

No. 1980-232

AN ACT

SB 1367

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, creating a statutory cause of action for wrongful use of civil proceedings.

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

Section 1. Chapter 83 of Title 42, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, is amended by adding a subchapter to read:

CHAPTER 83
PARTICULAR RIGHTS AND IMMUNITIES

* * *

SUBCHAPTER E
WRONGFUL USE OF CIVIL PROCEEDINGS

Sec.

8351. Wrongful use of civil proceedings.

8352. Existence of probable cause.

8353. Damages.

8354. Burden of proof.

§ 8351. Wrongful use of civil proceedings.

(a) Elements of action.—A person who takes part in the procurement, initiation or continuation of civil proceedings against another is subject to liability to the other for wrongful use of civil proceedings:

(1) he acts in a grossly negligent manner or without probable cause and primarily for a purpose other than that of securing the proper discovery, joinder of parties or adjudication of the claim in which the proceedings are based; and

(2) the proceedings have terminated in favor of the person against whom they are brought.

(b) Arrest or seizure of person or property not required.—The arrest or seizure of the person or property of the plaintiff shall not be a necessary element for an action brought pursuant to this subchapter.

§ 8352. Existence of probable cause.

A person who takes part in the procurement, initiation or continuation of civil proceedings against another has probable cause for doing so if he reasonably believes in the existence of the facts upon which the claim is based, and either:

(1) reasonably believes that under those facts the claim may be valid under the existing or developing law;

(2) *believes to this effect in reliance upon the advice of counsel, sought in good faith and given after full disclosure of all relevant facts within his knowledge and information; or*

(3) *believes as an attorney of record, in good faith that his procurement, initiation or continuation of a civil cause is not intended to merely harass or maliciously injure the opposite party.*

§ 8353. *Damages.*

When the essential elements of an action brought pursuant to this subchapter have been established as provided in section 8351 (relating to wrongful use of civil proceedings), the plaintiff is entitled to recover for the following:

(1) *The harm normally resulting from any arrest or imprisonment, or any dispossession or interference with the advantageous use of his land, chattels or other things, suffered by him during the course of the proceedings.*

(2) *The harm to his reputation by any defamatory matter alleged as the basis of the proceedings.*

(3) *The expense, including any reasonable attorney fees, that he has reasonably incurred in defending himself against the proceedings.*

(4) *Any specific pecuniary loss that has resulted from the proceedings.*

(5) *Any emotional distress that is caused by the proceedings.*

(6) *Punitive damages according to law in appropriate cases.*

§ 8354. *Burden of proof.*

In an action brought pursuant to this subchapter the plaintiff has the burden of proving, when the issue is properly raised, that:

(1) *The defendant has procured, initiated or continued the civil proceedings against him.*

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

(3) *The defendant did not have probable cause for his action.*

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

(5) *The plaintiff has suffered damages as set forth in section 8353 (relating to damages).*

Section 2. This act shall take effect in 60 days and shall be applicable to causes of action accruing thereafter.

APPROVED—The 19th day of December, A. D. 1980.

DICK THORNBURGH