall give calendar preference to an appeal
21 of a dismissal of a civil action determined to be a SLAPP lawsuit.
22 In any appeal of a dismissal pursuant to this act, the court may
23 award reasonable attorney fees and costs of litigation to the
24 prevailing party.

25

26 4. Exemptions.

27 This act shall not apply to the following causes of action:

28 a. any civil action brought by a governmental entity to enforce
29 any law aimed at the protection of the public safety, health or
30 welfare;

31 b. a SLAPP-back lawsuit;

32 c. a claim brought against a person primarily engaged in the
33 business of selling or leasing goods or services, if the statement or
34 conduct from which the claim arises:

35 (1) is a representation of fact made for the purpose of
36 promoting, securing, or completing sales or leases of, or
37 commercial transactions in, the person's goods or services; and

38 (2) is intended to be directed to an audience that is an actual or
39 potential buyer or customer.

40

41 5. Potential Award of Damages through SLAPP-back 42 Litigation.

43 a. The defendant in a SLAPP lawsuit may initiate an action,
44 claim, cross-claim, or counterclaim to recover compensatory
45 damages from the plaintiff of a SLAPP lawsuit or the plaintiff's
46 attorney, or both, pursuant to:

47 (1) the provisions of P.L.1988, c.46 (C.2A:15-59.1);

48 (2) the Rules of Court regarding frivolous litigation; or

(3) a civil action based on the common law tort of malicious abuse of process and relevant case law. In order to prevail in a civil action pursuant to this paragraph, the plaintiff must prove the following elements:

(a) a SLAPP lawsuit was instituted by the defendant against the plaintiff who is seeking damages under the SLAPP-back lawsuit;

(b) the SLAPP lawsuit was actuated by malice;

(c) there was an absence of probable cause for the SLAPP lawsuit;

(d) the SLAPP lawsuit was terminated in favor of the plaintiff in the SLAPP-back lawsuit; and

(e) the plaintiff in the SLAPP-back lawsuit suffered a special grievance, specifically interference with the plaintiff's liberty or property or severe and permanent economic damages.

b. Nothing in this act shall prevent a party from seeking compensatory damages related to a SLAPP lawsuit that was terminated in favor of a moving party through any other legal process authorized by law or the Rules of Court.

6. This act shall take effect on the first day of the fourth month following enactment and shall apply to any application for dismissal of a SLAPP lawsuit filed on or after the effective date of this act.

STATEMENT

This bill would authorize an application for a dismissal of a "Strategic Lawsuit Against Public Participation" (a "SLAPP"). "SLAPP" suits are meritless actions brought against individuals who speak out about public issues.

Section 1 of the bill defines terms, including the term "act in furtherance of the right of advocacy on issues of public interest." This term is defined as:

(1) a written or oral statement made in connection with an issue of public interest in, under consideration or review by, or that is reasonably likely to encourage or to enlist public participation in an effort to effect consideration or review by, a legislative, executive, or judicial body, or any other State or local government proceeding authorized by law;

(2) an expression or expressive conduct that involves petitioning State or local government or communicating views to members of the public in connection with an issue of public interest;

(3) any written or oral statement made or submitted in a place open to the public or a public forum in connection with an issue of public concern; or

(4) any other conduct in furtherance of the exercise of the constitutional right of free speech or right of petition in connection with an issue of public interest.

1 Section 2 of the bill provides that if, at any time during a civil
2 proceeding, the court finds that a pleading was signed with willful
3 intent to suppress a person's act in furtherance of the right of
4 advocacy on issues of public interest, the court may strike the
5 pleading, dismiss the civil action, or grant other relief as provided
6 by the Rules of Court or by law, which may include an award of
7 reasonable attorney fees and costs to the opposing party.

8 Section 3 of the bill authorizes a specific application to seek
9 dismissal of a SLAPP lawsuit. This section provides that, to the
10 extent possible, the court would give expedited calendar preference
11 to an application for dismissal filed to promote prompt disposition
12 of the issues raised in the application to prevent the unnecessary
13 expense of protracted litigation.

14 Section 3 provides that upon the filing of an application for
15 dismissal of a SLAPP lawsuit, the court would stay all discovery
16 and any pending proceedings in the civil action. Notwithstanding
17 the stay, the court, on request of a party for good cause shown, may
18 order that specified discovery or other proceedings be conducted if
19 necessary to allow the parties to meet or oppose the burden of
20 proof.

21 The bill provides that "good cause" would include:

22 (1) whether the party seeking discovery has reasonably
23 identified specific material held or known by the opposing party
24 that would aid the party seeking discovery in meeting or opposing
25 the burden of proof;

26 (2) whether the specific materials sought in discovery are
27 available from a source other than the opposing party; and

28 (3) other relevant factors at the court's discretion.

29 Under subsection c. of section 3, a moving party filing an
30 application seeking dismissal would have the initial burden of
31 presenting prima facie evidence showing that the cause of action at
32 issue arises from an act in furtherance of the right of advocacy on
33 an issue of public interest. If the moving party meets this
34 requirement, the burden shifts to the responding party to establish
35 the existence of prima facie evidence that demonstrates the
36 probability of prevailing on the cause of action, including evidence
37 to support each essential element of the cause of action, evidence
38 showing that the moving party's application for dismissal based on
39 an act in furtherance of the right of advocacy on issues of public
40 interest is devoid of any reasonable factual support or any arguable
41 basis of law, and evidence showing that the moving party's acts
42 caused actual compensable harm to the responding party.

43 After considering pleadings and supporting and opposing
44 affidavits stating the facts on which the liability or defense is based,
45 the court would determine whether the responding party has
46 established the existence of prima facie evidence that demonstrates
47 the probability of prevailing on the cause of action which requires
48 that the civil action proceed to trial. If the court finds that the

1 responding party has met this burden, the application for dismissal
2 would be denied and the civil action would proceed to trial at the
3 discretion of the court; otherwise, the civil action would be
4 dismissed.

5 If the court denies an application for dismissal:

6 (1) the fact that the determination has been made and the
7 substance of the determination could not be admitted into evidence
8 at any subsequent proceeding; and

9 (2) the determination could not affect the burden of proof or
10 standard of proof that is applied during any subsequent proceeding.

11 The bill provides that the court would award a moving party who
12 prevails on an application for dismissal of the SLAPP lawsuit
13 reasonable costs of litigation and any attorney's fees incurred in
14 defending the SLAPP lawsuit. In addition, the court may order
15 additional relief including sanctions against the responding party as
16 the court deems necessary to deter repetition of comparable conduct
17 by the responding party or others similarly situated.

18 Under the bill, if the court finds that the application for dismissal
19 of the SLAPP lawsuit was frivolous or that it was solely intended to
20 cause unnecessary delay, the court would award the responding
21 party reasonable costs of litigation and attorney's fees related to the
22 opposition of the application for dismissal of the SLAPP lawsuit.

23 The bill further provides that unless the right to judgment is
24 waived by the moving party, reasonable attorney fees and costs in
25 connection with the application for dismissal of the SLAPP lawsuit
26 would be awarded, as appropriate, notwithstanding the fact that the
27 responding party requested the dismissal of the civil action
28 subsequent to the filing of the moving party's application for
29 dismissal, but prior to the issuance of the judgment of dismissal by
30 the court.

31 The bill provides that a party aggrieved by the trial court's
32 decision regarding an application to dismiss a civil action alleged to
33 be a SLAPP lawsuit may appeal that decision pursuant to the Rules
34 of Court. To the extent possible, the court would give calendar
35 preference to an appeal of a dismissal of a civil action determined to
36 be a SLAPP lawsuit. The bill provides that in any appeal of a
37 dismissal, the court may award reasonable attorney fees and costs of
38 litigation to the prevailing party.

39 Section 4 provides that the bill would not be applicable to the
40 following causes of action:

41 a. any civil action brought by a governmental entity to enforce
42 any law aimed at the protection of the public safety, health or
43 welfare;

44 b. a SLAPP-back lawsuit; or

45 c. a claim brought against a person primarily engaged in the
46 business of selling or leasing goods or services, if the statement or
47 conduct from which the claim arises:

1 (1) is a representation of fact made for the purpose of
2 promoting, securing, or completing sales or leases of, or
3 commercial transactions in, the person's goods or services; and
4 (2) is intended to be directed to an audience that is an actual or
5 potential buyer or customer.

6 Section 5 authorizes the defendant in a SLAPP lawsuit to file a
7 "SLAPP-back" suit. Specifically, the defendant in a SLAPP lawsuit
8 could initiate an action, claim, cross-claim, or counterclaim to
9 recover compensatory damages from the plaintiff of a SLAPP
10 lawsuit or the plaintiff's attorney, or both, pursuant to:

11 (1) the provisions of P.L.1988, c.46 (C.2A:15-59.1);
12 (2) the Rules of Court regarding frivolous litigation; or
13 (3) a civil action based on the common law tort of malicious
14 abuse of process and relevant case law. In order to prevail in such a
15 civil action, the plaintiff must prove the following elements:

16 (a) a SLAPP lawsuit was instituted by the defendant against the
17 plaintiff who is seeking damages under the SLAPP-back lawsuit;
18 (b) the SLAPP lawsuit was actuated by malice;
19 (c) there was an absence of probable cause for the SLAPP
20 lawsuit;
21 (d) the SLAPP lawsuit was terminated in favor of the plaintiff in
22 the SLAPP-back lawsuit; and
23 (e) the plaintiff in the SLAPP-back lawsuit suffered a special
24 grievance, specifically interference with the plaintiff's liberty or
25 property or severe and permanent economic damages.

26 Section 5 of the bill further provides that nothing in the act
27 would prevent a party from seeking compensatory damages related
28 to a SLAPP lawsuit that was terminated in favor of a moving party
29 through any other legal process authorized by law or the Rules of
30 Court.