

---

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

SENATE BILL

No. 972 Session of  
2023

---

INTRODUCED BY MUTH, COLLETT, FONTANA, TARTAGLIONE, HAYWOOD,  
KEARNEY, HUGHES, DILLON, CAPPELLETTI, COSTA, STREET, SAVAL  
AND KANE, OCTOBER 31, 2023

---

REFERRED TO JUDICIARY, OCTOBER 31, 2023

---

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 protected public  
4 expression.

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

7 Section 1. Chapter 83 of Title 42 of the Pennsylvania  
8 Consolidated Statutes is amended by adding a subchapter to read:

9 SUBCHAPTER C.1

10 IMMUNITY FOR PROTECTED PUBLIC EXPRESSION

11 Sec.

12 8340.4. Short title of subchapter.

13 8340.5. Legislative findings and declaration.

14 8340.6. Definitions.

15 8340.7. Protected public expression immunity.

16 8340.8. Special motion for dismissal or judgment.

17 § 8340.4. Short title of subchapter.

18 This subchapter shall be known and may be cited as the

1 Pennsylvania Public Expression Protection Act.

2 § 8340.5. Legislative findings and declaration.

3 The General Assembly finds and declares as follows:

4 (1) There has been a disturbing increase in lawsuits  
5 brought primarily to chill the valid exercise of the  
6 constitutional rights of freedom of speech and petition for  
7 the redress of grievances.

8 (2) It is in the public interest to encourage continued  
9 participation in matters of public significance and that this  
10 participation should not be chilled through the abuse of the  
11 judicial process.

12 (3) This subchapter is intended to grant immunity to  
13 those groups or parties exercising this right and award  
14 attorney fees to those groups and parties that are forced to  
15 defend against meritless claims arising from the exercise of  
16 this right, and this subchapter shall be construed broadly.

17 § 8340.6. Definitions.

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

21 "Cause of action based on protected public expression."

22 (1) The term includes a cause of action asserted in a  
23 civil action against a person based on the person's:

24 (i) communication in a legislative, executive,  
25 judicial, administrative or other governmental  
26 proceeding;

27 (ii) communication on an issue under consideration  
28 or review in a legislative, executive, judicial,  
29 administrative or other governmental proceeding; or

30 (iii) exercise of any of the following rights

1 guaranteed by the Constitution of the United States or  
2 the Constitution of Pennsylvania, on a matter of public  
3 concern:

4 (A) The right to freedom of speech or of the  
5 press.

6 (B) The right to assemble or petition.

7 (C) The right of association.

8 (2) The term does not include any cause of action  
9 asserted in a civil action:

10 (i) against a government unit or an employee or  
11 agent of a government unit acting or purporting to act in  
12 an official capacity;

13 (ii) initiated by a government unit or an employee  
14 or agent of a government unit acting in an official  
15 capacity to enforce a law, regulation or ordinance;

16 (iii) against a person primarily engaged in the  
17 business of selling or leasing goods or services if the  
18 cause of action arises out of a communication related to  
19 the person's sale or lease of the goods or services;

20 (iv) seeking damages for bodily injury or death,  
21 provided that the cause of action is not for defamation,  
22 libel, slander, publication of private facts, false light  
23 invasion of privacy, misappropriation of likeness or  
24 intentional or negligent infliction of emotional  
25 distress, or does not arise solely from a communication  
26 on a matter of public concern;

27 (v) arising under Chapter 62A (relating to  
28 protection of victims of sexual violence or intimidation)  
29 or 23 Pa.C.S. Ch. 61 (relating to protection from abuse);

30 (vi) arising under 23 Pa.C.S. (relating to domestic

1 relations);

2 (vii) arising under the act of May 17, 1921  
3 (P.L.682, No.284), known as The Insurance Company Law of  
4 1921, or out of an insurance contract;

5 (viii) asserting misappropriation of trade secrets  
6 or corporate opportunities against the person who  
7 allegedly misappropriated the trade secret or corporate  
8 opportunity, or to enforce a nondisparagement agreement  
9 or a covenant not to compete against a party to the  
10 agreement or covenant; or

11 (ix) arising out of the internal affairs,  
12 governance, dissolution, liquidation, rights or  
13 obligations between or among owners and liability or  
14 indemnity of managers of business corporations,  
15 partnerships, limited partnerships, limited liability  
16 partnerships, professional associations, business trusts,  
17 joint ventures or other business enterprises, including  
18 actions involving the interpretation of the rights or  
19 obligations under the organic law, articles of  
20 incorporation, bylaws or agreements governing these  
21 enterprises.

22 "Goods and services." The term does not include the  
23 creation, dissemination, exhibition, advertisement or similar  
24 promotion of a dramatic, literary, musical, political,  
25 journalistic or artistic work.

26 "Protected public expression immunity." The immunity  
27 provided under section 8340.7(a) (relating to protected public  
28 expression immunity).

29 § 8340.7. Protected public expression immunity.

30 (a) Scope of immunity.--A person shall be immune from civil

1 liability for, and shall be entitled to the recovery of costs,  
2 fees, additional tax liability and other expenses under  
3 subsection (b) for defending against, a cause of action based on  
4 protected public expression if one of the following apply:

5 (1) The party asserting the cause of action based on  
6 protected public expression fails to establish a prima facie  
7 case as to each essential element of the cause of action.

8 (2) The party asserting the cause of action based on  
9 protected public expression has failed to state a cause of  
10 action upon which relief can be granted.

11 (3) There is no genuine issue as to any material fact  
12 and the person against whom the cause of action based on  
13 protected public expression has been asserted is entitled to  
14 judgment as a matter of law on the cause of action or part of  
15 the cause of action.

16 (b) Costs, attorney fees and expenses.--

17 (1) A person who is immune from civil liability for a  
18 cause of action, or any part of the cause of action, under  
19 subsection (a) shall be awarded court costs, reasonable  
20 attorney fees, including compensation for any additional tax  
21 liability that accrues as a direct consequence of the  
22 recovery of the attorney fees and costs, and reasonable  
23 litigation expenses related to defending against the cause of  
24 action, or part of the cause from which the person is immune,  
25 from any party who asserted the cause of action in accordance  
26 with subsection (d).

27 (2) If a court determines that a person's assertion of  
28 protected public expression immunity in a motion was  
29 frivolous or filed solely with intent to delay the  
30 proceeding, the court shall award to the opposing party the

1 court costs, reasonable attorney fees, including any  
2 additional tax liability that accrues as a direct consequence  
3 of the recovery of the attorney fees and costs, and  
4 reasonable litigation expenses related to defending against  
5 the assertion of the immunity in the motion.

6 (3) A person who asserts the protected public expression  
7 immunity in an answer or a motion shall be entitled to the  
8 award under paragraph (1) if the cause of action based on  
9 protected public expression, or any part of the cause of  
10 action, is voluntarily discontinued with or without prejudice  
11 after the person has asserted the immunity, unless a court  
12 has previously ruled in the action that the person is not  
13 immune from civil liability under subsection (a).

14 (c) Immediate appeal.--An order granting, denying or  
15 otherwise determining whether a person is immune from civil  
16 liability for a cause of action, or any part of a cause of  
17 action, based on protected public expression is immediately  
18 appealable under section 702 (relating to interlocutory orders).

19 (d) Recovery of costs.--

20 (1) A person may bring a cause of action to recover the  
21 court costs, reasonable attorney fees and reasonable  
22 litigation expenses incurred in defending against a cause of  
23 action based on protected public expression from any party  
24 that brought that action if the action was terminated in the  
25 person's favor on any ground of immunity under subsection  
26 (a), provided that no court previously determined whether the  
27 person was immune under subsection (a).

28 (2) A person bringing a cause of action under this  
29 subsection is entitled to recover punitive damages if the  
30 cause of action based on protected public expression was

1 commenced or continued for the sole purpose of harassing,  
2 intimidating, punishing or otherwise maliciously inhibiting  
3 the free exercise of speech, petition or association rights  
4 as guaranteed under the Constitution of the United States or  
5 Constitution of Pennsylvania.

6 (e) Construction and interpretation.--This section shall be  
7 broadly construed and applied to protect the exercise of the  
8 right of freedom of speech and of the press, the right to  
9 assemble and petition, and the right of association, guaranteed  
10 by the Constitution of the United States or Constitution of  
11 Pennsylvania.

12 (f) Application.--This section shall apply to a civil action  
13 filed or cause of action asserted in a civil action on or after  
14 the effective date of this subsection.

15 (g) Effect on pending litigation.--This section shall not  
16 affect the following:

17 (1) A cause of action asserted before the effective date  
18 of this subsection in a civil action.

19 (2) The immunity, rights and procedures provided under  
20 27 Pa.C.S. § 7707 (relating to participation in environmental  
21 law or regulation) or 8302 (relating to immunity).

22 § 8340.8. Special motion for dismissal or judgment.

23 (a) Special motion.--

24 (1) A person may file a special motion for dismissal of  
25 or judgment due to the person's protected public expression  
26 immunity no later than 60 days after being served with a  
27 pleading asserting a cause of action based on protected  
28 public expression, or at a later time upon a showing of good  
29 cause. The availability of the special motion does not  
30 preclude a party from asserting its protected public

1 expression immunity through a motion for judgment on the  
2 pleadings, motion for summary judgment or some other motion  
3 provided by court rules.

4 (2) In ruling on a special motion under this subsection,  
5 the court shall consider the pleadings, the motion, any reply  
6 or response to the motion and any evidence that could be  
7 considered in ruling on a motion for summary judgment, as  
8 well as any deposition testimony and any supporting and  
9 opposing affidavits attesting to the facts upon which  
10 liability or a defense is based.

11 (b) Stay.--

12 (1) Except as provided under paragraph (3), all other  
13 proceedings in an action, including discovery and the moving  
14 party's obligation to file a responsive pleading, except as  
15 necessary to challenge service of a writ or complaint, the  
16 court's jurisdiction or the action's venue, shall be stayed  
17 upon the filing of a motion under subsection (a). The stay  
18 shall remain in effect until the entry of an order ruling on  
19 the party's:

20 (i) assertion of protected public expression  
21 immunity; and

22 (ii) appeal under section 8340.7(c) (relating to  
23 protected public expression immunity), if applicable.

24 (2) During a stay under paragraph (1), the court:

25 (i) may allow limited discovery if a party shows  
26 that specific information is necessary to establish  
27 whether a party has satisfied or failed to satisfy a  
28 burden under section 8340.7(a) and the information is not  
29 reasonably available unless discovery is allowed; and

30 (ii) for good cause, may:



1           (A) hear and rule on a request for special or  
2           preliminary injunctive relief to protect against an  
3           imminent threat to public health or safety; and

4           (B) permit any proceeding relating exclusively  
5           to a cause of action:

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

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

13           (3) A motion under section 8340.7(b) for costs, attorney  
14           fees and expenses shall not be subject to a stay under this  
15           subsection.

16           (4) A stay under this subsection does not affect a  
17           party's ability to voluntarily discontinue a cause of action  
18           or part of a cause of action.

19           (c) Oral argument on motion.--The court shall hear oral  
20           argument on a motion under subsection (a) (1) no later than 60  
21           days after the filing of the motion, unless the court orders a  
22           later date to allow discovery under subsection (b) (2) or for  
23           other good cause. The following shall apply:

24                   (1) If the court orders a later date for oral argument,  
25                   the court shall hear argument on the motion under subsection  
26                   (a) (1) no later than 60 days after the court order allowing  
27                   the discovery, unless the court orders a later date for good  
28                   cause unrelated to discovery.

29                   (2) The court shall rule on a motion under subsection  
30                   (a) (1) no later than 60 days after hearing oral argument. The

1 court shall place on the record a written opinion setting  
2 forth its reasoning for the decision.

3 Section 2. This act shall take effect as follows:

4 (1) The addition of 42 Pa.C.S. § 8340.8 shall take  
5 effect upon promulgation or publication by the Pennsylvania  
6 Supreme Court of:

7 (i) a rule, similar in form to Rule of Civil  
8 Procedure 4023, stating that the contents of 42 Pa.C.S. §  
9 8340.8 are not suspended;

10 (ii) a direct letter of address, similar in form to  
11 *In re 42 Pa.C.S. § 1703*, 482 Pa. 522, 394 A.2d 444  
12 (1978), stating that the contents of 42 Pa.C.S. § 8340.8  
13 are not suspended and do not violate Article V of the  
14 Constitution of Pennsylvania; or

15 (iii) procedural rules providing substantially the  
16 same content as specified in 42 Pa.C.S. § 8340.8 and  
17 subsequent enactment by the General Assembly of a joint  
18 resolution confirming that the procedural rules provide  
19 substantially the same content as specified in 42 Pa.C.S.  
20 § 8340.8.

21 (2) The remainder of this act shall take effect  
22 immediately.