
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

SENATE AMENDMENTS TO HOUSE AMENDMENTS, NOVEMBER 27, 2002

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.~~ ACTION FOR UNAUTHORIZED ENACTMENT OR ENFORCEMENT OF <—
6 LOCAL ORDINANCES GOVERNING AGRICULTURAL OPERATIONS; AND
7 PROVIDING FOR CERTAIN ATTORNEY FEES AND COSTS.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

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

12 ~~SUBCHAPTER E~~

13 ~~FRIVOLOUS LITIGATION~~

14 ~~Sec.~~

15 ~~8350.1. Frivolous litigation.~~

16 ~~8350.2. Elements of cause of action.~~

17 ~~8350.3. Procedure.~~

18 ~~8350.4. Damages.~~

19 ~~8350.5. Other remedies.~~

1 ~~8350.6. Joint liability.~~

2 ~~§ 8350.1. Frivolous litigation.~~

3 ~~(a) Cause of action established. There is established a~~
4 ~~separate cause of action for damages arising out of the filing~~
5 ~~of a frivolous civil complaint, counterclaim or joinder~~
6 ~~complaint by an attorney, the law firm of which the attorney is~~
7 ~~a member or by any party who is not represented by an attorney.~~
8 ~~The injured party must file this action in the same court and~~
9 ~~division where the original action or matter was filed. This~~
10 ~~action shall not be collateral to the original action and shall~~
11 ~~proceed without reference to its status.~~

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

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

22 ~~§ 8350.2. Elements of cause of action.~~

23 ~~A complaint, counterclaim or joinder complaint is frivolous~~
24 ~~when the party filing the complaint, counterclaim or joinder~~
25 ~~complaint has not produced reasonable evidence establishing~~
26 ~~facts essential to the allegations set forth in the complaint,~~
27 ~~counterclaim or joinder complaint or has not proposed reasonable~~
28 ~~action to be taken by that party to produce or present such~~
29 ~~evidence and one of the following elements is proven by a~~
30 ~~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, interruption of any lawful business activity, intentional infliction of emotional distress or unwarranted pecuniary gain; or~~

~~(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.~~

~~§ 8350.3. Procedure.~~

~~(a) Notice to defendant. Before filing an action under this subchapter, the plaintiff in this action 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 proposed 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, expenses 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 any damages which the injured party may be entitled to, pursuant to Subchapter E.1 (relating to wrongful use of civil proceedings) and which have not already been recovered pursuant to this chapter.~~

~~§ 8350.4. Damages.~~

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

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

~~(2) The harm to the injured party's reputation.~~

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

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

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

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

~~§ 8350.5. Other remedies.~~

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

~~§ 8350.6. Joint liability.~~

~~Absent exceptional circumstances, a law firm shall be held jointly responsible for a frivolous civil complaint, counterclaim or joinder complaint filed by attorneys of the firm.~~

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

3 ~~SUBCHAPTER [E] E.1~~

4 ~~WRONGFUL USE OF CIVIL PROCEEDINGS~~

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

7 ~~§ 8351. Wrongful use of civil proceedings.~~

8 ~~* * *~~

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

15 ~~Section 4. The provisions of this act are nonseverable. In~~
16 ~~the event any provision in this act is held legally or~~
17 ~~constitutionally impermissible, suspended by the judiciary,~~
18 ~~superseded by rule of court, ruled to be the regulation of the~~
19 ~~practice of law or otherwise rendered inoperative by judicial~~
20 ~~action this entire act shall be void.~~

21 SECTION 1. SECTION 8542(B) OF TITLE 42 OF THE PENNSYLVANIA
22 CONSOLIDATED STATUTES IS AMENDED BY ADDING A PARAGRAPH TO READ:
23 § 8542. EXCEPTIONS TO GOVERNMENTAL IMMUNITY.

24 ~~* * *~~

25 (B) ACTS WHICH MAY IMPOSE LIABILITY.--THE FOLLOWING ACTS BY
26 A LOCAL AGENCY OR ANY OF ITS EMPLOYEES MAY RESULT IN THE
27 IMPOSITION OF LIABILITY ON A LOCAL AGENCY:

28 ~~* * *~~

29 (9) UNAUTHORIZED ENACTMENT OR ENFORCEMENT OF LOCAL
30 ORDINANCES GOVERNING NORMAL AGRICULTURAL OPERATIONS, AS

1 PROVIDED IN SECTION 8550.1 (RELATING TO UNAUTHORIZED
2 ENACTMENT OR ENFORCEMENT OF LOCAL ORDINANCES GOVERNING NORMAL
3 AGRICULTURAL OPERATIONS).

4 SECTION 2. TITLE 42 IS AMENDED BY ADDING A SECTION TO READ:

5 § 8550.1. UNAUTHORIZED ENACTMENT OR ENFORCEMENT OF LOCAL
6 ORDINANCES GOVERNING NORMAL AGRICULTURAL OPERATIONS.

7 (A) RIGHT OF ACTION.--ANY PERSON WHO IS AGGRIEVED BY AN
8 ENACTMENT OR ENFORCEMENT OF AN UNAUTHORIZED LOCAL ORDINANCE
9 GOVERNING NORMAL AGRICULTURAL OPERATIONS MAY BRING AN ACTION
10 AGAINST THE LOCAL AGENCY IN A COURT OF APPROPRIATE JURISDICTION
11 TO INVALIDATE THE ORDINANCE OR ENJOIN THE ENFORCEMENT THEREOF.

12 (B) ATTORNEY FEES AND COSTS.--

13 (1) IF THE COURT DETERMINES THAT OFFICIALS OR EMPLOYEES
14 OF THE LOCAL AGENCY ENACTED OR ENFORCED AN UNAUTHORIZED LOCAL
15 ORDINANCE GOVERNING NORMAL AGRICULTURAL OPERATIONS WILLFULLY
16 OR WITH WANTON DISREGARD OF THE LIMITATION OF AUTHORITY
17 ESTABLISHED UNDER STATE LAW, THE COURT MAY ORDER THE LOCAL
18 AGENCY TO PAY THE PLAINTIFF REASONABLE ATTORNEY FEES AND
19 OTHER LITIGATION COSTS INCURRED BY THE PLAINTIFF IN
20 CONNECTION WITH THE ACTION.

21 (2) IF THE COURT DETERMINES THAT THE ACTION BROUGHT BY
22 THE PLAINTIFF WAS FRIVOLOUS OR WAS BROUGHT WITHOUT
23 SUBSTANTIAL JUSTIFICATION IN CLAIM THAT THE LOCAL ORDINANCE
24 IN QUESTION WAS UNAUTHORIZED, THE COURT MAY ORDER THE
25 PLAINTIFF TO PAY THE LOCAL AGENCY REASONABLE ATTORNEY FEES
26 AND OTHER LITIGATION COSTS INCURRED BY THE LOCAL AGENCY IN
27 DEFENDING THE ACTION.

28 (3) ATTORNEY FEES AND LITIGATION COSTS WHICH MAY BE
29 AWARDED UNDER THIS SECTION ARE NOT SUBJECT TO THE LIMITATION
30 IN LIABILITY OTHERWISE PRESCRIBED IN THIS SUBCHAPTER.

1 (C) RIGHT OF ACTION NOT EXCLUSIVE.--ANY ACTION BY OR AWARD
2 TO AN AGGRIEVED PERSON UNDER THIS SECTION SHALL NOT BAR ANY
3 OTHER ACTION WHICH MAY OTHERWISE BE BROUGHT UNDER THIS
4 SUBCHAPTER AGAINST THE LOCAL AGENCY OR OFFICIAL OF THE LOCAL
5 AGENCY FOR WILLFUL MISCONDUCT.

6 (D) EFFECT ON OTHER POWERS AND DUTIES.--NOTHING IN THIS
7 SECTION SHALL BE CONSTRUED TO DIMINISH OR EXPAND THE AUTHORITY
8 PROVIDED TO ANY MUNICIPALITY:

9 (1) UNDER OTHER LAWS TO REGULATE, CONTROL OR REQUIRE
10 PERMITTING FOR THE LAND APPLICATION OF CLASS A OR B SEWAGE
11 SLUDGE.

12 (2) TO REGULATE AGRICULTURAL OPERATIONS OTHERWISE
13 PROVIDED TO ANY MUNICIPALITY UNDER THE ACT OF MAY 20, 1993
14 (P.L.12, NO.6), KNOWN AS THE NUTRIENT MANAGEMENT ACT, OR
15 OTHER LAWS OF THIS COMMONWEALTH.

16 (E) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING
17 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
18 SUBSECTION:

19 "NORMAL AGRICULTURAL OPERATION." AS DEFINED IN THE ACT OF
20 JUNE 10, 1982 (P.L.454, NO.133), ENTITLED "AN ACT PROTECTING
21 AGRICULTURAL OPERATIONS FROM NUISANCE SUITS AND ORDINANCES UNDER
22 CERTAIN CIRCUMSTANCES."

23 "UNAUTHORIZED LOCAL ORDINANCE." ANY ORDINANCE WHICH:

24 (1) PROHIBITS OR LIMITS OR ATTEMPTS TO PROHIBIT OR LIMIT
25 THE PERFORMANCE OF NORMAL AGRICULTURAL OPERATIONS; AND

26 (2) THE LOCAL AGENCY HAD NO LEGAL AUTHORITY TO ENACT OR
27 ENFORCE UNDER STATE LAW OR THE LOCAL AGENCY WAS PROHIBITED OR
28 PREEMPTED UNDER STATE LAW FROM ENACTING OR ENFORCING.

29 SECTION 3. ALL ACTS AND PARTS OF ACTS ARE REPEALED INSOFAR
30 AS THEY ARE INCONSISTENT WITH THIS ACT.

1 SECTION 4. THE ADDITION OF 42 PA.C.S. § 8550.1 SHALL APPLY
2 TO LOCAL ORDINANCES EXISTING AT THE TIME OF AND SUBSEQUENT TO
3 THE EFFECTIVE DATE OF THIS ACT.

4 Section 5. This act shall take effect in 60 days.