**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 2 TO CHAPTER 36, TITLE 15 SO AS TO ENACT THE “CITIZENS PARTICIPATION IN GOVERNMENT ACT OF 2009” AND TO PROVIDE THAT ACTS IN FURTHERANCE OF THE CONSTITUTIONAL RIGHT TO PETITION 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 PROVIDE FOR 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 ENTITLED “SOUTH CAROLINA FRIVOLOUS CIVIL PROCEEDINGS SANCTIONS ACT” AND TO REDESIGNATE CHAPTER 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 Article I, Section 2 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 government decisions and public policy, the public health, safety, and welfare, effective law enforcement, the efficient operation of government 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 government 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‑interested, 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 government 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 2

Citizen Participation in Government

Section 15‑36‑200. This article may be cited as the ‘Citizen Participation in Government Act of 2009’.

Section 15‑36‑210. As used in this article:

(1) ‘Government’ includes a branch, department, agency, instrumentality, official, employee, agent, or another person acting under color of law of the United States, the State of South Carolina, or other state or subdivision of a state or other public authority, including the electorate.

(2) ‘Judicial claim’ or ‘claim’ includes any lawsuit, cause of action, claim, cross‑claim, counterclaim, or other judicial pleading or filing requesting relief.

(3) ‘Motion’ includes any motion to dismiss, for summary judgment, for judgment on the pleadings, to strike, or any other judicial pleading filed to dispose of a judicial claim.

(4) ‘Moving party’ means a person on whose behalf the motion described in Section 15‑36‑230 is filed seeking dismissal of the judicial claim.

(5) ‘Person’ includes an individual, corporation, association, organization, partnership, two or more persons having a joint or common interest, or another legal entity.

(6) ‘Responding party’ means a person against whom the motion described in Section 15‑36‑230 is filed.

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

(8) ‘State’ includes the District of Columbia, the Commonwealth of Puerto Rico, and each territory and possession of the United States.

Section 15‑36‑220. Acts in furtherance of the constitutional right to petition, including seeking relief, influencing action, informing, communicating, and otherwise participating in the processes of government, are immune from civil liability in this State, regardless of intent or purpose, except when the acts are not aimed at procuring a governmental or electoral action, result, or outcome.

Section 15‑36‑230. This article applies to a motion to dispose of a claim in a judicial proceeding on the grounds that the claim is based on, relates to, or is in response to an act of the moving party in furtherance of the moving party’s rights as described in Section 15‑36‑220.

Section 15‑36‑240. Upon the filing of a motion as described in Section 15‑36‑230:

(1) the motion must be treated as one for summary judgment for which the:

(a) trial court must use a time period appropriate for preferred or expedited motions; and

(b) moving party has a right of expedited appeal from a trial court’s order denying the motion or from a trial court’s failure to rule on the motion in expedited fashion;

(2) discovery must be suspended, pending a decision on the motion and appeals;

(3) the responding party has the burden of proof, of going forward with the evidence, and of persuasion on the motion;

(4) the court must make its determination based upon the facts contained in the pleadings and affidavits filed;

(5) the court must grant the motion and dismiss the judicial claim, unless the responding party has produced clear and convincing evidence that the acts of the moving party are not immunized from liability as provided in Section 15‑36‑220;

(6) any government body to which the moving party’s acts were directed or the Attorney General may intervene to defend or otherwise support the moving party in the SLAPP;

(7) the court may award a moving party who is dismissed, without regard to any limits under state law:

(a) costs of litigation, including reasonable attorney and expert witness fees, incurred in connection with the motion; and

(b) additional sanctions upon the responding party and its attorneys as it determines sufficient to deter repetition of the conduct and comparable conduct by others similarly situated; and

(8) a person damaged or injured by reason of a claim filed in violation of his rights under Section 15‑36‑220 may seek relief in the form of a claim for actual or compensatory damages, as well as punitive damages, attorney’s fees, and costs, from the person responsible.

Section 15‑36‑250. (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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