

What Pennsylvania Can Expect From Anti-SLAPP Law

By **Thomas Wilkinson** (September 30, 2024)

Pennsylvania is the latest state to adopt a law designed to protect citizens who are faced with lawsuits aimed to impede their right to speak about matters of public concern.

Both chambers of the Pennsylvania legislature unanimously passed H.B. 1466,[1] and Gov. Josh Shapiro signed the act into law on July 17. The act grants immunity for protected public expression by empowering judges to dismiss a so-called strategic lawsuit against public participation. SLAPPs are often used to intimidate and prevent individuals from exercising their state and federal rights to free speech.



Thomas Wilkinson

By passing anti-SLAPP legislation, Pennsylvania lawmakers made clear that "[i]t is in the public interest to encourage continued participation in matters of public significance" without threat of "abuse of the judicial process."[2]

A Short History of Anti-SLAPP Efforts in Pennsylvania

Pennsylvania lawmakers introduced anti-SLAPP reform legislation[3] a decade ago, when the Old City Civic Association ceased doing business after being unable to sustain the cost burden of being hit with multiple SLAPP suits.[4] That first version of the bill, S.B. 95, was modified in 2018 to address concerns raised by various stakeholders, including the Pennsylvania Bar Association.[5]

The amendments included language changes to address the limits of free speech, the scope of potential liability for incurred fees and damages, and the designation of the appropriate factfinder.

A coalition of diverse groups, including the Pennsylvania NewsMedia Association and the Pennsylvania Bar Association, expressed support for broadening anti-SLAPP immunity beyond environmental suits to all "protected public expression." Anti-SLAPP legislation strengthens and shields free speech rights, particularly for nonprofit organizations and individuals with limited resources, though these protections are intended for all, no matter their station.[6]

The new law provides broader protections for claims, acting as the Pennsylvania-specific version of the Uniform Public Expression Protection Act, a comprehensive model anti-SLAPP law drafted by the Uniform Law Commission.

Currently, 34 states and the District of Columbia have anti-SLAPP laws. Pennsylvania is the ninth state to enact a law modeled after the Uniform Public Expression Protection Act.[7] By adopting a version of the Uniform Act, Pennsylvania joins these other states in an effort to minimize forum shopping and enhance uniformity nationwide.[8]

Highlights of the Current Bill

Building on the Uniform Act, H.B. 1466 creates a substantive framework by which lawsuits designed to impede the exercise of protected speech can be dismissed and incorporates

procedural features that reflect the actual practice of law in Pennsylvania. The substantive section went into effect immediately.

Substantive Framework

- A person is immune from civil liability for a suit based on "protected public expression" — which includes communications in government proceedings and the exercise of free speech and press rights on matters of public concern.[9]
- A SLAPP claim will be dismissed if a prima facie case cannot be established,[10] or if the standard for demurrer or summary judgment is established.[11]
- A party that succeeds in asserting immunity shall be awarded attorney fees, court costs and expenses of litigation jointly and severally against each opposing party that asserted the SLAPP cause of action.[12]
- If a party's assertion of immunity is itself deemed frivolous or meant to delay proceedings, the opposing party shall be awarded attorney fees, court costs and expenses of litigation.[13]
- A person may bring a cause of action for recovery of fees and costs incurred in defending against a SLAPP claim from any party that brought that action if the action was terminated in the person's favor on any ground, but no court previously determined whether the person was immune from suit.[14]

Procedural Features

- Immunity from a SLAPP claim can be raised at any time, including in an answer or motion. An anti-SLAPP motion must be raised no later than 60 days after service of the applicable claim, unless the court finds good cause.[15]
- All other proceedings, with certain limited exceptions, are stayed upon the filing of an anti-SLAPP motion.[16]
- The court must hear oral argument on the motion within 60 days of being filed,[17] and it must subsequently issue a decision within 60 days after hearing oral argument.[18]

- In ruling on immunity, a court shall consider the record as defined in the Pennsylvania Rules of Civil Procedure 1035.1 and 1035.2, relating to summary judgment motion practice.[19]
- The court may allow limited discovery on the motion if specific information is necessary to establish whether a party has satisfied its burden to establish immunity under the act.[20]
- Any determination whether immunity applies is subject to immediate appeal.[21]

The procedural aspects of the act will apply to civil actions commenced, or a cause of action asserted, on or after the effective date.

The next procedural steps will likely involve promulgation by the Supreme Court of Pennsylvania — through its Civil Procedural Rules Committee — of one or more rules of procedure conforming with the pretrial motion procedure under the act or advising the General Assembly that the provisions do not violate the Pennsylvania Constitution.

The Legislative Reference Bureau will then proceed to publish a notice of promulgation and the effective date in the Pennsylvania Bulletin.

Best Practices Following Enactment

Litigants will want to take proactive steps to minimize potential exposure under the act and should be cognizant that pursuing anti-SLAPP proceedings may seriously stall pending litigation.

Going forward, clients who wish to invoke legal theories such as defamation, abuse of process, invasion of privacy, interference with contract or wrongful use of civil proceedings should avoid asserting claims designed to silence critics engaging in protected public expression on matters of public concern.

Special caution should be exercised whenever the thrust of the prospective claim arises from communications concerning pending legislative, judicial or administrative proceedings. Pursuit of such claims will tend to encourage opponents to raise a motion asserting the immunity afforded under the new anti-SLAPP Act, bringing the case to a halt pending the court's disposition of the motion and any appeal has been resolved.

Defense counsel should be vigilant in assessing whether a complaint or particular claims asserted implicate protected public expression on a matter of public concern, and if so, whether the claim at issue falls under one of the exceptions to the coverage of the anti-SLAPP Act. Care must be taken to file an anti-SLAPP motion in a timely manner.

Litigants also should not interpose a motion asserting immunity under the act without a good faith basis or solely with the intent to delay the case, because doing so will entitle the claimant to the same mandatory award of attorney fees, court costs and expenses of litigation.

As with any law creating a new action and supporting procedural framework, there will be cases requiring the Pennsylvania courts to interpret the scope and application of the act. By way of example, the act does not define what speech will qualify as bearing on "a matter of public concern" and therefore be entitled to immunity.

In California, for example, the courts have opined that issues of public interest should be of concern to a substantial number of people. Because the act expressly calls for broad construction to defend and enhance protected public expression, practitioners should expect that Pennsylvania courts will likely view public statements or expressions of concern on matters under review by any governmental entity to be within the scope of protected public expression.

Conclusion

The new Pennsylvania anti-SLAPP Act enhances the free speech protections of individuals and organizations for statements made or positions taken on matters of public interest or regulation. The act's broad scope and related immunity will apply to communications well beyond the traditional news media and civic-minded expression that initially propelled the law's enactment.

Case law developments in other states suggest that the act's immunity protection will likely be deemed to extend to certain social media posts, blogs and other forms of public expression that the targets may find offensive, and spawn procedural wrangling and motion practice.

The act is an important step forward in protecting speech on matters of public concern against tactical or retaliatory claims, and is buttressed by a robust remedy for violations, as well as procedural requirements that lawyers must follow to take advantage of its application in practice.

Thomas G. Wilkinson Jr. is a member of Cozen O'Connor. He previously served as president of the Pennsylvania Bar Association and as chair of its Civil Litigation Section.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] House Bill 1466. <https://www.legis.state.pa.us/cfdocs/legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2023&sessInd=0&billBody=H&billTyp=B&billNbr=1466&pn=3487>.

[2] Act 72, 42 Pa. Cons. Stat. § 8340.12.

[3] Pennsylvania enacted a narrow anti-SLAPP bill in 2000, which only offered protection for speech related to criticism of environmental laws or regulations. See HB 1466: Protecting Public Expression Through Anti-SLAPP Reform, ACLU Pa., <https://www.aclupa.org/en/legislation/hb-1466-protecting-public-expression-through-anti-slapp-reform>.

[4] Pa. Lawmakers Pass Bill to Curb Frivolous Lawsuits, Protect Free Speech, The Bradford

Era (Jul. 11, 2024), https://www.bradfordera.com/news/pa-lawmakers-pass-bill-to-curb-frivolous-lawsuits-protect-free-speech/article_c49a9e02-3fca-11ef-a846-07bf281ea2a3.html. "[T]he Old City Civic Association ["OCCA"] was hobbled by the cost of getting sued. Even though the cases did not proceed to trial, the OCCA faced thousands of dollars in legal bills after being sued twice in 13 months for objecting to liquor license transfers." John McDevitt, Whacked by Lawsuit Costs, Old City Civic Association Disbands, CBS News (May 16, 2013), <https://www.cbsnews.com/philadelphia/news/whacked-by-lawsuit-costs-old-city-civic-association-disbands/>.

[5] The PBA's Civil and Equal Rights Committee, Civil Litigation Section and other committees expressed support for the pending anti-SLAPP bills, and the Association's policymaking body, the House of Delegates, approved those recommendations in both 2015 and 2018 as the legislation evolved.

[6] Public Hearing on House Bill 95 – Anti-SLAPP, 2019-20 Regular Sess. 13 (Penn. 2019).

[7] Emily Hockett, UPEPA Sweeps the Nation, Reps. Comm. for Freedom of the Press (June 3, 2024), <https://www.rcfp.org/upepa-sweeps-the-nation>.

[8] See generally Speak Free PA, <https://www.speakfreepa.org/>. New Jersey recently followed this trend with adoption in October 2023 of its Uniform Public Expression Act.

[9] §§ 8340.13, 8340.15.

[10] § 8340.15(1)(i).

[11] § 8340.15(1)(ii), (2).

[12] § 8340.18(a). An award will also be imposed if the opposing party voluntarily discontinues the SLAPP action, with or without prejudice. §8340.18(b).

[13] § 8340.18(b).

[14] §8320.1(a).

[15] § 8340.16(b).

[16] § 8340.16(e)(1), (f).

[17] § 8340.16(d)(1).

[18] § 8340.16(d)(5).

[19] § 8340.8340.16(d)(4). "[F]ederal courts of appeal are split as to whether—and to what extent—provisions of state anti-SLAPP laws should be applied by federal courts sitting in diversity.... The First, Second, and Ninth Circuits have previously ... allowed defendants to invoke at least some state anti-SLAPP law protections in federal court. The Fifth, Tenth, Eleventh, and D.C. Circuits, however, have not." Shannon Jankowski & Charles Hogle, SLAPP-ing Back: Recent Legal Challenges to the Application of State Anti-SLAPP Laws, ABA Comm'n's Law. (Mar. 16, 2022), https://americanbar.org/groups/communications_law/publications/communications_lawyer/2022-winter/slapping-back-recent-legal-challenges-the-application-state-antislapp-

laws/. The Act's fee shifting provision and its new cause of action should be deemed substantive law that apply in federal court because the immunity is not tied to any particular court procedure. The immunity can be raised in any pleading or motion permitted under the governing rules of civil procedure. A party is free to raise it via preliminary objections in state court or a motion to dismiss in federal court, a motion for judgment on the pleadings, at summary judgment, or even on a directed verdict.

[20] §8340.16(f)(2).

[21] §8340.17.