

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL  
No. 2119 Session of  
1988

INTRODUCED BY FLICK, WOZNIAK, BRANDT, CLARK, FOX, PITTS, CESSAR,  
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DIETTERICK, JADLOWIEC, MOWERY, KENNEY, SIRIANNI AND LEH,  
JANUARY 27, 1988

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 27, 1988

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, further providing for  
3 matters affecting governmental units.

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

6 Section 1. Section 8501 of Title 42 of the Pennsylvania  
7 Consolidated Statutes is amended to read:

8 § 8501. Definitions.

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

12 "Act." [Includes] Any conduct of a Commonwealth party or  
13 Commonwealth employee carried out within the scope of the  
14 Commonwealth party's or Commonwealth employee's official duties,  
15 including a failure to act.

16 "Commonwealth agency." An executive or independent agency,

1 including, but not limited to, all executive officers,  
2 administrative departments, independent administrative boards  
3 and commissions, departmental administrative bodies, boards,  
4 commissions and offices, and advisory boards and commissions  
5 subject to the act of April 9, 1929 (P.L.177, No.175), known as  
6 The Administrative Code of 1929, and any other agencies,  
7 commissions, departments, boards, authorities or other entities  
8 of State government, including, but not limited to, the  
9 Pennsylvania Commission on Crime and Delinquency, the State  
10 Ethics Commission, the Medical Professional Liability  
11 Catastrophe Loss Fund, the Milk Marketing Board, the Milrite  
12 Council, the Pennsylvania Minority Business Development  
13 Authority, the Pennsylvania Convention Center Authority, the  
14 Energy Development Authority, the Pennsylvania Higher Education  
15 Assistance Agency, the Pennsylvania Higher Educational  
16 Facilities Authority, the Pennsylvania Housing Finance Agency,  
17 the Pennsylvania Industrial Development Authority, the  
18 Pennsylvania Liquor Control Board, the Pennsylvania Public  
19 Television Network Commission, the Pennsylvania Public Utility  
20 Commission, the Pennsylvania Turnpike Commission, the  
21 Pennsylvania Board of Probation and Parole, the State Public  
22 School Building Authority, the State System of Higher Education  
23 and authorities functioning pursuant to the act of April 6, 1956  
24 (1955 P.L.1414, No.465), known as the Second Class County Port  
25 Authority Act, and section 303 of the act of January 22, 1968  
26 (P.L.42, No.8), known as the Pennsylvania Urban Mass  
27 Transportation Law.

28 "Commonwealth party." A Commonwealth agency or any other  
29 agency of the Commonwealth government and any employee thereof,  
30 but only with respect to an act within the scope of his office

1 or employment.

2 "Employee." Any person who [is acting or who has acted] has  
3 actual authority to act on behalf of a government unit whether  
4 on a permanent or temporary basis, whether compensated or not  
5 and whether within or without the territorial boundaries of the  
6 government unit, including any volunteer fireman and any elected  
7 or appointed officer, member of a governing body or other person  
8 designated to act for the government unit. Independent  
9 contractors under contract to the government unit and their  
10 employees and agents and persons performing tasks over which the  
11 government unit has no legal right of control are not employees  
12 of the government unit. If a contractor provides governmental  
13 services to the public on behalf of a government unit in a  
14 manner subject to the direction, supervision and control of the  
15 government unit, the contractor and subcontractors providing  
16 services to the government unit may be deemed to be employees  
17 for the purposes of this chapter if so designated in writing by  
18 the government unit, subject to conditions and limitations  
19 established by the government unit.

20 "Injury." Includes death.

21 "Judicial determination." Any determination by a court of  
22 competent jurisdiction including any settlement approved by such  
23 court.

24 "Local agency." A government unit other than [the  
25 Commonwealth government] a Commonwealth party. The term includes  
26 [an intermediate unit] intermediate units and local authorities,  
27 including, but not limited to, municipal authorities formed and  
28 existing under the provisions of the act of May 24, 1945  
29 (P.L.991, No.385), known as the Urban Redevelopment Law, and  
30 housing authorities formed and operating under the act of May

1 28, 1937 (P.L.955, No.265), known as the Housing Authorities  
2 Law.

3 Section 2. Title 42 is amended by adding a section to read:

4 § 8503. Signing of pleadings, motions and other papers;  
5 sanctions.

6 (a) Signature of attorney.--Every pleading, motion and other  
7 paper filed pursuant to this chapter of a party represented by  
8 an attorney shall be signed by at least one attorney of record  
9 in his individual name and whose address shall be stated. A  
10 party who is not represented by an attorney shall sign his  
11 pleading, motion or other paper and state his address.

12 (b) Certification.--Except as otherwise specifically  
13 provided by the rules of administrative procedure of the  
14 Commonwealth party or local agency or by the rules of any court,  
15 pleadings need not be verified or accompanied by affidavit. The  
16 signature of an attorney or party constitutes a certificate by  
17 him that he has read the pleading, motion or other paper; that  
18 to the best of his knowledge, information, and belief formed  
19 after reasonable inquiry, it is well grounded in fact and is  
20 warranted by existing law or a good faith argument for the  
21 extension, modification or reversal of existing law; and that it  
22 is not interposed for any improper purpose, such as to harass or  
23 to cause unnecessary delay or needless increase in the cost of  
24 litigation.

25 (c) Effect of nonsigning.--If a pleading, motion or other  
26 paper is not signed, it shall be stricken unless it is signed  
27 promptly after the omission is called to the attention of the  
28 pleader or movant.

29 (d) Sanctions.--If a pleading, motion or other paper is  
30 signed in violation of this section, the Commonwealth agency or

1 local agency in an administrative proceeding, or the court in  
2 matters properly before it, upon motion or upon its own  
3 initiative, shall impose upon the person who signed it, a  
4 represented party, or both, an appropriate sanction, which may  
5 include an order to pay to the Commonwealth or local party the  
6 amount of the reasonable expenses incurred because of the filing  
7 of pleading, motion or other paper, including a reasonable  
8 attorney fee.

9       Section 3. Sections 8521, 8522, 8523, 8524, 8525 and 8526 of  
10 Title 42 are amended to read:

11 § 8521. Sovereign immunity generally.

12       (a) General rule.--Except as otherwise provided in this  
13 subchapter, no Commonwealth party shall be liable for damages on  
14 account of injury to a person or property caused by an act of  
15 the Commonwealth party or any other person, and no provision of  
16 this title shall constitute a waiver of sovereign immunity for  
17 the purpose of 1 Pa.C.S. § 2310 (relating to sovereign immunity  
18 reaffirmed; specific waiver) or otherwise.

19       (b) Federal courts.--Nothing contained in this subchapter  
20 shall be construed to waive the immunity of the Commonwealth  
21 from suit in Federal courts guaranteed by the Eleventh Amendment  
22 to the Constitution of the United States.

23 § 8522. Exceptions to sovereign immunity.

24       (a) Liability imposed.--The General Assembly, pursuant to  
25 section 11 of Article I of the Constitution of Pennsylvania,  
26 does hereby waive, in the instances set forth in subsection (b)  
27 only and only to the extent set forth in this subchapter and  
28 within the limits set forth in section 8528 (relating to  
29 limitations on damages), sovereign immunity as a bar to an  
30 action against Commonwealth parties, for damages arising out of

1 a negligent act of a Commonwealth party with respect to one of  
2 the categories listed in subsection (b) where the damages would  
3 be recoverable under the common law or a statute creating a  
4 cause of action if the injury were caused by a person not having  
5 available the defense of sovereign immunity under section 8521  
6 (relating to sovereign immunity generally) or 8524 (relating to  
7 defense of official immunity).

8 (b) Acts which may impose liability.--[The] Except as  
9 provided in subsection (c), the following acts by a Commonwealth  
10 party may result in the imposition of liability on the  
11 Commonwealth and the defense of sovereign immunity shall not be  
12 raised to claims for damages caused by negligent acts relating  
13 to:

14 (1) Vehicle liability.--The operation of any motor  
15 vehicle in the possession or control of a Commonwealth party.  
16 As used in this paragraph, "motor vehicle" means any vehicle  
17 which is self-propelled and any attachment thereto, including  
18 vehicles operated by rail, through water or in the air.

19 (2) Medical-professional liability.--Acts of health care  
20 employees of Commonwealth agency medical facilities or  
21 institutions or by a Commonwealth party who is a doctor,  
22 dentist, nurse or related health care personnel.

23 (3) Care, custody or control of personal property.--The  
24 care, custody or control of tangible personal property in the  
25 possession or control of Commonwealth parties, including  
26 Commonwealth-owned personal property and property of persons  
27 held by a Commonwealth agency, except that the sovereign  
28 immunity of the Commonwealth is retained as a bar to actions  
29 on claims arising out of Commonwealth agency activities  
30 involving the use, handling, storage or disposal of nuclear

1 and other radioactive equipment, devices and materials. The  
2 only damages recoverable under this paragraph with respect to  
3 property of persons held by a Commonwealth party shall be  
4 property losses suffered with respect to the property.

5 (4) Commonwealth real estate, highways and sidewalks.--A  
6 dangerous condition [of] created by Commonwealth agency real  
7 estate and sidewalks, including Commonwealth-owned real  
8 property, leaseholds in the possession of a Commonwealth  
9 agency and Commonwealth-owned real property leased by a  
10 Commonwealth agency to private persons, and highways under  
11 the jurisdiction of a Commonwealth agency other than highways  
12 subject to section 8542(b)(6) (relating to exceptions to  
13 governmental immunity), except conditions described in  
14 paragraph (5). Dangerous conditions shall not include a  
15 condition resulting in injury solely by the effect of weather  
16 conditions. The Commonwealth shall not be liable for damages  
17 on account of an injury sustained by a person intentionally  
18 trespassing on real property of the Commonwealth.

19 (5) Potholes and other dangerous conditions.--A  
20 dangerous condition of highways under the jurisdiction of a  
21 Commonwealth agency, other than highways subject to section  
22 8542(b)(6), created by potholes or sinkholes or other similar  
23 conditions [created by natural elements], except that the  
24 claimant to recover must establish that the dangerous  
25 condition created a reasonably foreseeable risk of the kind  
26 of injury which was incurred and that the Commonwealth agency  
27 had actual written notice of the dangerous condition [of the  
28 highway] which caused the accident a sufficient time prior to  
29 the event to have taken measures to protect against the  
30 dangerous condition. Property damages shall not be

1 recoverable under this paragraph.

2 (6) Care, custody or control of animals.--The care,  
3 custody or control of animals in the possession or control of  
4 a Commonwealth party, including but not limited to police  
5 dogs and horses and animals incarcerated in Commonwealth  
6 agency laboratories. Damages shall not be recoverable under  
7 this paragraph on account of any injury caused by wild  
8 animals, including but not limited to bears and deer, except  
9 as otherwise provided by statute.

10 (7) Liquor store sales.--The sale of liquor at  
11 Pennsylvania liquor stores by employees of the Pennsylvania  
12 Liquor Control Board created by and operating under the act  
13 of April 12, 1951 (P.L.90, No.21), known as the ["Liquor  
14 Code,"] if such sale is made to any minor due to a failure  
15 to take prudent, good faith measures to avoid sales to  
16 minors, or to any person visibly intoxicated, or to any  
17 [insane person, or to any] person known [as] to be insane, an  
18 habitual drunkard, or of known intemperate habit.

19 (8) National Guard activities.--Acts of a member of the  
20 Pennsylvania military forces. No liability shall be imposed  
21 on the Commonwealth arising from acts or omissions of members  
22 of the Pennsylvania National Guard when they are in a duty  
23 status such that they are considered employees of the  
24 government of the United States under 28 U.S.C. § 2671  
25 (relating to definitions).

26 (9) Toxoids and vaccines.--The administration,  
27 manufacture and use of a toxoid or vaccine not manufactured  
28 in this Commonwealth under the following conditions:

29 (i) The toxoid or vaccine is manufactured in, and  
30 available only from, an agency of another state.



1           (ii) The agency of the other state will not make the  
2           toxoid or vaccine available to private persons or  
3           corporations, but will only permit its sale to another  
4           state or state agency.

5           (iii) The agency of the other state will make the  
6           toxoid or vaccine available to the Commonwealth only if  
7           the Commonwealth agrees to indemnify, defend and save  
8           harmless that agency from any and all claims and losses  
9           which may arise against it from the administration,  
10          manufacture or use of the toxoid or vaccine.

11          (iv) A determination has been made by the  
12          appropriate Commonwealth agency, approved by the Governor  
13          and published in the Pennsylvania Bulletin, that the  
14          toxoid or vaccine is necessary to safeguard and protect  
15          the health of the citizens or animals of this  
16          Commonwealth.

17          (v) The toxoid or vaccine is distributed by a  
18          Commonwealth agency to qualified persons for ultimate  
19          use.

20          The Commonwealth shall make the toxoid or vaccine available  
21          to a qualified person only if the person agrees to indemnify,  
22          defend and save harmless the Commonwealth from any and all  
23          claims and losses which may arise against the Commonwealth  
24          from the manufacture, distribution, administration or use of  
25          the toxoid or vaccine.

26          (c) Limitations on liability.--As used in this subchapter,  
27          negligent acts for which sovereign immunity is waived pursuant  
28          to subsection (b) shall not include:

29                  (1) Criminal or other intentional acts.--Acts which  
30                  constitute a crime, actual fraud, actual malice or willful

1 misconduct.

2 (2) Misuse of property.--Acts which result in damages  
3 because of misuse of Commonwealth property by an injured  
4 party, or acts which result in damages because of misuse of  
5 Commonwealth property by a party other than the injured party  
6 where the person misusing Commonwealth property is not a  
7 Commonwealth party and the Commonwealth party does not have  
8 actual knowledge of such misuse in sufficient time prior to  
9 the event causing damages to have taken measures to prevent  
10 the condition from arising.

11 (3) Damage by uninsured motorists.--Acts to the extent  
12 that such acts result in damages to persons operating motor  
13 vehicles in violation of 75 Pa.C.S. Ch. 17 (relating to  
14 financial responsibility), persons ineligible for benefits  
15 pursuant to 75 Pa.C.S. § 1714 (relating to ineligible  
16 claimants), or persons excluded from benefits pursuant to 75  
17 Pa.C.S. § 1718 (relating to exclusion from benefits).

18 (4) Workmen's compensation claims.--Acts to the extent  
19 that such acts give rise to a claim pursuant to the act of  
20 June 2, 1915 (P.L.736, No.338), known as The Pennsylvania  
21 Workmen's Compensation Act.

22 (5) Plan or design of Commonwealth property.--The plan  
23 or design of Commonwealth property, either in its original  
24 construction or in later improvement, where the plan or  
25 design has been approved in advance of construction by the  
26 Commonwealth party responsible for exercising discretionary  
27 authority to approve the design or plan or the plan or design  
28 is prepared in conformity with specifications previously  
29 approved.

30 (d) Standard of care.--The reasonable standard of care

necessary to avoid imposition of liability shall be determined with reference to the actual equipment, personnel, economic resources and facilities available to the Commonwealth party and the competing demands therefor. The amount of time reasonably required to take protective measures, the reasonableness and adequacy of actions taken by a Commonwealth party and the performance of inspections are factors to be included in determining whether the standard of care exercised was reasonable and adequate.

§ 8523. [Venue and process] Procedure.

(a) [Venue] Complaints.--Actions for claims against a Commonwealth party [may be brought in and only in a county in which] shall be brought by filing a complaint with the principal or local office of the Commonwealth party [is located or in] against which the cause of action arose [or where a transaction or occurrence took place out of which the cause of action arose. If venue is obtained in the Twelfth Judicial District (Dauphin County) solely because the principal office of the Commonwealth party is located within it, any judge of the Court of Common Pleas of Dauphin County shall have the power to transfer the action to any appropriate county where venue would otherwise lie].

(b) Process.--Service of process in the case of an action against [the] a Commonwealth party shall be made at the principal or local office of the Commonwealth [agency] party that is being sued and at the office of the Attorney General.

(c) Administrative proceeding.--The Commonwealth party shall conduct an administrative proceeding pursuant to 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies). Legal advice and representation for a Commonwealth

1 party in such administrative proceedings shall be provided  
2 pursuant to Chapters 3 and 4 of the act of October 15, 1980  
3 (P.L.950, No.164), known as the Commonwealth Attorneys Act. Two  
4 or more Commonwealth agencies may establish procedures for a  
5 single administrative entity to adjudicate claims pursuant to  
6 this subchapter.

7 (d) Final adjudication.--The Commonwealth party shall issue  
8 a final adjudication awarding damages or denying the claim  
9 within nine months of the date the complaint is filed, unless  
10 the claimant and the Commonwealth party agree to extend the  
11 period of time for conducting the proceeding.

12 (e) Appeal.--The final adjudication of the Commonwealth  
13 party may be appealed for a trial de novo before the court of  
14 common pleas in the county in which the cause of action arose or  
15 in which the principal office of the Commonwealth party is  
16 located.

17 (f) Change of venue.--If the Commonwealth party fails to  
18 render a final adjudication within nine months of the date the  
19 complaint is filed, or within an extended period agreed upon by  
20 the claimant and the Commonwealth party, or if the Commonwealth  
21 party at any time waives its right to conduct an administrative  
22 proceeding, an action may be initiated in the court of common  
23 pleas where the cause of action arose or in which the principal  
24 office of the Commonwealth party is located. In any such action  
25 before a court of common pleas, the amount claimed shall not be  
26 in excess of the amount of the claim presented to the  
27 Commonwealth party, except where the increased amount is based  
28 upon newly discovered evidence not reasonably discoverable at  
29 the time of presenting the claim to the Commonwealth party, or  
30 upon allegation and proof of intervening facts relating to the

1 amount of the claim.

2 (g) Exclusive remedy.--The remedy for negligent actions of  
3 Commonwealth parties provided by this section shall be exclusive  
4 of any other civil action or proceeding by reason of the same  
5 subject matter against the Commonwealth party or any employee  
6 thereof and a judgment provided pursuant to this section shall  
7 constitute a complete bar to any action by the claimant, by  
8 reason of the same subject matter, against the employee of the  
9 Commonwealth party whose act gave rise to the claim.

10 § 8524. [Defenses] Defense of official immunity.

11 [The following common law defenses are available:]

12 In an action brought against an employee of a Commonwealth  
13 party for damages on account of an injury to a person or  
14 property based upon claims arising from, or reasonably related  
15 to, the office or the performance of the duties of the employee,  
16 the employee may assert on his own behalf, or the Commonwealth  
17 party may assert on his behalf, the following defenses:

18 (1) [An official of a Commonwealth agency, or a member  
19 of the General Assembly or the judiciary may assert on his  
20 own behalf, or the Commonwealth may assert on his behalf,  
21 defenses] Common law defenses.--Defenses which have  
22 heretofore been available [to such officials] at common law  
23 to the employee.

24 (2) [An employee of a Commonwealth agency, or a member  
25 of the General Assembly or of the judiciary may assert on his  
26 own behalf, or the Commonwealth may assert on his behalf,  
27 the] Duty to act.--The defense that the employee was acting  
28 pursuant to a duty required by a statute or [statutorily  
29 authorized] regulation or that the employee reasonably  
30 believed he was acting pursuant to a duty required by law or

1 regulation.

2 (3) [An employee of a Commonwealth agency, or a member  
3 of the General Assembly or of the judiciary may assert on his  
4 own behalf, or the Commonwealth may assert on his behalf,  
5 the] Discretionary acts.--The defense that the act was within  
6 the discretion granted to the employee by statute or  
7 [statutorily authorized] regulation or the employee  
8 reasonably believed that he was acting within the discretion  
9 granted by law, regulation or the scope of his employment.

10 § 8525. Legal assistance.

11 When an action is brought under this subchapter against an  
12 employee of the Commonwealth government, and it is alleged that  
13 the act of the employee which gave rise to the claim was [within  
14 the scope of the office or duties of the employee] subject to  
15 the defense of official immunity as provided by section 8524  
16 (relating to defense of official immunity), the Commonwealth  
17 [through the Attorney General] agency shall defend the action,  
18 unless the [Attorney General] Commonwealth agency determines  
19 that the [act did not occur within the scope of the office or  
20 duties of the employee] employee was not entitled to the defense  
21 of official immunity. In the latter case, if it is subsequently  
22 determined that the act occurred within the scope of the [office  
23 or duties of the employee] defense of official immunity, the  
24 Commonwealth shall reimburse the employee for the expense of his  
25 legal defense [in such amounts as shall be determined to be  
26 reasonable by the court]. The amount of reimbursement shall be  
27 determined by the Commonwealth party subject to review by the  
28 Commonwealth Court in the manner provided by 2 Pa.C.S. Ch. 7  
29 Subch. A (relating to judicial review of Commonwealth agency  
30 action). If an action is brought against a Commonwealth

1 government employee for damages on account of injury to a person  
2 or property and it is not alleged that the act of the employee  
3 which gave rise to the claim was within the scope of his office  
4 or duties, and he successfully defends the action on the basis  
5 [that the act was within the scope of his office or duties] of  
6 the defense of official immunity, and he has given prior notice  
7 to the [Attorney General] Commonwealth agency and the [Attorney  
8 General] Commonwealth agency has refused to defend the action,  
9 he shall likewise be entitled to the reasonable expenses of the  
10 defense. An employee who raises the defense of official immunity  
11 shall cooperate fully with the Commonwealth in the defense of a  
12 claim against the Commonwealth party. If the employee fails to  
13 cooperate fully with the Commonwealth and the employee is  
14 subsequently determined to be eligible for reimbursement, the  
15 amount of reimbursement may be reduced or denied.

16 § 8526. Counterclaim by the Commonwealth.

17 In any action initiated under this subchapter, the  
18 Commonwealth may set forth any cause of action or set-off which  
19 it has against any party, including other defendants, or the  
20 plaintiff. A counterclaim need not diminish or defeat the relief  
21 demanded by the plaintiff. It may demand relief exceeding in  
22 amount or different in kind from that demanded by the plaintiff.

23 Section 4. Title 42 is amended by adding sections to read:

24 § 8527. Official liability and indemnity.

25 (a) General rule.--An employee of a Commonwealth party is  
26 liable for civil damages for injury to a person or property  
27 caused by acts of the employee which are subject to the defense  
28 of official immunity as provided by section 8524 (relating to  
29 defense of official immunity) to the same extent as his  
30 employing Commonwealth party and subject to the limitations

1 imposed by this subchapter.

2 (b) Indemnity by Commonwealth generally.--When an action is  
3 brought against an employee of a Commonwealth party for damages  
4 on account of an injury to a person or property, and he has  
5 given timely prior written notice to the Commonwealth party, and  
6 it is judicially determined that an act of the employee caused  
7 the injury and such act was, or that the employee in good faith  
8 reasonably believed that such act was, within the scope of his  
9 office or duties, the Commonwealth party shall indemnify the  
10 employee or his estate for the payment of any judgment,  
11 including costs and interest, on the suit.

12 (c) Indemnity by employee generally.--No employee of a  
13 Commonwealth party shall be liable to the Commonwealth party for  
14 any surcharge, contribution, indemnity or reimbursement for any  
15 liability incurred by the Commonwealth party for damages on  
16 account of an injury to a person or property caused by an act of  
17 the employee which was within the scope of his office or duties  
18 or which he in good faith reasonably believed to be within the  
19 scope of his office or duties. No employee of a Commonwealth  
20 party shall be liable to the Commonwealth party for any  
21 surcharge, contribution, indemnity or reimbursement for any  
22 expenses or legal fees incurred by the Commonwealth party while  
23 defending the employee against a claim for damages on account of  
24 an injury to a person or property caused by an act of the  
25 employee.

26 (d) Cooperation.--In an action against a Commonwealth party  
27 or an employee thereof for damages on account of an injury  
28 caused by an act of the employee in which action the employee  
29 has not fully cooperated with the Commonwealth party in the  
30 defense of the action, the provisions of subsection (c) shall



1 not apply.

2 § 8528. Willful misconduct.

3 In any action against a Commonwealth party or employee  
4 thereof for damages on account of an injury caused by the act of  
5 the employee in which it is determined that the act of the  
6 employee caused the injury and that such act constituted a  
7 crime, actual fraud, actual malice or willful misconduct, the  
8 provisions of sections 8521 (relating to sovereign immunity  
9 generally), 8524 (relating to defense of official immunity),  
10 8527 (relating to official liability and indemnity) and 8529  
11 (relating to limitations on damages) shall not apply unless the  
12 Commonwealth agency had actual knowledge of the willful  
13 misconduct of the employee a sufficient time prior to the event  
14 which caused the injury to have taken measures to protect  
15 against such misconduct and the Commonwealth agency failed to  
16 take reasonable protective measures.

17 Section 5. Sections 8528 and 8542 of Title 42 are amended to  
18 read:

19 § [8528] 8529. Limitations on damages.

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

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

Pennsylvania Urban Mass Transportation Law, damages arising from the same cause of action or transaction or occurrence shall not exceed \$250,000 in favor of any plaintiff, except with respect to damages recoverable under subsection (c)(5), where damages recoverable against such authorities shall not exceed \$250,000 in favor of any plaintiff or \$1,000,000 in the aggregate.

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

(1) Past loss of earnings and future loss of earnings and earning capacity discounted to the present value of such loss.

(2) Pain and suffering[.] in the following instances:

(i) Death.

(ii) Permanent loss of bodily function, permanent disfigurement or permanent dismemberment.

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

(4) Loss of consortium.

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

(d) Contribution.--Where damages are recoverable against parties to an action in addition to the Commonwealth party, notwithstanding the provisions of section 7102 (relating to comparative negligence), unless the Commonwealth party is

1 substantially at fault, the Commonwealth party shall be liable  
2 only for that portion of the total dollar amount awarded as  
3 damages in the ratio of the amount of the Commonwealth party's  
4 causal negligence to the amount of causal negligence attributed  
5 to all defendants against whom recovery is allowed. The  
6 Commonwealth party shall be deemed substantially at fault only  
7 if the causal negligence of the Commonwealth party exceeds the  
8 contributory negligence of the plaintiff and only if the ratio  
9 of the Commonwealth party's causal negligence to the amount of  
10 causal negligence of all defendants against whom recovery is  
11 allowed exceeds 50%.

12 (e) Attorney fees.--No attorney shall charge, demand,  
13 receive or collect for services rendered, fees in excess of 25%  
14 of any judgment rendered by a court pursuant to section 8523  
15 (relating to procedure), or in excess of 20% of any award,  
16 compromise or settlement made in the course of an administrative  
17 proceeding.

18 (f) Deduction of other payments.--In any civil action  
19 against a Commonwealth party, alleging damages for medical  
20 expenses or lost income sustained by or on behalf of a party,  
21 including, without limitation, actions for personal injury or  
22 death, it shall be permissible for the Commonwealth party to  
23 deduct from the plaintiff who is claiming damages against the  
24 Commonwealth party, medical expenses or lost income he has  
25 already received, or is entitled to receive, and any other  
26 compensation for damages, including, but not limited to,  
27 workers' compensation benefits, medical and hospital insurance  
28 benefits, prepaid health care benefits, Social Security  
29 benefits, railroad retirement benefits and pension benefits.

30 (g) Insurance benefits.--If a claimant receives or is

1 entitled to receive benefits under a policy of insurance other  
2 than a life insurance policy as a result of losses for which  
3 damages are recoverable under subsection (c), the amount of the  
4 benefits shall be deducted from the amount of damages which  
5 would otherwise be recoverable by the claimant.

6 § 8542. Exceptions to governmental immunity.

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

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

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

24 (b) Acts which may impose liability.--[The] Except as  
25 provided in subsection (c), the following acts by a local agency  
26 or any of its employees may result in the imposition of  
27 liability on a local agency, and the defense of governmental  
28 immunity or official immunity shall not be raised to claims for  
29 damages caused by negligent acts relating to:

30 (1) Vehicle liability.--The operation of any motor

1 vehicle in the possession or control of the local agency. As  
2 used in this paragraph, "motor vehicle" means any vehicle  
3 which is self-propelled and any attachment thereto, including  
4 vehicles operated by rail, through water or in the air.

5 (2) Care, custody or control of personal property.--The  
6 care, custody or control of tangible personal property of  
7 others in the possession or control of the local agency. The  
8 only losses for which damages shall be recoverable under this  
9 paragraph are those property losses suffered with respect to  
10 the personal property in the possession or control of the  
11 local agency.

12 (3) Real property.--The care, custody or control of real  
13 property in the possession of the local agency, except that  
14 the local agency shall not be liable for damages on account  
15 of any injury sustained by a person intentionally trespassing  
16 on real property in the possession of the local agency and  
17 shall not be liable for damages occurring solely because of  
18 the effect of weather conditions on real property in the  
19 possession of the local agency. As used in this paragraph,  
20 "real property" shall not include:

21 (i) trees, traffic signs, lights and other traffic  
22 controls, street lights and street lighting systems;

23 (ii) facilities of steam, sewer, water, gas and  
24 electric systems owned by the local agency and located  
25 within rights-of-way;

26 (iii) streets; or

27 (iv) sidewalks.

28 (4) Trees, traffic controls and street lighting.--A  
29 dangerous condition of trees, traffic signs, lights or other  
30 traffic controls, street lights or street lighting systems

1 under the care, custody or control of the local agency,  
2 except that the claimant to recover must establish that the  
3 dangerous condition created a reasonably foreseeable risk of  
4 the kind of injury which was incurred and that the local  
5 agency had actual notice or could reasonably be charged with  
6 notice under the circumstances of the dangerous condition  
7 which caused the accident at a sufficient time prior to the  
8 event to have taken measures to protect against the dangerous  
9 condition.

10 (5) Utility service facilities.--A dangerous condition  
11 of the facilities of steam, sewer, water, gas or electric  
12 systems owned by the local agency and located within rights-  
13 of-way, except that the claimant to recover must establish  
14 that the dangerous condition created a reasonably foreseeable  
15 risk of the kind of injury which was incurred and that the  
16 local agency had actual notice or could reasonably be charged  
17 with notice under the circumstances of the dangerous  
18 condition which caused the accident at a sufficient time  
19 prior to the event to have taken measures to protect against  
20 the dangerous condition.

21 (6) Streets.--

22 (i) A dangerous condition of streets owned by the  
23 local agency, except that the claimant to recover must  
24 establish that the dangerous condition created a  
25 reasonably foreseeable risk of the kind of injury which  
26 was incurred and that the local agency had actual notice  
27 or could reasonably be charged with notice under the  
28 circumstances of the dangerous condition which caused the  
29 accident at a sufficient time prior to the event to have  
30 taken measures to protect against the dangerous

1 condition.

2 (ii) A dangerous condition of streets owned or under  
3 the jurisdiction of Commonwealth agencies, if all of the  
4 following conditions are met:

5 (A) The local agency has entered into a written  
6 contract with a Commonwealth agency for the  
7 maintenance and repair by the local agency of such  
8 streets and the contract either:

9 (I) had not expired or been otherwise  
10 terminated prior to the occurrence of the injury;  
11 or

12 (II) if expired, contained a provision that  
13 expressly established local agency responsibility  
14 beyond the term of the contract for injuries  
15 arising out of the local agency's work.

16 (B) The injury and dangerous condition were  
17 directly caused by the negligent performance of its  
18 duties under such contract.

19 (C) The claimant must establish that the  
20 dangerous condition created a reasonably foreseeable  
21 risk of the kind of injury which was incurred and  
22 that the local agency had actual notice or could  
23 reasonably be charged with notice under the  
24 circumstances of the dangerous condition at a  
25 sufficient time prior to the event to have taken  
26 measures to protect against the dangerous condition.

27 (7) Sidewalks.--A dangerous condition of sidewalks  
28 within the rights-of-way of streets owned by the local  
29 agency, except that the claimant to recover must establish  
30 that the dangerous condition created a reasonably foreseeable

1 risk of the kind of injury which was incurred and that the  
2 local agency had actual notice or could reasonably be charged  
3 with notice under the circumstances of the dangerous  
4 condition at a sufficient time prior to the event to have  
5 taken measures to protect against the dangerous condition.  
6 When a local agency is liable for damages under this  
7 paragraph by reason of its power and authority to require  
8 installation and repair of sidewalks under the care, custody  
9 and control of other persons, the local agency shall be  
10 secondarily liable only and such other persons shall be  
11 primarily liable.

12 (8) Care, custody or control of animals.--The care,  
13 custody or control of animals in the possession or control of  
14 a local agency, including but not limited to police dogs and  
15 horses. Damages shall not be recoverable under this paragraph  
16 on account of any injury caused by wild animals, including  
17 but not limited to bears and deer, except as otherwise  
18 provided by statute.

19 (c) Limitations on liability.--In this subchapter, negligent  
20 acts for which governmental immunity is waived pursuant to  
21 subsection (b) shall not include:

22 (1) Acts which constitute a crime, actual fraud, actual  
23 malice or willful misconduct.

24 (2) Acts which result in damages because of misuse of  
25 local agency property by an injured party or acts which  
26 result in damages because of misuse of local agency property  
27 by a party other than the injured party where the person  
28 misusing local agency property is not local agency party or  
29 employee and the local agency does not have actual knowledge  
30 of the misuse in sufficient time prior to the event causing



1 damages to have taken measures to protect against the  
2 condition arising.

3 (3) Acts to the extent that the acts result in damages  
4 to persons operating motor vehicles in violation of 75  
5 Pa.C.S. Ch. 17 (relating to financial responsibility),  
6 persons ineligible for benefits pursuant to 75 Pa.C.S. § 1714  
7 (relating to ineligible claimants), or persons excluded from  
8 benefits pursuant to 75 Pa.C.S. § 1718 (relating to exclusion  
9 from benefits).

10 (4) Acts to the extent that the acts give rise to a  
11 claim pursuant to the act of June 2, 1915 (P.L.736, No.338),  
12 known as The Pennsylvania Workmen's Compensation Act.

13 (5) The plan or design of local agency property, either  
14 in its original construction or any improvement thereto,  
15 where such plan or design has been approved in advance of  
16 construction by the local agency responsible for exercising  
17 discretionary authority to approve such design or plan or the  
18 plan or design is prepared in conformity with specifications  
19 previously so approved.

20 (d) Limited definition.--As used in this section the amount  
21 of time reasonably required to take protective measures,  
22 including inspections required by law, and the reasonableness  
23 and adequacy of such protective measures, shall be determined  
24 with reference to the actual equipment, personnel, economic  
25 resources and facilities available to the local agency and the  
26 competing demands therefor.

27 Section 6. Title 42 is amended by adding a section to read:  
28 § 8543. Procedure.

29 (a) Complaints.--Actions for claims against a local agency  
30 shall be brought by filing a complaint with the principal office

1 of the local agency against which the cause of action arose.

2 (b) Process.--Service of process in the case of an action  
3 against a local agency shall be made at the principal office of  
4 the local agency that is being sued.

5 (c) Administrative proceeding.--The local agency shall  
6 conduct an administrative proceeding pursuant to 2 Pa.C.S. Ch. 5  
7 Subch. B (relating to practice and procedure of local agencies).

8 (d) Final adjudication.--The local agency shall issue a  
9 final adjudication awarding damages or denying the complaint  
10 within nine months of the date the complaint is filed, unless  
11 the claimant and the local agency agree to extend the period of  
12 time for conducting the proceeding.

13 (e) Appeal.--The final adjudication may be appealed for a  
14 trial de novo before the court of common pleas with jurisdiction  
15 to review local agency actions as provided by 2 Pa.C.S. Ch. 7  
16 Subch. B (relating to judicial review of local agency action).

17 (f) Change of venue.--If the local agency fails to render a  
18 final adjudication within nine months, or within an extended  
19 period agreed upon by the claimant and the local agency, or if  
20 the local agency at any time waives its right to conduct and  
21 administrative proceeding, an action may be initiated in the  
22 court of common pleas in the county in which the principal  
23 office of the local agency is located. In any such action in a  
24 court of common pleas, the amount claimed shall not be in excess  
25 of the amount of the claim presented to the local agency, except  
26 where the increased amount is based upon newly discovered  
27 evidence not reasonably discoverable at the time of presenting  
28 the claim to the local agency, or upon allegation and proof of  
29 intervening facts relating to the amount of the claim.

30 (g) Exclusive remedy.--The remedy for negligent actions of a

1 local agency provided by this section shall be exclusive of any  
2 other civil action or proceeding by reason of the same subject  
3 matter against the local agency or any employee thereof, and a  
4 judgment provided pursuant to this section shall constitute a  
5 complete bar to any action by the claimant, by reason of the  
6 same subject matter, against the employee of the local agency  
7 whose act gave rise to the claim.

8 Section 7. Sections 8545, 8546, 8547 and 8553 of Title 42  
9 are amended to read:

10 § 8545. Official liability generally.

11 An employee of a local agency is liable for civil damages on  
12 account of any injury to a person or property caused by acts of  
13 the employee which are within the scope of his office or duties,  
14 or which he reasonably and in good faith believes are within the  
15 scope of his office or duties, only to the same extent as his  
16 employing local agency and subject to the limitations imposed by  
17 this subchapter.

18 § 8546. Defense of official immunity.

19 In any action brought against an employee of a local agency  
20 for damages on account of an injury to a person or property  
21 based upon claims arising from, or reasonably related to, the  
22 office or the performance of the duties of the employee, the  
23 employee may assert on his own behalf, or the local agency may  
24 assert on his behalf:

25 (1) Defenses which are available at common law to the  
26 employee.

27 (2) The defense that the conduct of the employee which  
28 gave rise to the claim was authorized or required by law, or  
29 that he in good faith reasonably believed the conduct was  
30 authorized or required by law.

(3) The defense that the act of the employee which gave rise to the claim was within the policymaking discretion granted to the employee by law or that he in good faith reasonably believed was within the policymaking discretion granted to the employee by law. For purposes of this subsection, all acts of members of the governing body of a local agency or of the chief executive officer thereof are deemed to be within the policymaking discretion granted to such person by law.

§ 8547. Legal assistance.

(a) Mandatory provision of legal assistance generally.--When an action is brought against an employee of a local agency for damages on account of an injury to a person or property, and it is alleged that the act of the employee which gave rise to the claim was within the scope of the office or duties of the employee, the local agency shall, upon the written request of the employee, defend the action, unless or until there is a judicial determination that such act was not within the scope of the office or duties of the employee.

(b) Optional provision of legal assistance generally.--When an action is brought against an employee of a local agency for damages on account of an injury to a person or property, and it is not alleged that the act of the employee which gave rise to the claim was within the scope of his office or duties, the local agency may, upon the written request of the employee, defend the action, and such undertaking to defend thereafter may be withdrawn only with the approval of the court. If the local agency has refused a written request to defend the action, and it is judicially determined that the act was, or that the employee in good faith reasonably believed that such act was,

1 within the scope of the office or duties of the employee and did  
2 not constitute a crime, actual fraud, actual malice or willful  
3 misconduct, the local agency shall reimburse the employee for  
4 the expenses of his legal defense [in such amounts as shall be  
5 determined to be reasonable by the court]. The amount of  
6 reimbursement shall be determined by the local agency subject to  
7 review by the court of common pleas in the manner provided by 2  
8 Pa.C.S. Ch. 7 Subch. B (relating to judicial review of local  
9 agency action).

10 (c) Control of litigation.--When, pursuant to subsection (a)  
11 or subsection (b), the local agency defends an action against an  
12 employee thereof at the request of the employee, it may assume  
13 exclusive control of the defense of the employee, keeping him  
14 advised with respect thereto, and the employee shall cooperate  
15 fully with the defense, except that in situations where the  
16 legal counsel provided by the local agency determines that the  
17 interests of the employee and the local agency conflict, the  
18 local agency shall obtain the express written consent of the  
19 employee for such interested representation or shall supply  
20 independent representation. If an employee fails to fully and  
21 appropriately cooperate with the local agency and the employee  
22 is subsequently determined to be eligible for reimbursement, the  
23 amount of reimbursement may be reduced or denied.

24 § 8553. Limitations on damages.

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

28 (b) Amounts recoverable.--Damages arising from the same  
29 cause of action or transaction or occurrence or series of causes  
30 of action or transactions or occurrences shall not exceed

1 \$250,000 in favor of any plaintiff or \$500,000 in the aggregate.

2 (c) Types of losses recognized.--Damages shall be  
3 recoverable only for:

4 (1) Past loss of earnings and future loss of earnings  
5 and earning capacity discounted to the present value of such  
6 loss.

7 (2) Pain and suffering in the following instances:

8 (i) death; or

9 (ii) only in cases of permanent loss of a bodily  
10 function, permanent disfigurement or permanent  
11 dismemberment [where the medical and dental expenses  
12 referred to in paragraph (3) are in excess of \$1,500].

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

19 (4) Loss of consortium.

20 (5) Loss of support.

21 (6) Property losses.

22 (d) Contribution.--Where damages are recoverable against  
23 parties to an action in addition to the local agency,  
24 notwithstanding the provisions of section 7102 (relating to  
25 comparative negligence), unless the local agency is  
26 substantially at fault, the local agency shall be liable only  
27 for that portion of the total dollar amount awarded as damages  
28 in the ratio of the amount of the local agency's causal  
29 negligence to the amount of causal negligence attributed to all  
30 defendants against whom recovery is allowed. The local agency

1 shall be deemed substantially at fault if the causal negligence  
2 of the local agency exceeds the contributory negligence of the  
3 plaintiff and only if the ratio of the local agency's causal  
4 negligence to the amount of causal negligence of all defendants  
5 against whom recovery is allowed exceeds 50%.

6 (e) Attorney fees.--No attorney shall charge, demand,  
7 receive or collect for services rendered fees in excess of 25%  
8 of any judgment rendered by the court pursuant to section 8543  
9 (relating to procedure) or in excess of 20% of any award,  
10 compromise or settlement made in the course of an administrative  
11 proceeding.

12 (f) Deduction of other payments.--In any civil action  
13 against a local agency alleging damages for medical expenses or  
14 lost income sustained by or on behalf of a party, including,  
15 without limitation, actions for personal injury or death, it  
16 shall be permissible for the local agency to deduct from the  
17 plaintiff who is claiming damages against the local agency  
18 medical expenses or lost income he has already received, or is  
19 entitled to receive, and any other compensation for the damages,  
20 including, but not limited to, workers' compensation benefits,  
21 medical and hospital insurance benefits, prepaid health care  
22 benefits, Social Security benefits, railroad retirement benefits  
23 and pension benefits.

24 (g) Insurance benefits.--If a claimant receives or is  
25 entitled to receive benefits under a policy of insurance other  
26 than a life insurance policy as a result of losses for which  
27 damages are recoverable under subsection (c), the amount of such  
28 benefits shall be deducted from the amount of damages which  
29 would otherwise be recoverable by such claimant.

30 Section 8. The amendments provided by section 1 of this act

1 to 42 Pa.C.S. §§ 8501, 8521, 8522, 8524, 8526, 8527, 8528, 8542,  
2 8545 and 8546 shall be deemed to be legislative clarifications  
3 of intent of the law prior to these amendments and shall not be  
4 interpreted as implying a contrary interpretation prior to the  
5 effective date of this act.

6 Section 9. All acts and parts of acts are repealed insofar  
7 as they are inconsistent with this act.

8 Section 10. This act shall be applied to all matters within  
9 the jurisdiction of any court on the effective date of this act.

10 Section 11. This act shall take effect immediately.