

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 406 Session of  
2001INTRODUCED BY GERLACH, WAUGH, CORMAN, M. WHITE, TOMLINSON,  
THOMPSON AND EARLL, FEBRUARY 12, 2001

AS AMENDED ON THIRD CONSIDERATION, JUNE 21, 2001

## AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, ~~providing for sanctions~~ <—  
3 ~~for dilatory, obdurate and vexatious pleadings.~~ ESTABLISHING <—  
4 A CAUSE OF ACTION FOR FRIVOLOUS LITIGATION; FURTHER PROVIDING  
5 FOR WRONGFUL USE OF CIVIL PROCEEDINGS; AND MAKING AN  
6 EDITORIAL CHANGE.

7 The General Assembly of the Commonwealth of Pennsylvania  
8 hereby enacts as follows:

9 ~~Section 1. Section 2503 of Title 42 of the Pennsylvania~~ <—  
10 ~~Consolidated Statutes is amended to read:~~

11 ~~§ 2503. Right of participants to receive counsel fees.~~

12 ~~(a) General rule. The following participants shall be~~  
13 ~~entitled to a reasonable counsel fee as part of the taxable~~  
14 ~~costs of the matter:~~

15 ~~(1) The holder of bonds of a private corporation who~~  
16 ~~successfully recovers due and unpaid interest, the liability~~  
17 ~~for the payment of which was denied by the corporation.~~

18 ~~(2) A garnishee who enters an appearance in a matter~~  
19 ~~which is discontinued prior to answer filed.~~

1           ~~(3) A garnishee who is found to have in his possession~~  
2           ~~or control no indebtedness due to or other property of the~~  
3           ~~debtor except such, if any, as has been admitted by answer~~  
4           ~~filed.~~

5           ~~(4) A possessor of property claimed by two or more other~~  
6           ~~persons, if the possessor interpleads the rival claimants,~~  
7           ~~disclaims all interest in the property and disposes of the~~  
8           ~~property as the court may direct.~~

9           ~~(5) The prevailing party in an interpleader proceeding~~  
10          ~~in connection with execution upon a judgment.~~

11          ~~(6) Any participant who is awarded counsel fees as a~~  
12          ~~sanction against another participant for violation of any~~  
13          ~~general rule which expressly prescribes the award of counsel~~  
14          ~~fees as a sanction for dilatory, obdurate or vexatious~~  
15          ~~conduct during the pendency of any matter.~~

16          ~~(7) Any participant who is awarded counsel fees as a~~  
17          ~~sanction against another participant for dilatory, obdurate~~  
18          ~~or vexatious conduct during the pendency of a matter.~~

19          ~~(8) Any participant who is awarded counsel fees out of a~~  
20          ~~fund within the jurisdiction of the court pursuant to any~~  
21          ~~general rule relating to an award of counsel fees from a fund~~  
22          ~~within the jurisdiction of the court.~~

23          ~~(9) Any participant who is awarded counsel fees because~~  
24          ~~the conduct of another party in commencing the matter or~~  
25          ~~otherwise was arbitrary, vexatious or in bad faith.~~

26          ~~(10) Any other participant in such circumstances as may~~  
27          ~~be specified by statute heretofore or hereafter enacted.~~

28          ~~(b) Dilatory, obdurate and vexatious pleadings.—~~

29          ~~(1) By presenting to the court, whether by signing,~~  
30          ~~filing, submitting or later advocating, a pleading, written~~

~~motion or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances:~~

~~(i) it is not being presented for an improper purpose, such as to harass or to cause unnecessary delay;~~

~~(ii) the claims, defenses and other legal contentions therein are warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law or the establishment of new law;~~

~~(iii) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and~~

~~(iv) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.~~

~~If, after notice and a reasonable opportunity to respond, the court determines a violation, the court may, subject to the conditions stated in paragraphs (2) and (3), impose an appropriate sanction upon the attorneys, law firms or parties that are responsible for the violation.~~

~~(2) A motion for sanction under this subsection shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate paragraph (1). It shall be served as provided by rule, but shall not be filed with or presented to the court unless, within 31 days after service of the motion, or such other period as the~~

~~court may prescribe, the challenged paper, claim, defense, contention, allegation or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates and employees.~~

~~(3) On its own initiative, the court may enter an order describing the specific conduct that appears to violate paragraph (1) and directing an attorney, law firm or party to show cause why it has not violated paragraph (1) with respect thereto.~~

~~Section 2. This act shall take effect in 60 days.~~

SECTION 1. CHAPTER 83 OF TITLE 42 OF THE PENNSYLVANIA  
CONSOLIDATED STATUTES IS AMENDED BY ADDING A SUBCHAPTER TO READ:

SUBCHAPTER E

FRIVOLOUS LITIGATION

SEC.

8350.1. FRIVOLOUS LITIGATION.

8350.2. ELEMENTS OF CAUSE OF ACTION.

8350.3. PROCEDURE.

8350.4. DAMAGES.

8350.5. OTHER REMEDIES.

8350.6. JOINT LIABILITY.

§ 8350.1. FRIVOLOUS LITIGATION.

(A) CAUSE OF ACTION ESTABLISHED.--THERE IS ESTABLISHED A SEPARATE CAUSE OF ACTION FOR DAMAGES ARISING OUT OF THE FILING OF A FRIVOLOUS CIVIL COMPLAINT, COUNTERCLAIM OR JOINDER COMPLAINT BY AN ATTORNEY AND THE LAW FIRM OF WHICH THE ATTORNEY

1 IS A MEMBER OR BY A PARTY WHO IS NOT REPRESENTED BY AN ATTORNEY.  
2 THE INJURED PARTY MUST FILE THIS ACTION IN THE SAME COURT AND  
3 DIVISION WHERE THE ORIGINAL ACTION OR MATTER WAS FILED. THIS  
4 ACTION SHALL NOT BE COLLATERAL TO THE ORIGINAL ACTION AND SHALL  
5 PROCEED WITHOUT REFERENCE TO ITS STATUS.

6 (B) TIME FOR FILING ACTION.--AN ACTION BROUGHT PURSUANT TO  
7 THIS SUBCHAPTER MAY BE FILED BEFORE THE CHALLENGED PROCEEDING ON  
8 THE CIVIL COMPLAINT, COUNTERCLAIM OR JOINDER COMPLAINT IS  
9 TERMINATED.

10 (C) RELATIONSHIP TO OTHER ACTION.--THE ACTION ESTABLISHED  
11 UNDER THIS SUBCHAPTER IS A SEPARATE CAUSE OF ACTION THAN THAT  
12 PROVIDED FOR UNDER SUBCHAPTER E.1 (RELATING TO WRONGFUL USE OF  
13 CIVIL PROCEEDINGS). A PERSON MAY NOT BE PRECLUDED FROM BRINGING  
14 AN ACTION PURSUANT TO SUBCHAPTER E.1 ON THE SOLE BASIS THAT THE  
15 PERSON FIRST BROUGHT AN ACTION UNDER THIS SUBCHAPTER.

16 § 8350.2. ELEMENTS OF CAUSE OF ACTION.

17 A COMPLAINT, COUNTERCLAIM OR JOINDER COMPLAINT SHALL BE  
18 PRESUMED TO BE NOT FRIVOLOUS UNLESS ONE OF THE FOLLOWING  
19 ELEMENTS IS PROVEN BY A PREPONDERANCE OF THE EVIDENCE:

20 (1) THE CIVIL COMPLAINT, COUNTERCLAIM OR JOINDER  
21 COMPLAINT IS PRESENTED PRIMARILY FOR AN IMPROPER PURPOSE,  
22 INCLUDING, BUT NOT LIMITED TO, HARASSMENT, BUSINESS  
23 INTERRUPTION, INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS OR  
24 UNWARRANTED PECUNIARY GAIN;

25 (2) THE CLAIMS SET FORTH IN THE CIVIL COMPLAINT,  
26 COUNTERCLAIM OR JOINDER COMPLAINT ARE NOT WARRANTED BY  
27 EXISTING LAW OR BY A REASONABLE ARGUMENT FOR THE EXTENSION,  
28 MODIFICATION OR REVERSAL OF EXISTING LAW OR THE ESTABLISHMENT  
29 OF NEW LAW;

30 (3) THE ALLEGATIONS AND OTHER FACTUAL CONTENTIONS HAVE

1 NO REASONABLE EVIDENTIARY SUPPORT OR ARE NOT LIKELY TO HAVE  
2 REASONABLE EVIDENTIARY SUPPORT, AFTER A REASONABLE  
3 OPPORTUNITY FOR FURTHER INVESTIGATION OR DISCOVERY; OR

4 (4) THE COUNTERCLAIM OR JOINDER COMPLAINT HAS NO  
5 REASONABLE EVIDENTIARY SUPPORT OR IS NOT LIKELY TO HAVE  
6 REASONABLE EVIDENTIARY SUPPORT, AFTER A REASONABLE  
7 OPPORTUNITY FOR FURTHER INVESTIGATION OR DISCOVERY.

8 § 8350.3. PROCEDURE.

9 (A) NOTICE TO DEFENDANT.--BEFORE FILING AN ACTION UNDER THIS  
10 SUBCHAPTER, THE PLAINTIFF MUST NOTIFY THE DEFENDANT IN WRITING  
11 OF THE INTENTION TO FILE THE ACTION AND ATTACH A COPY OF THE  
12 PROPOSED COMPLAINT. EACH RECIPIENT OF THE COMPLAINT SHALL HAVE  
13 20 DAYS IN WHICH TO WITHDRAW OR OTHERWISE CURE THE CIVIL  
14 COMPLAINT, COUNTERCLAIM, OR JOINDER COMPLAINT GIVING RISE TO THE  
15 CLAIM OF FRIVOLOUS LITIGATION.

16 (B) EFFECT OF WITHDRAWAL OR CURE.--IF THE CIVIL COMPLAINT,  
17 COUNTERCLAIM, OR JOINDER COMPLAINT IS WITHDRAWN OR OTHERWISE  
18 CURED, THERE SHALL BE NO BASIS FOR THE CAUSE OF ACTION, EXCEPT  
19 THAT THE PLAINTIFF SHALL BE ENTITLED TO RECOVER COURT COSTS AND  
20 REASONABLE ATTORNEY FEES IF THE PLAINTIFF FILES A MOTION FOR  
21 SUCH RECOVERY WITHIN 30 DAYS OF A WITHDRAWAL.

22 (C) EFFECT OF RECOVERY.--RECOVERY BY AN INJURED PARTY UNDER  
23 THIS CHAPTER SHALL NOT PRECLUDE THE INJURED PARTY FROM  
24 RECOVERING DAMAGES, OTHER THAN REASONABLE ATTORNEY FEES AND  
25 COURT COSTS, PURSUANT TO SUBCHAPTER E.1 (RELATING TO WRONGFUL  
26 USE OF CIVIL PROCEEDINGS).

27 § 8350.4. DAMAGES.

28 WHEN ANY ELEMENT SET FORTH IN SECTION 8350.2 (RELATING TO  
29 ELEMENTS OF CAUSE OF ACTION) HAS BEEN PROVEN BY A PREPONDERANCE  
30 OF THE EVIDENCE, THE INJURED PARTY IS ENTITLED TO RECOVER THE

1 FOLLOWING:

2 (1) THE HARM NORMALLY RESULTING FROM ANY ARREST OR  
3 IMPRISONMENT OR ANY DISPOSSESSION OR INTERFERENCE WITH THE  
4 ADVANTAGEOUS USE OF THE INJURED PARTY'S LAND, CHATTELS OR  
5 OTHER THINGS SUFFERED BY THE INJURED PARTY DURING THE COURSE  
6 OF THE PROCEEDING.

7 (2) THE HARM TO THE INJURED PARTY'S REPUTATION BY ANY  
8 DEFAMATORY MATTER RELATING TO THE PROCEEDING.

9 (3) THE COST OF LITIGATION, INCLUDING, BUT NOT LIMITED  
10 TO, ANY REASONABLE ATTORNEY FEES.

11 (4) LOST INCOME THAT THE INJURED PARTY HAS INCURRED IN  
12 DEFENDING HIMSELF.

13 (5) ANY OTHER PECUNIARY LOSS THAT HAS RESULTED FROM THE  
14 PROCEEDING.

15 (6) ANY OTHER NONECONOMIC LOSS CAUSED BY THE  
16 PROCEEDINGS.

17 § 8350.5. OTHER REMEDIES.

18 NOTHING IN THIS SUBCHAPTER SHALL BE CONSTRUED TO PRECLUDE THE  
19 COURT FROM EXERCISING ITS INHERENT SUPERVISORY POWER OR FROM  
20 IMPOSING APPROPRIATE NONMONETARY OR MONETARY SANCTIONS UPON  
21 ATTORNEYS, LAW FIRMS AND UNREPRESENTED PARTIES WHO HAVE ENGAGED  
22 IN FRIVOLOUS OR BAD FAITH LITIGATION UNDER EXISTING LAW AND  
23 RULES OF PROCEDURE.

24 § 8350.6. JOINT LIABILITY.

25 ABSENT EXCEPTIONAL CIRCUMSTANCES, A LAW FIRM SHALL BE HELD  
26 JOINTLY RESPONSIBLE FOR A FRIVOLOUS CIVIL COMPLAINT,  
27 COUNTERCLAIM OR JOINDER COMPLAINT FILED BY ATTORNEYS OF THE  
28 FIRM.

29 SECTION 2. THE HEADING OF SUBCHAPTER E OF CHAPTER 83 OF  
30 TITLE 42 IS AMENDED TO READ:

SUBCHAPTER [E] E.1

WRONGFUL USE OF CIVIL PROCEEDINGS

SECTION 3. SECTION 8351 OF TITLE 42 IS AMENDED BY ADDING A  
SUBSECTION TO READ:

§ 8351. WRONGFUL USE OF CIVIL PROCEEDINGS.

\* \* \*

(C) RELATIONSHIP TO OTHER ACTION.--THE ACTION ESTABLISHED  
UNDER THIS SUBCHAPTER IS A SEPARATE CAUSE OF ACTION THAN THAT  
PROVIDED FOR UNDER SUBCHAPTER E (RELATING TO FRIVOLOUS  
LITIGATION). A PERSON MAY NOT BE PRECLUDED FROM BRINGING AN  
ACTION PURSUANT TO THIS SUBCHAPTER ON THE SOLE BASIS THAT THE  
PERSON FIRST BROUGHT AN ACTION UNDER SUBCHAPTER E.

SECTION 4. THE PROVISIONS OF THIS ACT ARE SEVERABLE. IF ANY  
PROVISION OF THIS ACT OR ITS APPLICATION TO ANY PERSON OR  
CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY SHALL NOT AFFECT  
OTHER PROVISIONS OR APPLICATIONS OF THIS ACT WHICH CAN BE GIVEN  
EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION.

SECTION 5. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.