

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1367 Session of
1980INTRODUCED BY STAUFFER, HAGER, COPPERSMITH AND KELLEY,
APRIL 8, 1980

SENATOR O'PAKE, JUDICIARY, AS AMENDED, SEPTEMBER 22, 1980

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, creating a statutory
3 cause of action for ~~malicious use of civil process~~ WRONGFUL
4 USE OF CIVIL PROCEEDINGS. <—

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

7 Section 1. Chapter 83 of Title 42, act of November 25, 1970
8 (P.L.707, No.230), known as the Pennsylvania Consolidated
9 Statutes, is amended by adding a subchapter to read:

CHAPTER 83

PARTICULAR RIGHTS AND IMMUNITIES

* * *

SUBCHAPTER E~~MALICIOUS USE OF CIVIL PROCESS~~ <—WRONGFUL USE OF CIVIL PROCEEDINGS <—

Sec.

8351. ~~Malicious use of civil process~~ WRONGFUL USE OF CIVIL <—PROCEEDINGS.

1 8352. Existence of probable cause.

2 8353. Damages.

3 8354. Burden of proof.

4 § 8351. ~~Malicious use of civil process~~ WRONGFUL USE OF CIVIL <—
5 PROCEEDINGS.

6 (a) Elements of action.--A person who takes an active part <—
7 ~~in the initiation, continuation or procurement~~ PART IN THE <—
8 PROCUREMENT, INITIATION OR CONTINUATION of civil proceedings
9 against another is subject to liability to the other for <—
10 ~~malicious use of civil process if~~ FOR WRONGFUL USE OF CIVIL <—
11 PROCEEDINGS:

12 (1) he acts IN A GROSSLY NEGLIGENT MANNER OR without <—
13 probable cause and primarily for a purpose other than that of
14 securing the proper DISCOVERY, JOINDER OF PARTIES OR <—
15 adjudication of the claim in which the proceedings are based;
16 and

17 (2) the proceedings have terminated in favor of the
18 person against whom they are brought.

19 (b) Arrest or seizure of person or property not required.--
20 The arrest or seizure of the person or property of the plaintiff
21 shall not be a necessary element for an action brought pursuant
22 to this subchapter.

23 § 8352. Existence of probable cause.

24 A person who takes an active part in the initiation, <—
25 ~~continuation or procurement~~ PART IN THE PROCUREMENT, INITIATION <—
26 OR CONTINUATION of civil proceedings against another has
27 probable cause for doing so if he reasonably believes in the
28 existence of the facts upon which the claim is based, and
29 either:

30 (1) ~~correctly or~~ reasonably believes that under those <—

1 facts the claim may be valid under the applicable EXISTING OR <—
2 DEVELOPING law; or <—

3 (2) believes to this effect in reliance upon the advice
4 of counsel, sought in good faith and given after full
5 disclosure of all relevant facts within his knowledge and
6 information; OR <—

7 (3) BELIEVES AS AN ATTORNEY OF RECORD, IN GOOD FAITH
8 THAT HIS PROCUREMENT, INITIATION OR CONTINUATION OF A CIVIL
9 CAUSE IS NOT INTENDED TO MERELY HARASS OR MALICIOUSLY INJURE
10 THE OPPOSITE PARTY.

11 § 8353. Damages.

12 When the essential elements of an action brought pursuant to
13 this subchapter have been established as provided in section
14 8351 (relating to ~~malicious use of civil process~~ WRONGFUL USE OF <—
15 CIVIL PROCEEDINGS), the plaintiff is entitled to recover for the
16 following:

17 (1) The harm normally resulting from any arrest or
18 imprisonment, or any dispossession or interference with the
19 advantageous use of his land, chattels or other things,
20 suffered by him during the course of the proceedings.

21 (2) The harm to his reputation by any defamatory matter
22 alleged as the basis of the proceedings.

23 (3) The expense, including any reasonable attorney fees,
24 that he has reasonably incurred in defending himself against
25 the proceedings.

26 (4) Any specific pecuniary loss that has resulted from
27 the proceedings.

28 (5) Any emotional distress that is caused by the
29 proceedings.

30 (6) PUNITIVE DAMAGES ACCORDING TO LAW IN APPROPRIATE <—

1 CASES.

2 § 8354. Burden of proof.

3 In an action brought pursuant to this subchapter the
4 plaintiff has the burden of proving, when the issue is properly
5 raised, that:

6 (1) The defendant has initiated, continued or procured <—
7 PROCURED, INITIATED OR CONTINUED the civil proceedings <—
8 against him.

9 (2) The proceedings were terminated in his favor.

10 (3) The defendant did not have probable cause for his
11 action.

12 (4) The primary purpose for which the proceedings were
13 brought was not that of securing the proper DISCOVERY, <—
14 JOINDER OF PARTIES OR adjudication of the claim on which the
15 proceedings were based.

16 (5) The plaintiff suffered special harm, and the extent <—
17 of the harm.

18 (5) THE PLAINTIFF HAS SUFFERED DAMAGES AS SET FORTH IN <—
19 SECTION 8353 (RELATING TO DAMAGES).

20 Section 2. This act shall take effect in 60 days and shall
21 be applicable to causes of action accruing thereafter.