

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **House Bill 4782**

BY DELEGATE HIGGINBOTHAM

[Introduced February 10, 2020; Referred to the  
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §51-12-1, §51-12-2, §51-12-3, §51-12-4, §51-12-5, §51-12-6, and §51-12-7,  
 3 all relating to enacting the Public Participation Protection Act; permitting litigants to file a  
 4 special motion to dismiss a claim if the claim is in furtherance of the right of petition, free  
 5 speech, or association under the United States Constitution or the West Virginia  
 6 Constitution; permitting expedited hearings and appeals; permitting the recovery of  
 7 attorneys' fees and costs and sanctions; making exceptions; providing for severability; and  
 8 setting an effective date.

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

**ARTICLE 7. THE PUBLIC PARTICIPATION PROTECTION ACT.**

**§51-12-1. Short title.**

1 This article shall be known and may be cited as the Public Participation Protection Act.

**§51-12-2. Time for filing special motion to dismiss; discovery.**

1 (a) A party may file a special motion to dismiss a claim under this article if the claim is  
 2 based on, or in response to, an act of the party in furtherance of the right of petition, free speech,  
 3 or association under the United States Constitution or the West Virginia Constitution in connection  
 4 with a public issue, which includes:

5 (1) The right of free speech by communicating, or conduct furthering communication, in a  
 6 public forum on a matter of public concern related to: (A) Health or safety; (B) environmental,  
 7 economic, or community well-being; (C) the government; (D) a public official or public figure; or  
 8 (E) a good, product, or service in the marketplace;

9 (2) The right to petition the government through: (A) A communication in connection with  
 10 an issue under consideration or review by a legislative, executive, administrative, judicial, or other  
 11 official body; (B) a communication that is reasonably likely to encourage consideration or review  
 12 of an issue by a legislative, executive, administrative, judicial, or other official body; or (C) a  
 13 communication that is reasonably likely to enlist public participation in an effort to effect

14 consideration of an issue by a legislative, executive, administrative, judicial, or other official body;

15 or

16 (3) The right of association, meaning a communication between individuals who join  
17 together to collectively express, promote, pursue, or defend common interests.

18 (b) A special motion to dismiss under this section must be filed not later than the 60th day  
19 after the date of service of the legal action. The court may extend the time to file a motion under  
20 this section for good cause.

21 (c) All discovery in the proceeding shall be stayed upon the filing of a special motion to  
22 dismiss under this section. The stay of discovery shall remain in effect until the entry of the order  
23 ruling on the motion and any interlocutory appeal thereof. Notwithstanding the stay imposed by  
24 this section, the court, on motion by a party or the court's own motion and for good cause shown,  
25 may order specified and limited discovery relevant to the motion..

**§51-12-3. Expedited hearing on special motion to dismiss.**

1 (a) The court shall conduct an expedited hearing on the motion. A hearing on the motion  
2 shall be held not later than 30 days after service of the motion, or 30 days of ordering discovery  
3 under §51-12-2(d) of this code unless docket conditions of the court require a later hearing, upon  
4 a showing of good cause, or by agreement of the parties.

5 (b) Consideration of the Special Motion to Dismiss. --

6 (1) If the moving party makes an initial showing by a preponderance of the evidence that  
7 the legal action is based on, or is in response to, that party's exercise of the right to free speech,  
8 right to petition, or right of association as defined in §51-12-2(a) of this code, the court shall grant  
9 the motion to dismiss unless the party bringing the action states with particularity the  
10 circumstances giving rise to the claim and shows by a preponderance of the evidence a probability  
11 of prevailing on the merits.

12 (2) Notwithstanding subdivision (1) of this subsection, the court shall grant the motion to  
13 dismiss if the moving party establishes each element of a valid defense to the claim.

14 (3) In its determination, the court shall consider pleadings and supporting and opposing  
15 affidavits stating the facts upon which the liability or defense is based.

16 (4) The court shall rule on a special motion to dismiss as soon as possible, but no later  
17 than 30 days after hearing the motion. If the court does not rule on a motion to dismiss within this  
18 period, the motion is considered to have been denied by operation of law.

19 (c) An order granting or denying a special motion to dismiss is appealable.

**§51-12-4. Recovery of attorneys' fees and costs; sanctions.**

1 (a) If the court orders dismissal of a legal action under this article, the court shall award  
2 to the moving party costs and reasonable attorney's fees, including those incurred on the motion.

3 (b) If the court finds that a special motion to dismiss is frivolous and solely intended to  
4 cause unnecessary delay, the court shall award costs and reasonable attorney's fees to the party  
5 opposing the motion.

**§51-12-5. Exemptions; rules of construction.**

1 This article does not:

2 (1) Apply to an enforcement action that is brought in the name of this state or a political  
3 subdivision of this state by the attorney general or a prosecuting attorney;

4 (2) Result in findings or determinations that are admissible into evidence at any later stage  
5 of the case or in any subsequent action;

6 (3) Affect or limit the authority of a court to award sanctions, costs, attorneys' fees or any  
7 other relief available under any statute, court rule, or other authority;

8 (4) Affect, limit, or preclude the right of the moving party to any defense, remedy, immunity,  
9 or privilege otherwise authorized by law;

10 (5) Affect the substantive law governing any asserted claim; or

11 (6) Create a private right of action.

**§51-12-6. Severability.**

1 The provisions of this article are severable and accordingly, if any part of this article is

2 adjudged to be unconstitutional or invalid, that determination does not affect the continuing validity  
3 of the remaining provisions of this article.

**§51-12-7. Effective date.**

1 This article shall be effective as to any civil action commenced on or after the date of  
2 enactment of the article regardless of whether the claim arose prior to the date of enactment.

NOTE: The purpose of this bill is to enact the Public Participation Protection Act. The bill permits litigants to file a special motion to dismiss a claim if the claim is in furtherance of the right of petition, free speech, or association under the United States Constitution or the West Virginia Constitution. The bill permits expedited hearings and appeals. The bill permits the recovery of attorneys' fees and costs and sanctions. The bill makes exceptions. The bill provides for severability. The bill sets an effective date.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.