
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1477 Session of
1978

INTRODUCED BY LEWIS, STAUFFER, ORLANDO, JUBELIRER AND STOUT,
MAY 22, 1978

AS REPORTED FROM COMMITTEE ON LOCAL GOVERNMENT, AS AMENDED,
HOUSE OF REPRESENTATIVES, SEPTEMBER 12, 1978

AN ACT

1 Providing a comprehensive procedure for the presentation of tort
2 claims against political subdivisions.

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1 This act shall be known and may be cited as the "Political
2 Subdivision Tort Claims Act."

3 Section 102. Legislative findings and intent.

4 (a) The General Assembly hereby finds and declares that
5 exposure of employees and officials of political subdivisions to
6 tort claims and civil law suits for acts or omissions within the
7 scope of their employment has a negative effect upon the
8 performance of official local governmental duties. Further, it
9 provides an obstacle to the discharge of the public business. It
10 is the declared intention of the General Assembly to relieve
11 employees and officials of political subdivisions from all legal
12 fees, expenses and judgments arising from such actions, unless
13 the tort complained of includes malice or criminal intent.

14 (b) The General Assembly further declares that any person
15 should be legally entitled to recover damages caused by bodily
16 injury or property damage due to a negligent or wrongful act
17 committed by either a political subdivision or employees or
18 officials thereof except in certain situations as hereinafter
19 provided.

20 (c) Therefore, the General Assembly, by this act, abolishes
21 all previous judicially created categories of political
22 subdivision tort liability such as "governmental" or
23 "proprietary" functions and "discretionary" or "ministerial"
24 acts. Liability for acts or omissions under this act shall be
25 based upon the traditional tort concepts of duty and the
26 reasonably prudent person's standard of care in the performance
27 of that duty. Determination of the standard of care required in
28 any particular instance should be made with the knowledge that
29 each political subdivision has financial limitations within
30 which it must exercise discretion in determining the extent and

1 nature of its activities.

2 Section 103. Definitions.

3 The following words and phrases when used in this act shall
4 have, unless the context clearly indicates otherwise, the
5 meanings given to them in this section:

6 "Agency." Any board, committee, commission, department or
7 other instrumentality or entity designated to act on behalf of a
8 political subdivision by law.

9 "Claim." Any written demand against a political subdivision
10 for monetary damages only to which any person is legally
11 entitled under the provisions of this act.

12 "Employee." Any person who is acting or who has acted on
13 behalf of a political subdivision or any agency thereof whether
14 that person is acting on a permanent or temporary basis, whether
15 compensated or not and whether performing ~~their~~ lawful duties <—
16 within or without the territorial boundaries of that person's
17 employing political subdivision. The definition of employee also
18 includes all elected or appointed officers, members of governing
19 bodies and other persons designated to act for an agency or
20 political subdivision and shall include volunteer firemen. This
21 definition shall neither include independent contractors nor
22 their employees or agents under contract to the governmental
23 entity to which this act applies in the event a claim arises.
24 This definition shall not apply to any person performing tasks
25 over which the political subdivision has no legal right of
26 control.

27 "Loss." Any injury, sickness or death of a person or damage
28 to real or personal property. No award for damages shall include
29 punitive or exemplary damages nor damages for loss of services
30 or loss of support.

1 "Political subdivision." Any county, city, borough,
2 incorporated town, township, school district, vocational school
3 district, intermediate unit, municipal authority, any authority
4 created by one or more political subdivisions, home rule,
5 optional plan or optional ~~charter~~ CHARTER municipality, and any <—
6 boards, commissions, committees, departments, instrumentalities,
7 or entities thereof designated to act in behalf of one or more
8 political subdivisions by law.

9 "Scope of employment." An employee acting in the performance
10 of the duties of the office or employment imposed by law or
11 performing tasks lawfully assigned by a competent legal
12 authority within the political subdivision.

13 CHAPTER 2

14 LIABILITY OF POLITICAL SUBDIVISIONS

15 Section 201. Liability generally.

16 Except as otherwise exempted by statute or the provisions of
17 this act, every political subdivision is subject to the
18 liability for its torts and those of its employees acting within
19 their scope of employment. A political subdivision shall not be
20 liable for any act or omission of any employee because of
21 corruption, fraud, malice or intentional wrongdoing on the part
22 of the employee.

23 Section 202. Employee's acts covered.

24 Action against an employee of a political subdivision for
25 injury, property loss, death, any or all such inflictions caused
26 by negligence or wrongful act, bad faith, omission, malicious
27 action or wanton and willful disregard may be prosecuted subject
28 to the limitations prescribed herein.

29 Section 203. Exceptions from liability.

30 A political subdivision, or an employee acting within the

1 scope of employment, shall not be liable if a loss results from:

2 (1) The conduct of a member of the governing body of any
3 political subdivision in the determination of legislative
4 policy and its formulation and promulgation as a defined and
5 binding rule of conduct.

6 (2) Judicial or quasi-judicial functions.

7 (3) Execution of the orders of any court.

8 (4) Enactment or enforcement, or failure to enact, any
9 law, whether valid or invalid, including but not limited to,
10 any charter provision, ordinance, resolution, rule,
11 regulation or written policy, unless the act of enforcement
12 constitutes false arrest or false imprisonment.

13 (5) Performance or failure to perform any act or service
14 which is within the exercise of discretion of the political
15 subdivision or its employee.

16 (6) Civil disobedience, work slowdown or work stoppage
17 by employees of the public or private sector, riot,
18 insurrection or rebellion.

19 (7) Temporary or natural conditions on any public way or
20 other public place, due to weather conditions, unless the
21 condition is affirmatively caused or allowed to remain after
22 actual or constructive notice, by the negligence of the
23 municipality or its employees.

24 (8) Assessment or collection of taxes.

25 (9) Licensing powers or functions including, but not
26 limited to, the issuance, the denial, suspension or
27 revocation of or failure or refusal to issue, deny, suspend
28 or revoke any permit, license, certificate, approval, order
29 or other similar authority where the authority is
30 discretionary under the law.

1 (10) Any claim or claims made under the act of June 2,
2 1915 (P.L.736, No.338), known as "The Pennsylvania Workmen's
3 Compensation Act."

4 (11) Any claim or claims made under the act of June 21,
5 1939 (P.L.566, No.284), known as "The Pennsylvania
6 Occupational Disease Act."

7 (12) Any claim or claims made under the act of December
8 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the
9 "Unemployment Compensation Law."

10 (13) The absence, condition or malfunction of any
11 traffic or road sign, signal or warning device unless the
12 absence, condition or malfunction is not corrected by the
13 political subdivision responsible for the maintenance of same
14 within a reasonable time after having received actual or
15 constructive notice, or the removal or destruction of such
16 signs, signal or warning devices by third parties, except on
17 failure of the political subdivision to correct such absence,
18 condition or malfunction within a reasonable time after
19 having received actual or constructive notice. The signs,
20 signals and warning devices referred to in this clause are
21 those used in connection with hazards normally connected with
22 the use of roadways or public ways and do not apply to the
23 duty to warn of specific defects such as excavations or
24 roadway obstructions. Nothing shall give rise to liability
25 resulting from the failure of any political subdivision to
26 initially place any of the above signs, signals or warning
27 devices when such failure is the result of a discretionary
28 act of the political subdivision or its employees.

29 ~~(14) Any paid or volunteer fireman, policeman or medical~~ <—
30 ~~or paramedical personnel of a political subdivision rendering~~

~~emergency care, first aid or rescue while in the performance of his duties at the scene of an emergency, or moving the person receiving such care, first aid and rescue to a hospital or other place of medical care, except any acts or omissions intentionally designed to harm or any grossly negligent acts or omissions which result in harm to the person receiving the emergency care, first aid or rescue, or being moved to a hospital or other place of medical care, but nothing herein shall relieve a driver of an emergency vehicle from liability arising from operation or use of such vehicle. In order for any paid or volunteer fireman, policeman, medical or paramedical personnel to receive the benefit of the exemption from civil liability provided for in this clause, he must first have taken and successfully completed a standard first aid course recognized or approved by the American Red Cross and further he shall have a valid certification from the American Red Cross that he has successfully completed any necessary training or refresher courses, or shall have successfully completed a first aid course having standards at least equal to a first aid course recognized or approved by the American Red Cross.~~

(14) THOSE PERSONS IMMUNE UNDER THE PROVISIONS OF 42 PA.C.S. § 8332 (RELATING TO NONMEDICAL GOOD SAMARITAN CIVIL IMMUNITY).

(15) Any claim which is limited or barred by any other act or which is for injuries or property damage against any officer, employee or agent where the individual is immune from suit.

(16) Unintentional misrepresentation.

(17) An act or omission of an individual who is not an

employee as defined in section 103.

Section 204. Surcharges.

No elected or appointed official of any political subdivision shall be surcharged for any act, error or omission in excess of the actual financial loss sustained by the political subdivision by reason thereof and by further reason of any action brought pursuant to the provisions herein. Other provisions of law to the contrary notwithstanding, the surcharge imposed hereby shall be the only surcharge imposed with regard to actions brought pursuant to this act.

SECTION 205. LIABILITY LIMITED TO STATUTORY AMOUNT. <—

(A) A POLITICAL SUBDIVISION'S LIABILITY SHALL BE LIMITED TO THE AMOUNTS SET FORTH IN SUBSECTION (B).

(B) THE LIABILITY OF A POLITICAL SUBDIVISION FOR CLAIMS WITHIN THE SCOPE OF THIS ACT SHALL NOT EXCEED:

(1) ONE HUNDRED THOUSAND DOLLARS TO ANY CLAIMANT FOR ANY NUMBER OF CLAIMS FOR PERSONAL INJURY OR DAMAGE TO OR DESTRUCTION OF PROPERTY, INCLUDING CONSEQUENTIAL DAMAGES ARISING OUT OF A SINGLE INCIDENT OR OCCURRENCE.

(2) THREE HUNDRED THOUSAND DOLLARS FOR ANY NUMBER OF CLAIMS ARISING OUT OF A SINGLE INCIDENT OR OCCURRENCE.

CHAPTER 3

JURISDICTION, VENUE AND PROCEDURE

Section 301. Jurisdiction.

The court of common pleas shall have original jurisdiction in all causes brought pursuant to the provisions of this act.

Section 302. Venue.

Venue shall lie in the judicial district in which the cause of action accrued or where the political subdivision is located, except where such political subdivision is located in more than

1 one judicial district, the action shall be brought in the
2 judicial district where the cause of action accrued or in the
3 judicial district in which the principal office or place of
4 business of such political subdivision is located.

5 Section 303. Exclusive procedure for filing claims.

6 No claim or action shall be allowed against a political
7 subdivision or its employees unless the claim has been filed in
8 accordance with the provisions of this act.

9 Section 304. Filing procedure.

10 (a) Any person claiming damages of a political subdivision
11 pursuant to the terms of this act shall, within 180 days of the
12 date of origin of the claim, notify the clerk or secretary or
13 other designated officer of such political subdivision in
14 writing of said claim, stating briefly the facts upon which the
15 claim is based. The time for giving such written notice of the
16 claim does not include the time during which the individual
17 injured is unable, due to incapacitation or disability from the
18 injury, to give notice, not exceeding 90 days of incapacity. In
19 the event that the individual's injuries result in death, the
20 time for giving notice shall commence with such individual's
21 death.

22 (b) Failure to comply with the notice requirement as
23 required by subsection (a) shall be a bar to any subsequent
24 action to recover damages unless such failure is reasonably
25 explained or unless political subdivision otherwise had actual
26 or constructive notice of the incident or condition giving rise
27 to an individual's claim.

28 (c) The time periods as otherwise provided by law for
29 commencement of actions based upon death, personal injury or
30 property damage shall govern the institution of legal

1 proceedings for the recovery of monetary damages in suits
2 brought pursuant to the provisions of this act.

3 Section 305. Settlements out of court.

4 The political subdivision, after conferring with its legal
5 officer or other legal counsel, may compromise a settlement of a
6 claim or suit brought against it or its employees under this act
7 as to the damages or other relief sought, and may appropriate
8 money for the payment of amounts agreed upon. When the amount of
9 any settlement exceeds \$2,500, the settlement shall not be
10 effective until approved by the court of original jurisdiction
11 and entered as a judgment as provided by law.

12 Section 306. Appeals.

13 Any party aggrieved by a final determination of the court of
14 original jurisdiction may appeal therefrom to Commonwealth
15 Court. The procedure on appeal shall be as otherwise provided by
16 law.

17 CHAPTER 4

18 JUDGMENTS

19 Section 401. Enforcement of judgments generally.

20 Judgments recovered against political subdivisions under the
21 provisions of this act shall be enforced in the same manner and
22 to the same extent as judgments are now enforced against such
23 political subdivisions under the laws of the Commonwealth,
24 except as herein provided.

25 Section 402. Judgments against insured political subdivisions.

26 If the judgment is obtained against a political subdivision
27 that has procured a contract or policy of public liability
28 insurance protection, the holder of the judgment may use the
29 methods of collecting the judgment as are provided by the policy
30 or contract and the laws of the Commonwealth to the extent of

1 the limits of coverage provided.

2 Section 403. Judgments against self-insured political
3 subdivision and those not fully insured.

4 For the payment of any judgment obtained under the provisions
5 of this act against a political subdivision that is a self-
6 insurer or not fully covered by liability insurance, the manner
7 of paying a money judgment shall be based upon a proof of
8 indebtedness or evidence of any estimated tax levy necessary for
9 payment of the judgment and any other evidence or statements
10 which the court of original jurisdiction may require. As an
11 alternative to paying the money judgment in this manner, the
12 court may provide for the judgment to be paid over a period of
13 not less than one nor more than ten years. The interest rate on
14 any judgment where payment is extended more than three years
15 shall be at the rate prescribed by law for the first three years
16 and at the rate of 6% for each remaining year.

17 CHAPTER 5

18 LEGAL INDEMNIFICATION

19 Section 501. Indemnification required generally.

20 A political subdivision shall provide a defense for its
21 employees and, except where otherwise immune from suit, be
22 responsible for the payment of any judgment on any claim or
23 civil law suit against an employee for money damages arising out
24 of any act or omission within the scope of employment.

25 Section 502. Special provisions.

26 A political subdivision shall provide a defense for its
27 employees irrespective of whether the claim and civil suit is
28 brought in a court of the Commonwealth or the United States or
29 under State or Federal law. A political subdivision may, unless
30 directed otherwise by a court of competent jurisdiction, refuse

1 to defend or indemnify its employee at any time if it is
2 determined that the act or omission of the employee was not
3 within the scope of employment or that the act or omission
4 included criminal intent or that such act or omission is within
5 the exceptions enumerated in section 201.

6 Section 503. Contribution, indemnification or reimbursement
7 by employee.

8 A political subdivision shall not be entitled to contribution
9 or indemnification, or reimbursement of legal fees and expenses
10 from its employee unless the court shall find that the act or
11 omission of the employee was outside the scope of employment or
12 that the act or omission included criminal intent or that such
13 act or omission is within the exceptions enumerated in section
14 201. Any action by a political subdivision against its employee
15 and any action by an employee against the political subdivision
16 for contribution, indemnification, or necessary legal fees and
17 expenses, shall be brought in the same court in which the tort
18 claim in question was brought.

19 CHAPTER 6

20 POWERS OF POLITICAL SUBDIVISION

21 Section 601. Purchase of liability insurance authorized.

22 A political subdivision shall have the authority to purchase
23 insurance on itself or its employees for any liability arising
24 from the performance of their duties within the scope of their
25 employment.

26 Section 602. Employment of risk manager authorized.

27 A political subdivision shall have the authority to employ a
28 professional risk manager whose responsibility it shall be to
29 administer a public liability insurance program for the
30 political subdivision and initiate any risk management program

1 for the political subdivision and its employees.

2 Section 603. Joint action by political subdivision authorized.

3 Any two or more political subdivisions may join together,
4 enter into any agreements, or jointly contract for the
5 development of a group risk management program either through
6 the provisions of the act of July 12, 1972 (P.L.762, No.180),
7 entitled "An act relating to intergovernmental cooperation" or
8 any other applicable law in the Commonwealth. Any two or more
9 political subdivisions may join together, enter into any
10 agreements, or jointly contract for the purchasing of public
11 liability insurance. Any two or more political subdivisions may
12 pool their public liability insurance risks through the
13 provisions of the act of July 12, 1972 (P.L.762, No.180), or any
14 other applicable law of the Commonwealth.

15 Section 604. Insurance pooling and coinsurance.

16 The pooling of insurance risks, reserves, claims or losses
17 shall not be construed to be transacting insurance nor otherwise
18 subject such political subdivisions to the provisions of the
19 laws of the Commonwealth regulating insurance or insurance
20 companies. Such political subdivisions may be coinsured under a
21 master policy and the total premium may be prorated among such
22 political subdivisions. Any county may undertake a group risk
23 management program or public liability insurance program on
24 behalf of itself and any other political subdivisions covered by
25 this act within the county that wish to voluntarily participate
26 in such programs.

27 Section 605. Funding of self-insurance.

28 Any political subdivision may self-insure, which must be
29 funded on an annual basis by appropriations to establish a
30 reserve for self-insurance purposes.

1 CHAPTER 7

2 MISCELLANEOUS PROVISIONS

3 Section 701. General laws and rules applicable.

4 The laws of the Commonwealth and the rules of civil procedure
5 as promulgated and adopted by the Supreme Court of Pennsylvania
6 insofar as applicable and not inconsistent herewith shall apply
7 to and govern actions under this act.

8 Section 702. Repeals.

9 (a) The following act or parts of acts are repealed
10 absolutely:

11 Clause 53.1 of section 2403, act of June 23, 1931 (P.L.932,
12 No.317), reenacted and amended June 28, 1951 (P.L.662, No.164),
13 known as "The Third Class City Code."

14 Clause LXVII of section 1502, act of June 24, 1931 (P.L.1206,
15 No.331), reenacted and amended May 27, 1949 (P.L.1955, No.569),
16 known as "The First Class Township Code."

17 The third paragraph of clause (q) of subsection B of section
18 4, act of May 2, 1945 (P.L.382, No.164), known as the
19 "Municipality Authorities Act of 1945."

20 Act of May 15, 1945 (P.L.538, No.210), entitled "An act
21 relating to the liabilities of elected and appointed officers of
22 the various political subdivisions and limiting surcharges to
23 the actual financial loss sustained."

24 Act of May 20, 1949 (P.L.1642, No.495), entitled "An act
25 relating to property owned by cities of the second class A,
26 authorizing special funds for its maintenance, and authorizing
27 council to insure against liability arising out of the ownership
28 or control of such property."

29 Subdivision (x) and section 2199.18, act of July 28, 1953
30 (P.L.723, No.230), known as the "Second Class County Code."

1 Subsection (b) of section 431, act of August 9, 1955
2 (P.L.323, No.130), known as "The County Code."

3 Clause 37.1 of section 1202, act of February 1, 1966 (1965
4 P.L.1656, No.581), known as "The Borough Code."

5 Section 1576 and 7723(d) of Title 75 (Vehicles), act of
6 November 25, 1970 (P.L.707, No.230), known as the Pennsylvania
7 Consolidated Statutes.

8 Act of July 10, 1975 (P.L.50, No.29), entitled "An act
9 providing for liability insurance for officers and employees of
10 incorporated towns."

11 (b) The following acts or parts of acts are repealed to the
12 extent indicated:

13 Clause XIII of section 702, act of May 1, 1933 (P.L.103,
14 No.69), reenacted and amended July 10, 1947 (P.L.1481, No.567),
15 known as "The Second Class Township Code," insofar as
16 inconsistent.

17 Section 774, act of March 10, 1949 (P.L.30, No.14), known as
18 the "Public School Code of 1949," insofar as inconsistent.

19 Section 11, act of March 19, 1951 (P.L.28, No.4), entitled
20 "An act relating to the civil defense of this State and its
21 coordination with national defense; providing for the
22 establishment of a State Council of Civil Defense, local and
23 district councils of civil defense, Mobile Support Units;
24 prescribing the powers, duties and immunities thereof and of
25 their personnel; authorizing mutual aid compacts and providing
26 penalties," insofar as it relates to political subdivisions and
27 their agents, employees and representatives.

28 Section 603, act of October 20, 1966 (3rd Sp.Sess., P.L.96,
29 No.6), known as the "Mental Health and Mental Retardation Act of
30 1966," insofar as inconsistent.

1 ~~Sections 5522 and 8832~~ SECTION 5522 of Title 42 (Judiciary <—
2 and Judicial Procedure), act of November 25, 1970 (P.L.707,
3 No.230), known as the Pennsylvania Consolidated Statutes,
4 insofar as inconsistent.

5 (c) All other acts or parts of acts are repealed to the
6 extent of any inconsistency.

7 Section 703. Effective date and application.

8 This act shall take effect in 60 days and shall apply to all
9 causes of action arising thereafter. Nothing in this act shall
10 be construed to apply its provisions to any cause of action,
11 which arose or which would otherwise have arisen prior to such
12 effective date had this act been in effect at such time.