
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 95 Session of
2019

INTRODUCED BY DIAMOND, METCALFE, BIZZARRO, BARRAR, BERNSTINE,
CALTAGIRONE, DRISCOLL, FREEMAN, ISAACSON, JAMES, McNEILL,
MILLARD, B. MILLER, NEILSON, OTTEN, RYAN, SCHLOSSBERG, SIMS,
SOLOMON, STAATS, STURLA, ZIMMERMAN AND JONES,
JANUARY 28, 2019

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 28, 2019

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 of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. The General Assembly finds and declares that
8 there has been a disturbing increase in lawsuits brought
9 primarily to chill the valid exercise of the constitutional
10 rights of freedom of speech and petition for the redress of
11 grievances. The General Assembly also finds and declares that it
12 is in the public interest to encourage continued participation
13 in matters of public significance and that this participation
14 should not be chilled through abuse of the judicial process.
15 This act is intended to grant immunity to those groups or
16 parties exercising this right and shall be construed broadly.

17 Section 2. Title 42 of the Pennsylvania Consolidated

1 Statutes is amended by adding a section to read:

2 § 8340.4. Immunity for constitutionally protected
3 communications.

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

11 (b) Motion to dismiss.--

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

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

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

23 (4) In the event that a court grants a motion to dismiss
24 but fails to award costs, fees or damages, as required, the
25 order shall also be immediately appealable and the moving
26 party may file a separate action to recover the moving
27 party's 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, which stay shall remain in effect until the

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

5 (d) Determination by court.--

6 (1) The court shall dismiss any action arising from a
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 its 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, that claim or part of the claim
23 shall proceed as a civil action pursuant to general rules. In
24 that event neither the determination that the claim is not in
25 whole or in part based on constitutionally protected
26 communication nor the fact of that determination shall be
27 admissible in evidence at any later stage of the case or in
28 any subsequent action and no burden of proof or degree of
29 proof otherwise applicable shall be affected by that
30 determination in any later stage of the case or in any

1 subsequent proceeding.

2 (e) Authorized recovery.--

3 (1) A moving party who prevails in whole or in part on a
4 motion to dismiss under this section shall be entitled to
5 recover attorney fees and costs, and any additional tax
6 liability that occurs as a direct consequence of the recovery
7 of the attorneys 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 shall consider any change
15 in present or future expenses or operating costs to the
16 moving party. The damages shall be a minimum of \$10,000.
17 Attorney fees, costs or damages due under this section shall
18 be payable by any person deemed responsible for the attorney
19 fees, costs or damages.

20 (3) If the court finds that a motion to dismiss is
21 frivolous or is solely intended to cause unnecessary delay,
22 the court shall award costs and reasonable attorney fees, and
23 any additional tax liability that occurs as a direct
24 consequence of the recovery of the attorneys fees and costs,
25 to the nonmoving party prevailing on the motion. Attorney
26 fees, costs or damages due under this section shall be
27 payable by any person deemed responsible for the attorney
28 fees, costs or damages.

29 (f) Construction.--This section shall be interpreted broadly
30 as to make its applicability the norm, not the exception, and

1 any doubt regarding whether a communication is protected speech
2 shall be resolved in favor of the position that it is.

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

6 "Constitutionally protected communication." A communication
7 in furtherance of a right to petition or a right to free speech,
8 which right is exercised in connection with an issue of public
9 concern or social significance under the following
10 circumstances:

11 (1) a written, oral, audio, visual or electronic
12 statement or writing in connection with an issue under
13 consideration or review by a legislative, executive,
14 judicial, administrative or other governmental body or in
15 another governmental or official proceeding;

16 (2) a written, oral, audio, visual or electronic
17 statement or writing that is reasonably likely to encourage
18 consideration or review of an issue by a legislative,
19 executive, judicial, administrative or other governmental
20 body or in another governmental or official proceeding;

21 (3) a written, oral, audio, visual or electronic
22 statement or writing reasonably likely to enlist public
23 participation in an effort to effect consideration of an
24 issue by a legislative, executive, judicial, administrative
25 or other governmental body or in another governmental or
26 official proceeding; or

27 (4) a written, oral, audio, visual or electronic
28 statement or writing that falls within the protection of the
29 right to petition government or the right to free speech
30 under the Constitution of the United States or the

1 Constitution of Pennsylvania.

2 "Governmental proceeding." A proceeding, other than a
3 judicial proceeding, conducted by an officer, official or body
4 of this Commonwealth or a political subdivision of this
5 Commonwealth, including a board or commission, or by an officer,
6 official or body of the Federal Government.

7 Section 3. This act shall take effect in 60 days.