

SENATE BILL No. 1195

May 13, 2004, Introduced by Senators BRATER, PRUSI, EMERSON, SCOTT and LELAND
and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
(MCL 600.101 to 600.9947) by adding section 2974.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2974. (1) A person who communicates with a
2 governmental unit, public official, or other person in
3 furtherance of the constitutional right to petition, including
4 seeking relief, influencing action, informing, communicating, and
5 otherwise participating in the process of government is immune
6 from civil liability for damages if the communication is aimed at
7 procuring a governmental or electoral action, result, or
8 outcome.

9 (2) A court shall grant a motion to dismiss a claim based on
10 the immunity granted by this section, unless the responding party
11 produces clear and convincing evidence of 1 or more of the

1 following:

2 (a) The moving party is not immune from liability under
3 subsection (1).

4 (b) All of the following apply to the communication that gave
5 rise to the claim:

6 (i) The communication was made with knowledge that it was
7 false or with reckless disregard of whether it was false.

8 (ii) The communication caused actual harm to the person
9 making the claim.

10 (iii) The communication is material to the claim.

11 (c) The communication that gave rise to the action included
12 information that the moving party was prohibited by statute or
13 common law from disseminating.

14 (3) Either of the following may intervene in an action to
15 defend or otherwise support a person making a communication
16 described in subsection (1):

17 (a) Any governmental unit to which the person communicates.

18 (b) The attorney general.

19 (4) A court shall order the suspension of all discovery
20 proceedings in an action while a motion to dismiss a claim based
21 on the immunity granted by this section is pending.

22 (5) A court shall award all of the following to a person in
23 whose favor a claim is dismissed under this section:

24 (a) Costs, including reasonable attorney and expert witness
25 fees, incurred in bringing the motion.

26 (b) Additional sanctions against the responding party and the
27 responding party's attorney or law firm that the court determines

1 are sufficient to deter the respondent and the respondent's
2 attorney or law firm from filing a claim for damages allegedly
3 resulting from a communication described in subsection (1).

4 (6) A person in whose favor a claim is dismissed under this
5 section may maintain an action, claim, cross-claim, or
6 counterclaim to recover 1 or more of the following from a person
7 who filed the claim:

8 (a) Actual and compensatory damages.

9 (b) Costs and attorney fees.

10 (c) Exemplary damages.

11 (7) A person may not recover damages, costs, or fees under
12 subsection (6) that the person recovers under subsection (5).

13 (8) The right to maintain an action under subsection (6) can
14 be waived only if it is waived specifically.

15 (9) As used in this section:

16 (a) "Communication" means a statement, claim, allegation in a
17 proceeding, decision, protest, writing, argument, contention, or
18 other expression.

19 (b) "Governmental unit" means this state, a municipality, a
20 political subdivision or agency of this state, the federal
21 government, or a public authority, board, or commission.

22 (c) "Moving party" means a person on whose behalf a motion
23 described in subsection (2) is filed.

24 (d) "Person" means an individual, corporation, partnership,
25 limited liability company, association, organization, 2 or more
26 persons having a joint or common interest, or other legal
27 entity.

1 (e) "Public official" means an individual elected or
2 appointed to 1 or more of the following:

3 (i) An office established by the state constitution of 1963.

4 (ii) A public office of a city, village, township, or county
5 in this state.

6 (iii) A department, board, agency, institution, commission,
7 authority, division, council, college, university, school
8 district, intermediate school district, special district, or
9 other public entity of this state or a city, village, township,
10 or county in this state.

11 (f) "Responding party" means a person against whom a motion
12 described in subsection (2) is filed.