
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 95 Session of
2017

INTRODUCED BY BIZZARRO, O'BRIEN, NEILSON, DRISCOLL, CALTAGIRONE,
SCHLOSSBERG, D. COSTA, SIMS, STURLA, McCARTER, McNEILL,
ROZZI, FREEMAN AND SCHWEYER, JANUARY 23, 2017

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 23, 2017

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, in particular rights and
3 immunities, providing for immunity for constitutionally
4 protected communications.

5 The General Assembly finds and declares as follows:

6 (1) There has been a disturbing increase in lawsuits
7 brought primarily to chill the valid exercise of the
8 constitutional rights of freedom of speech and petition for
9 the redress of grievances.

10 (2) It is in the public interest to encourage continued
11 participation in matters of public significance, and this
12 participation should not be chilled through abuse of the
13 judicial process.

14 (3) This act is intended to grant immunity to those
15 groups or parties exercising these rights and to be construed
16 broadly.

17 The General Assembly of the Commonwealth of Pennsylvania
18 hereby enacts as follows:

1 Section 1. Title 42 of the Pennsylvania Consolidated
2 Statutes is amended by adding a section to read:

3 § 8340.3. Immunity for constitutionally protected
4 communications.

5 (a) General rule.--A person who engages in any
6 constitutionally protected communication shall be immune from
7 any civil action for claims based upon that communication. If a
8 legal action is instituted against a party which is based on,
9 relates to or is in response to the party's constitutionally
10 protected communication, that party may file a motion to dismiss
11 the legal action in accordance with this section.

12 (b) Motion to dismiss.--

13 (1) A motion to dismiss under this section may be filed
14 at any time before the passage of 30 days after the filing of
15 a responsive pleading by the moving party or, in the court's
16 discretion, at any later time upon terms the court deems
17 proper.

18 (2) The motion to dismiss shall be scheduled by the
19 prothonotary for a hearing not more than 30 days after the
20 service of the motion unless the docket conditions of the
21 court require a later hearing.

22 (3) An order granting or denying a motion to dismiss
23 shall be immediately appealable.

24 (4) If a court grants a motion to dismiss but fails to
25 award costs, fees or damages as required, the order shall
26 also be immediately appealable and the moving party may file
27 a separate action to recover costs, fees and damages.

28 (c) Stay of discovery.--All discovery proceedings in the
29 action shall be stayed upon the filing of a motion to dismiss
30 under this section. The stay shall remain in effect until the

1 entry of the order ruling on the motion. The court, on its own
2 motion or on motion and for good cause shown, may order that
3 specified discovery be conducted limited to matters pertinent to
4 the motion filed under this section.

5 (d) Determination by court.--

6 (1) The court shall dismiss any action arising from
7 constitutionally protected communication if the court
8 initially determines that the moving party establishes by a
9 preponderance of the evidence that the claim is based upon a
10 constitutionally protected communication and, having made
11 that initial determination, the court determines that the
12 nonmoving party has not demonstrated a probability of
13 prevailing on those portions of the claim which are not based
14 upon, in whole or in part, or are not separable from, a
15 constitutionally protected communication.

16 (2) In making the determinations, the court shall
17 consider the pleadings and any supporting and opposing
18 pleadings and affidavits or other evidence submitted stating
19 the facts upon which the liability or defense is based.

20 (3) If the court determines that the moving party is not
21 entitled to the immunities granted under this section, as to
22 all or part of the claim, the following shall apply:

23 (i) The claim or part thereof shall proceed as a
24 civil action in accordance with general rules.

25 (ii) The following may not be admissible as evidence
26 at any later stage of the case or in a subsequent action
27 and no burden of proof or degree of proof otherwise
28 applicable shall be affected by that determination in any
29 later stage of the case or in any subsequent proceeding:

30 (A) The determination that the claim is not in

1 whole or in part based on constitutionally protected
2 communication.

3 (B) The fact of that determination.

4 (e) Authorized recovery.--

5 (1) A moving party who prevails in whole or in part on a
6 motion to dismiss under this section shall be entitled to
7 recover attorney fees and costs from any party who has filed
8 an action, part or all of which has been dismissed under
9 subsection (b) (1).

10 (2) The court shall hold a hearing, to be scheduled by
11 the prothonotary not more than 30 days from the ruling under
12 this section in favor of the moving party, to determine
13 damages to be assessed against the nonmoving party. In
14 determining the damages, the court may consider any change in
15 present or future operating costs to the moving party. The
16 damages shall be a minimum of \$10,000. Any attorney fees,
17 costs or damages due under this section shall be payable by
18 any person or group of persons acting, directly or
19 indirectly, in the interest of the party deemed responsible
20 for the attorney fees, costs or damages.

21 (3) If the court finds that a motion to dismiss is
22 frivolous or is solely intended to cause unnecessary delay,
23 the court shall award costs and reasonable attorney fees to
24 the party prevailing on the motion. Any attorney fees, costs
25 or damages due under this section shall be payable by any
26 persons deemed responsible for the attorney fees, costs or
27 damages.

28 (f) Construction.--This section shall be interpreted broadly
29 as to make its applicability the norm, not the exception, and
30 any doubt regarding whether a communication is protected speech

1 shall be resolved in favor of the position that it is.

2 (g) Definitions.--As used in this section, the following
3 words and phrases shall have the meanings given to them in this
4 subsection unless the context clearly indicates otherwise:

5 "Constitutionally protected communication." Communication
6 including any written, oral, audio, visual or electronic
7 statement or writing in furtherance of a right to petition or a
8 right to free speech, which right is exercised in connection
9 with an issue of public concern or social significance under the
10 following circumstances:

11 (1) Communication in connection with an issue under
12 consideration or review by a legislative, executive,
13 judicial, administrative or other governmental body or in
14 another governmental or official proceeding.

15 (2) Communication that is reasonably likely to encourage
16 consideration or review of an issue by a legislative,
17 executive, judicial, administrative or other governmental
18 body or in another governmental or official proceeding.

19 (3) Communication that is reasonably likely to enlist
20 public participation in an effort to effect consideration of
21 an issue by a legislative, executive, judicial,
22 administrative or other governmental body or in another
23 governmental or official proceeding.

24 (4) Communication that falls within the protection of
25 the right to petition government or the right to free speech
26 under the Constitution of the United States or the
27 Constitution of Pennsylvania.

28 "Governmental proceeding." A proceeding, other than a
29 judicial proceeding, conducted by an officer, official or body
30 of this Commonwealth or a political subdivision of this

1 Commonwealth, including a board or commission, or by an officer,
2 official or body of the Federal Government.

3 "Moving party who prevails." A party who files a motion to
4 dismiss under this section if, after the filing, the party
5 against whom the motion is filed withdraws either the entire
6 action or any part of the complaint pertaining to a protected
7 communication.

8 Section 2. This act shall take effect in 60 days.