**South Carolina General Assembly**

122nd Session, 2017-2018

**H. 4897**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. J.E. Smith, Sottile and Cogswell

Document Path: l:\council\bills\cc\15194wab18.docx

Introduced in the House on February 8, 2018

Currently residing in the House Committee on **Judiciary**

Summary: Citizens Participation in Government Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/8/2018 House Introduced and read first time ([House Journal‑page 31](file:///h:\hj\20180208.docx))

2/8/2018 House Referred to Committee on **Judiciary** ([House Journal‑page 31](file:///h:\hj\20180208.docx))

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**VERSIONS OF THIS BILL**

[2/8/2018](file:///p:\pprever\2017-18\4897_20180208.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 3 TO CHAPTER 36, TITLE 15 SO AS TO ENACT THE “CITIZENS PARTICIPATION IN GOVERNMENT ACT OF 2018” AND TO PROVIDE THAT ACTS IN FURTHERANCE OF THE CONSTITUTIONAL RIGHT TO FREE SPEECH, RIGHT TO PETITION, OR RIGHT OF ASSOCIATION ARE IMMUNE FROM CIVIL LIABILITY EXCEPT WHEN THE ACTS ARE NOT AIMED AT PROCURING A GOVERNMENTAL OR ELECTORAL ACTION, RESULT, OR OUTCOME, TO PROVIDE EXPEDITED PROCEDURES FOR HEARING MOTIONS IN ACTIONS BROUGHT IN OPPOSITION TO A CITIZEN’S RIGHT TO PETITION THE GOVERNMENT, TO CREATE A TOLL-FREE HOTLINE IN THE OFFICE OF THE ATTORNEY GENERAL FOR USE BY THE PUBLIC IN REPORTING VIOLATIONS OF THIS ACT, TO PROVIDE REMEDIES FOR VIOLATIONS, INCLUDING ATTORNEY’S FEES AND COSTS TO THE PREVAILING PARTY; AND TO DESIGNATE SECTIONS 15‑36‑10 THROUGH 15‑36‑100 AS ARTICLE 1, CHAPTER 36, TITLE 15 ENTITLED “SOUTH CAROLINA FRIVOLOUS CIVIL PROCEEDINGS SANCTIONS ACT” AND TO REDESIGNATE ARTICLE 36 AS “SANCTIONS”.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. The General Assembly finds that:

(1)(a) the framers of our Constitutions, recognizing citizen participation in government as an inalienable right essential to the survival of democracy, secured its protection through the right to petition the government for redress of grievances in the First Amendment to the United States Constitution and Section 2, Article I of the South Carolina Constitution, 1895;

(b) the communications, information, opinions, reports, testimony, claims, and arguments provided by citizens to their government are essential to wise governmental decisions and public policy, the public health, safety, and welfare, effective law enforcement, the efficient operation of governmental programs, the credibility and trust afforded government, and the continuation of this nation’s republican form of government through representative democracy;

(c) civil lawsuits and counterclaims, often claiming millions of dollars, have been and are being filed against thousands of citizens, businesses, and organizations based on their valid exercise of their right to petition, including seeking relief, influencing action, informing, communicating, and otherwise participating with governmental bodies, officials, or employees or the electorate;

(d) such lawsuits, called ‘Strategic Lawsuits Against Public Participation’ or “SLAPP”, are typically dismissed as unconstitutional, but often not before the defendants are put to great expense, harassment, and interruption of their productive activities;

(e) the number of SLAPPs has increased significantly over the past thirty years;

(f) SLAPPs are an abuse of the judicial process; they are used to censor, chill, intimidate, or punish citizens, businesses, and organizations for involving themselves in public affairs, and controlling SLAPPs will make a major contribution to lawsuit reform;

(g) the threat of financial liability, litigation costs, destruction of one’s business, loss of one’s home, and other personal losses from groundless lawsuits seriously affects government, commerce, and individual rights by significantly diminishing public participation in government, in public issues, and in voluntary service;

(h) while courts have recognized and discouraged SLAPPs, protection of these important rights has not been uniform or comprehensive; and

(i) while some citizen communications to government inevitably will be incorrect, unsound, self‑serving, or not in good faith, it is essential in our democracy that the constitutional rights of citizens to participate fully in the process of government be uniformly, consistently, and comprehensively protected and encouraged.

(2) The purposes of this article are to:

(a) protect and encourage citizen participation in government to the maximum extent permitted by law;

(b) create a more equitable balance between the rights of persons to file lawsuits and to trial by jury, and the rights of persons to petition, speak out, associate, and otherwise participate in their governments;

(c) support the operations of and assure the continuation of representative government in this nation, including the protection and regulation of public health, safety, and welfare by protecting public participation in governmental programs, public policy decisions, and other actions;

(d) establish a balanced, uniform, comprehensive process for speedy adjudication of SLAPPs as a major contribution to lawsuit reform; and

(e) provide for attorney’s fees, costs, and damages for persons whose citizen participation rights have been violated by the filing of a SLAPP against them.

SECTION 2. Chapter 36, Title 15 of the 1976 Code is amended by adding:

“Article 3

Citizens Participation in Government

Section 15‑36‑310. This article may be cited as the ‘Citizens Participation in Government Act of 2018’.

Section 15‑36‑320. As used in this article:

(1) ‘Communication’ includes the making or submitting of a statement or document in any form or medium, including oral, visual, written, audiovisual, or electronic.

(2) ‘Exercise of the right of association’ means a communication between individuals who join together to collectively express, promote, pursue, or defend common interests.

(3) ‘Exercise of the right of free speech’ means a communication made in connection with a matter of public concern.

(4) ‘Exercise of the right to petition’ means any of the following:

(a) a communication in or pertaining to:

(i) a judicial proceeding;

(ii) an official proceeding, other than a judicial proceeding, to administer the law;

(iii) an executive or other proceeding before a department of the state or federal government or a subdivision of the state or federal government;

(iv) a legislative proceeding, including a proceeding of a legislative committee;

(v) a proceeding before an entity that requires by rule that public notice be given before proceedings of that entity;

(vi) a proceeding in or before a managing board of an educational or eleemosynary institution supported directly or indirectly from public revenue;

(vii) a proceeding of the governing body of any political subdivision of this State;

(viii) a report of or debate and statements made in a proceeding described by subsubitem (iii), (iv), (v), (vi), or (vii); or

(ix) a public meeting dealing with a public purpose, including statements and discussions at the meeting or other matters of public concern occurring at the meeting;

(b) a communication in connection with an issue under consideration or review by a legislative, executive, judicial, or other governmental body or in another governmental or official proceeding;

(c) a communication that is reasonably likely to encourage consideration or review of an issue by a legislative, executive, judicial, or other governmental body or in another governmental or official proceeding;

(d) a communication reasonably likely to enlist public participation in an effort to effect consideration of an issue by a legislative, executive, judicial, or other governmental body or in another governmental or official proceeding; and

(e) a communication made in a place open to the public or a public forum in connection with an issue of public interest or concern; and

(f) any other communication that falls within the protection of the right to petition government under the Constitution of the United States or the constitution of this State.

(5) ‘Governmental proceeding’ means a proceeding, other than a judicial proceeding, by an officer, official, or body of this State or a political subdivision of this State, including a board or commission, or by an officer, official, or body of the federal government.

(6) ‘Legal action’ means a lawsuit, cause of action, petition, complaint, cross‑claim, counterclaim, motion, subpoena, interrogatories, or any other judicial pleading or filing that requests legal or equitable relief.

(7) ‘Matter of public concern’ includes 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) ‘Official proceeding’ means any type of administrative, executive, legislative, or judicial proceeding that may be conducted before a public servant.

(9) ‘Public servant’ means a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if the person has not yet qualified for office or assumed the person’s duties:

(a) an officer, employee, or agent of government;

(b) a juror;

(c) an arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy;

(d) an attorney or notary public when participating in the performance of a governmental function; or

(e) a person who is performing a governmental function under a claim of right but is not legally qualified to do so.

(10) ‘SLAPP’ means a ‘Strategic Lawsuit Against Public Participation’, a lawsuit filed to intimidate or chill a citizen’s involvement in public affairs.

Section 15‑36‑330. The purpose of this article is to encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in public affairs by protecting them from SLAPP lawsuits, while also protecting the rights of a person to file meritorious lawsuits for demonstrable injury.

Section 15‑36‑340. (A) Acts in furtherance of the exercise of the constitutional right to free speech, right to petition, or right of association are immune from civil liability in this State, regardless of intent or purpose, except when the act is not aimed at procuring a governmental or electoral action, result, or outcome.

(B) A party may file a motion to dismiss a claim in a judicial proceeding on the grounds that the claim is based on, relates to, or is in response to a party’s exercise of the right of free speech, right to petition, or right of association.

(C) A motion to dismiss a legal action under this section must be filed no later than the sixtieth day after the date of service of the legal action. The court may extend the time to file a motion under this section on a showing of good cause.

(D) Except as provided by Section 15‑36‑370(C), when a motion to dismiss is filed under this section, all discovery in the legal action is suspended until the court has ruled on the motion.

Section 15‑36‑350. (A) The trial court shall set a hearing on a motion under Section 15‑36‑340 no later than sixty days after the date of service of the motion unless the docket conditions of the court require a later hearing, upon a showing of good cause, or by agreement of the parties, but in no event may the hearing occur more than ninety days after service of the motion, except as provided by subsection (C).

(B) If the court cannot hold a hearing in the sixty‑day period provided in subsection (A), the court may take judicial notice that its docket conditions require a hearing at a later date, but in no event may the hearing occur more than ninety days after service of the motion, except as provided by subsection (C).

(C) If the court allows discovery under Section 15‑36‑370(B), the court may extend the hearing date to allow discovery under that subsection, but in no event may the hearing occur more than one hundred‑twenty days after the service of the motion.

Section 15‑36‑360. (A) The court must rule on a motion under Section 15‑36‑340 no later than the thirtieth day following the date of the hearing on the motion.

(B) Except as provided by subsection (C), on the motion of a party under Section 15‑36‑340, a court shall dismiss a legal action against the moving party if the moving party shows by a preponderance of the evidence that the legal action is based on, relates to, or is in response to the moving party’s exercise of:

(1) the right of free speech;

(2) the right to petition; or

(3) the right of association.

(C) The court may not dismiss a legal action under this section if the party bringing the legal action establishes by clear and specific evidence a prima facie case for each essential element of the claim in question.

(D) Notwithstanding the provisions of subsection (C), the court shall dismiss a legal action against the moving party if the moving party establishes by a preponderance of the evidence each essential element of a valid defense to the nonmovant’s claim.

Section 15‑36‑370. (A) In determining whether a legal action should be dismissed under this article, the court shall consider the pleadings and supporting and opposing affidavits stating the facts on which the liability or defense is based.

(B) On a motion by a party or on the court’s own motion and on a showing of good cause, the court may allow specified and limited discovery relevant to the motion.

Section 15‑36‑380. (A) At the request of a party making a motion under Section 15‑36‑340, the court shall issue findings regarding whether the legal action was brought to deter or prevent the moving party from exercising constitutional rights and is brought for an improper purpose, including to harass or to cause unnecessary delay or to increase the cost of litigation.

(B) The court must issue findings under subsection (A) no later than the thirtieth day after the date a request under that subsection is made.

Section 15‑36‑390. (A) If a court does not rule on a motion to dismiss under Section 15‑36‑340 in the time prescribed by Section 15‑36‑360, the motion is considered to have been denied by operation of law and the moving party may appeal.

(B) An appellate court shall expedite an appeal or other writ, whether interlocutory or not, from a trial court order on a motion to dismiss a legal action under Section 15‑36‑340 or from a trial court’s failure to rule on that motion in the time prescribed by Section 15‑36‑360.

Section 15‑36‑400. (A) If the court orders dismissal of a legal action under this article, the court shall award to the moving party:

(1) court costs, reasonable attorney’s fees, and other expenses incurred in defending against the legal action; and

(2) sanctions against the party who brought the legal action as the court determines sufficient to deter the party who brought the legal action from bringing similar actions described in this article.

(B) If the court finds that a motion to dismiss filed under this article is frivolous or solely intended to delay, the court may award court costs and reasonable attorney’s fees to the responding party.

Section 15-36-410. There is created in the Office of the Attorney General a toll-free ‘Citizens Participation in Government Hotline’ that a member of the public aggrieved by an abusive legal action under the provisions of this article may use to notify the Attorney General of the alleged abuse. The civil division of the Office of the Attorney General shall review and investigate such allegations and may seek appropriate legal and equitable remedies.

Section 15‑36‑420. The provisions of this article do not apply to:

(1) an enforcement action that is brought in the name of this State or a political subdivision of this State by the attorney general, a district attorney, a solicitor, or a county attorney.

(2) a legal action brought against a person primarily engaged in the business of selling or leasing goods or services, if the statement or conduct arises out of the sale or lease of goods, services, or an insurance product, insurance services, or a commercial transaction in which the intended audience is an actual or potential buyer or customer.

(3) a legal action seeking recovery for bodily injury, wrongful death, or survival or to statements made regarding that legal action.

(4) a legal action brought under Title 38 or arising out of an insurance contract.

Section 15‑36‑430. (A) Nothing in this article limits or precludes rights the moving party may have under other constitutional, statutory, case or common law, or rule provisions.

(B) This article must be construed liberally to effectuate its purpose and intent fully.

(C) If a provision of this article or the application of a provision of this article to a person or circumstance is held invalid, the application of the provision to other persons or circumstances and the remainder of this article are not affected.”

SECTION 3. A. Sections 15‑36‑10 through 15‑36‑100 of the 1976 Code are designated as Article 1 and entitled “South Carolina Frivolous Civil Proceedings Sanctions Act”.

B. Chapter 36, Title 15 of the 1976 Code is redesignated as “Sanctions”.

SECTION 4. This act takes effect upon approval by the Governor

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