STATE OF NEW YORK

9239

IN SENATE

May 12, 2022

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the civil rights law, in relation to strategic lawsuits against public participation and to make technical corrections; and to amend chapter 250 of the laws of 2020 amending the civil rights law relating to actions involving public petition and participation, in relation to the application thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 70-a of the civil rights law, as added by chapter 767 of the laws of 1992, paragraph (a) of subdivision 1 as amended by chapter 250 of the laws of 2020, is amended to read as follows:

§ 70-a. Actions involving public petition and participation; recovery of damages. 1. **For the purposes of this section:**

(a) A "strategic lawsuit against public participation" or "SLAPP" means a legal claim commenced or continued against an individual or an organization arising out of that party's exercise of the constitutional right of free speech about an issue of public concern and lacking a substantial basis in fact and/or law.

(b) "Substantial basis" means a heightened pleading burden, greater than that of plausibility, cognizability, or reasonableness, and requiring a demonstration of a probability of prevailing on the claim.

2. A **prevailing** defendant in an action involving public petition and participation, as defined in paragraph (a) of subdivision one of section seventy-six-a of this article, may [~~maintain~~] **assert a substantive cause of action against the plaintiff in the underlying litigation. The prevailing defendant may file** an action, claim, cross claim or counterclaim to recover damages, including costs and attorney's fees, from [~~any person who commenced or continued such action~~] **a SLAPP plaintiff**; provided that:

(a) costs and attorney's fees shall be recovered upon **an adjudication pursuant to subdivision (g) of rule thirty-two hundred eleven or subdivision (h) of rule thirty-two hundred twelve of the civil practice law and rules, an adjudication pursuant to federal rules of civil procedure**

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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12(b) or 56, or a demonstration, including an adjudication pursuant to subdivision (g) of rule thirty-two hundred eleven or subdivision (h) of rule thirty-two hundred twelve of the civil practice law and rules, that the action involving public petition and participation was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification or reversal of existing law;

(b) other compensatory damages may only be recovered upon an additional demonstration that the action involving public petition and participation was commenced or continued [~~for the~~] with a purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of speech, petition or association rights; and

(c) punitive damages may only be recovered upon an additional demonstration that the action involving public petition and participation was commenced or continued for the sole purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of speech, petition or association rights.

[~~2.~~] 3. The right to [~~bring~~] assert an action under this section can be waived only if it is waived specifically. An action must be instituted no later than one year from the date the SLAPP is finally determined in favor of the defendant in the underlying action.

[~~3.~~] 4. Nothing in this section shall affect or preclude the right of any party to any recovery otherwise authorized by common law, or by statute, law or rule.

§ 2. Paragraph (d) of subdivision 1 of section 76-a of the civil rights law, as added by chapter 250 of the laws of 2020, is amended and a new paragraph (e) is added to read as follows:

(d) "Public interest" shall be construed broadly, and shall mean: (1) any subject other than a purely private matter; (2) any subject relating to any matter of political, social, or other concern to the community; or (3) any subject that is of legitimate news interest; that is, a subject of general interest and of value and concern to the public.

(e) "Substantial basis" means a heightened pleading burden, greater than that of plausibility, cognizability, or reasonableness, and requiring a demonstration of a probability of prevailing on the claim.

§ 3. Subdivision 3 of section 76-a of the civil rights law is redesignated subdivision 4 and a new subdivision 3 is added to read as follows:

3. A prevailing defendant in an action involving public participation shall obtain costs and attorney's fees, via motion or other request, upon an adjudication pursuant to subdivision (g) of rule thirty-two hundred eleven or subdivision (h) of rule thirty-two hundred twelve of the civil practice law and rules, an adjudication pursuant to federal rules of civil procedure 12(b) or 56, or a demonstration that the action involving public petition and participation was commenced or continued without a substantial basis in fact and/or law and could not be supported by a substantial argument for the extension, modification or reversal of existing law.

§ 4. Section 71 of the civil rights law, as added by chapter 924 of the laws of 1920, is amended to read as follows:

§ 71. Damages in action for suing in name of another. In an action, brought by the adverse party, as prescribed in [~~the last~~] section seventy of this article, the plaintiff, if he recovers final judgment, is entitled to recover treble damages. In an action, brought by the person whose name was used, as prescribed in [~~the last~~] section seventy of this article, the plaintiff is entitled to recover his actual damages, and two hundred and fifty dollars in addition thereto.

§ 5. Section 4 of chapter 250 of the laws of 2020 relating to actions involving public petition and participation is amended to read as follows:

§ 4. This act shall take effect immediately **and shall apply to actions and proceedings pending on or filed on or after such effective date**.

§ 6. This act shall take effect immediately and shall apply to actions and proceedings pending on or filed on or after November 10, 2020.