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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 95 Session of  
2015

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

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REFERRED TO JUDICIARY, MARCH 31, 2015

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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 protected  
4 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 protected communications.

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

8 (b) Motion to dismiss.--

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

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

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

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

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

1 (d) Determination by court.--

2 (1) The court shall dismiss any action arising from any  
3 protected communication if the court initially determines  
4 that the moving party establishes by a preponderance of the  
5 evidence that the claim is based upon a protected  
6 communication and, having made that initial determination,  
7 the court determines that the nonmoving party has not  
8 established by clear and convincing evidence a probability of  
9 prevailing on those portions of the claim which are not based  
10 upon a protected communication.

11 (2) In making its determinations, the court shall  
12 consider the pleadings, and any supporting and opposing  
13 pleadings and affidavits or other evidence submitted stating  
14 the facts upon which the liability or defense is based.

15 (3) If the court determines that the moving party is not  
16 entitled to the immunities granted under this section,  
17 neither that determination nor the fact of that determination  
18 shall be admissible in evidence at any later stage of the  
19 case or in any subsequent action and no burden of proof or  
20 degree of proof otherwise applicable shall be affected by  
21 that determination in any later stage of the case or in any  
22 subsequent proceeding.

23 (e) Authorized recovery.--

24 (1) A moving party who prevails on a motion to dismiss  
25 under this section shall be entitled to recover attorney fees  
26 and costs from any party who has filed an action, part or all  
27 of which has been dismissed under subsection (b) (1).

28 (2) The court shall hold a hearing, to be scheduled by  
29 the clerk not more than 30 days from the ruling under this  
30 section in favor of the moving party, to determine damages to

1 be assessed against the nonmoving party. In determining the  
2 damages, the court may consider any change in present or  
3 future operating costs to the moving party. The damages shall  
4 be a minimum of \$10,000. Any attorney fees, costs or damages  
5 due under this section shall be payable by any person or  
6 group of persons acting, directly or indirectly, in the  
7 interest of the party deemed responsible for the attorney  
8 fees, costs or damages.

9 (3) If the court finds that a motion to dismiss is  
10 frivolous or is solely intended to cause unnecessary delay,  
11 the court shall award costs and reasonable attorney fees to  
12 the party prevailing on the motion. Any attorney fees, costs  
13 or damages due under this section shall be payable by any  
14 person or group of persons acting, directly or indirectly, in  
15 the interest of the party deemed responsible for such  
16 attorney fees, costs or damages.

17 (f) Claims in other jurisdiction.--In the event that a claim  
18 is brought or threatened against a citizen of this Commonwealth  
19 in another jurisdiction the defendant may file a motion to  
20 dismiss under this section in the courts of this Commonwealth.

21 (g) Construction.--This section shall be interpreted broadly  
22 as to make its applicability the norm, not the exception, and  
23 any doubt regarding whether a communication is protected speech  
24 shall be resolved in favor of the position that it is.

25 (h) Definitions.--As used in this section the following  
26 words and phrases shall have the meanings given to them in this  
27 subsection:

28 "Governmental proceeding." A proceeding, other than a  
29 judicial proceeding, conducted by an officer, official or body  
30 of this State or a political subdivision of this State,

1 including a board or commission, or by an officer, official or  
2 body of the Federal Government.

3 "Moving party who prevails." A party who files a motion to  
4 dismiss under this section if, after the filing, the party  
5 against whom the motion is filed withdraws either the entire  
6 action or any part of the complaint pertaining to a protected  
7 communication.

8 "Protected communication." Any good faith communication in  
9 furtherance of a right to petition or a right to free speech,  
10 which right is exercised in connection with an issue of public  
11 concern under the following circumstances:

12 (1) any written, oral, audio, visual or electronic  
13 statement or writing in connection with an issue under  
14 consideration or review by a legislative, executive,  
15 judicial, administrative or other governmental body or in  
16 another governmental or official proceeding;

17 (2) any written, oral, audio, visual or electronic  
18 statement or writing that is reasonably likely to encourage  
19 consideration or review of an issue by a legislative,  
20 executive, judicial, administrative or other governmental  
21 body or in another governmental or official proceeding;

22 (3) any written, oral, audio, visual or electronic  
23 statement or writing reasonably likely to enlist public  
24 participation in an effort to effect consideration of an  
25 issue by a legislative, executive, judicial, administrative  
26 or other governmental body or in another governmental or  
27 official proceeding; or

28 (4) any written, oral, audio, visual or electronic  
29 statement or writing that falls within the protection of the  
30 right to petition government under the Constitution of the

1 United States or the Constitution of Pennsylvania.

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