

**CHAPTER 25. WRONGFUL USE OF THE ACT**

- Sec.  
25.1. Wrongful use of the act.  
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**Source**

The provisions of this Chapter 25 adopted April 23, 1993, effective April 24, 1993, 23 Pa.B. 2087, unless otherwise noted.

**Cross References**

This chapter cited in 51 Pa. Code § 21.4 (relating to frivolous complaints; complaints without probable cause; disclosure of complaints).

**§ 25.1. Wrongful use of the act.**

Wrongful use of the act is established by one or more of the following elements:

- (1) The filing of a frivolous complaint which is a complaint filed in a grossly negligent manner without basis in law or fact.
- (2) The filing of a complaint without probable cause, primarily for a purpose other than reporting a violation of the act.
- (3) Disclosing publicly or causing to be publicly disclosed the fact that an individual is the subject of a complaint or Commission investigation.

**Cross References**

This section cited in 51 Pa. Code § 25.2 (relating to initiation of proceedings).

**§ 25.2. Initiation of proceedings.**

(a) The Commission may initiate proceedings to determine whether there has been a wrongful use of the act through the filing of a notification by a public official/public employe as provided for in section 8(1) of the act (65 P. S. § 408(1)), which notification shall contain the following:

- (1) A reference identifying the complaint/investigation involved.
- (2) A detailed explanation as to the reasons, information, facts or evidence establishing the elements of wrongful use of act as outlined in § 25.1 (relating to wrongful use of the act).
- (3) If applicable, identification of the person publicly disclosing the existence of Commission proceedings and the specific nature of the disclosure.
- (4) Additional information necessary to the resolution of the matter.

(b) Failure to provide information as outlined in this section will be cause for dismissal of the notification.

**Cross References**

This section cited in 51 Pa. Code § 25.3 (relating to disposition).

**§ 25.3. Disposition.**

(a) Pursuant to a notification containing the requisite information outlined in § 25.2 (relating to initiation of proceedings), the Commission will initiate proceedings by conducting an investigation to determine whether there has been a wrongful use of act.

(b) The investigation will be conducted in a confidential manner.

(c) The investigation may incorporate information which the Commission has already obtained.

(1) If the Commission determines a complaint has been filed in violation of the act, it will release the name and address of the complainant to the respondent after giving the complainant notice and an opportunity to be heard on the issue of whether the complainant wrongfully used the act.

(2) If the Commission determines that a complaint was proper, it will so notify the respondent who may appeal that determination and the Commission will schedule a hearing.

(d) Upon completion of the investigation, the Commission will make a preliminary determination as to wrongful use of the act. The Commission will notify the complainant and subject of the preliminary determination.

**§ 25.4. Appeal of determination.**

(a) Both the complainant and the subject have standing and either may appeal the preliminary determination to the Commission.

(1) Any appeal shall be filed with the Commission within 30 days of service of the preliminary determination.

(2) If there is no timely appeal filed, the Commission's initial determination will become absolute and will become the final determination of the Commission in the matter as to wrongful use of the act.

(b) The issuance of Orders to Show Cause is governed by the following:

(1) If a subject appeals, the Commission will issue an Order to Show Cause requiring the respondent to set forth reasons why the rule should not be made absolute as to a finding of no wrongful use of the act. The answer to the rule shall contain specific factual averments which establish a basis for believing the act was wrongfully used. One or more of the following are inadequate to establish wrongful use:

- (i) Dismissal of the complaint.
- (ii) Dismissal for lack of probable cause.
- (iii) Dismissal on jurisdictional grounds.

(2) The Commission will schedule a hearing for the subject's appeal at which the subject shall bear the burden of proving wrongful use of the act by

clear and convincing evidence. The investigative staff of the Commission will present the case opposing the subject's appeal.

(c) If the complainant appeals, the Commission will issue a Rule to Show Cause requiring the complainant to file an answer to the averments in the Rule as to why the Rule should not be made absolute as to a finding of wrongful use of the act. The Commission will schedule a hearing for the complainant's appeal. The investigative staff of the Commission will present the Commission's case and will have the burden of proving wrongful use of the act by clear and convincing evidence.

(d) If the Commission makes a final determination that the act has been wrongfully used, it will release to the subject the name and address of the complainant solely for the purpose of initiating an action for wrongful use of the act. The complainant's identity will not otherwise be publicly released.

(e) If the Commission makes a final determination that the act was not wrongfully used, it will issue a final determination setting forth the reasons and evidence for its finding.

(f) The procedures of §§ 21.21—21.29 will apply to the hearing to the extent applicable.

**Source**

The provisions of this § 25.4 amended May 5, 1995, effective May 6, 1995, 25 Pa.B. 1777. Immediately preceding text appears at serial pages (178998) to (178999).

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