

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 281

Session of
1981

INTRODUCED BY W. D. HUTCHINSON, HAGARTY, EARLEY, KUKOVICH,
HOEFFEL, WACHOB, COWELL, MANDERINO, H. WILLIAMS, WHITE,
LASHINGER, BERSON, ALDEN, FREIND, SPITZ, LAUGHLIN, REBER AND
PICCOLA, JANUARY 27, 1981

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 27, 1981

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, by further providing for
3 wrongful use of civil proceedings.

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

6 Section 1. Sections 8351, 8352 and 8353 of Title 42, act of
7 November 25, 1970 (P.L.707, No.230), known as the Pennsylvania
8 Consolidated Statutes, added December 19, 1980 (No.232), are
9 amended to read:

10 § 8351. Wrongful use of civil proceedings.

11 (a) Elements of action.--A person who [takes] is a party or
12 attorney of record or who otherwise takes an active and
13 substantial part in the procurement, initiation or continuation
14 of civil proceedings against another is subject to liability to
15 the other for wrongful use of civil proceedings if:

16 (1) he acts [in a grossly negligent manner or] with
17 malice and without probable cause and primarily for a purpose

1 other than that of securing the proper discovery, joinder of
2 parties or adjudication of the claim in which the proceedings
3 are based; and

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

6 (b) Arrest or seizure of person or property not required.--
7 The arrest or seizure of the person or property of the plaintiff
8 shall not be a necessary element for an action brought pursuant
9 to this subchapter.

10 § 8352. Existence of probable cause.

11 A person who [takes] is a party or attorney of record or who
12 otherwise takes an active and substantial part in the
13 procurement, initiation or continuation of civil proceedings
14 against another has probable cause for doing so if he reasonably
15 believes in the existence of the facts upon which the claim is
16 based, and either:

17 (1) reasonably believes that under those facts the claim
18 may be valid under the existing or developing law;

19 (2) believes to this effect in reliance upon the advice
20 of counsel, sought in good faith and given after full
21 disclosure of all relevant facts within his knowledge and
22 information; or

23 (3) believes as an attorney of record, in good faith
24 that his procurement, initiation or continuation of a civil
25 cause is not intended to merely harass or maliciously injure
26 the opposite party.

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 use 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 according to law in appropriate
16 cases.] the expense, including any reasonable attorney fees
17 that he has reasonably incurred in defending himself against
18 the wrongfully initiated proceedings, as well as such damages
19 as may otherwise be awarded for an intentional tort.

20 Section 2. Section 8354 of Title 42 is repealed.

21 Section 3. This act shall take effect in 60 days and shall
22 be applicable to causes of action accruing thereafter.