

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1258

Session of
1999

INTRODUCED BY GANNON, ARMSTRONG, BELFANTI, CHADWICK, CLYMER,
DALLY, FICHTER, HALUSKA, LAUGHLIN, MELIO, NICKOL, ROSS,
SAYLOR, SEYFERT, STERN, WILLIAMS, CIVERA, SATHER, YOUNGBLOOD
AND TRELLO, APRIL 13, 1999

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
DECEMBER 6, 1999

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, providing for damages
3 resulting from computer data failure AND FOR IMMUNITY FOR <—
4 ENVIRONMENTAL ACTIVISM; and further providing for exceptions
5 to sovereign immunity and for exceptions to governmental
6 immunity.

7 THE GENERAL ASSEMBLY FINDS AND DECLARES AS FOLLOWS: <—

8 (1) THERE HAS BEEN A DISTURBING INCREASE IN LAWSUITS,
9 KNOWN AS STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION
10 (SLAPP), BROUGHT PRIMARILY TO CHILL THE VALID EXERCISE BY
11 CITIZENS OF THEIR CONSTITUTIONAL RIGHT TO FREEDOM OF SPEECH
12 AND TO PETITION THE GOVERNMENT FOR THE REDRESS OF GRIEVANCES.

13 (2) IT IS IN THE PUBLIC INTEREST TO EMPOWER CITIZENS TO
14 BRING A SWIFT END TO RETALIATORY LAWSUITS SEEKING TO
15 UNDERMINE THEIR PARTICIPATION IN THE ESTABLISHMENT OF STATE
16 AND LOCAL ENVIRONMENTAL POLICY AND IN THE IMPLEMENTATION AND
17 ENFORCEMENT OF ENVIRONMENTAL LAW AND REGULATIONS.

18 (3) THIS ACT WILL ENSURE THAT A FRIVOLOUS LAWSUIT OR A

1 SLAPP CAN BE RESOLVED IN A PROMPT MANNER BY PERMITTING
2 CITIZENS TO RAISE CIVIL IMMUNITY TO SUCH SUITS WHEN FILING A
3 PRELIMINARY OBJECTION FOR LEGAL INSUFFICIENCY OF A PLEADING
4 OR DEMURRER OR UPON ANOTHER APPROPRIATE MOTION AND TO OBTAIN
5 A STAY ON DISCOVERY AS PROVIDED FOR IN THIS ACT.

6 (4) A COURT SHOULD GRANT OR DENY RELIEF ON THE
7 PRELIMINARY OBJECTION OR OTHER APPROPRIATE MOTION WITHOUT
8 RESERVING THE MATTER FOR FURTHER DISCOVERY.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Title 42 of the Pennsylvania Consolidated
12 Statutes is amended by adding ~~a section~~ SECTIONS to read:

13 § 8313. Damages in actions for computer data failure.

14 (a) Direct damages recoverable.--Notwithstanding any other
15 provision of law, in an action to recover damages based upon an
16 alleged failure by a computer software consultant properly to
17 detect, disclose, prevent or remediate a computer data failure,
18 the plaintiff may recover direct damages, including:

19 (1) damages resulting from bodily injury to the
20 plaintiff or physical damage to the plaintiff's property
21 proximately caused by the defendant's conduct; and

22 (2) any costs reasonably incurred to reprogram or
23 replace and test the relevant computer system, computer
24 program or software or internal hardware timer.

25 (b) Other damages.--In an action to which subsection (a)
26 applies and subject to subsection (d), there shall be no
27 recovery for consequential, indirect or incidental damages,
28 including, but not limited to, business interruption losses,
29 lost profits or losses alleged to have resulted from the
30 plaintiff's inability to perform his contractual obligations to

third parties, provided that nothing in this subsection shall limit recovery of consequential damages for bodily injury proximately caused by the defendant's conduct.

(c) Contractual rights.--Nothing in this section shall be construed to limit the ability of contracting parties to enter into agreements as they deem appropriate with regard to liability and damages.

(d) Scope.--Nothing in this section shall limit recovery of consequential, indirect or incidental damages if the plaintiff proves fraud, including fraudulent misrepresentation, intentional harm or gross negligence. Nothing in this section shall be construed to create or give rise to a cause of action not otherwise existing under law.

(e) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Computer date failure." Either of the following:

(1) A present or future inability of a computer system, computer program or software, or internal hardware timer, to properly handle dates of calendar year 1999 or subsequent years.

(2) An incompatibility between:

(i) the computer system, computer program or software, or internal hardware timer; and

(ii) any other system, program, software, internal hardware timer, or electronic data in any form, with respect to the handling of dates of calendar year 1999 or subsequent years.

"Computer program or software." A set of statements or instructions to be used directly or indirectly in a computer in

1 order to bring about a certain result.

2 "Computer software consultant." A person who creates,
3 repairs or modifies computer programs or software for others.

4 The term includes a person who engages, subcontracts with or
5 employs others to perform such services. The term shall not
6 include a person who manufactures computer programs or software
7 for sale to the general public.

8 "Computer system." Any electronic device or collection of
9 devices, including support devices, networks and embedded chips,
10 that contains computer programs, electronic instructions, input
11 data and output data, and that performs functions, including,
12 but not limited to, logic, arithmetic, data storage and
13 retrieval, communication and control. The term shall not include
14 calculators that are not programmable.

15 "Creates, repairs or modifies." Any creation or alteration
16 of the design, source code or other components contained within
17 or constituting a computer program. The term includes any such
18 services provided under a contract for computer goods and
19 services.

20 § 8340.1. PARTICIPATION IN ENVIRONMENTAL LAW OR REGULATION.

<—

21 (A) IMMUNITY.--

22 (1) A PERSON WHO ACTS IN FURTHERANCE OF THE PERSON'S
23 RIGHT OF PETITION OR FREE SPEECH UNDER THE CONSTITUTION OF
24 THE UNITED STATES OR THE CONSTITUTION OF PENNSYLVANIA IN
25 CONNECTION WITH AN ISSUE RELATED TO ENFORCEMENT OR
26 IMPLEMENTATION OF ENVIRONMENTAL LAW OR REGULATION SHALL BE
27 IMMUNE FROM CIVIL LIABILITY IN ANY ACTION EXCEPT WHERE THE
28 COMMUNICATION TO THE GOVERNMENT AGENCY IS NOT GENUINELY AIMED
29 AT PROCURING A FAVORABLE GOVERNMENTAL ACTION, RESULT OR
30 OUTCOME.

1 (2) A COMMUNICATION IS NOT GENUINELY AIMED AT PROCURING
2 A FAVORABLE GOVERNMENTAL ACTION, RESULT OR OUTCOME IF IT:

3 (I) IS NOT MATERIAL OR RELEVANT TO THE ENFORCEMENT
4 OR IMPLEMENTATION OF ENVIRONMENTAL LAW OR REGULATION;

5 (II) WAS KNOWINGLY FALSE WHEN MADE;

6 (III) WAS RENDERED WITH RECKLESS DISREGARD AS TO THE
7 TRUTH OR FALSITY OF THE STATEMENT WHEN MADE; OR

8 (IV) REPRESENTED A WRONGFUL USE OF PROCESS OR ABUSE
9 OF PROCESS.

10 (B) STAY OF DISCOVERY.--THE COURT SHALL STAY ALL DISCOVERY
11 PROCEEDINGS IN THE ACTION UPON THE FILING OF PRELIMINARY
12 OBJECTIONS FOR LEGAL INSUFFICIENCY OF A PLEADING OR OTHER
13 APPROPRIATE MOTION ON THE BASIS OF IMMUNITY, PROVIDED, HOWEVER,
14 THAT THE COURT, ON MOTION AND AFTER A HEARING AND FOR GOOD CAUSE
15 SHOWN, MAY ORDER THAT SPECIFIED DISCOVERY BE CONDUCTED. THE STAY
16 OF DISCOVERY SHALL REMAIN IN EFFECT UNTIL NOTICE OF THE ENTRY OF
17 THE ORDER RULING ON THE PRELIMINARY OBJECTIONS OR ON ANOTHER
18 APPROPRIATE MOTION.

19 (C) ADMISSIBILITY OF COURT DETERMINATION.--IF THE COURT
20 DETERMINES THAT THE PLAINTIFF HAS ESTABLISHED THAT THERE IS A
21 SUBSTANTIAL LIKELIHOOD THAT THE PLAINTIFF WILL PREVAIL ON THE
22 CLAIM, NEITHER THAT DETERMINATION NOR THE FACT OF THAT
23 DETERMINATION SHALL BE ADMISSIBLE IN EVIDENCE AT ANY LATER STAGE
24 OF THE CASE, AND NO BURDEN OF PROOF OR DEGREE OF PROOF OTHERWISE
25 APPLICABLE SHALL BE AFFECTED BY THAT DETERMINATION.

26 (D) INTERVENTION.--THE GOVERNMENT AGENCY INVOLVED IN THE
27 FURTHERANCE OF A PERSON'S RIGHT OF PETITION OR FREE SPEECH UNDER
28 THE CONSTITUTION OF THE UNITED STATES OR THE CONSTITUTION OF
29 PENNSYLVANIA IN CONNECTION WITH A PUBLIC ISSUE MAY INTERVENE OR
30 OTHERWISE PARTICIPATE AS AN AMICUS CURIAE IN THE ACTION

1 INVOLVING PUBLIC PETITION AND PARTICIPATION.

2 (E) LEGAL PROTECTIONS OF DEFENDANTS.--NOTHING IN THIS
3 SECTION SHALL BE CONSTRUED TO LIMIT ANY CONSTITUTIONAL,
4 STATUTORY OR COMMON-LAW PROTECTIONS OF DEFENDANTS TO ACTIONS
5 INVOLVING PUBLIC PETITION AND PARTICIPATION.

6 (F) ABUSE OF LEGAL PROCESS.--IN ADDITION TO OTHER COSTS OR
7 REMEDIES ALLOWED BY GENERAL RULE OR STATUTE, IN ANY
8 ADMINISTRATIVE OR JUDICIAL PROCEEDING RELATED TO THE ENFORCEMENT
9 OR IMPLEMENTATION OF ENVIRONMENTAL LAW OR REGULATION, THE AGENCY
10 OR COURT MAY AWARD COSTS, INCLUDING REASONABLE ATTORNEY FEES, IF
11 THE AGENCY OR COURT DETERMINES THAT AN ACTION, APPEAL, CLAIM,
12 MOTION OR PLEADING IS FRIVOLOUS OR TAKEN SOLELY FOR DELAY OR
13 THAT THE CONDUCT OF A PARTY OR COUNSEL IS DILATORY OR VEXATIOUS.

14 (G) DEFINITIONS.--THE FOLLOWING WORDS AND PHRASES WHEN USED
15 IN THIS SECTION SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
16 SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

17 "ACT IN FURTHERANCE OF A PERSON'S RIGHT OF PETITION OR FREE
18 SPEECH UNDER THE UNITED STATES CONSTITUTION OR THE CONSTITUTION
19 OF PENNSYLVANIA IN CONNECTION WITH A PUBLIC ISSUE." ANY WRITTEN
20 OR ORAL STATEMENT OR WRITING MADE BEFORE A LEGISLATIVE,
21 EXECUTIVE OR JUDICIAL PROCEEDING, OR ANY OTHER OFFICIAL
22 PROCEEDING AUTHORIZED BY LAW; ANY WRITTEN OR ORAL STATEMENT OR
23 WRITING MADE IN CONNECTION WITH AN ISSUE UNDER CONSIDERATION OR
24 REVIEW BY A LEGISLATIVE, EXECUTIVE OR JUDICIAL BODY, OR ANY
25 OTHER OFFICIAL PROCEEDING AUTHORIZED BY LAW; ANY WRITTEN OR ORAL
26 STATEMENT OR WRITING MADE IN A PLACE OPEN TO THE PUBLIC OR A
27 PUBLIC FORUM IN CONNECTION WITH AN ISSUE OF PUBLIC INTEREST; OR
28 ANY WRITTEN OR ORAL STATEMENT OR WRITING MADE TO A GOVERNMENT
29 AGENCY IN CONNECTION WITH THE IMPLEMENTATION AND ENFORCEMENT OF
30 ENVIRONMENTAL LAW AND REGULATIONS.

1 "ENFORCEMENT OF ENVIRONMENTAL LAW AND REGULATIONS." ANY
2 ACTIVITY RELATED TO THE IDENTIFICATION AND ELIMINATION OF
3 VIOLATIONS OF ENVIRONMENTAL LAWS AND REGULATIONS, INCLUDING
4 INVESTIGATIONS OF ALLEGED VIOLATIONS, INSPECTIONS OF ACTIVITIES
5 SUBJECT TO REGULATION UNDER ENVIRONMENTAL LAW AND REGULATIONS
6 AND RESPONSES TAKEN TO PRODUCE CORRECTION OF THE VIOLATIONS.

7 "GOVERNMENT AGENCY." THE FEDERAL GOVERNMENT, THE
8 COMMONWEALTH AND ALL OF ITS DEPARTMENTS, COMMISSIONS, BOARDS,
9 AGENCIES AND AUTHORITIES, AND ALL POLITICAL SUBDIVISIONS AND
10 THEIR AUTHORITIES.

11 "IMPLEMENTATION OF ENVIRONMENTAL LAW AND REGULATIONS." ANY
12 ACTIVITY RELATED TO THE DEVELOPMENT AND ADMINISTRATION OF
13 ENVIRONMENTAL PROGRAMS DEVELOPED UNDER ENVIRONMENTAL LAW AND
14 REGULATIONS.

15 Section 2. Sections 8522 and 8542 of Title 42 are amended by
16 adding subsections to read:

17 § 8522. Exceptions to sovereign immunity.

18 * * *

19 (c) Computer date failures.--Nothing in this section shall
20 create or allow an exception to sovereign immunity, and there
21 shall be no liability imposed upon a Commonwealth party for
22 damages arising out of a negligent act which causes or fails to
23 prevent a computer date failure as defined in section 8313
24 (relating to damages in actions for computer date failure).

25 § 8542. Exceptions to governmental immunity.

26 * * *

27 (e) Computer date failures.--Nothing in this section shall
28 create or allow an exception to governmental immunity, and there
29 shall be no liability imposed upon a local agency for damages
30 arising out of a negligent act which causes or fails to prevent

1 a computer date failure as defined in section 8313 (relating to
2 damages in actions for computer date failure).

3 Section 3. This act shall take effect ~~immediately.~~ <—

4 AS FOLLOWS: <—

5 (1) THE ADDITION OF 42 PA.C.S. § 8340.1 SHALL TAKE
6 EFFECT IN 60 DAYS.

7 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT
8 IMMEDIATELY.