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HOUSE BILL NO. 759

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 7, 2020)

(Patron Prior to Substitute—Delegate VanValkenburg)

A BILL 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; fees and costs.

Be it enacted by the General Assembly of Virginia:

1. 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:

"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; or (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" 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.

"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. Such special motion to dismiss shall be treated as a demurrer pursuant to § 8.01-273.

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.

The court shall hold an expedited hearing on such special motion to dismiss and issue an order as soon as practicable after such hearing. If such special motion to dismiss is granted, dismissal of the SLAPP shall be with prejudice.

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

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

D. The provisions of this section shall not apply to:

1. Any claim that arises out of the sale or lease of goods or services, including insurance products, between a seller and an actual or potential buyer or customer. This subdivision does not apply to:

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

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

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

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

2. Any claim that is brought solely to enforce an important constitutional or statutory right held by the general public, or in an action seeking declaratory or injunctive relief against a governmental entity or agency.

3. Any action filed under Title 20, or an application for a protective order under Title 16.1 or Title 19.2.

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- 60 4. *Any claim that alleges discrimination or assault under a state or federal civil rights statute.*
61 5. *Any claim that seeks recovery for bodily injury, wrongful death, or survival.*
62 6. *Any claim that is brought by a whistleblower under a state or federal whistleblower statute.*
63 7. *An enforcement action initiated by the Attorney General or an attorney for the Commonwealth.*
64 2. **That § 8.01-223.2 of the Code of Virginia is repealed.**
65 3. **That the procedures established by the first enactment of this act shall only be available for**
66 **claims filed on or after July 1, 2020.**