

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2386 Session of
1980

INTRODUCED BY McKELVEY, SALVATORE AND ROCKS, MARCH 18, 1980

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 18, 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 wrongful initiation of civil proceedings.

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

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

9 CHAPTER 83

10 PARTICULAR RIGHTS AND IMMUNITIES

11 * * *

12 SUBCHAPTER E

13 WRONGFUL INITIATION OF CIVIL PROCEEDINGS

14 Sec.

15 8351. Wrongful initiation of civil proceedings.

16 8352. Existence of probable cause.

17 8353. Damages.

18 8354. Burden of proof.

1 § 8351. Wrongful initiation of civil proceedings.

2 (a) Elements of action.--A person who takes an active part
3 in the initiation, continuation or procurement of civil
4 proceedings against another is subject to liability to the other
5 for wrongful civil proceedings if:

6 (1) he acts without probable cause and primarily for a
7 purpose other than that of securing the proper adjudication
8 of the claim in which the proceedings are based; and

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

11 (b) Arrest or seizure of person or property not required.--
12 The arrest or seizure of the person or property of the plaintiff
13 shall not be a necessary element for an action brought pursuant
14 to this subchapter.

15 § 8352. Existence of probable cause.

16 A person who takes an active part in the initiation,
17 continuation or procurement of civil proceedings against another
18 has probable cause for doing so if he reasonably believes in the
19 existence of the facts upon which the claim is based, and
20 either:

21 (1) correctly or reasonably believes that under those
22 facts the claim may be valid under the applicable law; or

23 (2) believes to this effect in reliance upon the advice
24 of counsel, sought in good faith and given after full
25 disclosure of all relevant facts within his knowledge and
26 information.

27 § 8353. Damages.

28 When the essential elements of an action brought pursuant to
29 this subchapter have been established as provided in section
30 8351 (relating to wrongful initiation of civil proceedings), the

1 plaintiff is entitled to recover for the following:

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

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

8 (3) The expense, including any reasonable attorney fees,
9 that he has reasonably incurred in defending himself against
10 the proceedings.

11 (4) Any specific pecuniary loss that has resulted from
12 the proceedings.

13 (5) Any emotional distress that is caused by the
14 proceedings.

15 (6) Punitive damages in cases where the defendant
16 initiated the action in wanton and reckless disregard for the
17 rights of the plaintiff.

18 § 8354. Burden of proof.

19 In an action brought pursuant to this subchapter the
20 plaintiff has the burden of proving, when the issue is properly
21 raised, that:

22 (1) The defendant has initiated, continued or procured
23 the civil proceedings against him.

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

25 (3) The defendant did not have probable cause for his
26 action.

27 (4) The primary purpose for which the proceedings were
28 brought was not that of securing the proper adjudication of
29 the claim on which the proceedings were based.

30 (5) The plaintiff suffered special harm, and the extent

1 of the harm.

2 (6) The circumstances make the recovery of punitive
3 damages appropriate.

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