
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 461 Session of
2019

INTRODUCED BY SCHWANK, FONTANA, FARNESE, STREET, COSTA, HUGHES,
BREWSTER, HAYWOOD, DINNIMAN, YUDICHAK, KILLION, BLAKE,
TARTAGLIONE AND MUTH, MARCH 21, 2019

REFERRED TO JUDICIARY, MARCH 21, 2019

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, in particular rights and
3 immunities, providing for contracts and agreements for
4 nondisclosure of certain information.

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

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

9 § 8316.2. Contracts and agreements for nondisclosure of certain
10 information.

11 (a) Void contract provisions.--In any contract or agreement
12 for employment or other services, a provision shall be void and
13 unenforceable after the effective date of this section if the
14 provision has the purpose or effect of:

15 (1) preventing an individual from disclosing or
16 discussing harassment, abuse or discrimination occurring
17 during or related to the employment or services to which the
18 agreement or contract applies;

1 (2) requiring an individual to waive any substantive or
2 procedural rights or remedies relating to a claim of
3 harassment, abuse or discrimination; or

4 (3) impairing or attempting to impair the ability of an
5 individual to report a claim of harassment, abuse or
6 discrimination or to testify, assist or participate in any
7 manner with a court proceeding or an investigation related to
8 a claim of harassment, abuse or discrimination conducted by
9 the Attorney General or other Federal, State or local agency
10 or legislative body.

11 (b) Void settlement agreement provisions.--Except as
12 provided in subsection (c), a provision in an agreement,
13 contract or settlement or similar instrument to resolve or
14 conclude a potential or actual civil or criminal action relating
15 to harassment, abuse or discrimination, is void and
16 unenforceable after the effective date of this section if the
17 provision has the purpose or effect of:

18 (1) preventing the disclosure of factual information
19 related to the claims and terms of the settlement agreement;

20 (2) suppressing or expunging or attempting to suppress
21 or expunge information relevant to a court proceeding or
22 investigation into alleged harassment, abuse or
23 discrimination by the actor or a person under the actor's
24 authority; or

25 (3) preventing an individual from testifying, assisting
26 or participating in any manner in connection with a court
27 proceeding or investigation related to a claim of harassment,
28 discrimination or abuse conducted by the Attorney General or
29 any other Federal, State or local agency or legislative body.

30 (c) Exception.--Notwithstanding subsection (b), a provision

1 that prevents disclosure of information related to a potential
2 or actual claim of harassment, abuse or discrimination, or to
3 the terms of a settlement of the claim, may be included in an
4 agreement, contract or settlement or similar instrument to
5 resolve or conclude the claim if the individual on whose behalf
6 the civil action would be or has been brought agrees to the
7 provision voluntarily and with a full understanding of the terms
8 of the agreement, contract or settlement or similar instrument.
9 The provision may limit disclosure of any or all matters related
10 to the potential or actual claim or settlement and may reserve
11 the right to testify or participate in any manner in connection
12 with a court proceeding or investigation related to a claim of
13 harassment, abuse or discrimination conducted by the Attorney
14 General or any other Federal, State or local agency or
15 legislative body in the interests of public safety.

16 (d) Voidable agreement provisions.--In an agreement,
17 contract or settlement or similar instrument entered on or
18 before the effective date of this section, a provision contrary
19 to this section shall be voidable by a party who was a minor at
20 the time of execution of the agreement, contract or settlement
21 or similar instrument.

22 (e) Retaliation prohibited.--It is unlawful to retaliate
23 against an individual for:

24 (1) refusing to enter into an agreement, contract or
25 settlement or similar instrument that contains a provision
26 prohibited by this section; or

27 (2) except with respect to enforcement actions under
28 subsection (f) for nondisclosure provisions agreed to under
29 subsection (c):

30 (i) disclosing or discussing harassment, abuse

1 or discrimination;

2 (ii) reporting a claim of harassment, abuse or
3 discrimination; or

4 (iii) testifying, assisting or participating in
5 any manner in a court proceeding or investigation
6 related to a claim of harassment, abuse or
7 discrimination, including in any Federal, State or
8 local agency or legislative body in the interests of
9 public safety.

10 (f) Enforcement.--A person aggrieved of a violation of this
11 section may, within four years after the violation, bring an
12 action in a court of competent jurisdiction for compensatory
13 damages, injunctive relief and reasonable court costs and
14 attorney fees. The rights and remedies provided in this
15 subsection shall not be exclusive and shall not preempt other
16 procedures and remedies available under other applicable laws,
17 including section 5533 (relating to infancy, insanity or
18 imprisonment).

19 (g) Actions to enforce prohibited.--Regardless of the
20 jurisdiction where an agreement, contract or settlement or
21 similar instrument was executed, no proceeding or action may be
22 commenced within this Commonwealth to enforce or recover damages
23 for violation of a provision in the agreement, contract or
24 settlement or similar instrument if the provision is known to be
25 proscribed by this section.

26 (h) Nonapplicability.--A provision in an agreement, contract
27 or settlement or similar instrument subject to this section and
28 to the act of February 14, 2008 (P.L.6, No.3), known as the
29 Right-to-Know Law, shall not be construed to be exempt from
30 disclosure under the Right-to-Know Law.

1 (i) Reporting of child abuse, elder abuse and criminal
2 offenses.--This section does not in any way prohibit, prevent,
3 impair or restrict the reporting to the proper authority of any
4 of the following:

5 (1) Suspected child abuse under 23 Pa.C.S. Ch. 63
6 (relating to child protective services).

7 (2) Actions that may constitute a criminal offense under
8 Title 18 (relating to crimes and offenses).

9 (3) Actions that may constitute exploitation or abuse of
10 elder or dependent adults as defined in section 103 of the
11 act of October 7, 2010 (P.L.484, No.70), known as the Adult
12 Protective Services Act.

13 (j) Construction.--Nothing in this section may be
14 interpreted to alter any confidentiality requirements and
15 limitations on disclosure as set forth in the laws referenced in
16 subsection (i).

17 (k) Definitions.--As used in this section, the following
18 words and phrases shall have the meanings given to them in this
19 subsection unless the context clearly indicates otherwise:

20 "Abuse." Includes the verbal, sexual and physical conduct:

21 (1) described in the definition of "abuse" in 23 Pa.C.S.
22 § 6102(a) (relating to definitions); or

23 (2) defined as "abuse" under section 103 of the Adult
24 Protective Services Act.

25 "Discrimination." Acts prohibited by Federal and State
26 antidiscrimination laws.

27 "Harassment." Any of the following:

28 (1) Offensive or derogatory remarks, the display of
29 offensive material or gestures and unwelcome physical conduct
30 based on certain characteristics or affiliations, including,

1 but not limited to, race, sex, gender identity and
2 expression, sexual orientation, disability, color, ethnicity
3 and age that explicitly or implicitly interfere with an
4 individual's participation in employment, social, community
5 or professional activities.

6 (2) Acts proscribed by criminal and civil laws
7 prohibiting assault and battery, stalking, harassment or
8 sexual violence and misconduct.

9 (3) Unwelcome sexual advances, requests for sexual
10 favours and other verbal or physical conduct of a sexual
11 nature.

12 "Retaliation." Engaging in any act or course of conduct
13 intended to harm, threaten or offend in response to another
14 person who has taken any lawful action under this section.

15 Section 2. The provisions of 42 Pa.C.S. § 8316.2 are
16 severable. If any provision of 42 Pa.C.S. § 8316.2 or its
17 application to any person or circumstance is held invalid, the
18 invalidity shall not affect other provisions or applications of
19 42 Pa.C.S. § 8316.2 which can be given effect without the
20 invalid provision or application.

21 Section 3. This act shall take effect in 60 days.