

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2757 Session of
1986

INTRODUCED BY McCLATCHY, HAGARTY, NAHILL, FOX AND CIVERA,
SEPTEMBER 24, 1986

REFERRED TO COMMITTEE ON JUDICIARY, SEPTEMBER 24, 1986

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, clarifying the
3 definitions of "Commonwealth party" and "local agency";
4 further setting amounts recoverable from certain Commonwealth
5 parties; and further clarifying the provision of legal
6 assistance to Commonwealth parties.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Sections 8501, 8523, 8525 and 8528 of Title 42 of
10 the Pennsylvania Consolidated Statutes are amended to read:

11 § 8501. Definitions.

12 The following words and phrases when used in this chapter
13 shall have, unless the context clearly indicates otherwise, the
14 meanings given to them in this section:

15 "Act." Includes a failure to act.

16 "Commonwealth party." A Commonwealth agency, which includes
17 authorities functioning pursuant to the act of April 6, 1956
18 (1955 P.L.1414, No.465), known as the Second Class County Port
19 Authority Act, and section 303 of the act of January 22, 1968

1 (P.L.42, No.8), known as the Pennsylvania Urban Mass
2 Transportation Law, and any employee thereof, but only with
3 respect to an act within the scope of his office or employment.

4 "Employee." Any person who is acting or who has acted on
5 behalf of a government unit whether on a permanent or temporary
6 basis, whether compensated or not and whether within or without
7 the territorial boundaries of the government unit, including any
8 volunteer fireman and any elected or appointed officer, member
9 of a governing body or other person designated to act for the
10 government unit. Independent contractors under contract to the
11 government unit and their employees and agents and persons
12 performing tasks over which the government unit has no legal
13 right of control are not employees of the government unit.

14 "Injury." Includes death.

15 "Judicial determination." Any determination by a court of
16 competent jurisdiction including any settlement approved by such
17 court.

18 "Local agency." A government unit other than [the] a
19 Commonwealth [government] party. The term includes [an
20 intermediate unit] intermediate units and municipal authorities
21 formed and existing under the provisions of the act of May 2,
22 1945 (P.L.382, No.164), known as the Municipality Authorities
23 Act of 1945.

24 § 8523. Venue and process.

25 (a) Venue.--Actions for claims against a Commonwealth party
26 may be brought in and only in a county in which the principal or
27 local office of the Commonwealth party is located or in which
28 the cause of action arose or where a transaction or occurrence
29 took place out of which the cause of action arose. If venue is
30 obtained in the Twelfth Judicial District (Dauphin County)

1 solely because the principal office of the Commonwealth party is
2 located within it, any judge of the Court of Common Pleas of
3 Dauphin County shall have the power to transfer the action to
4 any appropriate county where venue would otherwise lie.

5 (b) Process.--Service of process in the case of an action
6 against the Commonwealth or a Commonwealth party shall be made
7 at the principal or local office of the Commonwealth [agency]
8 party that is being sued and, except as provided in section 8525
9 (relating to legal assistance), at the office of the Attorney
10 General.

11 § 8525. Legal assistance.

12 When an action is brought under this subchapter against an
13 employee of the Commonwealth government, and it is alleged that
14 the act of the employee which gave rise to the claim was within
15 the scope of the office or duties of the employee, the
16 Commonwealth through the Attorney General shall defend the
17 action, unless the Attorney General determines that the act did
18 not occur within the scope of the office or duties of the
19 employee. In the latter case, if it is subsequently determined
20 that the act occurred within the scope of the office or duties
21 of the employee, the Commonwealth shall reimburse the employee
22 for the expense of his legal defense in such amounts as shall be
23 determined to be reasonable by the court. If an action is
24 brought against a Commonwealth government employee for damages
25 on account of injury to a person or property and it is not
26 alleged that the act of the employee which gave rise to the
27 claim was within the scope of his office or duties, and he
28 successfully defends the action on the basis that the act was
29 within the scope of his office or duties, and he has given prior
30 notice to the Attorney General and the Attorney General has

1 refused to defend the action, he shall likewise be entitled to
2 the reasonable expenses of the defense. Notwithstanding anything
3 to the contrary in this section or in section 5522 (relating to
4 six months limitation) or 8523(b) (relating to venue and
5 process), the Attorney General shall not represent and notices
6 shall not be served on the Attorney General concerning actions
7 brought against authorities functioning pursuant to the act of
8 April 6, 1956 (1955 P.L.1414, No.465), known as the Second Class
9 County Port Authority Act, and section 303 of the act of January
10 22, 1968 (P.L.42, No.8), known as the Pennsylvania Urban Mass
11 Transportation Law. Instead the provisions of sections 8547
12 (relating to legal assistance) through 8550 (relating to willful
13 misconduct) shall apply to those authorities and the original
14 jurisdiction of the Commonwealth Court shall not extend to those
15 authorities.

16 § 8528. Limitations on damages.

17 (a) General rule.--Actions for which damages are limited by
18 reference to this subchapter shall be limited as set forth in
19 this section.

20 (b) Amount recoverable.--Damages arising from the same cause
21 of action or transaction or occurrence or series of causes of
22 action or transactions or occurrences shall not exceed \$250,000
23 in favor of any plaintiff or \$1,000,000 in the aggregate. With
24 respect to actions brought against authorities functioning
25 pursuant to the act of April 6, 1956 (1955 P.L.1414, No.465),
26 known as the Second Class County Port Authority Act, and section
27 303 of the act of January 22, 1968 (P.L.42, No.8), known as the
28 Pennsylvania Urban Mass Transportation Law, damages arising from
29 the same cause of action or transaction or occurrence or series
30 of causes of actions or transactions or occurrences shall not

1 exceed \$250,000 in favor of any plaintiff, except with respect
2 to damages recoverable under subsection (c)(5), where damages
3 recoverable against such authorities shall not exceed \$250,000
4 in favor of any plaintiff or \$1,000,000 in the aggregate.

5 (c) Types of damages recoverable.--Damages shall be
6 recoverable only for:

7 (1) Past and future loss of earnings and earning
8 capacity.

9 (2) Pain and suffering.

10 (3) Medical and dental expenses including the reasonable
11 value of reasonable and necessary medical and dental
12 services, prosthetic devices and necessary ambulance,
13 hospital, professional nursing, and physical therapy expenses
14 accrued and anticipated in the diagnosis, care and recovery
15 of the claimant.

16 (4) Loss of consortium.

17 (5) Property losses, except that property losses shall
18 not be recoverable in claims brought pursuant to section
19 8522(b)(5) (relating to potholes and other dangerous
20 conditions).

21 Section 2. All acts and parts of acts are repealed insofar
22 as they are inconsistent with this act.

23 Section 3. This act shall apply to all matters within the
24 jurisdiction of any court on the effective date of this act.

25 Section 4. This act shall take effect immediately.