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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2376 Session of  
1993

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INTRODUCED BY GRUITZA, DECEMBER 14, 1993

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REFERRED TO COMMITTEE ON JUDICIARY, DECEMBER 14, 1993

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AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, further providing for  
3 exceptions to governmental immunity for fire companies  
4 selling or distributing alcoholic beverages.

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

7 Section 1. Section 8542(b) of Title 42 of the Pennsylvania  
8 Consolidated Statutes is amended to read:

9 § 8542. Exceptions to governmental immunity.

10 \* \* \*

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

14 (1) Vehicle liability.--The operation of any motor  
15 vehicle in the possession or control of the local agency. As  
16 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.

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

8           (3) Real property.--The care, custody or control of real  
9     property in the possession of the local agency, except that  
10    the local agency shall not be liable for damages on account  
11    of any injury sustained by a person intentionally trespassing  
12    on real property in the possession of the local agency. As  
13    used in this paragraph, "real property" shall not include:

14           (i) trees, traffic signs, lights and other traffic  
15     controls, street lights and street lighting systems;

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

19           (iii) streets; or

20           (iv) sidewalks.

21           (4) Trees, traffic controls and street lighting.--A  
22     dangerous condition of trees, traffic signs, lights or other  
23     traffic controls, street lights or street lighting systems  
24     under the care, custody or control of the local agency,  
25     except that the claimant to recover must establish that the  
26     dangerous condition created a reasonably foreseeable risk of  
27     the kind of injury which was incurred and that the local  
28     agency had actual notice or could reasonably be charged with  
29     notice under the circumstances of the dangerous condition at  
30     a sufficient time prior to the event to have taken measures

1 to protect against the dangerous condition.

2 (5) Utility service facilities.--A dangerous condition  
3 of the facilities of steam, sewer, water, gas or electric  
4 systems owned by the local agency and located within rights-  
5 of-way, except that the claimant to recover must establish  
6 that the dangerous condition created a reasonably foreseeable  
7 risk of the kind of injury which was incurred and that the  
8 local agency had actual notice or could reasonably be charged  
9 with notice under the circumstances of the dangerous  
10 condition at a sufficient time prior to the event to have  
11 taken measures to protect against the dangerous condition.

12 (6) Streets.--

13 (i) A dangerous condition of streets owned by the  
14 local agency, except that the claimant to recover must  
15 establish that the dangerous condition created a  
16 reasonably foreseeable risk of the kind of injury which  
17 was incurred and that the local agency had actual notice  
18 or could reasonably be charged with notice under the  
19 circumstances of the dangerous condition at a sufficient  
20 time prior to the event to have taken measures to protect  
21 against the dangerous condition.

22 (ii) A dangerous condition of streets owned or under  
23 the jurisdiction of Commonwealth agencies, if all of the  
24 following conditions are met:

25 (A) The local agency has entered into a written  
26 contract with a Commonwealth agency for the  
27 maintenance and repair by the local agency of such  
28 streets and the contract either:

29 (I) had not expired or been otherwise  
30 terminated prior to the occurrence of the injury;

1                   or

2                   (II) if expired, contained a provision that  
3                   expressly established local agency responsibility  
4                   beyond the term of the contract for injuries  
5                   arising out of the local agency's work.

6                   (B) The injury and dangerous condition were  
7                   directly caused by the negligent performance of its  
8                   duties under such contract.

9                   (C) The claimant must establish that the  
10                  dangerous condition created a reasonably foreseeable  
11                  risk of the kind of injury which was incurred and  
12                  that the local agency had actual notice or could  
13                  reasonably be charged with notice under the  
14                  circumstances of the dangerous condition at a  
15                  sufficient time prior to the event to have taken  
16                  measures to protect against the dangerous condition.

17               (7) Sidewalks.--A dangerous condition of sidewalks  
18               within the rights-of-way of streets owned by the local  
19               agency, except that the claimant to recover must establish  
20               that the dangerous condition created a reasonably foreseeable  
21               risk of the kind of injury which was incurred and that the  
22               local agency had actual notice or could reasonably be charged  
23               with notice under the circumstances of the dangerous  
24               condition at a sufficient time prior to the event to have  
25               taken measures to protect against the dangerous condition.  
26               When a local agency is liable for damages under this  
27               paragraph by reason of its power and authority to require  
28               installation and repair of sidewalks under the care, custody  
29               and control of other persons, the local agency shall be  
30               secondarily liable only and such other persons shall be

1 primarily liable.

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

9 (9) Sales or distribution of alcoholic beverages.--The  
10 sale or distribution of alcoholic beverages by employees of a  
11 fire company to a person who sustains injuries or inflicts  
12 injuries on another directly as a consequence of the sale or  
13 distribution.

14 \* \* \*

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