

No. 1978-152

AN ACT

HB 2437

Amending Titles 1 (General Provisions) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, responding to and prescribing limitations on decisional law, reaffirming sovereign immunity as provided in section 11 of Article I of the Constitution of Pennsylvania, preserving sovereign immunity as a bar to claims brought against Commonwealth agencies and their officials and employees; specifically waiving sovereign immunity as provided by the Constitution in certain limited cases; granting jurisdiction to certain courts over claims brought against Commonwealth agencies; providing for limitations upon and the procedures relating to said claims; authorizing rules and regulations; suspending certain judicial proceedings until July 1, 1979, shortening the statutes of limitations in certain cases; and repealing certain laws.

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

Section 1. Title 1, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, is amended by adding a part to read:

PART VI
IMPLEMENTATION OF CONSTITUTIONAL PROVISIONS

Chapter

23. Implementation of Constitutional Provisions

CHAPTER 23
IMPLEMENTATION OF CONSTITUTIONAL PROVISIONS

Sec.

2310. Sovereign immunity reaffirmed; specific waiver.

§ 2310. Sovereign immunity reaffirmed; specific waiver.

Pursuant to section 11 of Article I of the Constitution of Pennsylvania, it is hereby declared to be the intent of the General Assembly that the Commonwealth, and its officials and employees acting within the scope of their duties, shall continue to enjoy sovereign and official immunity and remain immune from suit except as the General Assembly shall specifically waive the immunity. When the General Assembly specifically waives sovereign immunity, a claim against the Commonwealth and its officials and employees shall be brought only in such manner and in such courts and in such cases as directed by the provisions of Title 42 (relating to judiciary and judicial procedure) unless otherwise specifically authorized by statute.

Section 2. Sections 761(a) and (c), 762(a)(1), 931(a) and (c), 5101(b), 5110, 5111 and 5522(a) of Title 42 are amended or added to read:

§ 761. Original jurisdiction.

(a) General rule.—The Commonwealth Court shall have original jurisdiction of all civil actions or proceedings:

(1) Against the Commonwealth government, including any officer thereof, acting in his official capacity, except:

(i) actions or proceedings in the nature of applications for a writ of habeas corpus or post-conviction relief not ancillary to proceedings within the appellate jurisdiction of the court; [and]

(ii) eminent domain proceedings; *and*

(iii) *actions on claims in which sovereign immunity has been waived pursuant to section 5110 (relating to limited waiver of sovereign immunity) and pursuant to the act of May 20, 1937 (P.L.728, No.193), referred to as the Board of Arbitration of Claims Act.*

(2) By the Commonwealth government, including any officer thereof, acting in his official capacity, except eminent domain proceedings.

(3) Original jurisdiction of which is vested in the Commonwealth Court by any statute hereafter enacted.

* * *

(c) No waiver of sovereign immunity.—The provisions of subsection (a)(1) relating to actions or proceedings against the Commonwealth shall not be construed as a waiver by the Commonwealth of immunity to suit *except as specifically waived pursuant to section 5110 or pursuant to the act of May 20, 1937 (P.L.728, No.193), referred to as the Board of Arbitration of Claims Act.*

* * *

§ 762. Appeals from courts of common pleas.

(a) General rule.—Except as provided in subsection (b), the Commonwealth Court shall have exclusive jurisdiction of appeals from final orders of the courts of common pleas in any of the following cases:

(1) Commonwealth civil cases.—All civil actions or proceedings to which the Commonwealth or any officer *or employee* thereof, acting in his official capacity *or within the scope of his duties*, is a party, *including actions or claims in which sovereign immunity has been waived pursuant to section 5110 (relating to limited waiver of sovereign immunity)*, except actions or proceedings in the nature of applications for a writ of habeas corpus or post-conviction relief not ancillary to proceedings within the appellate jurisdiction of the court.

* * *

§ 931. Original jurisdiction and venue.

(a) General rule.—Except where exclusive original jurisdiction of an action or proceeding is by statute or by general rule adopted pursuant to section 503 (relating to reassignment of matters) vested in another court of this Commonwealth, the courts of common pleas shall have unlimited original jurisdiction of all actions and proceedings, including all actions

and proceedings heretofore cognizable by law or usage in the courts of common pleas *and actions pursuant to section 5110 (relating to limited waiver of sovereign immunity).*

* * *

(c) Venue [and process.—The].—*Except for the manner in which actions against a Commonwealth agency, its officials and employees, may be brought, the venue of a court of common pleas concerning matters over which jurisdiction is conferred by this section shall be as prescribed by general rule. Actions for claims against a Commonwealth agency, its officials and employees may be brought in and only in a county in which the principal or local office of the Commonwealth agency is located or in which the cause of action arose or where the 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 agency is located within it, any judge of the Court of Common Pleas of the Twelfth Judicial District (Dauphin County) shall have the power to remove the action to any appropriate county where venue would otherwise lie.*

(d) Process.—*Service of process in the case of an action against the Commonwealth shall be made at the principal or local office of the Commonwealth agency that is being sued and at the office of the Attorney General. The process of the court shall extend beyond the territorial limits of the judicial district to the extent prescribed by general rule. Except as otherwise prescribed by general rule, in a proceeding to enforce an order of a government agency the process of the court shall extend throughout this Commonwealth.*

§ 5101. Remedy to exist for legal injury.

* * *

(b) No waiver of sovereign immunity.—The provisions of subsection (a) shall not be construed as a waiver by the Commonwealth of immunity to suit *except for actions pursuant to section 5110 (relating to limited waiver of sovereign immunity).*

§ 5110. Limited waiver of sovereign immunity.

(a) General rule.—*The General Assembly, pursuant to section 11 of Article I of the Constitution of Pennsylvania, does hereby waive, in the following instances only and only to the extent set forth in this section and within the limits set forth in section 5111 (relating to limitations on damages), sovereign immunity as a bar to an action against Commonwealth agencies, and their officials and employees acting within the scope of their duties, for damages arising out of a negligent act or omission where the damages would be recoverable under the common law or a statute creating a cause of action if caused by a person not having available the defense of sovereign immunity. An action shall not be barred and the defense of sovereign immunity shall not be raised to claims for:*

(1) *Vehicle liability.—Damages caused by the operation of any motor vehicle. As used in this paragraph "motor vehicle" means any*

vehicle which is self-propelled and any attachment thereto, including vehicles operated by rail, through water or in the air.

(2) Medical-professional liability.—Damages caused by Commonwealth health care employees of medical facilities or institutions or by a doctor, dentist, nurse and related health care personnel.

(3) Care, custody or control of personal property.—Damages caused by the care, custody or control of personal property in the possession of Commonwealth agencies, including Commonwealth-owned property and property of persons held by the Commonwealth, except that the sovereign immunity of the Commonwealth is retained as a bar to actions on claims arising out of Commonwealth activities involving the use of nuclear and other radioactive equipment, devices and materials.

(4) Commonwealth real estate, highways and sidewalks.—Damages caused by a dangerous condition of Commonwealth real estate and sidewalks, including Commonwealth-owned real property, leaseholds in the possession of the Commonwealth and Commonwealth real property leased to private persons, and highways under the jurisdiction of Commonwealth agencies except as limited in paragraph (5).

(5) Potholes and other dangerous conditions.—Damages, other than property damages, caused by a dangerous condition of highways under the jurisdiction of Commonwealth agencies created by potholes or sinkholes or other similar conditions created by natural elements, except that the claimant to recover must establish that the dangerous condition created a reasonably foreseeable risk of the kind of damage which was incurred and that the Commonwealth agency had actual written notice of the dangerous condition of the highway a sufficient time prior to the event to have taken measures to protect against the dangerous condition.

(6) Care, custody or control of animals.—Damages caused by animals in the care, custody or control of Commonwealth agencies, including but not limited to police dogs and horses and animals incarcerated in Commonwealth laboratories, but shall not include damages caused by wild animals including but not limited to bears and deer except as otherwise provided by statute.

(7) Liquor store sales.—Damages caused by the sale of liquor at Pennsylvania liquor stores by employees of the Pennsylvania Liquor Control Board created by and operating under the act of April 12, 1951 (P.L.90, No.21), known as the "Liquor Code," if such sale is made to any minor, or to any person visibly intoxicated, or to any insane person, or to any person known as an habitual drunkard or of known intemperate habit.

(8) National Guard activities.—Damages caused by a member of the Pennsylvania military forces.

(b) Certain defenses retained.—The following existing common law defenses are retained:

(1) An official of the Commonwealth agency or a member of the General Assembly or the judiciary may assert on his own behalf, or the Commonwealth may assert on his behalf, defenses which have heretofore been available to such officials.

(2) An employee of a Commonwealth agency, a member of the General Assembly or the judiciary may assert on his own behalf, or the Commonwealth may assert on his behalf, the defense that the employee was acting pursuant to a duty required by a statute or statutorily authorized regulation.

(3) An official or employee of a Commonwealth agency, a member of the General Assembly or the judiciary, may assert on his own behalf or the Commonwealth may assert on his behalf, the defense that the act or omission was within the discretion granted to the official or employee by statute or statutorily authorized regulation.

(c) Legal assistance.—When an action is brought pursuant to this section against an official or employee of a Commonwealth agency or any other Commonwealth government employee, and it is alleged that the act or omission occurred within the scope of his employment, the Commonwealth through the Attorney General shall defend the suit, unless the Attorney General determines that the act or omission did not occur within the scope of employment. In the latter case, if it is subsequently determined that the act or omission occurred within the scope of employment, the Commonwealth shall reimburse the official or employee for the cost of his legal defense in such amounts as shall be determined to be reasonable by the court. If a Commonwealth government employee is sued and it is alleged that the act or omission occurred outside the scope of his employment, and he successfully defends the suit on the basis that the act or omission was within the scope of his employment, and he has given prior notice to the Attorney General and the Attorney General has refused to defend the action, he shall likewise be entitled to the reasonable costs of the defense.

(d) Counterclaim and set-off by the Commonwealth.—In any action initiated under this section, the Commonwealth may set forth any cause of action or set-off which it has against the plaintiff. A counterclaim need not diminish or defeat the relief demanded by the plaintiff. It may demand relief exceeding in amount or different in kind from that demanded by the plaintiff.

§ 5111. Limitations on damages.

(a) Amount recoverable.—No verdict or verdicts against the Commonwealth on actions brought pursuant to section 5110 (relating to limited waiver of sovereign immunity) arising from the same cause of action or transaction or occurrence or series of causes of action or transactions or occurrences shall exceed \$250,000 in favor of any plaintiff or \$1,000,000 in the aggregate.

(b) Types of damages recoverable.—Damages shall be recoverable only for:

(1) Past and future loss of earnings and earning capacity.

(2) Pain and suffering.

(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 property losses shall not be recoverable in claims brought pursuant to section 5110(a)(5).

§ 5522. Six months limitation.

(a) Notice prerequisite to action against government unit.—Within six months from the date that any injury was sustained or any cause of action accrued, any person who is about to commence any civil action or proceeding within this Commonwealth or elsewhere against a government unit for damages on account of any injury to his person *or property* shall file in the office of the government unit, *and if the action is against a Commonwealth agency for damages then also file in the office of the Attorney General*, a statement in writing, signed by or in his behalf, setting forth:

(1) The name of the person to whom the cause of action has accrued.

(2) The name and residence of the person injured.

(3) The date and hour of the accident.

(4) The approximate location where the accident occurred.

(5) The name and address of any attending physician.

If the statement provided for by this subsection is not filed, any civil action or proceeding commenced against the government unit more than six months after the date of injury shall be dismissed and the person to whom any such cause of action accrued for any personal injury shall be forever barred from proceeding further thereon within this Commonwealth or elsewhere. The court shall excuse compliance with this requirement upon a showing of reasonable excuse for failure to file such statement.

* * *

Section 3. Powers and duties of Attorney General and Department of General Services.

(a) Reports to General Assembly.—The Attorney General shall report on April 1, 1980 and annually thereafter to the General Assembly through the Speaker of the House of Representatives and the President pro tempore of the Senate, the number and types of claims instituted against the Commonwealth, their disposition or status, including settlements agreed or verdicts entered, and such other information as the Attorney General shall deem appropriate.

(b) Rules and regulations.—The Attorney General shall promulgate rules and regulations not inconsistent with this act in order to implement

the intent of the act. The subject of the rules and regulations may include the procedures for settlement of claims prior to or after the institution of suit, the designation of local and principal offices for Commonwealth agencies, the basis for undertaking and continuing legal defense of claims, and the procedures for payment of claims and satisfaction of judgments. The rules and regulations, and amendments thereto, promulgated pursuant to this section shall not take effect until the requirements of the "Commonwealth Documents Law" have been complied with and 30 days have expired after transmission of the rules and regulations to the General Assembly through the Speaker of the House of Representatives and the President pro tempore of the Senate.

(c) Risk management program.—The Department of General Services shall undertake a comprehensive review of risk management including loss prevention, the availability of insurance and the feasibility of self-insurance for the areas of specific waiver of sovereign immunity enumerated in 42 Pa.C.S. § 5110 (relating to limited waiver of sovereign immunity). The department shall report, on or before February 1, 1979, to the Governor and the General Assembly through the President pro tempore of the Senate and the Speaker of the House of Representatives, its findings and recommendations for the most efficient risk management and loss prevention program, the most feasible insurance or self-insurance coverage, or combination of both. The department shall assist the Attorney General in formulating rules and regulations, standards or guidelines, for adjusting and processing claims and otherwise managing the pre-litigation procedures to be utilized by Commonwealth agencies to carry out the provisions of this act.

Section 4. Repeals.

(a) The provisions of the following acts, and all other acts and parts of acts, are repealed insofar as they waive or purport to waive sovereign immunity inconsistent with this act, but are saved from repeal insofar as they provide defenses or immunities from suit:

Section 11, act of March 19, 1951 (P.L.28, No.4), known as the "State Council of Civil Defense Act of 1951."

Section 5.2, act of October 27, 1955 (P.L.744, No.222), known as the "Pennsylvania Human Relations Act."

Section 603, act of October 20, 1966 (3rd Sp.Sess., P.L.96, No.6), known as the "Mental Health and Mental Retardation Act of 1966."

Section 1001, act of October 15, 1975 (P.L.390, No.111), known as the "Health Care Services Malpractice Act."

Section 11, act of November 26, 1975 (P.L.438, No.124), known as the "Child Protective Services Law."

Section 114, act of July 9, 1976 (P.L.817, No.143), known as the "Mental Health Procedures Act."

(b) Except as provided in subsection (a), all other acts and parts of acts are repealed insofar as they are inconsistent with this act.

(c) Nothing in this section shall repeal the waiver of sovereign immunity in:

Section 1207, act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929."

Sections 405, 1003 and 1004, act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code."

Act of May 20, 1937 (P.L.728, No.193), referred to as the Board of Arbitration of Claims Act.

Section 5. Construction and application.

(a) This act is intended to specifically respond to and prescribe limitations on the decision of *Mayle v. Commonwealth*, decided by the Supreme Court on July 14, 1978.

(b) The following provisions applying this act to actions accrued on the effective date of this act, and its intended retroactive effect, are to assure the development of a consistent body of law, an orderly and uniform management of litigation and to prevent inequities within the terms of this act that would otherwise be caused by the lack of identical restrictions, limitations, procedural requirements and the application of the other provisions of this act. It is the intent of the General Assembly that the express limited waiver from bar of suit, and limited waiver of the defense of sovereign immunity contained in this act, shall be uniformly applied to all actions which are not otherwise barred, and shall not depend upon the fortuitousness of the date of the accruing of the action, or the diligence with which it was prosecuted or its status within the judicial system on July 14, 1978. Accordingly, the limitations on the amount recoverable, the types of damages, the notice requirements and all other limitations shall apply to all actions, whenever accrued, if they would have been applicable had the action accrued on or after the effective date of this act. In the case of claims not barred under this act and for which there was in effect at the time the claim accrued, or such later time as may be applicable, a policy of insurance or a self-insurance program authorized by section 2404(b) of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," which policy or program contained limitations on the amount of damages which are less than those set forth in this act, the lesser amount shall apply to such claims. In applying this act:

(1) An action which accrued prior to the effective date of this act but which is barred by 42 Pa.C.S. § 5110 (relating to limited waiver of sovereign immunity) and is not within the exceptions contained therein, shall continue to be barred, and sovereign immunity shall continue as a defense, unless the action would not have been barred, and sovereign immunity would not have been a defense to it, by the applicable statutory and decisional law as it existed on July 13, 1978; such an action, not otherwise barred, shall be barred if suit is not instituted within the appropriate statute of limitation or within 60 days after the effective date of this act, whichever first occurs.

(2) An action which is within the exceptions provided in 42 Pa.C.S. § 5110 shall not be barred.

(c) All further trial or pretrial procedures in actions which are not barred under subsection (b) shall be suspended and no such proceedings shall be had on such cases, excepting only the institution of suit, and the filing and deciding of pretrial motions in which the applicability of this act is at issue. The suspension of further trial or pretrial proceedings shall continue until July 1, 1979. In the case of actions filed prior to the effective date of this act and which are not otherwise barred by this act, the parties to the suit, or any of them, shall have 60 days from the effective date of this act to move to transfer the case to the appropriate court of common pleas having jurisdiction, amend pleadings to conform to the requirements of this act, and otherwise comply with the requirements contained in this act.

(d) Nothing contained in this act shall be construed to revive any action in which the applicable statute of limitation has run or in which a compromise settlement was reached and a release obtained, or in which final order dismissing the action against the Commonwealth or an agency of the Commonwealth government has been entered, no appeal has been taken, and the time for appeal has expired.

(e) Nothing contained in this act shall be construed to waive the Commonwealth's immunity from suit in Federal courts guaranteed by the eleventh amendment to the United States Constitution.

Section 6. Effective date.

This act shall take effect immediately.

APPROVED—The 28th day of September, A. D. 1978.

It is my intention in approving this act that section 5 (construction and application) shall have general retroactive effect; and in particular it is the specific intent that:

(1) In all cases where the statute of limitations has run, the cause of action shall be barred.

(2) In all cases where the cause of action is not permitted by section 5110, regardless of when it arose, the cause of action shall be barred and sovereign immunity shall continue as a defense: Provided, That an action that would not have been barred by the applicable statutory or decisional law as it existed on July 13, 1978, shall not be barred if suit is instituted within the appropriate statute of limitations or within 60 days after the effective date of this act, whichever first occurs.

(3) In all cases where the cause of action is permitted by section 5110, and arose before the effective date of this act, the cause of action shall not be barred and sovereign immunity shall not be a defense to it, provided that the action is brought within the applicable statute of limitations.

Further, it is my intent in approving this act and my understanding of section 5(c) that the language therein does not deny the court the power to perpetuate testimony or to take any other action necessary to prevent manifest injustice.

MILTON J. SHAPP