

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 95 Session of 2017

INTRODUCED BY FARNESE, GREENLEAF, BOSCOLA, VULAKOVICH, BLAKE, YUDICHAK, BREWSTER, FONTANA, COSTA, MENSCH, HAYWOOD, RAFFERTY, HUGHES, BROWNE AND LEACH, FEBRUARY 15, 2017

AS AMENDED ON SECOND CONSIDERATION, APRIL 24, 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 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
18 Statutes is amended by adding a section to read:

1 § 8340.3. Immunity for constitutionally protected
2 communications.

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

10 (b) Motion to dismiss.--

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

15 (2) The motion to dismiss shall be scheduled by the
16 ~~prothonotary~~ COURT for a hearing not more than 30 days after <--
17 the service of the motion unless the docket conditions of the
18 court require a later hearing.

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

21 (4) In the event that a court grants a motion to dismiss
22 but fails to award costs, fees or damages, as required, the
23 order shall also be immediately appealable and the moving
24 party may file a separate action to recover its costs, fees
25 and damages.

26 (c) Stay of discovery.--All discovery proceedings in the
27 action shall be stayed upon the filing of a motion to dismiss
28 under this section, which stay shall remain in effect until the
29 entry of the order ruling on the motion. The court, on its own
30 motion or on motion and for good cause shown, may order that

1 specified discovery be conducted limited to matters pertinent to
2 the motion filed under this section.

3 (d) Determination by court.--

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

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

18 (3) If the court determines that the moving party is not
19 entitled to the immunities granted under this section, as to
20 all or part of the claim, that claim or part thereof shall
21 proceed as a civil action pursuant to general rules. In that
22 event neither the determination that the claim is not in
23 whole or in part based on constitutionally protected
24 communication nor the fact of that determination shall be
25 admissible in evidence at any later stage of the case or in
26 any subsequent action and no burden of proof or degree of
27 proof otherwise applicable shall be affected by that
28 determination in any later stage of the case or in any
29 subsequent proceeding.

30 (e) Authorized recovery.--

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

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

17 (3) If the court finds that a motion to dismiss is
18 frivolous or is solely intended to cause unnecessary delay,
19 the court shall award costs and reasonable attorney fees to
20 the NONMOVING party prevailing on the motion. Any attorney <--
21 fees, costs or damages due under this section shall be
22 payable by any person deemed responsible for such attorney
23 fees, costs or damages.

24 (f) Construction.--This section shall be interpreted broadly
25 as to make its applicability the norm, not the exception, and
26 any doubt regarding whether a communication is protected speech
27 shall be resolved in favor of the position that it is.

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

1 "Constitutionally protected communication." ~~Any good faith A~~ <--
2 communication in furtherance of a right to petition or a right
3 to free speech, which right is exercised in connection with an
4 issue of public concern or social significance under the
5 following circumstances:

6 (1) any written, oral, audio, visual or electronic
7 statement or writing in connection with an issue under
8 consideration or review by a legislative, executive,
9 judicial, administrative or other governmental body or in
10 another governmental or official proceeding;

11 (2) any written, oral, audio, visual or electronic
12 statement or writing that is reasonably likely to encourage
13 consideration or review of an issue by a legislative,
14 executive, judicial, administrative or other governmental
15 body or in another governmental or official proceeding;

16 (3) any written, oral, audio, visual or electronic
17 statement or writing reasonably likely to enlist public
18 participation in an effort to effect consideration of an
19 issue by a legislative, executive, judicial, administrative
20 or other governmental body or in another governmental or
21 official proceeding; or

22 (4) any written, oral, audio, visual or electronic
23 statement or writing that falls within the protection of the
24 right to petition government or the right to free speech
25 under the Constitution of the United States or the
26 Constitution of Pennsylvania.

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

1 body of the Federal Government.

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

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