

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

SENATE BILL

No. 392 Session of  
2021

---

INTRODUCED BY SCHWANK, FONTANA, TARTAGLIONE, HUGHES,  
SANTARSIERO, KEARNEY, BREWSTER, SAVAL, COSTA, KANE AND MUTH,  
MARCH 11, 2021

---

REFERRED TO JUDICIARY, MARCH 11, 2021

---

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 § 8316.3. 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 are not exclusive and may 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 prohibit, prevent, impair or  
3 restrict the reporting to the proper authority of any of the  
4 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 a confidentiality requirement or limitation  
15 on disclosure as set forth in the laws referenced in subsection  
16 (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 race, sex, gender identity and expression, sexual  
2 orientation, disability, color, ethnicity and age that  
3 explicitly or implicitly interfere with an individual's  
4 participation in employment, social, community or  
5 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. § 8316.3 are  
16 severable. If any provision of 42 Pa.C.S. § 8316.3 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. § 8316.3 which can be given effect without the  
20 invalid provision or application.

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