
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 95 Session of
2021

INTRODUCED BY DIAMOND, GLEIM, GROVE, HERSHEY, HOHENSTEIN,
ISAACSON, JAMES, KEEFER, METCALFE, MILLARD, B. MILLER, MOUL,
NEILSON, PISCIOTTANO, RYAN, STAATS, ZABEL AND ZIMMERMAN,
JANUARY 27, 2021

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 27, 2021

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 § 8340.4. Immunity for constitutionally protected
2 communications.

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

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

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

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

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

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

4 (d) Determination by court.--

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

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

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

1 (e) Authorized recovery.--

2 (1) A moving party who prevails in whole or in part on a
3 motion to dismiss under this section shall be entitled to
4 recover attorney fees and costs, and any additional tax
5 liability that occurs as a direct consequence of the recovery
6 of the attorney fees and costs, from any party who has filed
7 an action, part or all of which has been dismissed under
8 subsection (b) (1).

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

19 (3) If the court finds that a motion to dismiss is
20 frivolous or is solely intended to cause unnecessary delay,
21 the court shall award costs and reasonable attorney fees, and
22 any additional tax liability that occurs as a direct
23 consequence of the recovery of the attorneys fees and costs,
24 to the nonmoving party prevailing on the motion. Attorney
25 fees, costs or damages due under this section shall be
26 payable by any person deemed responsible for the attorney
27 fees, costs or 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." A communication
6 in furtherance of a right to petition or a right to free speech,
7 which right is exercised in connection with an issue of public
8 concern or social significance under the following
9 circumstances:

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

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

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

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

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