

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 393 Session of
1999

INTRODUCED BY FEESE, GEORGE, MAITLAND, SNYDER, BARRAR, TIGUE,
PLATTS, GEIST, NICKOL, FARGO, CORRIGAN, KREBS, SAYLOR,
CHADWICK, DEMPSEY, TRELLO, LAUGHLIN, LYNCH, LEH, STAIRS,
HERMAN, WALKO, CURRY, HENNESSEY, MASLAND, MAHER, CLARK,
STERN, STEIL, BAKER, SCHRODER, McCALL, GANNON, S. H. SMITH,
YOUNGBLOOD, SEYFERT, STEELMAN, E. Z. TAYLOR, WILT, ORIE,
MICHLOVIC AND THOMAS, FEBRUARY 8, 1999

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
APRIL 19, 1999

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, providing for
3 participation in environmental law or regulation.

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

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

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

15 (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 to read:

13 § 8340.1. Participation in environmental law or regulation.

14 (a) Immunity.--

15 (1) A person who acts in furtherance of the person's
16 right of petition or free speech under the Constitution of
17 the United States or the Constitution of Pennsylvania in
18 connection with an issue related to enforcement or
19 implementation of environmental law or regulation shall be
20 immune from civil liability in any action except where the
21 communication to the government agency is not genuinely aimed
22 at procuring a favorable governmental action, result or
23 outcome.

24 (2) A communication is not genuinely aimed at procuring
25 a favorable governmental action, result or outcome if it:

26 (i) is not material or relevant to the enforcement
27 or implementation of environmental law or regulation;

28 (ii) was knowingly false when made;

29 (iii) was rendered with reckless disregard as to the
30 truth or falsity of the statement when made; or

1 (iv) represented a wrongful use of process or abuse
2 of process.

3 (b) Stay of discovery.--The court shall stay all discovery
4 proceedings in the action upon the filing of preliminary
5 objections for legal insufficiency of a pleading or other
6 appropriate motion on the basis of immunity, provided, however,
7 that the court, on motion and after a hearing and for good cause
8 shown, may order that specified discovery be conducted. The stay
9 of discovery shall remain in effect until notice of the entry of
10 the order ruling on the preliminary objections or on another
11 appropriate motion.

12 (c) Admissibility of court determination.--If the court
13 determines that the plaintiff has established that there is a
14 substantial likelihood that the plaintiff will prevail on the
15 claim, neither that determination nor the fact of that
16 determination shall be admissible in evidence at any later stage
17 of the case, and no burden of proof or degree of proof otherwise
18 applicable shall be affected by that determination.

19 (d) Intervention.--The government agency involved in the
20 furtherance of a person's right of petition or free speech under
21 the Constitution of the United States or the Constitution of
22 Pennsylvania in connection with a public issue may intervene or
23 otherwise participate as an amicus curiae in the action
24 involving public petition and participation.

25 (e) Legal protections of defendants.--Nothing in this
26 section shall be construed to limit any constitutional,
27 statutory or common-law protections of defendants to actions
28 involving public petition and participation.

29 (f) Abuse of legal process.--In addition to other costs or
30 remedies allowed by general rule or statute, in any

administrative or judicial proceeding related to the enforcement or implementation of environmental law or regulation, the agency or court may award costs, including reasonable attorney fees, if the agency or court determines that an action, appeal, claim, motion or pleading is frivolous or taken solely for delay or that the conduct of a party or counsel is dilatory or vexatious.

(g) Definitions.--The following words and phrases when used in this section shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Act in furtherance of a person's right of petition or free speech under the United States Constitution or the Constitution of Pennsylvania in connection with a public issue." Any written or oral statement or writing made before a legislative, executive or judicial proceeding, or any other official proceeding authorized by law; any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive or judicial body, or any other official proceeding authorized by law; any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; or any written or oral statement or writing made to a government agency in connection with the implementation and enforcement of environmental law and regulations.

"Enforcement of environmental law and regulations." Any activity related to the identification and elimination of violations of environmental laws and regulations, including investigations of alleged violations, inspections of activities subject to regulation under environmental law and regulations and responses taken to produce correction of the violations.

"Government agency." The Federal Government, the

1 Commonwealth and all of its departments, commissions, boards,
2 agencies and authorities, and all political subdivisions and
3 their authorities.

4 "Implementation of environmental law and regulations." Any
5 activity related to the development and administration of
6 environmental programs developed under environmental law and
7 regulations.

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