

H. B. 4143

(By Delegates Guthrie, Sponaugle,
Poore and Skinner)

[Introduced January 14, 2014; referred to the
Committee on the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §55-18-1, §55-18-2,
§55-18-3, §55-18-4, §55-18-5, §55-18-6, §55-18-7 and §55-18-8,
all relating to stopping strategic lawsuits against public
participation (SLAPPs); providing for expedited motions to
dismiss abusive SLAPP lawsuits; defining the forms of public
participation protected from such SLAPP suits and providing
for an expedited motion to dismiss such suits; providing for
special motions to quash abusive attempts to obtain personal
information about individuals via discovery; providing for the
recovery of attorney's fees and other costs due to defending
against a SLAPP suit as well as \$10,000 in statutory damages
for suits brought in bad faith; prohibiting government
entities from engaging in SLAPP suits and providing for
liability by government entities under the law for doing so;

1 and exempting purely commercial speech and lawsuits brought in
2 the public interest from provisions of the article.

3 *Be it enacted by the Legislature of West Virginia:*

4 That the Code of West Virginia, 1931, as amended, be amended
5 by adding thereto a new article, designated §55-18-1, §55-18-2,
6 §55-18-3, §55-18-4, §55-18-5, §55-18-6, §55-18-7 and §55-18-8, all
7 to read as follows:

8 **ARTICLE 18. STOP STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION.**

9 **§55-18-1. Short title.**

10 This article may be cited as the "Act to Stop Strategic
11 Lawsuits Against Public Participation (SLAPPs)".

12 **§55-18-2. Legislative findings.**

13 The Legislature finds that there has been a disturbing
14 increase in lawsuits brought primarily to chill the valid exercise
15 of the constitutional rights of freedom of speech and petition for
16 the redress of grievances. It is in the public interest to
17 encourage continued participation in matters of public
18 significance, and that this participation should not be chilled
19 through abuse of the judicial process. As well, information
20 provided by citizens concerning potential wrongdoing is vital to
21 effective law enforcement and the efficient operation of
22 government. The threat of a civil action for damages can act as a
23 deterrent to citizens who wish to report information to federal,

1 state or local agencies or otherwise participate in public forums.
2 The costs of defending against such suits can be severely
3 burdensome.

4 **§55-18-3. Definitions.**

5 For the purposes of this article:

6 (a) "Act in furtherance of the right of advocacy on issues of
7 public interest" means any of the following:

8 (1) A written or oral act made in any of the following
9 circumstances:

10 (A) In a place open to the public or a public forum in
11 connection with an issue of public interest;

12 (B) An expression or expressive conduct that involves
13 petitioning the government or communicating views to members of the
14 public in connection with an issue of public interest.

15 (b) "Claim" means a civil lawsuit, claim, complaint, cause of
16 action, cross-claim, counterclaim or other civil judicial pleading
17 or filing requesting relief.

18 (c) "Governmental entity" or "government entity" means the
19 state, including the executive, legislative and the judicial
20 branches of government and the independent establishments of the
21 state, counties, municipalities, corporations primarily acting as
22 instrumentalities of the state, counties or municipalities,
23 districts, authorities, boards, commissions or any agencies
24 thereof.

1 (d) "Issue of public interest" means an issue related to
2 health or safety; environmental, economic or community well-being;
3 the government; a public figure; or a good, product or service in
4 the market place. The term "issue of public interest" may not be
5 construed to include private interests, such as statements directed
6 primarily toward protecting the speaker's commercial interests
7 rather than toward commenting on or sharing information about a
8 matter of public significance.

9 (e) "Personal identifying information" includes any of the
10 following:

11 (1) Name, address, telephone number, date of birth or mother's
12 maiden name.

13 (2) Driver's license or driver's license number or nondriver's
14 license or nondriver's license number.

15 (3) Savings, checking or other financial account number.

16 (4) Social security number or tax identification number.

17 (5) Passport or passport number.

18 (6) Citizenship status, visa or alien registration card or
19 number.

20 (7) Birth certificate or a facsimile of a birth certificate.

21 (8) Credit or debit card or credit or debit card number.

22 (9) Credit history or credit rating.

23 (10) Signature.

24 (11) Personal identification number, electronic identification

1 number, password, access code or device, electronic address,
2 electronic identification number, routing information or code,
3 digital signature or telecommunication identifying information.

4 (12) Biometric data, such as fingerprint, voice print, retina
5 or iris image or other unique physical representation.

6 (13) Place of employment, employment history or employee
7 identification number.

8 (14) Numbers or information not described in subdivisions (1)
9 through (13) of this section that can be used to access a person's
10 financial resources, access medical information, obtain
11 identification, act as identification or obtain property.

12 (15) "SLAPPback" means a cause of action for malicious
13 prosecution or abuse of process arising from the filing or
14 maintenance of a prior cause of action that has been dismissed
15 pursuant to a special motion to dismiss under this article.

16 **§55-18-4. Special motion to dismiss.**

17 (a) A party may file a special motion to dismiss a claim
18 arising from an act in furtherance of the right of advocacy on
19 issues of public interest within forty five days after service of
20 the claim.

21 (b) If a party filing a special motion to dismiss under this
22 section makes a prima facie showing that the claim at issue arises
23 from an act in furtherance of the right of advocacy on an issue of
24 public interest, then the motion shall be granted unless the

1 responding party demonstrates that the claim is likely to succeed
2 on the merits, in which case the motion shall be denied.

3 (c) (1) Except as provided in subdivision (2) of this
4 subsection, upon the filing of a special motion to dismiss,
5 discovery proceedings on the claim shall be stayed until the motion
6 has been disposed of; (2) when it appears likely that targeted
7 discovery will enable the plaintiff to defeat the motion and that
8 the discovery will not be unduly burdensome, the court may order
9 that specified discovery be conducted. Such an order may be
10 conditioned upon the plaintiff paying any expenses incurred by the
11 defendant in responding to such discovery.

12 (d) The court shall hold an expedited hearing on the special
13 motion to dismiss and issue a ruling as soon as practicable after
14 the hearing. If the special motion to dismiss is granted, dismissal
15 shall be with prejudice.

16 (e) The provisions of this article do not apply to a special
17 motion to dismiss a SLAPPback. A party opposing a special motion
18 to strike a SLAPPback may file an ex parte application for a
19 continuance to obtain necessary discovery. If it appears that facts
20 essential to justify opposition to that motion may exist, but
21 cannot then be presented, the court shall grant a reasonable
22 continuance to permit the party to obtain affidavits or conduct
23 discovery or may make any other order as may be just.

24 **§55-18-5. Special motion to quash.**

1 (a) A person whose personal identifying information is sought,
2 pursuant to a discovery order, request or subpoena, in connection
3 with a claim arising from an act in furtherance of the right of
4 advocacy on issues of public interest may make a special motion to
5 quash the discovery order, request or subpoena.

6 (b) If a person bringing a special motion to quash under this
7 section makes a prima facie showing that the underlying claim
8 arises from an act in furtherance of the right of advocacy on
9 issues of public interest, then the motion shall be granted unless
10 the person seeking his or her personal identifying information
11 demonstrates that the underlying claim is likely to succeed on the
12 merits, in which case the motion shall be denied.

13 **§55-18-6. Fees, costs and damages.**

14 (a) The court may award a moving party who prevails, in whole
15 or in part, on a motion brought under sections three or four of
16 this article, the costs of litigation, including reasonable
17 attorney fees. In addition, the moving party shall receive
18 statutory damages of \$10,000. Statutory damages may be denied if
19 the court finds that the complaint or information made in an act in
20 furtherance of the right of advocacy on issues of public interest
21 was communicated in bad faith.

22 (b) The court may award reasonable attorney fees and costs to
23 the responding party only if the court finds that a motion brought
24 under sections three or four is frivolous or is solely intended to

1 cause unnecessary delay.

2 (c) If the court finds that a special motion to dismiss a
3 SLAPPback is frivolous or solely intended to cause unnecessary
4 delay, the court shall award costs and reasonable attorney's fees
5 to a plaintiff prevailing on the motion.

6 **§55-18-7. SLAPP suits by government entities.**

7 (a) No governmental entity in this state may file, or cause to
8 be filed, through its employees or agents, a claim against a party
9 without merit and solely because the party has exercised the right
10 to peacefully assemble, the right to instruct representatives, or
11 the right to petition for redress of grievances before the various
12 governmental entities of this state, as protected by the First
13 Amendment to the United States Constitution and the Constitution of
14 West Virginia.

15 (b) A party subject to an action by a governmental entity in
16 violation of this section has a right to an expeditious resolution
17 of a motion that the claim is in violation of this section. A
18 person or entity may petition the court for an order under this
19 article dismissing the claim or granting final judgment in favor of
20 that person or entity.

21 The court may award the party against whom a claim is made by
22 a governmental entity actual damages arising from the governmental
23 entity's violation of this article. The court shall award the
24 prevailing party costs, fees and damages as specified in section

1 five of this article.

2 In a claim filed by a governmental entity which is found by a
3 court to be in violation of this section, the governmental entity
4 shall report that finding and provide a copy of the court's order
5 to the Attorney General no later than thirty days after the order
6 is final. The Attorney General shall report a violation of this
7 section by a governmental entity to the Governor, the President of
8 the Senate and the Speaker of the House of Delegates. A copy of the
9 report shall be provided to the affected governmental entity.

10 **§55-18-8. Exemptions.**

11 (a) This article does not apply to a claim brought against a
12 person primarily engaged in the business of selling or leasing
13 goods or services, if the statement or conduct from which the claim
14 arises meets all of the following conditions:

15 (1) The statement or conduct is a representation of fact made
16 for the purpose of promoting, securing or completing sales or
17 leases of, or commercial transactions in, the person's goods or
18 services; and

19 (2) The statement or conduct is intended to be directed to an
20 audience that is an actual or potential buyer or customer.

21 (b) This article does not apply to a claim brought solely in
22 the public interest or on behalf of the general public if all of
23 the following conditions exist:

24 (1) The plaintiff does not seek any relief greater than or

1 different from the relief sought for the general public or a class
2 of which the plaintiff is a member;

3 (2) A claim for attorney's fees, costs or penalties does not
4 constitute greater or different relief for purposes of this
5 subdivision;

6 (3) The claim, if successful, would enforce an important right
7 affecting the public interest and would confer a significant
8 benefit, whether pecuniary or nonpecuniary, on the general public
9 or a large class of persons; and

10 (4) Private enforcement is necessary and places a
11 disproportionate financial burden on the plaintiff in relation to
12 the plaintiff's stake in the matter.

NOTE: The purpose of this bill is to stop strategic lawsuits against public participation (SLAPPs). This article provides for expedited motions to dismiss abusive SLAPP lawsuits. It defines the forms of public participation protected from such SLAPP suits and provides for an expedited motion to dismiss such suits. It provides for special motions to quash abusive attempts to obtain personal information about individuals via discovery. The bill also provides for the recovery of attorney's fees and other costs due to defending against a SLAPP suit as well as \$10,000 in statutory damages for suits brought in bad faith. The bill prohibits government entities from engaging in SLAPP suits and provides for liability by government entities under the law for doing so. The bill exempts purely commercial speech and lawsuits brought in the public interest from provisions of the article.

This article is new; therefore, it has been completely underscored.