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SENATE BILL NO. 375

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on February 10, 2020)

(Patron Prior to Substitute—Senator Edwards)

A BILL to amend and reenact § 8.01-223.2 of the Code of Virginia, relating to immunity of persons; statements regarding matters of public concern or made at a public hearing; special plea to dismiss; stay of discovery.

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-223.2 of the Code of Virginia is amended and reenacted as follows:

§ 8.01-223.2. Immunity of persons for statements made at public hearing or communicated to third party.

A. A person shall be immune from civil liability for a violation of § 18.2-499, a claim of tortious interference with an existing contract or a business or contractual expectancy, or a claim of defamation based solely on statements (i) regarding matters of public concern that would be protected under the First Amendment to the United States Constitution or Article I, Section 12 of the Constitution of Virginia made by that person that are communicated to a third party or (ii) made at a public hearing before the governing body of any locality or other political subdivision, or the boards, commissions, agencies and authorities thereof, and other governing bodies of any local governmental entity concerning matters properly before such body. The immunity provided by this section shall not apply to any statements made with actual or constructive knowledge that they are false or with reckless disregard for whether a high degree of awareness that they are probably false.

B. A person claiming immunity pursuant to this section may file a special plea to dismiss the underlying claim. Upon the filing of such a plea, discovery proceedings related to such underlying claim shall be stayed, except as expressly provided herein, pending the entry of an order adjudicating such a plea. After consideration of the pleadings and any other evidence, which may be developed by discovery limited to the issues raised by the plea, the court shall either deny the plea or, if the court determines that (i) the defendant meets the standard in subsection A and (ii) the plaintiff has not alleged sufficient facts or failed to provide sufficient evidence to overrule the plea, shall sustain the plea and dismiss the claim with prejudice. In any hearing addressing the special plea, the court shall review any allegations and evidence under the standard outlined for motions for summary judgment.

C. Any person who has a suit against him dismissed pursuant to the immunity provided by this section may be awarded reasonable attorney fees and costs.