

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2356 Session of
1990

INTRODUCED BY FLICK, NOYE, GEIST, BURD, YANDRISEVITS, SAURMAN,
TRELLO, FARGO, MORRIS AND LANGTRY, MARCH 19, 1990

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 19, 1990

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, 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. Section 8351(b) of Title 42 of the Pennsylvania
7 Consolidated Statutes is amended to read:

8 § 8351. Wrongful use of civil proceedings.

9 * * *

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

14 Section 2. The introductory paragraph of section 8353 of
15 Title 42 is amended and the section is amended by adding a
16 paragraph to read:

17 § 8353. Damages.

18 When the essential elements of an action brought pursuant to

1 this subchapter have been established as provided in section
2 8351 (relating to wrongful use of civil proceedings), the
3 [plaintiff] aggrieved party is entitled to recover for the
4 following:

5 * * *

6 (7) Court costs, including fees under section 8355(b)(5)
7 (relating to procedure) and reasonable attorney fees for the
8 maintenance of the action.

9 Section 3. Section 8354 of Title 42 is amended to read:

10 § 8354. Burden of proof.

11 In an action brought pursuant to this subchapter the
12 [plaintiff] aggrieved party has the burden of proving, when the
13 issue is properly raised, that:

14 (1) The [defendant has] plaintiff in the original action
15 procured, initiated or continued the civil proceedings
16 against him.

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

18 (3) The [defendant] plaintiff in the original action did
19 not have probable cause for his action.

20 (4) The primary purpose for which the proceedings were
21 brought was not that of securing the proper discovery,
22 joinder of parties or adjudication of the claim on which the
23 proceedings were based.

24 (5) The [plaintiff] aggrieved party has suffered damages
25 as set forth in section 8353 (relating to damages).

26 Section 4. Title 42 is amended by adding a section to read:

27 § 8355. Procedure.

28 (a) Commencement.--

29 (1) In actions before a district justice or arbitration
30 panel, the aggrieved party may make an oral application for

1 wrongful use determination at the close of the trial in the
2 presence of all parties and the tribunal. The district
3 justice or panel shall note the application on an
4 adjudication form bearing the decision in the aggrieved
5 party's favor.

6 (2) In actions tried before a jury, the aggrieved party
7 may make oral application after the rendering of the verdict
8 in his favor and prior to the jury's dismissal. The
9 application shall be made part of the record.

10 (3) In actions tried before a judge without a jury, the
11 aggrieved party may make an oral application at the close of
12 trial prior to adjournment. The application shall be made
13 part of the record.

14 (4) In actions terminated in the aggrieved party's favor
15 prior to an adjudication, an oral application may be made by
16 the aggrieved party upon termination in his favor and shall
17 be made part of the record.

18 (5) In actions terminated in the aggrieved party's favor
19 prior to trial, the aggrieved party may make a written
20 application to the court within five days of termination.

21 (b) Procedure after application.--

22 (1) The aggrieved party must file a written statement of
23 claims in the original action against the plaintiff or other
24 person involving the basis for initiation of wrongful use
25 action and damages sustained within seven days of making
26 application under subsection (a).

27 (2) Within seven days after service of the statement of
28 claims under paragraph (1), the respondent must file a
29 written answer.

30 (3) Within 14 days after service of answer under

1 paragraph (2), the parties must provide all information
2 requested and discoverable under the Pennsylvania Rules of
3 Civil Procedure, unless otherwise ordered by the court upon
4 good cause shown.

5 (4) Unless otherwise ordered by the court for good cause
6 shown, failure of a party to file a statement or answer or
7 provide discovery within the time limits set forth in
8 paragraphs (1) through (3) shall result in the entry of
9 judgment for the nondefaulting party. If the defaulting party
10 was not the plaintiff in the original action, the issue of
11 damages sustained by the aggrieved party shall be heard by
12 the tribunal that terminated the underlying suit in the
13 aggrieved party's favor.

14 (5) Hearings under this subsection shall be conducted
15 before the tribunal that terminated the underlying suit in
16 the aggrieved party's favor within 45 days of termination
17 unless extended by order of court upon good cause shown.
18 Hearings shall follow the Pennsylvania Rules of Civil
19 Procedure pertaining to trials to the extent possible:

20 (i) If the tribunal that terminated in the aggrieved
21 party's favor utilizes a jury, the jury shall be
22 reconstituted for the hearing under this paragraph. The
23 court shall appoint a special master to preside over the
24 conduct of the hearing and rule on evidentiary and
25 procedural questions. Jurors shall be paid \$35 per day
26 for each day of the hearing. Special masters shall be
27 paid \$150 per day.

28 (ii) If the tribunal that terminated in the
29 aggrieved party's favor was an arbitration panel, the
30 panel shall be reconstituted for the hearing. Each

1 panelist shall be paid \$100 per day for each day of
2 hearing.

3 (iii) If the tribunal that terminated in the
4 aggrieved party's favor was a judge or district justice,
5 that judge or district justice shall conduct the hearing.
6 An administrative fee of \$300 shall be paid by the
7 aggrieved party bringing the wrongful use action prior to
8 the hearing.

9 (6) The tribunal shall submit a written determination on
10 the issues before it within three days after completion of
11 the hearing.

12 (c) Posthearing process.--

13 (1) Exceptions to written determinations by tribunals
14 shall be taken in accordance with the Pennsylvania Rules of
15 Civil Procedure pertaining to posttrial motions. Failure to
16 file an exception in the nature of a posttrial motion within
17 the time prescribed shall constitute a waiver of any right to
18 posttrial relief.

19 (2) If no exceptions are taken, or when all posthearing
20 issues are finally resolved, the prevailing party in the
21 wrongful use action may have any determination entered as a
22 judgment against the nonprevailing party.

23 (3) Execution on, and satisfaction of, a judgment under
24 this paragraph shall be in accordance with the Pennsylvania
25 Rules of Civil Procedure.

26 Section 5. This act shall apply to actions in which the
27 underlying action is commenced on or after the effective date of
28 this act.

29 Section 6. This act shall take effect immediately.