
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 835 Session of
2001

INTRODUCED BY KUKOVICH, MELLOW, LAVALLE, KITCHEN, TARTAGLIONE,
SCHWARTZ, BOSCOLA, COSTA, BODACK AND LOGAN, MAY 2, 2001

REFERRED TO JUDICIARY, MAY 2, 2001

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, further providing for
3 health information, for consumer protections, for arbitration
4 and settlement provisions, for interest on certain judgments
5 and for certain rights of physicians and patients; providing
6 for duties and defenses of accountants, for workplace safety
7 and toxic-free workplace actions, for limitations on
8 protective orders and settlement provisions, for
9 whistleblowers protections and for employee terminations;
10 adding exceptions to sovereign and governmental immunity;
11 abolishing the defense of high public official immunity in
12 certain cases; authorizing citizens' suits through the use of
13 private attorney general actions in certain cases; and
14 repealing certain acts.

15 The civil justice system in this Commonwealth stands as the
16 paradigm of the American system of government. The world has now
17 come to recognize that a viable, just and fair legal system is
18 one which acts as a safety valve with regard to the pressures
19 built into a complex and heterogeneous society. The public has
20 come to understand the importance of the court system in
21 guaranteeing the right to redress grievances. Unfortunately, the
22 current legal climate has become a battleground for forces which
23 are attempting to restrict the very legal rights which have made
24 America a great and productive society. Those restrictions of

1 rights frequently take the form of immunity legislation,
2 restrictive rules, secrecy and other devices and artifices
3 calculated to pressure a plaintiff, both financially and from a
4 temporal point of view, while shielding or protecting
5 wrongdoers. It is the purpose of this act to recognize that the
6 common law augmented by statute operates as a deterrent to
7 wrongful misconduct against consumer interests.

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

10 Section 1. Chapters 61 and 73 of Title 42 of the
11 Pennsylvania Consolidated Statutes are amended by adding
12 subchapters to read:

13 SUBCHAPTER F

14 HEALTH INFORMATION ACCURACY, PRESERVATION AND

15 CONFIDENTIALITY

16 Sec.

17 6171. Short title of subchapter.

18 6172. Definitions.

19 6173. Preservation and accuracy of health information.

20 6174. Limitations on disclosure.

21 6175. Duty to maintain confidentiality.

22 6176. Recordkeeping requirements.

23 6177. Prohibition on disclosure to employers.

24 6178. Regulations by Department of Health.

25 6179. Applicability of other laws.

26 6180. Cause of action.

27 § 6171. Short title of subchapter.

28 This subchapter shall be known and may be cited as the Health
29 Information Accuracy, Preservation and Confidentiality Act.

30 § 6172. Definitions.

1 The following words and phrases when used in this subchapter
2 shall have the meanings given to them in this section unless the
3 context clearly indicates otherwise:

4 "Health information." Any information or medical records, in
5 whatever form, pertaining to medical and health care services
6 performed by or at the direction of an individual health care
7 provider or an institutional health care provider which identify
8 the patient or client, or from whom the identity of the patient
9 or client can reasonably be determined, which is in the
10 possession of an information source. The term includes medical
11 records relating to the evaluation, diagnosis or treatment of an
12 injury, illness or condition.

13 "Individual health care provider." A physician, nurse,
14 emergency medical services workers, chiropractor, psychologist,
15 nurse-midwife, physician assistant, dentist or other person
16 providing medical, nursing or other health care services of any
17 kind.

18 "Information source." The term shall include:

19 (1) An individual health care provider.

20 (2) An institutional health care provider.

21 (3) An ambulatory service facility.

22 (4) A health maintenance organization as defined in the
23 act of December 29, 1972 (P.L.1701, No.364), known as the
24 Health Maintenance Organization Act.

25 (5) A medical or health service plan with a certificate
26 of authority issued by the Insurance Department, including,
27 but not limited to, hospital plan corporations as defined in
28 40 Pa.C.S. Ch. 61 (relating to hospital plan corporations)
29 and professional health services plan corporations as defined
30 in 40 Pa.C.S. Ch. 63 (relating to professional health

1 services plan corporations).

2 (6) A commercial insurer with a certificate of authority
3 issued by the Insurance Department providing health or
4 accident insurance.

5 (7) A self-insured employer providing health or accident
6 coverage or benefits for its employees.

7 (8) An administrator of a self-insured or partially
8 self-insured health or accident plan providing covered
9 services.

10 (9) Any health and welfare fund that provides health or
11 accident benefits or insurance pertaining to covered
12 services.

13 (10) The Department of Public Welfare for those covered
14 services it purchases or provides through the medical
15 assistance program under the act of June 13, 1967 (P.L.31,
16 No.21), known as the Public Welfare Code.

17 (11) Any other payor for covered services, other than an
18 individual.

19 (12) An employee or agent of any of the enumerated
20 entities.

21 "Institutional health care provider." A hospital, nursing
22 home, hospice, drug and alcohol services provider, clinic, blood
23 bank, plasmapheresis or other blood product center, organ or
24 tissue bank, sperm bank, clinical laboratory or any health care
25 institution required to be licensed in this Commonwealth.

26 "Medical record." The written or graphic documentation,
27 electronic or sound record, videotape, photograph or computer
28 record of services pertaining to medical or health care
29 performed by or at the direction of an individual health care
30 provider or institutional health care provider. The term

1 includes diagnostic documentation such as X-rays,
2 electrocardiograms, electroencephalograms and test results.
3 § 6173. Preservation and accuracy of health information.

4 (a) Contemporaneous entry of health information.--Entries
5 into health information shall be made contemporaneously. It
6 shall be unlawful to amend, add to or delete health information,
7 except that an entry correcting an error or clarifying an entry
8 previously made or adding information not available at the time
9 the information source was initially created may be made if the
10 correction, clarification or addition is dated and timed, if
11 necessary, to show its subsequent status.

12 (b) Destruction of health information unlawful.--It shall be
13 unlawful willfully to destroy health information, including,
14 without limitation, diagnostic slides, specimens, surgical
15 hardware or X-rays without the written consent of the patient. A
16 violation of this section shall be punishable as a summary
17 offense.

18 (c) Consequences of alteration or destruction of health
19 information.--The alteration or willful destruction of health
20 information for the purpose of affecting civil liability of the
21 information source shall constitute a basis for a cause of
22 action as provided in section 6180 (relating to cause of
23 action). If it is shown that there has been such an alteration
24 or destruction of health information, the fact-finder may take
25 this into account in determining whether the health care
26 provider breached the standard of care due to the patient. The
27 alteration or destruction of health information shall also
28 constitute a ground for suspension of the license of an
29 individual health care provider. There shall be a duty on the
30 part of an individual health care provider who becomes aware of

1 an alteration or destruction of health information for the
2 purpose of affecting the civil liability of the information
3 source to report the alteration or destruction to the
4 appropriate State licensing authorities.

5 § 6174. Limitations on disclosure.

6 (a) Disclosure limited.--All health information in the
7 possession or custody of an information source shall be kept
8 confidential and may not be released or its contents disclosed
9 to anyone, except:

10 (1) To the patient.

11 (2) To the subject's primary care physician, provided
12 that the subject has indicated the identity of that primary
13 care physician to whom such information may be released.

14 (3) To a person specifically designated in a written
15 consent under subsection (b).

16 (4) To an agent, employee or medical staff member of a
17 health care provider when disclosure is necessary for
18 purposes of diagnosis or treatment.

19 (5) To prevent death or severe illness in an emergency
20 where disclosure of health information is necessary for
21 treatment of the patient or client.

22 (6) To a peer review organization or committee as
23 defined in the act of July 20, 1974 (P.L.564, No.193), known
24 as the Peer Review Protection Act, a nationally recognized
25 accrediting agency or any Federal or State government agency
26 with oversight responsibilities over health care providers or
27 as otherwise provided by law.

28 (7) To an insurer, but only to the extent necessary to
29 reimburse a health care provider or to make payment of a
30 claim submitted under an insured's policy.

1 (8) Pursuant to an order of a court after application
2 showing good cause with proper notice and an opportunity to
3 be heard. The court shall weigh the need for disclosure
4 against the privacy interest of the individual and possible
5 harm resulting from disclosure.

6 (b) Required elements of written consent to disclosure.--A
7 written consent to disclosure of health care information shall
8 include:

9 (1) The specific name of the individual or organization
10 permitted to make the disclosure.

11 (2) The name or title of the individual to whom or the
12 name of the organization to which the disclosure is to be
13 made.

14 (3) The name of the patient whose records are to be
15 disclosed.

16 (4) The specific purpose or purposes of the disclosure.

17 (5) The amount and kind of information to be disclosed.

18 (6) The signature of the patient or, if the patient is
19 12 years of age or younger, the signature of the patient's
20 parent or guardian.

21 (7) The date on which the consent is signed.

22 (8) A statement that the consent is subject to
23 revocation at any time except to the extent that the person
24 who is to make the disclosure has already acted in reliance
25 on it.

26 (9) The date, event or condition upon which the consent
27 will expire, if not earlier revoked.

28 In no event shall a written consent under this act be deemed
29 valid more than one year after the date to consent was signed.

30 (c) Expired, deficient, revoked or false consent.--A

1 disclosure may not be made on the basis of a consent which:

2 (1) has expired;

3 (2) on its face substantially fails to conform to any of
4 the requirements set forth under subsection (b);

5 (3) is known to have been revoked; or

6 (4) is known by the person holding the information to be
7 materially false.

8 (d) Notice requirement.--Each disclosure made with the
9 subject's written consent must be accompanied by the following
10 written statement:

11 This information has been disclosed to you from records
12 the confidentiality of which is protected by law. You may
13 not make any further disclosure of this information
14 unless further disclosure is expressly permitted by the
15 written consent of the person to whom it pertains. A
16 general authorization for the release of health
17 information or medical records is not sufficient for this
18 purpose.

19 (e) Authorization.--Nothing in this subchapter shall require
20 in litigation that an individual be required to sign an
21 authorization.

22 § 6175. Duty to maintain confidentiality.

23 In the event that health information is disclosed under
24 section 6174(a)(6) or (7) (relating to limitations on
25 disclosure), an information source shall take all necessary
26 steps to maintain the confidentiality of the patient and that
27 patient's health information and medical records. Unless there
28 is a compelling need to disclose the actual identity of the
29 patient or client, all information relating to the identity of
30 the patient or client or from which the identity can be

1 reasonably determined shall not be disclosed.

2 § 6176. Recordkeeping requirements.

3 Information sources shall maintain, as a permanent part of
4 the patient's medical records, a record of all disclosures of
5 health information to any person not employed by or affiliated
6 with it. The record shall include the name and address of each
7 person receiving the health information and a description of the
8 information disclosed.

9 § 6177. Prohibition on disclosure to employers.

10 Health information may not be disclosed to the patient's
11 employer without the written consent of the patient. In the case
12 of disclosure to an employer, the written consent must also
13 include a statement why the disclosure is necessary and that the
14 patient understands the reason for the disclosure.

15 § 6178. Regulations by Department of Health.

16 Within one year of the enactment of this subchapter, the
17 Department of Health shall promulgate standards for the
18 implementation of administrative, technological and physical
19 safeguards by information sources to protect against
20 unauthorized disclosure of individually identifiable health
21 information.

22 § 6179. Applicability of other laws.

23 Nothing in this subchapter is intended to alter limitations
24 on disclosure of health information that are prescribed in law.

25 § 6180. Cause of action.

26 (a) Recovery.--Any person aggrieved by a violation of this
27 subchapter shall have a cause of action against the person who
28 committed the violation and may recover:

29 (1) Compensatory damages, but not less than liquidated
30 damages, computed at the rate of \$1,000 for each violation.

1 (2) Punitive damages.

2 (3) Reasonable attorney fees and litigation costs.

3 (b) Effect of each disclosure.--Each unauthorized disclosure
4 of health care information shall be considered a separate
5 violation.

6 SUBCHAPTER D

7 EFFECT OF ARBITRATION PROVISIONS

8 Sec.

9 7371. Purpose.

10 7372. Definitions.

11 7373. Consumer protection.

12 7374. Confidentiality of settlement agreements.

13 § 7371. Purpose.

14 Consumers are increasingly affected by arbitration clauses
15 contained in agreements which may not be completely understood
16 by them. The purpose of this subchapter is to assure that
17 consumers do not give up their right to sue without full
18 knowledge of their rights.

19 § 7372. Definitions.

20 The following words and phrases when used in this subchapter
21 shall have the meanings given to them in this section unless the
22 context clearly indicates otherwise:

23 "Arbitration clause." Language requiring arbitration,
24 conciliation or mediation in an agreement, except such language
25 required by law.

26 § 7373. Consumer protection.

27 The signatory to an agreement containing an arbitration
28 clause may rescind the agreement within five business days of
29 executing it. No arbitration clause contained in an agreement
30 shall be enforceable unless the clause's language is reproduced

1 in bold print of at least ten-point type and there is a separate
2 signature line for the same with the following insertion
3 following the clause and immediately preceding this line:

4 You do not have to agree to arbitration, conciliation or
5 mediation. You have a right to go to court to resolve any
6 disputes you may have. You have the right to discuss this
7 matter with an attorney of your choice. You also have the
8 right to rescind your signature to this agreement within
9 five business days of the date of the execution of this
10 agreement.

11 § 7374. Confidentiality of settlement agreements.

12 No person shall make a settlement of a dispute, payment of
13 money or other resolution of a claim which has been asserted in
14 an action or submitted for arbitration contingent upon the
15 confidentiality of the terms and conditions of the resolution of
16 the claim, the return of any documents or an agreement
17 prohibiting a person or the person's counsel from sharing
18 information with others. This section is not intended to modify
19 any law, regulation or rule relating to the imposition of
20 protective orders pursuant to discovery proceedings. For the
21 purposes of this section, "person" shall include a Commonwealth
22 agency and a local agency.

23 Section 2. Section 8101 of Title 42 is amended to read:

24 § 8101. Interest on judgments.

25 Except as otherwise provided by another statute, a judgment
26 for a specific sum of money shall bear simple interest [at the
27 lawful rate] from the date of the verdict or award, or from the
28 date of the judgment, if the judgment is not entered upon a
29 verdict or award[.], to the date of payment of the judgment
30 calculated by adding 1% to the prime rate as reported in the

1 first edition of the Wall Street Journal published in each
2 calendar year for which damages were awarded, unless the fact-
3 finder found that a higher rate of interest had been agreed upon
4 by the parties, in which case it shall constitute the rate and
5 terms of interest to be added to the amount of the verdict,
6 award or judgment.

7 Section 3. Title 42 is amended by adding a chapter to read:

8 CHAPTER 82

9 PHYSICIAN'S AND PATIENT'S RIGHTS

10 Sec.

11 8201. Purpose.

12 8202. Review of records and testimony.

13 8203. Right to counsel.

14 8204. Cause termination.

15 8205. Covenants not to compete.

16 8206. Denial of privileges.

17 8207. Peer review.

18 8208. Inspection of records.

19 § 8201. Purpose.

20 The purpose of this chapter is to assure that physicians may
21 provide the best professional services consistent with the
22 interests of the patient and third parties.

23 § 8202. Review of records and testimony.

24 A physician shall have a right to freely review health
25 information of a patient or to testify on any matter regarding a
26 patient's health if the law and rules of procedure and evidence
27 otherwise allow such review or testimony. A physician may bring
28 an action for damages or in equity against any person who
29 coerces, threatens, intimidates or retaliates against the
30 physician for giving testimony on behalf of a patient.

1 § 8203. Right to counsel.

2 A physician shall have the right to the assistance of counsel
3 during negotiations with a health care provider regarding the
4 terms of an employment contract, a capitation arrangement or
5 other payment schedule or system.

6 § 8204. Cause termination.

7 A physician's employment or other compensatory arrangement
8 shall not be terminated without good cause. For the purposes of
9 this section, the absence of good cause shall mean such conduct
10 inimical to the orderly functioning of the employment
11 relationship as would permit discharge for willful misconduct
12 under the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897,
13 No.1), known as the Unemployment Compensation Law.

14 § 8205. Covenants not to compete.

15 A provision constituting a covenant not to compete in a
16 physician's employment agreement or in an agreement for the sale
17 of a physician's professional practice shall be void as against
18 public policy.

19 § 8206. Denial of privileges.

20 A physician shall not be denied privileges at the facilities
21 of a health care provider without a hearing before an
22 independent tribunal after written notice of the basis of the
23 proposed refusal or termination of privileges. The physician
24 shall have the right to be heard, the right to the assistance of
25 counsel, the right to present evidence in the physician's favor
26 and the right to a written statement of the findings and
27 decision of the tribunal.

28 § 8207. Peer review.

29 The act of July 20, 1974 (P.L.564, No.193), known as the Peer
30 Review Protection Act, shall not be construed to prevent a

1 physician from reviewing the physician's own file regarding any
2 matter subject to peer review. A physician's patient shall also
3 be entitled to review and copy any document regarding the
4 physician's privileges or adverse action taken against the
5 physician, any incident report or other document pertaining to
6 the competency of the physician.

7 § 8208. Inspection of records.

8 An insurer of health care, health maintenance or health care
9 provider after written notice shall within ten days provide to
10 its insured, member, participant or patient an opportunity to
11 inspect and to receive copies of all information and records
12 relating to or pertaining to its delay, failure or refusal to
13 approve or provide in a timely manner comprehensive health
14 services to such member, participant or insured.

15 Section 4. Chapter 83 of Title 42 is amended by adding a
16 subchapter to read:

17 SUBCHAPTER F

18 ACCOUNTANTS' RIGHTS

19 Sec.

20 8361. Obligation to report wrongdoing.

21 § 8361. Obligation to report wrongdoing.

22 A certified public accountant, public accountant or
23 individual or entity providing accounting services shall be
24 obligated to report to the appropriate Federal, State or local
25 government authorities wrongdoing discovered during employment
26 without fear of reprisal or retaliation from the employer. For
27 the purposes of this subchapter, retaliation means the
28 termination or severing of any relationship as a consequence of
29 the one providing the accounting services reporting to the
30 government authorities alleged wrongdoing by the accountant's

1 client. To the extent that a good faith report of wrongdoing is
2 made by the accountant, the accountant shall be entitled to
3 introduce the report of wrongdoing in defense of any action
4 brought against the accountant claiming that the accountant
5 permitted wrongdoing to occur.

6 Section 5. Title 42 is amended by adding a chapter to read:

7 CHAPTER 84

8 WORKPLACE SAFETY AND EMPLOYMENT RIGHTS

9 Subchapter

10 A. Unsafe Conditions

11 B. Workplace Safety Actions

12 C. Environmental Safety

13 D. Protections for Employees

14 E. Employee Termination

15 SUBCHAPTER A

16 UNSAFE CONDITIONS

17 Sec.

18 8401. Scope of subchapter.

19 8402. Prohibiting certain defenses.

20 8403. Protective orders.

21 § 8401. Scope of subchapter.

22 The existing law relating to liability for defective products
23 shall continue in effect except as amended by the provisions of
24 this subchapter.

25 § 8402. Prohibiting certain defenses.

26 (a) Nondefense.--It shall not be a defense for any
27 manufacturer of a product to aver that the person injured was a
28 fellow servant or employee of the workers who assembled,
29 designed, engineered or installed the product which is alleged
30 to have caused the injury, without regard to limitations and

1 immunities of the act of June 2, 1915 (P.L.736, No.338), known
2 as the Workers' Compensation Act.

3 (b) Unsafe conditions.--A person who suffers an injury as a
4 result of products and systems utilized beyond their safe
5 operating lives, altered in an unsafe manner or upon which safe
6 maintenance or improvement has not been performed shall not be
7 barred from suit based on the person's employment relationship
8 with the provider of the machines, tools or equipment alleged to
9 have caused the injury, without regard to the limitations and
10 immunities of the Workers' Compensation Act.

11 (c) Directed misuse.--A person who suffers an injury as a
12 result of the employer's willfully directing the misuse of any
13 product, including, but not limited to, machinery, tools,
14 chemicals or substances, shall not be barred from suit based on
15 the person's employment relationship with the provider of the
16 products alleged to have caused the injury, without regard to
17 the limitations and immunities of the Workers' Compensation Act.

18 (d) Standards.--In any trial of any product liability
19 action, the court shall not permit evidence of government or
20 industry standards to be admitted into evidence by the defendant
21 in the defense of the action for any purpose.

22 § 8403. Protective orders.

23 (a) General rule.--In any action subject to this section, no
24 person shall seek and no court shall enter a protective order
25 which is inconsistent with the provisions of this section, and
26 any order to the contrary shall be void and of no effect.

27 (b) Scope.--No person subject to a protective order shall be
28 forbidden from making any document or other information
29 furnished to that person pursuant to such order available to any
30 of the following:

1 (1) Federal, State or local regulatory or law
2 enforcement agency, or legislative or judicial body, where
3 the person furnishing such information reasonably believes
4 that such agency or body has regulatory, law enforcement,
5 legislative or adjudicative authority with respect to the
6 product involved in such action, and the opposing counsel are
7 notified that documents or information has been furnished
8 within five days after they are made available.

9 (2) An attorney whom the person furnishing such
10 information reasonably believes is duly licensed to practice
11 law in a state or the District of Columbia and representing a
12 person claiming losses from the same product as is involved
13 in this action provided that the attorney receiving the
14 documents or other information agrees, in writing, to be
15 bound by the protective order and to be subject to the
16 jurisdiction of the court issuing it in connection with the
17 matter relating to it, and a copy of the agreement is
18 promptly furnished to opposing counsel.

19 (3) Nothing in this section shall authorize or require
20 the disclosure of trade secrets as defined in 18 Pa.C.S. §
21 3930 (relating to theft of trade secrets).

22 (c) Settlement restriction.--In any action, no person shall
23 request, as a condition of settlement, that the claimant or the
24 claimant's attorney agree to any of the following:

25 (1) To return or destroy documents related in any way to
26 the action, provided that it shall not be improper to
27 continue a valid protective order in effect or to enter a
28 valid postdismissal protective order.

29 (2) In the case of an attorney, not to represent any
30 other claimant in a similar action or in any other action

1 against any of the defendants.

2 (d) Other rights.--Nothing in this section shall impair or
3 diminish any other right of any person to obtain access to any
4 document or information related in any way to an action subject
5 to this subchapter.

6 SUBCHAPTER B
7 WORKPLACE SAFETY ACTIONS

8 Sec.

9 8411. Cause of action for injuries arising out of certain
10 acts by employers.

11 8412. Hazard-free work environment.

12 8413. Toxic injury-free workplace.

13 8414. Concealment of public hazards.

14 8415. Injunctions authorized.

15 § 8411. Cause of action for injuries arising out of certain
16 acts by employers.

17 (a) Action authorized.--An employee shall have a cause of
18 action against the employer for damages which result from the
19 employer's reckless, willful or wanton disregard for the safety
20 of the employee or which results from the employer's intentional
21 misconduct.

22 (b) Certain defenses prohibited.--In a claim brought under
23 this section, the employer shall not raise the defense of
24 assumption of the risk or the defense of the employee's
25 comparative fault or misuse of a product or violation of a
26 safety regulation.

27 (c) Relationship to claims under the Workers' Compensation
28 Act.--The cause of action authorized by this section shall not
29 diminish any rights or interests which an employee may have
30 under the act of June 2, 1915 (P.L.736, No.338), known as the

1 Workers' Compensation Act, and shall exist without regard to the
2 limitations, defenses and immunities of that act. The filing of
3 an action as authorized by this section shall not affect the
4 employee's eligibility for benefits under the Workers'
5 Compensation Act, except that compensatory damages recovered
6 under this section shall be reduced by the amount of benefits
7 received under that act. The employer found liable on the action
8 brought under this section shall have no right to subrogation
9 for benefits paid under the Workers' Compensation Act.

10 § 8412. Hazard-free work environment.

11 (a) Cause of action.--An employee who suffers an injury
12 caused by the removal of a warning, guard or other safety device
13 from a machine, tool or other implement may bring an action for
14 damages against the employer if the employer knew or should have
15 known of the removal. The action shall be brought within two
16 years of the injury.

17 (b) Relationship to claims under the Workers' Compensation
18 Act.--The cause of action authorized by this section shall not
19 diminish any rights or interests which an employee may have
20 under the act of June 2, 1915 (P.L.736, No.338), known as the
21 Workers' Compensation Act, and shall exist without regard to the
22 limitations, defenses and immunities of that act. The filing of
23 an action as authorized by this section shall not affect the
24 employee's eligibility for benefits under the Workers'
25 Compensation Act, except that compensatory damages recovered
26 under this section shall be reduced by the amount of benefits
27 received under that act. The employer found liable on the action
28 brought under this section shall have no right to subrogation
29 for benefits paid under the Workers' Compensation Act.

30 (c) Defenses to action.--There shall be no recovery if the

1 employee removed the warning, guard or other safety device
2 unless the removal was at the direction of the employer;
3 knowledge by the employee of the removal alone shall not be a
4 defense.

5 (d) Definition.--As used in this section, the term
6 "employer" shall include any person in control of the workplace
7 premises but shall be limited to an employer who employs 25 or
8 more persons.

9 § 8413. Toxic injury-free workplace.

10 (a) Cause of action.--An employee who suffers an injury
11 caused by or becomes diseased from unreasonable exposure to
12 levels of a toxic substance may bring an action for damages
13 against the employer if the employer knew or should have known
14 of the hazardous exposure. This action shall be brought within
15 two years of the time at which the employee's injury or disease
16 manifests itself to a degree sufficient to give reasonable
17 notice that a cause of action may exist.

18 (b) Relationship to claims under the Workers' Compensation
19 Act.--The cause of action authorized by this section shall not
20 diminish any rights or interests which an employee may have
21 under the act of June 2, 1915 (P.L.736, No.338), known as the
22 Workers' Compensation Act, and shall exist without regard to the
23 limitations, defenses and immunities of that act. The filing of
24 an action as authorized by this section shall not affect the
25 employee's eligibility for benefits under the Workers'
26 Compensation Act, except that compensatory damages recovered
27 under this section shall be reduced by the amount of benefits
28 received under that act. The employer found liable on the action
29 brought under this section shall have no right to subrogation
30 for benefits paid under the Workers' Compensation Act.

1 (c) Defenses to action.--There shall be no recovery if the
2 employee brought the toxic substance onto the premises unless
3 this was at the direction of the employer; knowledge by the
4 employee of the toxicity of the substance alone shall not be a
5 defense.

6 (d) Definition.--As used in this section, the term
7 "employer" shall include any person in control of the workplace
8 premises, but shall be limited to an employer who employs 25 or
9 more persons.

10 § 8414. Concealment of public hazards.

11 (a) Agreement to conceal public hazard unenforceable.--Any
12 portion of an agreement that has as its purpose or effect the
13 concealment of a public hazard is void and may not be enforced.

14 (b) Order to conceal public hazard prohibited.--A court may
15 not enter an order that has as its purpose or effect the
16 concealment of a public hazard.

17 (c) Penalty.--A person who intentionally, knowingly or
18 recklessly conceals a public hazard commits a misdemeanor of the
19 first degree.

20 (d) Standing.--Any person has standing to contest an order
21 that violates this section.

22 (e) Procedure and venue.--A person may contest an order that
23 violates this section by bringing an action in any court of
24 competent jurisdiction.

25 (f) Attorney fees.--Any party or attorney that prevails in
26 litigation under this section shall have the right to petition
27 the court for attorney fees and costs to be charged against the
28 losing or settling party.

29 (g) Applicability.--This section applies only to an order
30 rendered or a contract or agreement entered into on or after the

1 effective date of this section. An order rendered or a contract
2 or agreement entered into before the effective date of this
3 section is governed by the law in effect at the time the order
4 was rendered or the contract or agreement was entered into and
5 that law is continued in effect for that purpose.

6 (h) Definition.--As used in this section, the term "public
7 hazard" means an instrument, device or substance or a condition
8 of an instrument, device or substance that has caused or may
9 cause bodily injury to more than one individual.

10 § 8415. Injunctions authorized.

11 (a) Final injunction.--A court in which an action brought
12 under this chapter has been filed may issue an injunction
13 subsequent to the verdict or in connection with the settlement
14 of the action if the court is satisfied that the public safety
15 is furthered by the results of its issuance. Such an injunction
16 may provide for recalls of products, the issuance of safety
17 warnings, the evaluation of the etiology of a risk, the
18 implementation of standards, the furnishing of education or such
19 other relief as may be appropriate. No injunction shall issue
20 without notice and opportunity to be heard by any person who
21 might be adversely affected. The court shall find from the
22 evidence introduced at trial or during discovery that the relief
23 granted is necessary for the safety of the public, but the
24 parties shall not be required to specifically plead such relief
25 in order to request the court to order it.

26 (b) Temporary injunctions.--Further, any tribunal within the
27 Commonwealth shall be empowered to issue mandatory injunctions
28 in connection with any suit for damages providing for recalls,
29 safety warnings, evaluation of the etiology of a risk,
30 implementation of safety standards, mandatory education or such

1 other relief as may be appropriate after notice and opportunity
2 to be heard.

3 (c) Statement.--In the case of a verdict, an injunction may
4 be issued without specific findings of fact or conclusions of
5 law, but the relief shall be clearly stated and the court shall
6 explain in writing why the relief granted is necessary to affect
7 the wrong proven at trial.

8 (d) Findings of fact and conclusions of law.--In the case of
9 a settlement, the court, upon issuing an injunction, shall issue
10 findings of fact and conclusions of law after notice and an
11 opportunity to be heard for the relief granted. The parties
12 shall be encouraged to stipulate to injunctions in the
13 settlement of any civil case in the event where the public
14 interest may be served.

15 (e) Pleadings.--It shall not be necessary to specifically
16 plead for or ask for an injunction in the complaint or any other
17 pleading.

18 SUBCHAPTER C

19 ENVIRONMENTAL SAFETY

20 Sec.

21 8421. Definitions.

22 8422. Strict liability.

23 8423. Causation.

24 8424. Limitation of action.

25 § 8421 Definitions.

26 The following words and phrases when used in this subchapter
27 shall have the meanings given to them in this section unless the
28 context clearly indicates otherwise:

29 "Facility."

30 (1) Any building, structure, installation, equipment,

1 pipe or pipeline, including any pipe into a sewer or publicly
2 owned treatment works, well, pit, pond, lagoon, impoundment,
3 ditch, landfill, storage container, motor vehicle, rolling
4 stock or aircraft.

5 (2) Any watercraft of any description or other
6 artificial contrivance used or capable of being used as a
7 means of transportation on water.

8 (3) Any site or area where a hazardous substance has
9 been deposited, stored, disposed of or placed or otherwise
10 come to be located.

11 The term does not include any consumer product in consumer use.

12 "Hazardous substance." The term includes:

13 (1) Substances designated under section 311(b)(2)(A) of
14 the Federal Water Pollution Control Act (62 Stat. 1155, 33
15 U.S.C. § 1321(b)(2)(A)).

16 (2) Elements, compounds, mixtures, solutions or
17 substances designated under section 102 of the Comprehensive
18 Environmental Response, Compensation, and Liability Act of
19 1980 (Public Law 96-510, 42 U.S.C. § 9602).

20 (3) Hazardous wastes having the characteristics
21 identified under or listed under section 3001 of the Solid
22 Waste Disposal Act (Public Law 89-272, 42 U.S.C. § 6921).

23 (4) Toxic pollutants listed under section 307(a) of the
24 Federal Water Pollution Control Act (62 Stat. 1155, 33 U.S.C.
25 § 1317(A)).

26 (5) Hazardous air pollutants listed under section 112 of
27 the Clean Air Act (Public Law 95-95, 42 U.S.C. § 7412).

28 (6) Imminently hazardous chemical substances or mixtures
29 with respect to which the administrator of the United States
30 Environmental Protection Agency has taken action under

section 7 of the Toxic Substances Control Act (Public Law 94-469, 15 U.S.C. § 2606).

(7) Hazardous wastes as defined by regulations promulgated under this subchapter.

"Release." Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment which occurred at a point in time or which continues to occur. The term does not include:

(1) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, watercraft or pipeline pumping station engine.

(2) Release of source, by-product or special nuclear material from nuclear incident, as those terms are defined in section 11 of the Atomic Energy Act of 1954 (68 Stat. 921, 42 U.S.C. § 2014), if the release is subject to requirements with respect to financial protection established by the Federal Nuclear Regulatory Commission under section 170 of the Atomic Energy Act of 1954 (42 U.S.C. § 2210).

(3) Release of source, by-product or special nuclear material from any processing site designated pursuant to section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978 (Public Law 95-604, 42 U.S.C. § 7912(a)(1) or 7942(a)).

§ 8422. Strict liability.

For the purpose of this subchapter, a person is responsible for a release of a hazardous substance from a facility if the person:

(1) owned or operated the facility at the time the hazardous substance was placed or came to be located in or on

1 the facility during the time of the release or threatened
2 release or at any time between those occurrences;

3 (2) owned or possessed the hazardous substance and
4 arranged, by contract, agreement or otherwise, for the
5 disposal, treatment or transport for disposal or treatment of
6 the hazardous substance; or

7 (3) accepted the hazardous substance for transport to a
8 disposal or treatment facility and either selected the
9 facility to which it was transported or disposed of the
10 substance in a manner contrary to law.

11 A person who is responsible for a release of a hazardous
12 substance from a facility shall be strictly liable for all
13 damages recoverable at common law which result from the release
14 or to which the release significantly contributes.

15 § 8423. Causation.

16 In adjudicating the question of whether a plaintiff's
17 personal injury or disease was caused by the release of a
18 hazardous substance, the question shall be submitted to the
19 trier of fact if the plaintiff shows evidence sufficient to
20 enable the trier of fact to find that it is more likely than not
21 that the plaintiff's exposure to the hazardous substance found
22 in the release caused or increased the risk of injury or disease
23 suffered by the plaintiff.

24 § 8424. Limitation of action.

25 An action authorized by this subchapter shall be brought
26 within two years from the time at which the injury or disease
27 manifested itself to the degree sufficient to give reasonable
28 notice that a cause of action may exist.

29 SUBCHAPTER D

30 PROTECTIONS FOR EMPLOYEES

1 Sec.

2 8451. Short title of subchapter.

3 8452. Hazardous condition warning and refusal.

4 8453. Whistleblower protection.

5 § 8451. Short title of subchapter.

6 This subchapter shall be known and may be cited as the
7 Hazardous Condition and Warning Act.

8 § 8452. Hazardous condition warning and refusal.

9 (a) Rights of employees.--No employer may discharge or
10 discipline an employee for:

11 (1) reporting a hazardous condition;

12 (2) refusing to be exposed to a hazardous condition;

13 (3) warning another employee of a hazardous condition to
14 which the latter is or could be exposed.

15 (b) Determining existence of hazardous condition.--In the
16 case of a refusal or warning, each of the following shall apply:

17 (1) A reasonable individual, having knowledge by
18 education, training and experience necessary for the
19 performance of the employee's job, in the circumstances
20 confronting the employee, would conclude that a hazardous
21 condition exists.

22 (2) There is sufficient time, due to the urgency of the
23 situation, to eliminate or abate the hazardous condition
24 through resort to regular statutory enforcement procedures.

25 (3) The employee notifies the employer of the hazardous
26 condition and requests its correction or abatement.

27 (4) The employer is unable or unwilling to correct or
28 abate the hazardous condition.

29 (c) Employee's remedy.--An employee who has been discharged
30 or disciplined in violation of this section may file suit

1 requesting compensatory and punitive damages, including, but not
2 limited to, attorney fees.

3 (d) Definitions.--As used in this section, the following
4 words and phrases shall have the meanings given to them in this
5 subsection:

6 "Employer." The term shall not include a Commonwealth agency
7 or a political subdivision or its agency.

8 "Hazardous condition." A condition in a workplace that:

9 (1) Causes or creates a substantial risk of death,
10 disease or serious physical harm, either imminently or a
11 result of long-term exposure.

12 (2) Contains a risk that is greater than the ordinary
13 expected risk inherent in an employment after all feasible
14 safety and health precautions have been taken.

15 (3) Results from the employer's violation of health and
16 safety standards established by Federal or State statutes or
17 regulations, local ordinances, collective bargaining
18 agreements or industrial codes.

19 § 8453. Whistleblower protection.

20 No employer may discharge, threaten or otherwise discriminate
21 or retaliate against an employee regarding the employee's
22 compensation or terms, conditions, location or privileges of
23 employment because the employee reports or is about to make a
24 report, verbally or in writing, to the employer or an
25 appropriate authority of an instance of wrongdoing under this
26 chapter. The remedies, penalties and enforcement procedure for
27 violations of this section shall be as provided in the act of
28 December 12, 1986 (P.L.1559, No.169), known as the Whistleblower
29 Law. The damages shall be provided by section 8452(c) (relating
30 to hazardous condition warning and refusal).

1 SUBCHAPTER E

2 EMPLOYEE TERMINATION

3 Sec.

4 8471. Purpose.

5 8472. Definitions.

6 8473. Right to terminate.

7 8474. Exceptions.

8 8475. Issue preclusion.

9 8476. Cause of action.

10 § 8471. Purpose.

11 Many employees in this Commonwealth are terminated without
12 explanation. The purpose of this subchapter is to require that
13 good cause exists to justify an employment termination, thereby
14 stabilizing the work force, and providing a reasonable comfort
15 level to employees while ensuring employers' flexibility.

16 § 8472. Definitions.

17 The following words and phrases when used in this subchapter
18 shall have the meanings given to them in this section unless the
19 context clearly indicates otherwise:

20 "Good cause." Legitimate business reasons as would be
21 acceptable to a reasonable employer existing at the time of the
22 termination.

23 "Legitimate business reasons." The term includes any conduct
24 inimical to the orderly functioning of the business, including
25 drug or alcohol use which represents actual impairment of the
26 employee during working hours, theft from the employer or other
27 criminal conduct affecting the employment relationship.

28 § 8473. Right to terminate.

29 (a) Good cause required.--In order for an employee to be
30 terminated, good cause must be shown. Within three business days

1 of the termination, the employee shall be given the reason in
2 writing for the termination. If exigent circumstances prevent
3 the giving of the reasons, the reasons shall be provided in
4 writing within 20 days of termination together with an
5 explanation as to what prevented earlier notice.

6 (b) Elements of good cause.--A termination is for good cause
7 if it is not arbitrary, based on false information or
8 accusations or motivated by a violation of public policy
9 including statutory or regulatory protections.

10 § 8474. Exceptions.

11 Good cause need not be shown where termination is due to bona
12 fide plant closing or economic reasons, provided that such
13 layoffs or terminations do not represent an intent to evade the
14 intent of this chapter. This chapter is inapplicable in any
15 circumstance if:

16 (1) a collective bargaining agreement is in force which
17 includes provisions relating to employee termination
18 procedures and the procedures require good cause for
19 termination; or

20 (2) the employee is employed by a Commonwealth agency or
21 a local agency.

22 This chapter is in addition to and not in abrogation of any
23 collective bargaining rights or other employee protections
24 provided by law.

25 § 8475. Issue preclusion.

26 An unappealed finding in an unemployment compensation
27 proceeding that an employee was terminated for a compelling and
28 necessitous reason or for other reasons inimical to an
29 employer's interests shall be binding upon the parties to the
30 extent that both in advance of the decision have agreed in

1 writing that it would be conclusive on the termination issue and
2 that the employee would be reinstated if the final decision was
3 that the termination was not for a compelling and necessitous
4 reason.

5 § 8476. Cause of action.

6 An employee terminated without cause shall have a cause of
7 action for damages, including actual economic loss and loss of
8 employment opportunity. This cause of action shall not abrogate
9 any other damage remedy or equitable relief available to the
10 employee. Attorney fees, costs and punitive damages shall be
11 allowed if the employer's conduct was intentional, undertaken in
12 bad faith, was willful or wanton or exhibited a reckless
13 indifference to the rights of the employee. Any action brought
14 by the employee in bad faith, maliciously, or in reckless
15 indifference to the facts shall result in an award to the
16 employer of attorney fees and costs.

17 Section 6. Section 8522(b)(2) of Title 42 is amended to
18 read:

19 § 8522. Exceptions to sovereign immunity.

20 * * *

21 (b) Acts which may impose liability.--The following acts by
22 a Commonwealth party may result in the imposition of liability
23 on the Commonwealth and the defense of sovereign immunity shall
24 not be raised to claims for damages caused by:

25 * * *

26 (2) Medical-professional liability.--Acts of health care
27 employees of Commonwealth agency medical facilities or
28 institutions or by a Commonwealth party who is a doctor,
29 dentist, nurse or related health care personnel and acts
30 which constitute corporate negligence by a Commonwealth

1 agency providing health care.

2 * * *

3 Section 7. Section 8542(a) of Title 42 is amended and
4 subsection (b) is amended by adding paragraphs to read:

5 § 8542. Exceptions to governmental immunity.

6 (a) Liability imposed.--A local agency shall be liable for
7 damages on account of an injury to a person or property within
8 the limits set forth in this subchapter if both of the following
9 conditions are satisfied and the injury occurs as a result of
10 one of the acts set forth in subsection (b):

11 (1) The damages would be recoverable under common law or
12 a statute creating a cause of action if the injury were
13 caused by a person not having available a defense under
14 section 8541 (relating to governmental immunity generally) or
15 section 8546 (relating to defense of official immunity); and

16 (2) The injury was caused by the negligent acts of the
17 local agency or an employee thereof acting within the scope
18 of his office or duties with respect to one of the categories
19 listed in subsection (b). As used in this paragraph,
20 "negligent acts" shall [not] include acts or conduct which
21 constitutes a crime, actual fraud, actual malice or willful
22 misconduct if the acts or conduct is done within the scope of
23 the office or duties.

24 (b) Acts which may impose liability.--The following acts by
25 a local agency or any of its employees may result in the
26 imposition of liability on a local agency:

27 * * *

28 (9) Medical professional liability.--Acts of health care
29 employees of a local agency or of the medical facilities or
30 institutions operated by a local agency.

1 (10) Toxic substances in schools.--A condition in or on
2 a school building or property resulting in pupils being
3 unreasonably exposed to levels of pesticide if the school
4 district or other local agency owning or operating the
5 building knew or should have known of the hazardous exposure.

6 (11) Willful misconduct of certain local agency
7 officials.--An act of willful misconduct by a public official
8 of a local agency done with the knowledge and actual or
9 implicit permission of the local agency.

10 (12) Failure to maintain computer system in connection
11 with 911 emergency response system.--The failure of a local
12 agency to maintain, upgrade or correct its computer system
13 which administers a 911 emergency response system unless the
14 agency can demonstrate that it made a good faith attempt to
15 maintain, upgrade or correct the system.

16 (13) Supervisory negligence.--The failure to supervise
17 in circumstances where the conduct or failure to act would be
18 negligent at common law.

19 * * *

20 Section 8. Section 8546 of Title 42 is amended to read:

21 § 8546. Defense of official immunity; high public official
22 immunity.

23 (a) General rule.--In any action brought against an employee
24 of a local agency for damages on account of an injury to a
25 person or property based upon claims arising from, or reasonably
26 related to, the office or the performance of the duties of the
27 employee, the employee may assert on his own behalf, or the
28 local agency may assert on his behalf:

29 (1) Defenses which are available at common law to the
30 employee.

1 and, upon a showing of wanton or reckless misconduct, punitive
2 damages.

3 Section 10. This act shall take effect in 60 days.