

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1466 Session of
2023

INTRODUCED BY BIZZARRO, CERRATO, HANBIDGE, HOHENSTEIN, KHAN,
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SANCHEZ, PARKER, OTTEN, KINKEAD, FLEMING, INNAMORATO, GREEN
AND A. BROWN, JUNE 21, 2023

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, JULY 3, 2024

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, in particular rights and
3 immunities, providing for a cause of action on protected
4 public expression and for immunity for protected public
5 expression; and imposing a duty upon the Administrative
6 Office of Pennsylvania Courts and the Legislative Reference
7 Bureau.

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

10 Section 1. Title 42 of the Pennsylvania Consolidated
11 Statutes is amended by adding a section to read:

12 § 8320.1. Action for protected public expression.

13 (a) Establishment.--A person has a cause of action if, in a
14 previous cause of action based on protected public expression:

15 (1) the person would have prevailed on a ground under
16 section 8340.15 (relating to grant of immunity); but

17 (2) the court did not make a determination on immunity
18 under section 8340.15.

1 (b) Recovery.--A party that prevails in an action under this
2 section is entitled to recover from the nonprevailing party
3 under subsection (a)(1) all of the following:

4 (1) Attorney fees, court costs and expenses of
5 litigation in the underlying action.

6 (2) Punitive damages upon proof that the underlying
7 action was commenced or continued for the sole purpose of
8 harassing, intimidating, punishing or maliciously inhibiting
9 protected public expression.

10 (c) Construction.--This section shall be broadly construed
11 and applied to defend and enhance protected public expression.

12 (d) Definitions.--As used in this section, the following
13 words and phrases shall have the meanings given to them in this
14 subsection unless the context clearly indicates otherwise:

15 "Protected public expression." As defined in section 8340.13
16 (relating to definitions).

17 "Protected public expression immunity." As defined in
18 section 8340.13.

19 Section 2. Chapter 83 of Title 42 is amended by adding a
20 subchapter to read:

21 SUBCHAPTER C.1

22 PROTECTED PUBLIC EXPRESSION

23 Sec.

24 8340.11. Short title of subchapter.

25 8340.12. Declaration of policy.

26 8340.13. Definitions.

27 8340.14. Scope.

28 8340.15. Grant of immunity.

29 8340.16. Pretrial motion.

30 8340.17. Interlocutory appeal.

1 8340.18. Awards.

2 § 8340.11. Short title of subchapter.

3 This subchapter shall be known and may be cited as the
4 Uniform Public Expression Protection Act.

5 § 8340.12. Declaration of policy.

6 The General Assembly finds and declares as follows:

7 (1) There has been a disturbing increase in lawsuits
8 brought primarily to chill the valid exercise of protected
9 public expression.

10 (2) It is in the public interest to encourage continued
11 participation in matters of public significance. This
12 participation should not be chilled through abuse of the
13 judicial process.

14 (3) This subchapter:

15 (i) grants immunity to those groups or parties
16 exercising the rights to protected public expression; and

17 (ii) awards attorney fees to parties that are forced
18 to defend against meritless claims arising from the
19 exercise of the rights to protected public expression.

20 (4) Broad construction of this subchapter will implement
21 the goals under paragraphs (2) and (3).

22 § 8340.13. Definitions.

23 The following words and phrases when used in this subchapter
24 shall have the meanings given to them in this section unless the
25 context clearly indicates otherwise:

26 "Cause of action based on protected public expression." A
27 cause of action under section 8340.14 (relating to scope).

28 "Goods or services." The term does not include the creation,
29 dissemination, exhibition or advertisement or similar promotion
30 of a dramatic, literary, musical, political, journalistic or

1 artistic work.

2 "Protected public expression." A person's:

3 (1) communication in a legislative, executive, judicial
4 or administrative proceeding;

5 (2) communication on an issue under consideration or
6 review in a legislative, executive, judicial or
7 administrative proceeding; or

8 (3) exercise, on a matter of public concern, of the
9 rights of freedom of speech or of the press, the right to
10 assemble or petition or the right of association, guaranteed
11 by:

12 (i) the First Amendment to the Constitution of the
13 United States; or

14 (ii) section 7 or 20 of Article I of the
15 Constitution of Pennsylvania.

16 "Protected public expression immunity." Immunity under
17 section 8340.15 (relating to grant of immunity).

18 § 8340.14. Scope.

19 (a) Coverage.--Except as provided in subsection (b), this
20 subchapter applies to a cause of action based on protected
21 public expression.

22 (b) Exclusions.--This subchapter does not apply to any of
23 the following claims asserted in a civil action:

24 (1) Against a government unit or an employee or agent of
25 a government unit acting in an official capacity.

26 (2) By a government unit or an employee or agent of a
27 government unit acting in an official capacity to enforce a
28 law, regulation or ordinance.

29 (3) Against a person primarily engaged in the business
30 of selling or leasing goods or services if the cause of

1 action arises out of a communication related to the person's
2 sale or lease of the goods or services.

3 (4) Seeking damages for bodily injury or death unless
4 the claim:

5 (i) is for:

6 (A) defamation;

7 (B) publication of private facts;

8 (C) false light invasion of privacy;

9 (D) misappropriation of likeness; or

10 (E) intentional or negligent infliction of
11 emotional distress; or

12 (ii) arises solely from a communication on a matter
13 of public concern.

14 (5) Arising under any of the following:

15 (i) 23 Pa.C.S. Ch. 61 (relating to protection from
16 abuse).

17 (ii) Chapter 62A (relating to protection of victims
18 of sexual violence or intimidation).

19 (iii) The act of May 17, 1921 (P.L.682, No.284),
20 known as The Insurance Company Law of 1921.

21 (6) Arising under an insurance contract.

22 (7) Asserting misappropriation of trade secrets or
23 corporate opportunities against the person that allegedly
24 misappropriated the trade secret or corporate opportunity.

25 (8) Enforcing a nondisparagement agreement or a covenant
26 not to compete against a party to the agreement or covenant.

27 (9) Arising out of the internal affairs, governance,
28 dissolution, liquidation, rights or obligations between or
29 among stockholders or partners. This paragraph includes the
30 interpretation of the rights or obligations under the

1 governing organic law, articles of incorporation, bylaws and
2 agreements.

3 (10) Liability or indemnity of managers of business
4 corporations, partnerships, limited partnerships, limited
5 liability partnerships, professional associations, business
6 trusts, joint ventures or other business enterprises. This
7 paragraph includes the interpretation of the rights or
8 obligations under the governing organic law, articles of
9 incorporation, bylaws or agreements.

10 § 8340.15. Grant of immunity.

11 A person is immune from civil liability for a cause of action
12 based on protected public expression if any of the following
13 paragraphs apply:

14 (1) The party asserting the cause of action based on
15 protected public expression fails to:

16 (i) establish a prima facie case as to each
17 essential element of the cause of action; or

18 (ii) state a cause of action upon which relief can
19 be granted.

20 (2) There is no genuine issue as to any material fact,
21 and the person against whom the cause of action based on
22 protected public expression has been asserted is entitled to
23 judgment as a matter of law in whole or in part.

24 § 8340.16. Pretrial motion.

25 (a) Authorization.--A party may file a special motion for
26 dismissal of or judgment on a cause of action, or part of a
27 cause of action, based on a party's protected public expression
28 immunity.

29 (b) Time.--A motion under subsection (a) must be made as
30 follows:

1 (1) Except as provided in paragraph (2), no later than
2 60 days after being served with a pleading asserting a cause
3 of action based on protected public expression.

4 (2) The court may extend the time under paragraph (1)
5 upon a showing of good cause.

6 (c) Effect.--A motion under subsection (a) does not preclude
7 a party from asserting protected public expression immunity
8 through other pleadings and motions under the Pennsylvania Rules
9 of Civil Procedure.

10 (d) Procedure.--Upon motion under subsection (a), all of the
11 following apply:

12 (1) Subject to paragraphs (2) and (3), the court shall
13 hear oral argument on the motion within 60 days after the
14 motion is filed.

15 (2) The court may extend the time period under paragraph
16 (1):

17 (i) to allow discovery under subsection (f) (2) (i);

18 or

19 (ii) for good cause.

20 (3) If paragraph (2) applies, the court shall hear
21 argument as follows:

22 (i) For an extension under paragraph (2) (i):

23 (A) within 60 days after the court order
24 allowing the discovery; or

25 (B) for good cause, on the date specified by the
26 court.

27 (ii) For an extension under paragraph (2) (ii), on
28 the date specified by the court.

29 (4) In ruling on a motion under subsection (a), the
30 court shall consider the record as defined in Pa.R.C.P. No.

1 1035.1 (relating to Motion for Summary Judgment. Definition),
2 the special motion and responses and the evidence which can
3 be considered on a motion for summary judgment under
4 Pa.R.C.P. No. 1035.2 (relating to motion).

5 (5) Within 60 days after hearing oral argument under
6 paragraph (1) or (3), the court shall:

7 (i) rule on a motion under subsection (a); and

8 (ii) place on the record a written opinion stating
9 its reasoning for its ruling.

10 (e) Stay.--If a motion under subsection (a) is made, all of
11 the following apply:

12 (1) Except as provided in subsection (f), all other
13 proceedings in the action are stayed. This paragraph includes
14 discovery and the moving party's obligation to file a
15 responsive pleading.

16 (2) A stay under paragraph (1) shall remain in effect
17 until the order ruling on the motion becomes final. This
18 paragraph includes an appeal of the order.

19 (f) Exceptions to stay.--During a stay under subsection (e),
20 all of the following apply:

21 (1) A party may challenge service of a writ or
22 complaint, personal or subject matter jurisdiction or venue.

23 (2) A court may take any of the following actions:

24 (i) Allow limited discovery if a party shows that
25 specific information:

26 (A) is necessary to establish whether a party
27 has satisfied or failed to satisfy a burden under
28 section 8340.15 (relating to grant of immunity); and

29 (B) is not reasonably available unless discovery
30 is allowed.

1 (ii) Upon a showing of good cause, hear and rule on
2 a request for special or preliminary injunctive relief to
3 protect against an imminent threat to public health or
4 safety.

5 (iii) Upon a showing of good cause, permit a
6 proceeding relating exclusively to a cause of action:

7 (A) in response to which no party has asserted
8 protected public expression immunity; and

9 (B) which does not implicate an issue relevant
10 to a party's assertion of protected public expression
11 immunity or to the cause of action for which that
12 immunity has been asserted.

13 (3) A party may voluntarily discontinue all or part of
14 the party's action.

15 (4) A party may move to recover attorney fees, court
16 costs and expenses of litigation under section 8340.18
17 (relating to awards).

18 § 8340.17. Interlocutory appeal.

19 An order granting, denying or otherwise determining immunity
20 under this subchapter is immediately appealable under section
21 702 (relating to interlocutory orders).

22 § 8340.18. Awards.

23 (a) Party asserting immunity.--If a cause of action based on
24 protected public expression is commenced against a party, all of
25 the following apply:

26 (1) If the party is immune under section 8340.15
27 (relating to grant of immunity), the court shall award the
28 party attorney fees, court costs and expenses of litigation
29 jointly and severally against each adverse party that
30 asserted the cause of action.

1 (2) If the party asserts protected public expression
2 immunity and the opposing party voluntarily discontinues the
3 action under Pa.R.C.P. No. 230 (relating to voluntary
4 nonsuit), with or without prejudice, the court shall award
5 the asserting party attorney fees, court costs and expenses
6 of litigation jointly and severally against each adverse
7 party that asserted the cause of action.

8 (b) Party opposing immunity.--If the court determines that a
9 party's assertion of protected public expression immunity is
10 frivolous or filed solely with intent to delay the proceeding,
11 the court shall award the opposing party attorney fees, court
12 costs and expenses of litigation, incurred in opposing the
13 assertion of protected public expression immunity.

14 Section 3. The following apply:

15 (1) The Administrative Office of Pennsylvania Courts has
16 a duty under paragraph (3) if any of the following occur:

17 (i) Promulgation by the Supreme Court of
18 Pennsylvania of a rule, similar in form to Pa.R.C.P. No.
19 4023, stating that the provisions of 42 Pa.C.S. § 8340.16
20 are not suspended.

21 (ii) Promulgation by the Supreme Court of
22 Pennsylvania of a direct letter of address, similar in
23 form to In re 42 Pa.C.S. § 1703, 482 Pa. 522, 394 A.2d
24 444 (1978), stating that the provisions of 42 Pa.C.S. §
25 8340.16 are not suspended and do not violate Article V of
26 the Constitution of Pennsylvania.

27 (iii) Promulgation by the Supreme Court of
28 Pennsylvania of procedural rules providing substantially
29 the same content as the provisions of 42 Pa.C.S. §
30 8340.16.

1 (2) The Legislative Reference Bureau shall determine the
2 effective date of passage by the General Assembly of a joint
3 resolution confirming that the procedural rules under
4 paragraph (1)(iii) provide substantially the same content as
5 the provisions of 42 Pa.C.S. § 8340.16.

6 (3) The Administrative Office of Pennsylvania Courts
7 shall transmit to the Legislative Reference Bureau all of the
8 following:

9 (i) Notice, for publication in the next available
10 issue of the Pennsylvania Bulletin, of each promulgation
11 and effective date under paragraph (1)(i) and (ii).

12 (ii) Notice of a promulgation and its effective date
13 under paragraph (1)(iii).

14 (4) The Legislative Reference Bureau shall publish any
15 of the following in the Pennsylvania Bulletin:

16 (i) For a notice under paragraph (3)(i), the entire
17 notice.

18 (ii) For a notice under paragraph (3)(ii), notice of
19 the later of the effective date of:

20 (A) promulgation under paragraph (1)(iii); or

21 (B) passage under paragraph (2).

22 Section 4. This act does not affect immunity, rights,
23 obligations or procedures under 27 Pa.C.S. § 7707 or Ch. 83.

24 SECTION 5. IN APPLYING AND CONSTRUING THIS ACT, <--
25 CONSIDERATION MUST BE GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF
26 THE LAW WITH RESPECT TO ITS SUBJECT MATTER AMONG STATES THAT
27 ENACT IT.

28 SECTION 6. THIS ACT APPLIES TO A CIVIL ACTION COMMENCED OR A
29 CAUSE OF ACTION ASSERTED IN A CIVIL ACTION ON OR AFTER THE
30 EFFECTIVE DATE OF THIS SECTION.

1 Section 5 7. This act shall take effect as follows:

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2 (1) The addition of 42 Pa.C.S. § 8340.16 shall take
3 effect on the effective date specified in the notice under
4 section 3(4).

5 (2) The remainder of this act shall take effect
6 immediately.