

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 910 Session of 2001

INTRODUCED BY GEIST, ALLEN, ARGALL, M. BAKER, BASTIAN, BEBKO-JONES, BELARDI, BUXTON, CALTAGIRONE, CAPPABIANCA, CIVERA, COLAFELLA, CURRY, DALEY, DeLUCA, FAIRCHILD, FICHTER, FRANKEL, GODSHALL, HARHAI, HENNESSEY, HERMAN, HERSHEY, HESS, HORSEY, JAMES, KAISER, KELLER, LAUGHLIN, MAJOR, MANN, MARKOSEK, MARSICO, McGILL, McILHATTAN, MELIO, R. MILLER, PETRARCA, PIPPY, RAYMOND, READSHAW, ROHRER, ROSS, RUBLEY, SAYLOR, SCHULER, SHANER, SOLOBAY, E. Z. TAYLOR, THOMAS, TIGUE, WALKO, WANSACZ, WATSON, WILT, WOJNAROSKI, YEWIC, YOUNGBLOOD, ZIMMERMAN, FREEMAN, STEELMAN, TRELLO AND MYERS, MARCH 12, 2001

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES, MAY 22, 2001

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, further providing for the
3 volunteer-in-public-service negligence standard AND FOR <—
4 SENTENCES FOR OFFENSES COMMITTED WITH FIREARMS.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. ~~Section 8332.4(a) and (e)~~ SECTIONS 8332.4(A) AND <—
8 (E) AND 9712 of Title 42 of the Pennsylvania Consolidated
9 Statutes are amended to read:

10 § 8332.4. Volunteer-in-public-service negligence standard.

11 (a) [General rule.--] Services covered.--

12 (1) Except as provided otherwise in this section, no
13 person who, without compensation and as a volunteer, renders
14 public services for a nonprofit organization under section

1 501(c)(3) [or (4)], (4) or (6) of the Internal Revenue Code
2 of 1986 (68A Stat. 3, 26 U.S.C. § 501(c)(3) [or (4)], (4) or
3 (6)) or for a Commonwealth or local government agency
4 conducting or sponsoring a public service program or project
5 shall be liable to any person for any civil damages as a
6 result of any acts or omissions in rendering such services
7 unless the conduct of such person falls substantially below
8 the standards generally practiced and accepted in like
9 circumstances by similar persons rendering such services and
10 unless it is shown that such person did an act or omitted the
11 doing of an act which such person was under a recognized duty
12 to another to do, knowing or having reason to know that such
13 act or omission created a substantial risk of actual harm to
14 the person or property of another. It shall be insufficient
15 to impose liability to establish only that the conduct of
16 such person fell below ordinary standards of care.

17 (2) Except as provided otherwise in this section, no
18 design professional who, without compensation and as a
19 volunteer, provides services related to a declared national,
20 State or local emergency caused by a major earthquake,
21 hurricane, tornado, explosion, collapse or other similar
22 disaster or catastrophic event at the request of or with the
23 approval of a Federal, State or local public official, law
24 enforcement official, public safety official or building
25 inspection official acting in an official capacity shall be
26 liable to any person for any civil damages as a result of any
27 acts or omissions in rendering such services unless the
28 conduct of such design professional falls substantially below
29 the standards generally practiced and accepted in like
30 circumstances by similar persons rendering such services and

1 unless it is shown that such design professional did an act
2 or omitted the doing of an act which such design professional
3 was under a recognized duty to another to do, knowing or
4 having reason to know that such act or omission created a
5 substantial risk of actual harm to the person or property of
6 another. It shall be insufficient to impose liability to
7 establish only that the conduct of such design professional
8 fell below ordinary standards of care.

9 * * *

10 (e) Definitions.--As used in this section, the following
11 words and phrases shall have the meanings given to them in this
12 subsection:

13 "Compensation." The term shall not include reimbursement for
14 reasonable expenses actually incurred or to be incurred.

15 "Design professional." An individual licensed by the
16 Commonwealth of Pennsylvania as an architect, geologist, land
17 surveyor, landscape architect or professional engineer.

18 "Public service program or project." An organized program,
19 or other public service ordinarily conducted or rendered by
20 volunteers.

21 § 9712. SENTENCES FOR OFFENSES COMMITTED WITH FIREARMS. <—

22 (A) MANDATORY SENTENCE.--EXCEPT AS PROVIDED UNDER SECTION
23 9716 (RELATING TO TWO OR MORE MANDATORY MINIMUM SENTENCES
24 APPLICABLE), ANY PERSON WHO IS CONVICTED IN ANY COURT OF THIS
25 COMMONWEALTH OF A CRIME OF VIOLENCE AS DEFINED IN SECTION
26 9714(G) (RELATING TO SENTENCES FOR SECOND AND SUBSEQUENT
27 OFFENSES), SHALL, IF THE PERSON VISIBLY POSSESSED A FIREARM OR A
28 REPLICA OF A FIREARM, WHETHER OR NOT THE FIREARM OR REPLICA WAS
29 LOADED OR FUNCTIONAL, THAT PLACED THE VICTIM IN REASONABLE FEAR
30 OF DEATH OR SERIOUS BODILY INJURY, DURING THE COMMISSION OF THE

1 OFFENSE, BE SENTENCED TO A MINIMUM SENTENCE OF AT LEAST FIVE
2 YEARS OF TOTAL CONFINEMENT NOTWITHSTANDING ANY OTHER PROVISION
3 OF THIS TITLE OR OTHER STATUTE TO THE CONTRARY. SUCH PERSONS
4 SHALL NOT BE ELIGIBLE FOR PAROLE, PROBATION, WORK RELEASE OR
5 FURLOUGH. THE MANDATORY SENTENCE IMPOSED UNDER THIS SUBSECTION
6 SHALL BE IMPOSED CONSECUTIVE TO ANY OTHER SENTENCE IMPOSED BY
7 THE COURT.

8 (B) PROOF AT SENTENCING.--PROVISIONS OF THIS SECTION SHALL
9 NOT BE AN ELEMENT OF THE CRIME AND NOTICE THEREOF TO THE
10 DEFENDANT SHALL NOT BE REQUIRED PRIOR TO CONVICTION, BUT
11 REASONABLE NOTICE OF THE COMMONWEALTH'S INTENTION TO PROCEED
12 UNDER THIS SECTION SHALL BE PROVIDED AFTER CONVICTION AND BEFORE
13 SENTENCING. THE APPLICABILITY OF THIS SECTION SHALL BE
14 DETERMINED AT SENTENCING. THE COURT SHALL CONSIDER ANY EVIDENCE
15 PRESENTED AT TRIAL AND SHALL AFFORD THE COMMONWEALTH AND THE
16 DEFENDANT AN OPPORTUNITY TO PRESENT ANY NECESSARY ADDITIONAL
17 EVIDENCE AND SHALL DETERMINE, BY A PREPONDERANCE OF THE
18 EVIDENCE, IF THIS SECTION IS APPLICABLE.

19 (C) AUTHORITY OF COURT IN SENTENCING.--THERE SHALL BE NO
20 AUTHORITY IN ANY COURT TO IMPOSE ON AN OFFENDER TO WHICH THIS
21 SECTION IS APPLICABLE ANY LESSER SENTENCE THAN PROVIDED FOR IN
22 SUBSECTION (A) [OR], TO PLACE SUCH OFFENDER ON PROBATION [OR],
23 TO SUSPEND SENTENCE OR TO IMPOSE THE MANDATORY SENTENCE
24 CONCURRENT TO ANY OTHER SENTENCE. NOTHING IN THIS SECTION SHALL
25 PREVENT THE SENTENCING COURT FROM IMPOSING A SENTENCE GREATER
26 THAN THAT PROVIDED IN THIS SECTION. SENTENCING GUIDELINES
27 PROMULGATED BY THE PENNSYLVANIA COMMISSION ON SENTENCING SHALL
28 NOT SUPERSEDE THE MANDATORY SENTENCES PROVIDED IN THIS SECTION.

29 (D) APPEAL BY COMMONWEALTH.--IF A SENTENCING COURT REFUSES
30 TO APPLY THIS SECTION WHERE APPLICABLE, THE COMMONWEALTH SHALL

1 HAVE THE RIGHT TO APPELLATE REVIEW OF THE ACTION OF THE
2 SENTENCING COURT. THE APPELLATE COURT SHALL VACATE THE SENTENCE
3 AND REMAND THE CASE TO THE SENTENCING COURT FOR IMPOSITION OF A
4 SENTENCE IN ACCORDANCE WITH THIS SECTION IF IT FINDS THAT THE
5 SENTENCE WAS IMPOSED IN VIOLATION OF THIS SECTION.

6 (E) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING
7 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
8 SUBSECTION:

9 "FIREARM." ANY WEAPON, INCLUDING A STARTER GUN, WHICH WILL
10 OR IS DESIGNED TO OR MAY READILY BE CONVERTED TO EXPEL A
11 PROJECTILE BY THE ACTION OF AN EXPLOSIVE OR THE EXPANSION OF GAS
12 THEREIN.

13 "REPLICA OF A FIREARM." AN ITEM THAT CAN REASONABLY BE
14 PERCEIVED TO BE A FIREARM.

15 Section 2. This act shall take effect in 60 days.