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CIVIL PRACTICE, COURTS Civil Practice Act: Prohibit a Civil Litigant from Interposing a Claim for an Improper Purpose Such as to Suppress a Person's Right of Free Speech or Right to Petition Government; Provide for a Motion to Strike or Dismiss That May be Interposed by a Civil Defendant Whose Rights as Above are Infringed by Such a Claim; Include Statements Made in Furtherance of the Right of Free Speech or Right to Petition Government in Connection with an Issue of Public Interest as Privileged Communications that May Not be Used as a Basis for a Libel or Slander Tort Claim

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CIVIL PRACTICE, COURTS

Civil Practice Act: Prohibit a Civil Litigant from Interposing a Claim for an Improper Purpose Such as to Suppress a Person's Right of Free Speech or Right to Petition Government; Provide for a Motion to Strike or Dismiss That May be Interposed by a Civil Defendant Whose Rights as Above are Infringed by Such a Claim; Include Statements Made in Furtherance of the Right of Free Speech or Right to Petition Government in Connection with an Issue of Public Interest as Privileged Communications that May Not be Used as a Basis for a Libel or Slander Tort Claim

CODE SECTIONS:	O.C.G.A. §§ 9-11-11.1, (new), 51-5-7 (amended)
BILL NUMBER:	SB 1
ACT NUMBER:	616
GEORGIA LAWS:	1996 Ga. Laws 260
SUMMARY:	The Act creates a motion to strike and a motion to dismiss for use by defendants whose right to free speech or right to petition government for a redress of grievances related to an issue of public interest or concern is challenged by the interposition of a civil suit. The Act requires the plaintiff and the attorney of record to certify that the claims are not advanced for the purpose of restricting such First Amendment speech. The Act also amends the definition of privileged communications under Georgia's torts of libel and slander to include such speech related to an issue of public interest or concern.
EFFECTIVE DATE:	April 1, 1996[1]

History

A Strategic Lawsuit Against Public Participation (SLAPP) suit, is defined as "threatened and actual litigation"[2] by a plaintiff whose primary purpose is to stop a person or group from exercising the First

1. The Act became effective upon approval by the Governor.

2. GEORGIA CENTER FOR LAW IN THE PUBLIC INTEREST, STRATEGIC LITIGATION AGAINST PUBLIC PARTICIPATION: SENATE BILL 1 PASSED THE GEORGIA SENATE UNANIMOUSLY THIS SESSION. WHY IS IT NECESSARY FOR GEORGIA?, 5 (1995) [hereinafter GCLPI STUDY] (available in Georgia State University College of Law Library).

Amendment rights of free speech and to petition the government for a redress of grievances.[3] SLAPP suits and the threath of such suits prevent people from exercising these First Amendment rights by "intimidation and delay, . . . as both warning and punishment to those who seek to express their views on matters of public concern."[4]

Although the threat of SLAPP suits widely affects public interest groups and citizens that oppose such projects as landfills, road or land developments, and other issues of public concern, actual SLAPP suits are hard to identify.[5] SLAPP suits are typically tort actions that depend on a claim of damages, real or otherwise, caused by the actions or words of the accused person or group.[6] Typically, SLAPP plaintiffs claim defamation, interference with business relationships, or abuse of process.[7] While the types of claims are different, what makes a suit a "SLAPP suit" is the intent of the plaintiff in filing the action.[8] Rather than seeking redress for injury, the SLAPP plaintiff files suit in an effort to prevent individual citizens or public interest groups from speaking out on issues of public concern.[9] Situations giving rise to SLAPP suits usually involve citizens or groups that speak out on controversial issues in order to achieve an end that has a negative effect on the plaintiff.[10] Common actions that lead to SLAPP suits include efforts to persuade county governments to deny proposed landfill sites and zoning or variance permits for unpopular or unsightly land developments.[11] However, even though the plaintiff may suffer injury, citizens have a right to speak out on such public issues.[12]

SLAPP defendants usually win cases actually proceeding to trial.[13] However, even when a SLAPP plaintiff loses at trial, he or she may actually "win" because the goal of the litigation is to delay, restrict, or reduce future citizen speech, and change the focus of the controversy.[14] Existing procedures for redressing defendants' injuries from frivolous SLAPP suits are ineffective because they are unavailable to the defendant until commencement of a trial or even after trial is

3. *Id.*
4. *Id.*
5. *Id.* at 1-2.
6. *Id.* at 1.
7. *Id.*
8. *See id.* at 1-3.
9. *See id.* at 1.
10. *See id.* at 1-2.
11. *See id.* at 2.
12. *Id.* at 21-22 (quoting Entertainment Partners Group v. Davis, 590 N.Y.S.2d 979, 983 (1992)).
13. *Id.* at 10. Nationally, 78% of all SLAPP defendants prevail, and 82% of those going to trial prevail. *Id.*
14. *Id.*

completed.[15] The trial-based methods of redress—constitutional defenses, awards of attorney's fees, sanctions on attorneys, countersuits and the like[16]—do not solve the problem of SLAPP suits because they do not address the delay in the defendant's ability to exercise free speech.[17] By the time a case is decided or dismissed, which takes an average of thirty-six months,[18] the public issue at the heart of the claim may have already been resolved.[19] The SLAPP plaintiff, whose goal is to prevent a citizen or group from opposing his or her position, has already achieved his or her objectives long before trial.[20] Further, the mere threat of a lawsuit, in which a defendant has no alternative but to halt the actions that led to the claim and take the issue to trial, prevents many would-be SLAPP defendants from speaking out once a single suit is filed.[21] The need to provide an early, inexpensive method for SLAPP defendants to defeat groundless lawsuits prior to trial led the Georgia General Assembly to pass the "SLAPP Suit Act."[22]

SB1

Civil Practice Act

The Act amends the Civil Practice Act by creating a new Code section 9-11-11.1.[23] The Act is designed to encourage public participation by Georgia citizens "in matters of public significance . . . [and to encourage] the valid exercise of the constitutional rights of freedom of speech and the right to petition government for a redress of grievances."[24] The Act requires plaintiffs who file claims involving free speech related to public issues to provide additional certifications,[25] beyond those typically required under rules of civil procedure, to

15. *Id.* at 12.
16. *Id.* at 10-11.
17. *Id.* at 12.
18. *Id.* at 3.
19. *Id.* at 11.
20. *Id.* at 10, 13.
21. *Id.* at 2-3.
22. Telephone Interview with Sen. Mary Margaret Oliver, Senate District No. 42 (July 22, 1996) [hereinafter Oliver Interview].
23. O.C.G.A. § 9-11-11.1 (Supp. 1996).
24. *Id.* § 9-11-11.1(a).
25. *Id.* § 9-11-11.1(b). The Act requires additional certification by parties asserting a claim "against a person or entity [that] aris[es] from an act . . . which could reasonably be construed as an act in furtherance of the right of free speech or the right to petition government for a redress of grievances . . . in connection with an issue of public interest or concern." *Id.*

prevent frivolous lawsuits.[26] The Act requires an affirmative certification that

> the act forming the basis for the claim is not a privileged communication . . . and that the claim is not interposed for any improper purpose such as to suppress a person's or entity's right of free speech or right to petition government, or to harass, or to cause unnecessary delay or needless increase in the cost of litigation.[27]

The certification must be filed with the pleading and must be signed by both the plaintiff and his or her attorney of record, if any.[28]

If a claim requiring certification under the Act is filed without the additional certification, that claim is automatically stricken unless the appropriate certification is provided within ten days after the omission is called to the claimant's attention.[29] If a plaintiff falsely verifies a claim, the Act allows the defendant to file a motion to strike or to dismiss the claim and to ask the court to impose sanctions on the plaintiff, the attorney, or both.[30] In addition, the court may impose sanctions on its own initiative.[31] Potential sanctions include "dismissal of the claim and an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including a reasonable attorney's fee."[32]

As soon as a motion to dismiss or a motion to strike is filed by a defendant, the court must stay all discovery and any pending hearings or motions, unless the plaintiff moves for a specific discovery action or hearing to continue and shows good cause why it should continue.[33] The Act also requires the court to hear the motion to dismiss or to strike no more than thirty days after service unless "emergency matters before the court require a later hearing."[34]

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26. A written verification designed to preclude frivolous lawsuits is required for all federal claims under Rule 11 of the Federal Rules of Civil Procedure. FED. R. CIV. P. 11. The General Assembly adopted Rule 11's verification of claims language and added to it specific details relevant to SLAPP suits. *Compare id. with* O.C.G.A. § 9-11-11.1(b) (Supp. 1996). In the absence of a specific statutory verification such as O.C.G.A. § 9-11-11.1, Georgia's Civil Practice Act only requires a plaintiff's attorney to certify that "he [or she] has read the pleading and that it is not interposed for delay." 1966 Ga. Laws 609, § 11, at 622 (codified at O.C.G.A. § 9-11-11 (1993)).

27. O.C.G.A. § 9-11-11.1(b) (Supp. 1996).

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.* § 9-11-11.1(d).

34. *Id.*

The original version of the bill would have allowed the court to delay a hearing beyond thirty days if the criminal docket of the court made the delay necessary.[35] However, the House Judiciary Committee disagreed with this exception because of the need for quick resolution of SLAPP claims.[36] By allowing only emergency matters to delay a hearing on a motion made pursuant to the Act, the General Assembly intended to ensure quick resolution of SLAPP suits, indicating the importance it places on Georgia citizens' right to participate in governmental decisionmaking.[37] SLAPP plaintiffs frequently file suit to stop public action "during crucial periods of government decision-making, and every day that [citizens] are silenced by a frivolous lawsuit is cause for concern."[38]

By requiring an affirmative statement on the part of claimants indicating that they are not initiating a SLAPP action, the Act allows a defendant to object to a claimant's improper motives almost from the start and allows the court to take action when defendants do not object.[39] However, SB 1, as introduced, did not require a written certification, but rather relied on the defendant to make a motion to strike or dismiss.[40] In order to defend the motion, a plaintiff had to establish that substantial justification for the lawsuit existed and prove that he or she likely would prevail on the claim.[41] The Senate Judiciary Committee struck the original procedural remedy in its entirety and instead adopted the additional certification requirements for the claimant, the procedure ultimately used in the Act.[42] The Committee proposed the change in an effort to prevent SLAPP suits from being filed in the first place.[43] Because any delay might benefit the SLAPP plaintiff, the Committee attempted to propose a solution that would relieve actual and potential SLAPP defendants from meritless lawsuits with little or no delay.[44] By requiring certification when the pleading is filed, plaintiffs and attorneys filing SLAPP suits are immediately subject to sanctions, even if the defendant does not act.[45] Under the original proposal, a plaintiff could have filed suit against a defendant and gained the benefits of delay while the

35. SB 1, as introduced, 1995 Ga. Gen. Assem.
36. Oliver Interview, *supra* note 22; *see* SB 1 (HCS), 1996 Ga. Gen. Assem.
37. Oliver Interview, *supra* note 22.
38. GCLPI STUDY, *supra* note 2, at 7.
39. O.C.G.A. § 9-11-11.1(b) (Supp. 1996).
40. SB 1, as introduced, 1995 Ga. Gen. Assem.
41. *Id.*
42. O.C.G.A. § 9-11-11.1(b) (Supp. 1996); SB 1 (SCS), 1995 Ga. Gen. Assem.
43. Oliver Interview, *supra* note 22.
44. *Id.*
45. *Id.*

defendant prepared and argued a motion to strike.[46] The defendant would have borne the cost of preparing and arguing the motion and would have needed to prepare an answer in case the motion was defeated.[47] All of these litigation expenses and inconveniences for SLAPP defendants would have served to prevent many potential SLAPP defendants from making their views on public issues heard.[48]

Libel and Slander

The Act also alters Georgia's libel and slander laws by amending Code section 51-5-7 to explicitly classify "[s]tatements made in good faith . . . in furtherance of the right of free speech or the right to petition government for a redress of grievances"[49] as privileged communications,[50] which may not be advanced as a basis for libel or slander tort actions.[51] In determining whether communication is privileged, Code section 51-5-7(4) refers back to the SLAPP suit provisions in Code section 9-11-11.1(c), which define protected speech "in connection with an issue of public interest or concern."[52] As defined in the Act, such speech includes:

> [A]ny written or oral statement, writing, or petition made before or to a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, or any written or oral statement, writing, or petition made in connection with an issue under consideration or review by a

46. *Id.*
47. *Id.*
48. *Id.*
49. O.C.G.A. § 51-5-7(1), (4) (Supp. 1996).
50. 1996 Ga. Laws 260, § 2, at 262.
51. *Id.* A claim based upon a privileged communication is only actionable if the plaintiff can show actual malice. Privileged communications made without malice bar recovery. Rucker v. Gandy, 158 Ga. App. 104, 105, 279 S.E.2d 259 (1981). Because the plaintiff has the burden of proving actual malice, if he or she cannot do so in pre-trial affidavits, depositions, or other documentary evidence, the court should grant summary judgment to the defendant. *See* Williams v. Trust Co., 140 Ga. App, 49, 230 S.E.2d 45 (1976).
52. O.C.G.A. § 9-11-11.1(c) (Supp. 1996).

legislative, executive, or judicial body, or any other official proceeding authorized by law.[53]

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53. *Id.* The Act narrowed the definition of protected speech as originally proposed. *Compare id. with* SB 1, as introduced, 1995 Ga. Gen. Assem. The original version covered "any written or oral statement, writing, or petition made in a place open to the public or a public forum in connection with an issue of public interest or concern." SB 1, as introduced, 1995 Ga. Gen. Assem. The House Judiciary Committee struck this definition, and it was not incorporated in the Act. O.C.G.A. § 9-11-1.1(c) (Supp. 1996); SB 1 (HCS), 1995 Ga. Gen. Assem. By including issues not under consideration by any government body, the definition of protected speech had the potential to protect speech that did not further the interest of citizen participation in governmental affairs, but merely involved private parties. Oliver Interview, *supra* note 22. Under such a definition, many legitimate plaintiffs with libel or slander claims could have found themselves without a remedy. *Id.*