

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2031 Session of
1989

INTRODUCED BY COLAFELLA, TRELLO, CALTAGIRONE, COLAIZZO, HALUSKA,
MORRIS, JOHNSON, CIVERA, BILLOW, PRESSMANN, PESCI, GODSHALL,
FARGO, PISTELLA, GIGLIOTTI, BUNT AND COLE, OCTOBER 23, 1989

REFERRED TO COMMITTEE ON JUDICIARY, OCTOBER 23, 1989

AN ACT

1 Providing for indemnification of the cost of legal defense to
2 health care providers for health care reporting requirements.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Health Care
7 Providers Immunity Defense Act.

8 Section 2. Legislative findings and intent.

9 (a) Findings.--The General Assembly finds and declares as
10 follows:

11 (1) The General Assembly has, over the years, imposed on
12 health care providers many special duties of reporting facts
13 learned in the performance of their profession to
14 departments, agencies, boards or commissions created by or as
15 part of State government.

16 (2) In some of these instances, the General Assembly has
17 enacted immunity statutes granting immunity to health care

1 providers for complying with this statutorily imposed duty,
2 and, in other instances, no immunity has been legislatively
3 granted.

4 (3) In some instances, where no immunity statutes have
5 been enacted, absolute or qualified immunity has been granted
6 by judicial decision.

7 (4) Many of the immunity statutes have been qualified by
8 such limitations as applicability only to criminal or civil
9 cases, limitation to defamation and the requirement that
10 reports be made in good faith or without malice.

11 (5) Despite the grants of immunity, health care
12 providers have been subjected to lawsuits in the past,
13 potentially face lawsuits in the future and have been
14 responsible for the costs of defense, including the payment
15 of legal fees, even when they have been successful in defense
16 because of their immunity.

17 (6) It is unfair to require health care providers to
18 make reports of facts learned in their professional capacity
19 yet not provide for payment of the costs of legal
20 representation if they are subjected to lawsuits for making
21 these reports.

22 (b) Intent.--It is the intent of the General Assembly that
23 the Commonwealth indemnify health care providers when they are
24 sued for reporting requirements which are statutorily imposed
25 and to provide for the award of reasonable attorney fees to such
26 health care providers in the event of a successful defense.

27 Section 3. Definitions.

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

1 "Health care provider." A person licensed by the
2 Commonwealth to provide health care or professional medical
3 services as a physician, an osteopathic physician or surgeon, a
4 podiatrist and an employee or agent of any of them acting in the
5 course and scope of employment.

6 "Indemnify." To restore the defendant who is the victim of a
7 loss because of the cost of counsel fees by payment of an amount
8 equal to such costs.

9 "Reporting requirements." Statutes enacted by the General
10 Assembly which require or permit persons to make reports
11 concerning health care to departments, agencies, boards or
12 commissions created by or as part of State government.

13 "Statutes requiring reports and granting immunity." Statutes
14 enacted by the General Assembly which both require or permit
15 persons to make reports concerning health care and grant
16 immunity for making such reports.

17 Section 4. Defense of suits.

18 When an action is brought against a health care provider for
19 an act or acts performed by a health care provider in accordance
20 with reporting requirements or statutes requiring reports and
21 granting immunity, if:

22 (1) The defendant finally and completely prevails, the
23 defendant shall be allowed a reasonable attorney fee to be
24 taxed and collected as a part of the costs of the suit.

25 (2) The defendant makes a reasonable effort to collect
26 such costs and they have not been paid by the unsuccessful
27 plaintiff or the defendant's insurer, the Commonwealth shall
28 indemnify the prevailing defendant and all funds required for
29 such indemnification are hereby specifically appropriated
30 from the Medical, Osteopathic and Podiatry Fees Account,

1 which is a special restricted receipts account of the General
2 Fund, or its successor.

3 (3) Such reasonable attorney fee is not paid by the
4 unsuccessful plaintiff, and the Commonwealth has paid such
5 fee to the prevailing defendant pursuant to this section, the
6 Commonwealth shall have a cause of action against such
7 unsuccessful plaintiff to recover its indemnity payment.

8 (4) Such indemnity payment is recovered from an
9 unsuccessful plaintiff by the Commonwealth, it shall be paid
10 into the Medical, Osteopathic and Podiatry Fees Account, or
11 its successor.

12 Section 5. Effective date.

13 This act shall take effect immediately.