

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 3253

By Delegate Pushkin

[Introduced March 07, 2025; 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 §55-22-1, §55-22-2, §55-22-3, §55-22-4, §55-22-5, §55-22-6, §55-22-7 and §55-22-8, relating to the establishing of the West Virginia Public Participation Act; providing legislative findings and declarations; defining terms; authorizing litigants to petition for dismissal of strategic lawsuits against public participation; establishing procedures for dismissal; setting burdens of proof; providing for judicial review of any decision on a petition for dismissal; providing for the award of attorneys' fees, costs and other relief; and providing for exceptions and limitations on the applicability of the West Virginia Public Participation Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22. LIMITATIONS OF ACTIONS REGARDING FREEDOM OF SPEECH AND
PUBLIC PARTICIPATION.

§55-22-1. Short Title.

This article shall be known by and may be cited as the "West Virginia Public Participation Act."

§55-22-2. Legislative declarations and purpose.

The Legislature hereby finds and declares:

(1) It is in the public interest to encourage participation by the citizens of West Virginia in matters of public significance through the exercise of the constitutional rights of freedom of speech protected under Article III, Section 7 of the Constitution of the State of West Virginia, as well as the First Amendment to the Constitution of the United States;

(2) The valid exercise of the constitutional rights of freedom of speech, the right to petition government, and the right of association should not be chilled through abuse of the judicial process;

(3) It is the purpose of this article to encourage and safeguard the exercise of the

constitutional rights of persons to speak freely, to associate freely, and to petition to participate in government to the fullest extent permitted by law while, at the same time, protecting the rights of persons to file meritorious lawsuits for demonstrable injury; and,

(4) This article is enacted in view of these findings, and the protections provided in both the Constitution of the State of West Virginia and the Constitution of the United States and shall be liberally construed in light thereof to effectuate the purpose and intent of this article.

§55-22-3.

Definitions.

For purposes of this article:

(1) "Claim" or "cause of action" means a lawsuit, petition, complaint, cross-claim, counterclaim, or any other judicial pleading or filing that requests legal or equitable relief;

(2) "Defendant" or "defending party" means any person or entity against whom a cause of action is asserted, including a counterclaim defendant, cross-claim defendant, or third-party defendant;

(3) "Entity" means a firm, sole proprietorship, partnership, corporation, association, or other entity engaged in business;

(4) "Exercise of the right of association" means the exercise of the constitutional right to join to take collective action on a matter of public concern that falls within the protection of the Constitution of the State of West Virginia and the Constitution of the United States;

(5) "Exercise of the right of free speech" means a communication made in connection with a matter of public concern or religious expression that falls within the protection of the Constitution of the State of West Virginia and the Constitution of the United States;

(6) "Exercise of the right to petition" means a communication that falls within the protection of the Constitution of the State of West Virginia and the Constitution of the United States and:

(A) Is intended to encourage consideration or review of an issue by a federal, state, or local legislative, executive, judicial, or other governmental body; or

(B) Is intended to enlist public participation to effect consideration of an issue by a federal,

state, or local legislative, executive, judicial, or other governmental body;

(7) "Matter of public concern" means an issue related to:

(A) Health or safety;

(B) Environmental, economic, or community well-being;

(C) The government;

(D) A public official or public figure; or

(E) A good, product, or service in the marketplace.

(8) "Plaintiff" means any person asserting a claim or cause of action.

(9) "Prosecuting attorney" means a prosecuting attorney, assistant prosecuting attorney, or
duly appointed special prosecuting attorney; and

(10) "Strategic lawsuit against public participation" means a claim or cause of action
against a defendant or defending party based upon, or in response to, the defendant's lawful
exercise of the constitutional right to free speech, right to petition, or right of association on a
matter of public concern.

§55-22-4. Limitations on strategic lawsuits against public participation; procedures.

(a) For any cause of action asserted against a person or entity in response to his or her
exercise of the right of free speech, right to petition, or right of association on a matter of public
concern, the defending party may petition to dismiss the alleged strategic lawsuit against public
participation in accordance with the provisions of this article.

(b) A defending party may petition to dismiss a strategic lawsuit against public participation
within 60 calendar days from the date of service of the cause of action or, in the court's discretion,
at any later time that the court deems proper.

(c) If a motion to dismiss is filed under §55-19-4(b), the court shall conduct an expedited
hearing on the matter. A response to the motion to dismiss, including any opposing affidavits, may
be served, and filed by the plaintiff no less than five days before the expedited hearing on the
petition or, in the court's discretion, at any earlier time that the court deems proper.

12 (d) Any cause of action in which the defense set forth in §55-19-4(b) is asserted shall be
13 stayed by the court until the entry of an order ruling on the pending motion to dismiss. The court
14 may allow specified and limited discovery relevant to the motion to dismiss upon a showing of
15 good cause.

16 (e) If a court does not rule upon a motion to dismiss filed pursuant to §55-19-4(b) within 60
17 days of filing of the motion, then the petition shall be considered denied by operation of law and the
18 defending party may appeal in accordance with §55-19-6.

§55-22-5. Dismissal of action; burdens of proof;

1 (a) Except as provided for in §55-19-5(b), on the motion of a person or entity filed pursuant
2 to §55-19-4(b), a court shall dismiss with prejudice any cause of action filed against a defending
3 party if the party shows by a preponderance of the evidence that the cause of action is a strategic
4 lawsuit against public participation that is based on the defending party's lawful exercise of the
5 constitutional right of free speech, right to petition, or right of association on a matter of public
6 concern.

7 (b) A court shall not dismiss a cause of action against a defending party if the plaintiff
8 establishes by clear and convincing evidence a *prima facie* case for each essential legal element
9 of any claims set forth in the cause of action.

10 (c) Notwithstanding the provisions of §55-19-5(b), the court shall dismiss a cause of action
11 if the defending party establishes a valid legal defense to the claims set forth in the cause of action.

12 (d) If the court denies a motion to dismiss filed pursuant to §55-19-4(b), the fact that the
13 court has denied the motion and the substance of the court's ruling on the motion is not admissible
14 as evidence in support of the plaintiff's claims against the defending party.

§55-22-6. Judicial review; appeal to Supreme Court of Appeals.

1 Any party adversely affected by an order entered pursuant to §55-19-4 shall be entitled to
2 judicial review thereof. The court's order dismissing or refusing to dismiss a cause of action
3 pursuant to a petition filed under §55-19-4(b) is immediately appealable to the Supreme Court of
4 Appeals, or in any such intermediate appellate courts created pursuant to Section 1, Article VIII of
5 the Constitution of the State of West Virginia: *Provided*, That any such appeal seeking review of
6 the court's determination shall be filed with said court within 30 days from the date of entry of the
7 judgment of the court.

§55-22-7. Award of costs, expenses, and attorneys' fees; other relief.

1 (a) If the court dismisses a cause of action pursuant to a petition filed under §55-19-4(b),
2 the court shall award the defending party its costs, attorneys' fees, and other reasonable litigation
3 expenses incurred in defense against the strategic lawsuit against public participation.

4 (b) In its discretion, the court may provide for any additional relief, including sanctions, that
5 it determines may be necessary to deter repeated abuse of strategic lawsuits against public
6 participation.

7 (c) If the court finds that a petition filed pursuant to §55-19-4(b) was frivolous or was filed
8 solely for the purpose of unnecessary delay with no reasonable basis in law or fact and makes
9 specific written findings and conclusions establishing such finding, the court may award to the
10 plaintiff party court costs and reasonable attorneys' fees incurred in opposing the petition.

§55-22-8. Applicability and limitations.

1 (a) *Applicability*. – Except as otherwise provided in this subsection, the provisions of this
2 article shall apply to all causes of action filed on or after the effective date of its enactment. The
3 West Virginia Public Participation Act shall not apply to:

4 (1) Any enforcement action that is brought in the name of the state or a political subdivision
5 of this state, except for an action directed at a person or entity requesting information pursuant to
6 §29B-1-1 *et seq.*, by the Attorney General or prosecuting attorney;

7 (2) Any cause of action that arises out of the sale or lease of goods or services, including
8 insurance products, between a seller and an actual or potential buyer or customer, if the statement
9 or conduct in question relates to the sale or lease of goods, services, or an insurance product,
10 insurance services, or a commercial transaction in which the intended audience is an actual or
11 potential buyer or customer: *Provided*, That for the purposes of this subdivision consumer
12 comments or reviews of a business, good, or service posted on a publicly available website or
13 social media platform do not arise out of the sale or lease of goods or services;

14 (3) Any cause of action seeking recovery for personal injury or wrongful death;

15 (4) Any claim pertaining to family law under the provisions of this code;

16 (5) Any cause of action brought under the insurance code, as set forth in chapter 33 of this
17 code, or arising out of an insurance contract; or

18 (6) Any statements made with actual knowledge that they are false or that were published
19 with a reckless and willful disregard of the truth.

20 (b) *Limitations*. – Nothing in this article shall:

21 (1) Create any new cause of action or abrogate or modify, in any way, any constitutional
22 immunity or common law or statutory privilege or immunity heretofore enjoyed by any person, or
23 otherwise alter or affect any other defense or remedy established by statute or common law; or

24 (2) Be construed as to prevent the filing of a cause of action for defamation, or to otherwise
25 limit, abrogate, or modify existing statutes or case law, or any other defense, remedy, privileges, or
26 immunities as established by statute or common law with respect to a defamation claim.

NOTE: The purpose of this bill is to establish the West Virginia Public Participation Act. The bill provides additional protections to individuals and entities engaged in the exercise of the protected constitutional rights of free speech, freedom to petition, and freedom of association by allowing for the filing of a motion to dismiss in response to strategic lawsuits against public participation. The bill establishes procedures for reviewing strategic lawsuits against public participation and sets forth the applicability and limitations of the defense.

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