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HOUSE BILL NO. 759

Offered January 8, 2020

Prefiled January 7, 2020

A BILL to amend and reenact § 8.01-670 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 8.01-223.3, and to repeal § 8.01-223.2 of the Code of Virginia, relating to strategic lawsuits against public participation; special motion to dismiss; stay of discovery; special motion to quash; fees and costs.

Patrons—VanValkenburg, Hudson, Jones and Levine

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-670 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 8.01-223.3 as follows:

§ 8.01-223.3. Strategic lawsuits against public participation; procedures.

A. For the purposes of this section, unless the context requires otherwise:

"Claim" means any civil lawsuit, claim, complaint, cause of action, cross-claim, counterclaim, or other judicial pleading or filing requesting damages, declaratory relief, or equitable relief.

"Government entity" means a branch, department, agency, county, or subdivision of the federal government, each of the several states, the District of Columbia, and any commonwealth, territory, or possession of the United States.

"Matter of public concern" means any oral statement made, or written statement, or other document submitted (i) in a legislative, executive, or judicial proceeding or other proceeding authorized by law; (ii) in connection with an issue or other proceeding authorized by law under consideration or review by a legislative, executive, or judicial body; (iii) in connection with a public official, public figure, or other person who has drawn public attention due to the person's official acts, fame, notoriety, or celebrity; (iv) in connection with an issue of political, social, or other significance to a local community or neighborhood; (v) in connection with an issue related to public health, public safety, protection of survivors of violence, abuse, or exploitation, environmental protection, civil rights, civil liberties, or a government entity or election. "Matter of public concern" also includes a published review of a good or service in the marketplace. "Matter of public concern" shall not be construed to include private interests, such as statements directed primarily toward protecting the defendant's commercial interests, rather than commenting on or sharing information about a matter of public concern.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity.

"Personal identifying information" shall have the same meaning as "identifying information" as provided in subsection C of § 18.2-186.3.

"Strategic lawsuit against public participation" or "SLAPP" means a civil claim against a defendant based on, or in response to, the defendant's lawful exercise of the constitutional right to petition or free speech on a matter of public concern.

B. A party alleging that a claim filed against him is a SLAPP may file a special motion to dismiss within 45 days of service of such a claim. Such special motion to dismiss shall be treated as a demurrer pursuant to § 8.01-273.

If a party filing a special motion to dismiss makes a prima facie showing that the claim at issue is a SLAPP, then the motion shall be granted and the claim dismissed with prejudice, unless the responding party demonstrates that the claim is legally sufficient and supported by a prima facie showing of facts to sustain a favorable judgment if the plaintiff's evidence is credited, in which case the special motion to dismiss shall be denied.

Upon the filing of such a special motion, discovery proceedings related to the claim alleged to be a SLAPP shall be stayed pending the entry of an order adjudicating such a special motion to dismiss, unless the court allows limited and specific discovery for good cause shown. Limited and specific discovery may be conditioned by the court upon the plaintiff paying any expenses incurred by the defendant in responding to such discovery.

The court shall hold an expedited hearing on such special motion to dismiss and issue an order as soon as practicable after such hearing. In making its decision on such special motion, the court shall consider the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based. If such special motion to dismiss is granted, dismissal of the SLAPP shall be with prejudice.

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59 A party aggrieved by an order granting or denying such a special motion shall be permitted to
60 submit a petition for an appeal to the Supreme Court of Virginia pursuant to § 8.01-670.

61 C. A person whose personal identifying information is sought pursuant to a discovery order, request,
62 or subpoena in connection with an alleged SLAPP may make a special motion to quash such order,
63 request, or subpoena.

64 If a party filing a motion to quash makes a prima facie showing that the subpoena or order is for
65 personal identifying information, the motion shall be granted and the subpoena or order to produce
66 such personal identifying information shall be quashed, unless the responding party produces evidence
67 supporting each element of the claim for which the party can reasonably be expected to have evidence
68 without discovery, in which case the motion to quash shall be denied.

69 A party aggrieved by an order granting or denying such a special motion to quash shall be
70 permitted to submit a petition for an appeal to the Supreme Court of Virginia pursuant to § 8.01-670.

71 D. If the moving party prevails, in whole or in part, on a special motion to dismiss or quash, the
72 court shall award such moving party reasonable expenses related to such a motion, including attorney
73 fees and costs.

74 If the responding party to such a special motion to dismiss or quash prevails, and the court finds
75 that such special motion to dismiss or quash was filed in bad faith or solely with the intent to delay the
76 proceedings on the underlying claim, the court may award such responding party reasonable expenses
77 related to such motion, including attorney fees and costs.

78 E. The provisions of this section shall not apply to:

79 1. Any claim that arises out of the sale or lease of goods or services, including insurance products,
80 between a seller and an actual or potential buyer or customer, unless the claim involves the creation,
81 dissemination, exhibition, or promotion of a journalistic, consumer commentary, dramatic, literary,
82 musical, political, or artistic work.

83 2. Any claim that alleges discrimination or assault under a state or federal civil rights statute.

84 3. Any claim that seeks recovery for bodily injury, wrongful death, or survival.

85 4. Any claim that is brought by a whistleblower under a state or federal whistleblower statute.

86 5. An enforcement action initiated by the Attorney General or an attorney for the Commonwealth.

87 6. Any claim that is brought solely to enforce an important constitutional or statutory right held by
88 the general public or in an action seeking declaratory or injunctive relief against a government agency
89 or entity.

90 7. Any action filed under Title 20, or an application for a protective order pursuant to the relevant
91 provisions of Title 16.1 or Title 19.2.

92 This subsection does not apply to:

93 a. Any publisher, editor, reporter, or other person connected with or employed by a newspaper,
94 magazine, or other periodical publication, or by a press association or wire service, or any person who
95 has been so connected or employed;

96 b. A radio or television news reporter or other person connected with or employed by a radio or
97 television station, or any person who has been so connected or employed;

98 c. Any person engaged in the dissemination of ideas or expression in any book or academic journal
99 while engaged in the gathering, receiving, or processing of information for communication to the public;
100 or

101 d. Any action against any person or entity based upon the creation, dissemination, exhibition,
102 advertisement, or other similar promotion of any dramatic, literary, musical, political, or artistic work,
103 including a motion picture or television program and an article published in a newspaper or magazine
104 of general circulation.

105 **§ 8.01-670. In what cases awarded.**

106 A. Except as provided by § 17.1-405, any person may present a petition for an appeal to the
107 Supreme Court if he believes himself aggrieved:

108 1. By any judgment in a controversy concerning:

109 a. The title to or boundaries of land,

110 b. The condemnation of property,

111 c. The probate of a will,

112 d. The appointment or qualification of a personal representative, guardian, conservator, committee, or
113 curator,

114 e. A mill, roadway, ferry, wharf, or landing,

115 f. The right of the Commonwealth, or a county, or municipal corporation to levy tolls or taxes, or

116 g. The construction of any statute, ordinance, or county proceeding imposing taxes; or

117 2. By the order of a court refusing a writ of quo warranto or by the final judgment on any such writ;

118 or

119 3. By a final judgment in any other civil case; or

120 4. By an order granting or denying a special motion to dismiss or special motion to quash provided

121 by § 8.01-223.3.

122 B. Except as provided by § 17.1-405, any party may present a petition for an appeal to the Supreme
123 Court in any case on an equitable claim wherein there is an interlocutory decree or order:

124 1. Granting, dissolving or denying an injunction; or

125 2. Requiring money to be paid or the possession or title of property to be changed; or

126 3. Adjudicating the principles of a cause.

127 C. Except in cases where appeal from a final judgment lies in the Court of Appeals, as provided in
128 § 17.1-405, any party may present a petition pursuant to § 8.01-670.1 for appeal to the Supreme Court.

129 **2. That § 8.01-223.2 of the Code of Virginia is repealed.**

130 **3. That the procedures established by the first enactment of this act shall only be available for**
131 **claims filed on or after July 1, 2020.**