

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 95 Session of 2015

INTRODUCED BY FARNESE, FONTANA, BREWSTER, COSTA, TARTAGLIONE, HAYWOOD, YUDICHAK, BOSCOLA, BLAKE, LEACH, KITCHEN, WOZNIAK, GREENLEAF, EICHELBERGER, ALLOWAY AND VULAKOVICH, MARCH 31, 2015

AS AMENDED ON THIRD CONSIDERATION, JUNE 30, 2015

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, in particular rights and
3 immunities, providing for immunity for CONSTITUTIONALLY
4 protected communications. <--

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. The General Assembly finds and declares that
8 there has been a disturbing increase in lawsuits brought
9 primarily to chill the valid exercise of the constitutional
10 rights of freedom of speech and petition for the redress of
11 grievances. The General Assembly also finds and declares that it
12 is in the public interest to encourage continued participation
13 in matters of public significance and that this participation
14 should not be chilled through abuse of the judicial process.
15 This act is intended to grant immunity to those groups or
16 parties exercising this right and shall be construed broadly.

17 Section 2. Title 42 of the Pennsylvania Consolidated
18 Statutes is amended by adding a section to read:

1 § 8340.3. Immunity for CONSTITUTIONALLY protected <--  
2 communications.

3 (a) General rule.--A person who engages in any  
4 CONSTITUTIONALLY protected communication shall be immune from <--  
5 any civil action for claims based upon such communication. If a  
6 legal action instituted against any party that is based on,  
7 relates to or is in response to a party's CONSTITUTIONALLY <--  
8 protected communication, that party may file a motion to dismiss  
9 the legal action as provided in this section.

10 (b) Motion to dismiss.--

11 (1) A motion to dismiss under this section may be filed  
12 at any time before the passage of 30 days after the filing of  
13 a responsive pleading by the moving party or, in the court's  
14 discretion, at any later time upon terms it deems proper.

15 (2) The motion to dismiss shall be scheduled by the  
16 ~~clerk of the court~~ PROTHONOTARY for a hearing not more than <--  
17 30 days after the service of the motion unless the docket  
18 conditions of the court require a later hearing.

19 (3) An order granting or denying a motion to dismiss  
20 shall be immediately appealable.

21 (4) In the event that a court grants a motion to dismiss  
22 but fails to award costs, fees or damages, as required, the  
23 order shall also be immediately appealable and the moving  
24 party may file a separate action to recover its costs, fees  
25 and damages.

26 (c) Stay of discovery.--All discovery proceedings in the  
27 action shall be stayed upon the filing of a motion to dismiss  
28 under this section, which stay shall remain in effect until the  
29 entry of the order ruling on the motion. The court, on its own  
30 motion or on motion and for good cause shown, may order that

1 specified discovery be conducted limited to matters pertinent to  
2 the motion filed under this section.

3 (d) Determination by court.--

4 (1) The court shall dismiss any action arising from any  
5 CONSTITUTIONALLY protected communication if the court <--  
6 initially determines that the moving party establishes by a  
7 preponderance of the evidence that the claim is based upon a  
8 CONSTITUTIONALLY protected communication and, having made <--  
9 that initial determination, the court determines that the  
10 nonmoving party has not established by clear and convincing  
11 evidence a probability of prevailing on those portions of the  
12 claim which are not based upon a, IN WHOLE OR IN PART, OR ARE <--  
13 NOT SEPARABLE FROM, A CONSTITUTIONALLY protected  
14 communication.

15 (2) In making its determinations, the court shall  
16 consider the pleadings, and any supporting and opposing  
17 pleadings and affidavits or other evidence submitted stating  
18 the facts upon which the liability or defense is based.

19 (3) If the court determines that the moving party is not  
20 entitled to the immunities granted under this section, AS TO <--  
21 ALL OR PART OF THE CLAIM, THAT CLAIM OR PART THEREOF SHALL  
22 PROCEED AS A CIVIL ACTION PURSUANT TO GENERAL RULES. IN THAT  
23 EVENT neither ~~that~~ THE determination THAT THE CLAIM IS NOT IN <--  
24 WHOLE OR IN PART BASED ON CONSTITUTIONALLY PROTECTED  
25 COMMUNICATION nor the fact of that determination shall be  
26 admissible in evidence at any later stage of the case or in  
27 any subsequent action and no burden of proof or degree of  
28 proof otherwise applicable shall be affected by that  
29 determination in any later stage of the case or in any  
30 subsequent proceeding.

1 (e) Authorized recovery.--

2 (1) A moving party who prevails IN WHOLE OR IN PART on a <--  
3 motion to dismiss under this section shall be entitled to  
4 recover attorney fees and costs from any party who has filed  
5 an action, part or all of which has been dismissed under  
6 subsection (b)(1).

7 (2) The court shall hold a hearing, to be scheduled by  
8 the ~~clerk~~ PROTHONOTARY not more than 30 days from the ruling <--  
9 under this section in favor of the moving party, to determine  
10 damages to be assessed against the nonmoving party. In  
11 determining the damages, the court may consider any change in  
12 present or future operating costs to the moving party. The  
13 damages shall be a minimum of \$10,000. Any attorney fees,  
14 costs or damages due under this section shall be payable by  
15 any person or group of persons acting, directly or  
16 indirectly, in the interest of the party deemed responsible  
17 for the attorney fees, costs or damages.

18 (3) If the court finds that a motion to dismiss is  
19 frivolous or is solely intended to cause unnecessary delay,  
20 the court shall award costs and reasonable attorney fees to  
21 the party prevailing on the motion. Any attorney fees, costs  
22 or damages due under this section shall be payable by any  
23 person or group of persons acting, directly or indirectly, in  
24 the interest of the party deemed responsible for such  
25 attorney fees, costs or damages.

26 ~~(f) Claims in other jurisdiction. In the event that a claim <--~~  
27 ~~is brought or threatened against a citizen of this Commonwealth~~  
28 ~~in another jurisdiction the defendant may file a motion to~~  
29 ~~dismiss under this section in the courts of this Commonwealth.~~

30 ~~(g) (F) Construction.--This section shall be interpreted <--~~

1 broadly as to make its applicability the norm, not the  
2 exception, and any doubt regarding whether a communication is  
3 protected speech shall be resolved in favor of the position that  
4 it is.

5 ~~(h)~~ (G) Definitions.--As used in this section the following <--  
6 words and phrases shall have the meanings given to them in this  
7 subsection:

8 "CONSTITUTIONALLY PROTECTED COMMUNICATION." ANY GOOD FAITH <--  
9 COMMUNICATION IN FURTHERANCE OF A RIGHT TO PETITION OR A RIGHT  
10 TO FREE SPEECH, WHICH RIGHT IS EXERCISED IN CONNECTION WITH AN  
11 ISSUE OF PUBLIC CONCERN OR SOCIAL SIGNIFICANCE UNDER THE  
12 FOLLOWING CIRCUMSTANCES:

13 (1) ANY WRITTEN, ORAL, AUDIO, VISUAL OR ELECTRONIC  
14 STATEMENT OR WRITING IN CONNECTION WITH AN ISSUE UNDER  
15 CONSIDERATION OR REVIEW BY A LEGISLATIVE, EXECUTIVE,  
16 JUDICIAL, ADMINISTRATIVE OR OTHER GOVERNMENTAL BODY OR IN  
17 ANOTHER GOVERNMENTAL OR OFFICIAL PROCEEDING;

18 (2) ANY WRITTEN, ORAL, AUDIO, VISUAL OR ELECTRONIC  
19 STATEMENT OR WRITING THAT IS REASONABLY LIKELY TO ENCOURAGE  
20 CONSIDERATION OR REVIEW OF AN ISSUE BY A LEGISLATIVE,  
21 EXECUTIVE, JUDICIAL, ADMINISTRATIVE OR OTHER GOVERNMENTAL  
22 BODY OR IN ANOTHER GOVERNMENTAL OR OFFICIAL PROCEEDING;

23 (3) ANY WRITTEN, ORAL, AUDIO, VISUAL OR ELECTRONIC  
24 STATEMENT OR WRITING REASONABLY LIKELY TO ENLIST PUBLIC  
25 PARTICIPATION IN AN EFFORT TO EFFECT CONSIDERATION OF AN  
26 ISSUE BY A LEGISLATIVE, EXECUTIVE, JUDICIAL, ADMINISTRATIVE  
27 OR OTHER GOVERNMENTAL BODY OR IN ANOTHER GOVERNMENTAL OR  
28 OFFICIAL PROCEEDING; OR

29 (4) ANY WRITTEN, ORAL, AUDIO, VISUAL OR ELECTRONIC  
30 STATEMENT OR WRITING THAT FALLS WITHIN THE PROTECTION OF THE

1 RIGHT TO PETITION GOVERNMENT OR THE RIGHT TO FREE SPEECH  
2 UNDER THE CONSTITUTION OF THE UNITED STATES OR THE  
3 CONSTITUTION OF PENNSYLVANIA.

4 "Governmental proceeding." A proceeding, other than a  
5 judicial proceeding, conducted by an officer, official or body  
6 of this State or a political subdivision of this State,  
7 including a board or commission, or by an officer, official or  
8 body of the Federal Government.

9 "Moving party who prevails." A party who files a motion to  
10 dismiss under this section if, after the filing, the party  
11 against whom the motion is filed withdraws either the entire  
12 action or any part of the complaint pertaining to a protected  
13 communication.

14 "Protected communication." Any good faith communication in <--  
15 furtherance of a right to petition or a right to free speech,  
16 which right is exercised in connection with an issue of public  
17 concern under the following circumstances:

18 (1) any written, oral, audio, visual or electronic  
19 statement or writing in connection with an issue under  
20 consideration or review by a legislative, executive,  
21 judicial, administrative or other governmental body or in  
22 another governmental or official proceeding;

23 (2) any written, oral, audio, visual or electronic  
24 statement or writing that is reasonably likely to encourage  
25 consideration or review of an issue by a legislative,  
26 executive, judicial, administrative or other governmental  
27 body or in another governmental or official proceeding;

28 (3) any written, oral, audio, visual or electronic  
29 statement or writing reasonably likely to enlist public  
30 participation in an effort to effect consideration of an

1 ~~issue by a legislative, executive, judicial, administrative~~  
2 ~~or other governmental body or in another governmental or~~  
3 ~~official proceeding; or~~

4 ~~(4) any written, oral, audio, visual or electronic~~  
5 ~~statement or writing that falls within the protection of the~~  
6 ~~right to petition government under the Constitution of the~~  
7 ~~United States or the Constitution of Pennsylvania.~~

8 Section 3. This act shall take effect in 60 days.