

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 406 Session of
2001

INTRODUCED BY GERLACH, WAUGH, CORMAN, M. WHITE, TOMLINSON,
THOMPSON AND EARLL, FEBRUARY 12, 2001

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, DECEMBER 10, 2001

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, establishing a cause of
3 action for frivolous litigation; further providing for
4 wrongful use of civil proceedings; and making an editorial
5 change.

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

8 ~~Section 1. Chapter 83 of Title 42 of the Pennsylvania~~ <—
9 ~~Consolidated Statutes is amended by adding a subchapter to read:~~

10 ~~SUBCHAPTER E~~

11 ~~FRIVOLOUS LITIGATION~~

12 ~~Sec.~~

13 ~~8350.1. Frivolous litigation.~~

14 ~~8350.2. Elements of cause of action.~~

15 ~~8350.3. Procedure.~~

16 ~~8350.4. Damages.~~

17 ~~8350.5. Other remedies.~~

18 ~~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 is a member or by a party who is not represented by an attorney. The injured party must file this action in the same court and division where the original action or matter was filed. This action shall not be collateral to the original action and shall proceed without reference to its status.~~

~~(b) Time for filing action. An action brought pursuant to this subchapter may be filed before the challenged proceeding on the civil complaint, counterclaim or joinder complaint is terminated.~~

~~(c) Relationship to other action. The action established under this subchapter is a separate cause of action than that provided for under Subchapter E.1 (relating to wrongful use of civil proceedings). A person may not be precluded from bringing an action pursuant to Subchapter E.1 on the sole basis that the person first brought an action under this subchapter.~~

~~§ 8350.2. Elements of cause of action.~~

~~A complaint, counterclaim or joinder complaint shall be presumed to be not frivolous unless one of the following elements is proven by a preponderance of the evidence:~~

~~(1) the civil complaint, counterclaim or joinder complaint is presented primarily for an improper purpose, including, but not limited to, harassment, business interruption, intentional infliction of emotional distress or unwarranted pecuniary gain;~~

~~(2) the claims set forth in the civil complaint,~~

~~counterclaim or joinder complaint are not warranted by existing law or by a reasonable argument for the extension, modification or reversal of existing law or the establishment of new law;~~

~~(3) the allegations and other factual contentions have no reasonable evidentiary support or are not likely to have reasonable evidentiary support, after a reasonable opportunity for further investigation or discovery; or~~

~~(4) the counterclaim or joinder complaint has no reasonable evidentiary support or is not likely to have reasonable evidentiary support, after a reasonable opportunity for further investigation or discovery.~~

~~§ 8350.3. Procedure.~~

~~(a) Notice to defendant. Before filing an action under this subchapter, the plaintiff must notify the defendant in writing of the intention to file the action and attach a copy of the proposed complaint. Each recipient of the complaint shall have 20 days in which to withdraw or otherwise cure the civil complaint, counterclaim, or joinder complaint giving rise to the claim of frivolous litigation.~~

~~(b) Effect of withdrawal or cure. If the civil complaint, counterclaim, or joinder complaint is withdrawn or otherwise cured, there shall be no basis for the cause of action, except that the plaintiff shall be entitled to recover court costs and reasonable attorney fees if the plaintiff files a motion for such recovery within 30 days of a withdrawal.~~

~~(c) Effect of recovery. Recovery by an injured party under this chapter shall not preclude the injured party from recovering damages, other than reasonable attorney fees and court costs, pursuant to Subchapter E.1 (relating to wrongful~~

1 ~~use of civil proceedings).~~

2 ~~§ 8350.4. Damages.~~

3 ~~When any element set forth in section 8350.2 (relating to~~
4 ~~elements of cause of action) has been proven by a preponderance~~
5 ~~of the evidence, the injured party is entitled to recover the~~
6 ~~following:~~

7 ~~(1) The harm normally resulting from any arrest or~~
8 ~~imprisonment or any dispossession or interference with the~~
9 ~~advantageous use of the injured party's land, chattels or~~
10 ~~other things suffered by the injured party during the course~~
11 ~~of the proceeding.~~

12 ~~(2) The harm to the injured party's reputation by any~~
13 ~~defamatory matter relating to the proceeding.~~

14 ~~(3) The cost of litigation, including, but not limited~~
15 ~~to, any reasonable attorney fees.~~

16 ~~(4) Lost income that the injured party has incurred in~~
17 ~~defending himself.~~

18 ~~(5) Any other pecuniary loss that has resulted from the~~
19 ~~proceeding.~~

20 ~~(6) Any other noneconomic loss caused by the~~
21 ~~proceedings.~~

22 ~~§ 8350.5. Other remedies.~~

23 ~~Nothing in this subchapter shall be construed to preclude the~~
24 ~~court from exercising its inherent supervisory power or from~~
25 ~~imposing appropriate nonmonetary or monetary sanctions upon~~
26 ~~attorneys, law firms and unrepresented parties who have engaged~~
27 ~~in frivolous or bad faith litigation under existing law and~~
28 ~~rules of procedure.~~

29 ~~§ 8350.6. Joint liability.~~

30 ~~Absent exceptional circumstances, a law firm shall be held~~

1 ~~jointly responsible for a frivolous civil complaint,~~
2 ~~counterclaim or joinder complaint filed by attorneys of the~~
3 ~~firm.~~

4 ~~Section 2. The heading of Subchapter E of Chapter 83 of~~
5 ~~Title 42 is amended to read:~~

6 SUBCHAPTER ~~[E]~~ E.1

7 ~~WRONGFUL USE OF CIVIL PROCEEDINGS~~

8 ~~Section 3. Section 8351 of Title 42 is amended by adding a~~
9 ~~subsection to read:~~

10 ~~§ 8351. Wrongful use of civil proceedings.~~

11 ~~* * *~~

12 ~~(c) Relationship to other action. The action established~~
13 ~~under this subchapter is a separate cause of action than that~~
14 ~~provided for under Subchapter E (relating to frivolous~~
15 ~~litigation). A person may not be precluded from bringing an~~
16 ~~action pursuant to this subchapter on the sole basis that the~~
17 ~~person first brought an action under Subchapter E.~~

18 ~~Section 4. The provisions of this act are severable. If any~~
19 ~~provision of this act or its application to any person or~~
20 ~~circumstance is held invalid, the invalidity shall not affect~~
21 ~~other provisions or applications of this act which can be given~~
22 ~~effect without the invalid provision or application.~~

23 ~~Section 5. This act shall take effect in 60 days.~~

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

26 SUBCHAPTER E

27 FRIVOLOUS LITIGATION

28 SEC.

29 8350.1. FRIVOLOUS LITIGATION.

30 8350.2. ELEMENTS OF CAUSE OF ACTION.

1 8350.3. PROCEDURE.

2 8350.4. DAMAGES.

3 8350.5. OTHER REMEDIES.

4 8350.6. JOINT LIABILITY.

5 § 8350.1. FRIVOLOUS LITIGATION.

6 (A) CAUSE OF ACTION ESTABLISHED.--THERE IS ESTABLISHED A
7 SEPARATE CAUSE OF ACTION FOR DAMAGES ARISING OUT OF THE FILING
8 OF A FRIVOLOUS CIVIL COMPLAINT, COUNTERCLAIM OR JOINDER
9 COMPLAINT BY AN ATTORNEY, THE LAW FIRM OF WHICH THE ATTORNEY IS
10 A MEMBER OR BY ANY PARTY WHO IS NOT REPRESENTED BY AN ATTORNEY.
11 THE INJURED PARTY MUST FILE THIS ACTION IN THE SAME COURT AND
12 DIVISION WHERE THE ORIGINAL ACTION OR MATTER WAS FILED. THIS
13 ACTION SHALL NOT BE COLLATERAL TO THE ORIGINAL ACTION AND SHALL
14 PROCEED WITHOUT REFERENCE TO ITS STATUS.

15 (B) TIME FOR FILING ACTION.--AN ACTION BROUGHT PURSUANT TO
16 THIS SUBCHAPTER MAY BE FILED BEFORE THE CHALLENGED PROCEEDING ON
17 THE CIVIL COMPLAINT, COUNTERCLAIM OR JOINDER COMPLAINT IS
18 TERMINATED.

19 (C) RELATIONSHIP TO OTHER ACTION.--THE ACTION ESTABLISHED
20 UNDER THIS SUBCHAPTER IS A SEPARATE CAUSE OF ACTION THAN THAT
21 PROVIDED FOR UNDER SUBCHAPTER E.1 (RELATING TO WRONGFUL USE OF
22 CIVIL PROCEEDINGS). A PERSON MAY NOT BE PRECLUDED FROM BRINGING
23 AN ACTION PURSUANT TO SUBCHAPTER E.1 ON THE SOLE BASIS THAT THE
24 PERSON FIRST BROUGHT AN ACTION UNDER THIS SUBCHAPTER.

25 § 8350.2. ELEMENTS OF CAUSE OF ACTION.

26 A COMPLAINT, COUNTERCLAIM OR JOINDER COMPLAINT IS FRIVOLOUS
27 WHEN THE PARTY FILING THE COMPLAINT, COUNTERCLAIM OR JOINDER
28 COMPLAINT HAS NOT PRODUCED ANY EVIDENCE ESTABLISHING PROBABLE
29 CAUSE TO SUPPORT THE FILING OF THE COMPLAINT, COUNTERCLAIM OR
30 JOINDER COMPLAINT OR HAS NOT PROPOSED ANY ACTION TO BE TAKEN BY

1 THAT PARTY TO PRODUCE OR PRESENT SUCH EVIDENCE AND ONE OF THE
2 FOLLOWING ELEMENTS IS PROVEN BY A PREPONDERANCE OF THE EVIDENCE:

3 (1) THE CIVIL COMPLAINT, COUNTERCLAIM OR JOINDER
4 COMPLAINT IS PRESENTED PRIMARILY FOR AN IMPROPER PURPOSE,
5 INCLUDING, BUT NOT LIMITED TO, HARASSMENT, INTERRUPTION OF
6 ANY LAWFUL BUSINESS ACTIVITY, INTENTIONAL INFLICTION OF
7 EMOTIONAL DISTRESS OR UNWARRANTED PECUNIARY GAIN; OR

8 (2) THE CLAIMS SET FORTH IN THE CIVIL COMPLAINT,
9 COUNTERCLAIM OR JOINDER COMPLAINT ARE NOT WARRANTED BY
10 EXISTING LAW OR BY A REASONABLE ARGUMENT FOR THE EXTENSION,
11 MODIFICATION OR REVERSAL OF EXISTING LAW OR THE ESTABLISHMENT
12 OF NEW LAW.

13 § 8350.3. PROCEDURE.

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

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

27 (C) EFFECT OF RECOVERY.--RECOVERY BY AN INJURED PARTY UNDER
28 THIS CHAPTER SHALL NOT PRECLUDE THE INJURED PARTY FROM
29 RECOVERING ANY DAMAGES WHICH THE INJURED PARTY MAY BE ENTITLED
30 TO, PURSUANT TO SUBCHAPTER E.1 (RELATING TO WRONGFUL USE OF

1 CIVIL PROCEEDINGS) AND WHICH HAVE NOT ALREADY BEEN RECOVERED
2 PURSUANT TO THIS CHAPTER.

3 § 8350.4. DAMAGES.

4 WHEN ANY ELEMENT SET FORTH IN SECTION 8350.2 (RELATING TO
5 ELEMENTS OF CAUSE OF ACTION) HAS BEEN PROVEN BY A PREPONDERANCE
6 OF THE EVIDENCE, THE INJURED PARTY IS ENTITLED TO RECOVER THE
7 FOLLOWING:

8 (1) THE HARM NORMALLY RESULTING FROM ANY DISPOSSESSION
9 OR INTERFERENCE WITH THE ADVANTAGEOUS USE OF THE INJURED
10 PARTY'S LAND, CHATTELS OR OTHER THINGS SUFFERED BY THE
11 INJURED PARTY DURING THE COURSE OF THE PROCEEDING.

12 (2) THE HARM TO THE INJURED PARTY'S REPUTATION.

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

15 (4) LOST INCOME THAT THE INJURED PARTY HAS INCURRED IN
16 DEFENDING HIMSELF.

17 (5) ANY OTHER PECUNIARY LOSS THAT HAS RESULTED FROM THE
18 PROCEEDING.

19 (6) ANY OTHER NONECONOMIC LOSS CAUSED BY THE
20 PROCEEDINGS.

21 § 8350.5. OTHER REMEDIES.

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

28 § 8350.6. JOINT LIABILITY.

29 ABSENT EXCEPTIONAL CIRCUMSTANCES, A LAW FIRM SHALL BE HELD
30 JOINTLY RESPONSIBLE FOR A FRIVOLOUS CIVIL COMPLAINT,

1 COUNTERCLAIM OR JOINDER COMPLAINT FILED BY ATTORNEYS OF THE
2 FIRM.

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

5 SUBCHAPTER [E] E.1

6 WRONGFUL USE OF CIVIL PROCEEDINGS

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

9 § 8351. WRONGFUL USE OF CIVIL PROCEEDINGS.

10 * * *

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

17 SECTION 4. THE PROVISIONS OF THIS ACT ARE NONSEVERABLE. IN
18 THE EVENT ANY PROVISION IN THIS ACT IS HELD LEGALLY OR
19 CONSTITUTIONALLY IMPERMISSIBLE, SUSPENDED BY THE JUDICIARY,
20 SUPERSEDED BY RULE OF COURT, RULED TO BE THE REGULATION OF THE
21 PRACTICE OF LAW OR OTHERWISE RENDERED INOPERATIVE BY JUDICIAL
22 ACTION THIS ENTIRE ACT SHALL BE VOID.

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