

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, YEWCIC, YOUNGBLOOD,
ZIMMERMAN, FREEMAN, STEELMAN, TRELLO AND MYERS,
MARCH 12, 2001

AS AMENDED ON SECOND CONSIDERATION, IN SENATE, OCTOBER 9, 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. Sections 8332.4(a) and (e) and 9712 of Title 42 <—~~
8 ~~of the Pennsylvania Consolidated Statutes are amended to read:~~

9 SECTION 1. SECTION 8332.4(A) AND (E) OF TITLE 42 OF THE <—
10 PENNSYLVANIA CONSOLIDATED STATUTES ARE AMENDED TO READ:

11 § 8332.4. Volunteer-in-public-service negligence standard.

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

13 (1) Except as provided otherwise in this section, no
14 person who, without compensation and as a volunteer, renders

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

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

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

10 * * *

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

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

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

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

22 ~~§ 9712. Sentences for offenses committed with firearms.~~ <—

23 ~~(a) Mandatory sentence. Except as provided under section~~
24 ~~9716 (relating to two or more mandatory minimum sentences~~
25 ~~applicable), any person who is convicted in any court of this~~
26 ~~Commonwealth of a crime of violence as defined in section~~
27 ~~9714(g) (relating to sentences for second and subsequent~~
28 ~~offenses), shall, if the person visibly possessed a firearm or a~~
29 ~~replica of a firearm, whether or not the firearm or replica was~~
30 ~~loaded or functional, that placed the victim in reasonable fear~~

~~of death or serious bodily injury, during the commission of the offense, be sentenced to a minimum sentence of at least five years of total confinement notwithstanding any other provision of this title or other statute to the contrary. Such persons shall not be eligible for parole, probation, work release or furlough. The mandatory sentence imposed under this subsection shall be imposed consecutive to any other sentence imposed by the court.~~

~~(b) Proof at sentencing. Provisions of this section shall not be an element of the crime and notice thereof to the defendant shall not be required prior to conviction, but reasonable notice of the Commonwealth's intention to proceed under this section shall be provided after conviction and before sentencing. The applicability of this section shall be determined at sentencing. The court shall consider any evidence presented at trial and shall afford the Commonwealth and the defendant an opportunity to present any necessary additional evidence and shall determine, by a preponderance of the evidence, if this section is applicable.~~

~~(c) Authority of court in sentencing. There shall be no authority in any court to impose on an offender to which this section is applicable any lesser sentence than provided for in subsection (a) [or], to place such offender on probation [or], to suspend sentence or to impose the mandatory sentence concurrent to any other sentence. Nothing in this section shall prevent the sentencing court from imposing a sentence greater than that provided in this section. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory sentences provided in this section.~~

~~(d) Appeal by Commonwealth. If a sentencing court refuses~~

1 ~~to apply this section where applicable, the Commonwealth shall~~
2 ~~have the right to appellate review of the action of the~~
3 ~~sentencing court. The appellate court shall vacate the sentence~~
4 ~~and remand the case to the sentencing court for imposition of a~~
5 ~~sentence in accordance with this section if it finds that the~~
6 ~~sentence was imposed in violation of this section.~~

7 ~~(c) Definitions. As used in this section, the following~~
8 ~~words and phrases shall have the meanings given to them in this~~
9 ~~subsection:~~

10 ~~"Firearm." Any weapon, including a starter gun, which will~~
11 ~~or is designed to or may readily be converted to expel a~~
12 ~~projectile by the action of an explosive or the expansion of gas~~
13 ~~therein.~~

14 ~~"Replica of a firearm." An item that can reasonably be~~
15 ~~perceived to be a firearm.~~

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