

No. 1978-330

AN ACT

SB 1477

Providing a comprehensive procedure for the presentation of tort claims against political subdivisions.

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

**CHAPTER 1
PRELIMINARY PROVISIONS**

Section 101. Short title.

This act shall be known and may be cited as the "Political Subdivision Tort Claims Act."

Section 102. Definitions.

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

"Agency." Any board, committee, commission, department or other instrumentality or entity designated to act on behalf of a political subdivision by law.

"Employee of a political subdivision." Any person who is acting or who has acted on behalf of a political subdivision whether on a permanent or temporary basis, whether compensated or not and whether within or without the territorial boundaries of the political subdivision, including any volunteer fireman and any elected or appointed officer, member of a governing body or other person designated to act for the political subdivision; provided, however, that independent contractors under contract to the political subdivision and their employees and agents and persons performing tasks over which the political subdivision has no legal right of control are not employees of the political subdivision.

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

"Political subdivision." Any county, city, borough, incorporated town, township, school district, vocational school district, intermediate unit, municipal authority, home rule, optional plan or optional charter municipality, any authority created by one or more political subdivisions, and any board, commission, committee, department, instrumentality, or

entity thereof designated to act in behalf of one or more political subdivisions.

CHAPTER 2 GOVERNMENTAL IMMUNITY

Section 201. Governmental immunity generally.

Except as otherwise provided in this act, no political subdivision shall be liable for any damages on account of any injury to a person or property caused by any act or omission of the political subdivision or an employee thereof or any other person.

Section 202. Exceptions to governmental immunity.

(a) Liability imposed.—A political subdivision shall be liable for damages on account of an injury to a person or property within the limits set forth in chapter 4 (relating to limitations on damages) if both of the following conditions are satisfied and the injury occurs as a result of one of the actions or activities set forth in subsection (b):

(1) The damages would be recoverable under common law or a statute creating a cause of action if the injury were caused by a person not having available a defense under section 201 (relating to governmental immunity generally) or section 302 (relating to defense of official immunity); and

(2) The injury was caused by the negligent acts or omissions of the political subdivision or an employee thereof acting within the scope of his office or duties with respect to one of the categories listed in this subsection. As used in this subsection, "negligent acts or omissions" shall not include acts or omissions or conduct which constitutes a crime, actual fraud, actual malice or willful misconduct.

(b) Actions or activities which may impose liability.—The following acts or activities by a political subdivision or any of its employees may result in the imposition of liability on a political subdivision:

(1) The operation of any motor vehicle in the possession or control of the political subdivision. As used in this paragraph, "motor vehicle" means any vehicle which is self-propelled and any attachment thereof, including vehicles operated by rail, through water or in air.

(2) The care, custody or control of personal property of others in the possession or control of the political subdivision. The only losses for which damages shall be recoverable under this paragraph are those property losses suffered with respect to the personal property in the possession or control of the political subdivision.

(3) The care, custody or control of real property in the possession of the political subdivision, except that the political subdivision shall not be liable for damages on account of any injury sustained by a person intentionally trespassing on real property in the possession of the political subdivision. As used in this paragraph, "real property" shall not include trees, streets, sidewalks, traffic signs, lights and other traffic controls, street lights and street lighting systems and facilities of steam,

sewer, water, gas and electric systems owned by the political subdivision and located within rights of way.

(4) A dangerous condition of traffic lights, lights or other traffic controls, street lights or street lighting systems or trees under the care, custody or control of the political subdivision, except that the claimant to recover must establish that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred and that the political subdivision had actual notice or could reasonably be charged with notice under the circumstances of the dangerous condition at a sufficient time prior to the event to have taken measures to protect against the dangerous condition.

(5) A dangerous condition of the facilities of steam, sewer, water, gas and electric systems owned by the political subdivision and located within rights of way, except that the claimant to recover must establish that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred and that the political subdivision had actual notice or could reasonably be charged with notice under the circumstance of the dangerous condition at a sufficient time prior to the event to have taken measures to protect against the dangerous condition.

(6) A dangerous condition of streets owned by the political subdivision, except that the claimant to recover must establish that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred and that the political subdivision had actual notice or could reasonably be charged with notice under the circumstance of the dangerous condition at a sufficient time prior to the event to have taken measures to protect against the dangerous condition.

(7) A dangerous condition of sidewalks within the rights of way of streets owned by the political subdivision, except that the claimant to recover must establish that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred and that the political subdivision had actual notice or could reasonably be charged with notice under the circumstance of the dangerous condition at a sufficient time prior to the event to have taken measures to protect against the dangerous condition. When a political subdivision is liable for damages under this paragraph by reason of its power and authority to require installation and repair of sidewalks under the care, custody and control of other persons, the political subdivision shall be secondarily liable only and such other persons shall be primarily liable.

(8) The care, custody or control of animals in the possession or control of a political subdivision, including but not limited to police dogs and horses. Damages shall not be recoverable under this paragraph on account of any injury caused by wild animals, including but not limited to bears and deer, except as otherwise provided by law.

(c) Limited definition.—As used in this subsection the amount of time reasonably required to take protective measures including inspections required by law shall be determined with reference to the actual equipment.

personnel and facilities available to the political subdivision and the competing demands therefor.

CHAPTER 3 OFFICIAL IMMUNITY

Section 301. Official liability generally.

An employee of a political subdivision is liable for civil damages on account of any injury to a person or property caused by his acts or omissions only to the same extent as his employing political subdivision and subject to the limitations imposed by this chapter.

Section 302. Defense of official immunity.

In any action brought against an employee of a political subdivision for damages on account of an injury to a person or property based upon claims arising from, or reasonably related to, the office or the performance of the duties of the employee, the employee may assert on his own behalf, or the political subdivision may assert on his behalf:

- (1) Defenses which are available at common law to the employee.
- (2) The defense that the conduct of the employee which gave rise to the claim was authorized or required by law, or that he in good faith reasonably believed the conduct was authorized or required by law.
- (3) The defense that the act or omission of the employee which gave rise to the claim was within the policymaking discretion granted to the employee by law. For purposes of this subsection, all acts and omissions of members of the governing body of a political subdivision or of the chief executive officer thereof are deemed to be within the policymaking discretion granted to such person by law.

Section 303. Legal assistance.

(a) Mandatory provision of legal assistance generally.—When an action is brought against an employee of a political subdivision for damages on account of an injury to a person or property, and it is alleged that the act or omission of the employee which gave rise to the claim was within the scope of the office or duties of the employee, the political subdivision shall, upon the written request of the employee, defend the action, unless or until there is a judicial determination that such act or omission 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 political subdivision for damages on account of an injury to a person or property, and it is not alleged that the act or omission of the employee which gave rise to the claim was within the scope of his office or duties, the political subdivision 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 political subdivision has refused a written request to defend the action, and it is judicially determined that the act or omission was, or that the employee in good faith reasonably believed that such act or omission was, within the scope of the office or duties of the employee and did not constitute a crime,

actual fraud, actual malice or willful misconduct, the political subdivision shall reimburse the employee for the cost of his legal defense in such amounts as shall be determined to be reasonable by the court.

(c) Control of litigation.—When, pursuant to subsection (a) or subsection (b), the political subdivision defends an action against an employee thereof at the request of the employee, it may assume exclusive control of the defense of the employee, keeping him advised with respect thereto, and the employee shall cooperate fully with the defense, provided that in situations where the legal counsel provided by the political subdivision determines that the interests of the employee and the political subdivision conflict, the political subdivision shall obtain the express written consent of the employee for such interested representation or shall supply independent representation.

Section 304. Indemnity.

(a) Indemnity by political subdivision generally.—When an action is brought against an employee of a political subdivision for damages on account of an injury to a person or property, and he has given timely prior written notice to the political subdivision, and it is judicially determined that an act or omission of the employee caused the injury and such act or omission was, or that the employee in good faith reasonably believed that such act or omission was, within the scope of his office or duties, the political subdivision shall indemnify the employee for the payment of any judgment on the suit.

(b) Indemnity by employee generally.—No employee of a political subdivision shall be liable to the political subdivision for any surcharge, contribution, indemnity or reimbursement for any liability incurred by the political subdivision for damages on account of an injury to a person or property caused by an act or omission of the employee which was within the scope of his office or duties or which he in good faith reasonably believed to be within the scope of his office or duties. No employee of a political subdivision shall be liable to the political subdivision for any surcharge, contribution, indemnity or reimbursement for any expenses or legal fees incurred by the political subdivision while defending the employee against a claim for damages on account of an injury to a person or property caused by an act or omission of the employee.

(c) Cooperation.—In any action against a political subdivision or an employee thereof for damages on account of an injury caused by the act or omission of the employee in which action the employee has not fully cooperated with the political subdivision in the defense of the action, the provisions of subsection (b) shall not apply.

Section 305. Intervention.

A political subdivision may intervene in any action brought against an employee thereof for damages on account of an injury to a person or property based upon claims arising from, or reasonably related to, the office or the performance of the duties of the employee.

Section 306. Limitation on damages.

In any action brought against an employee of a political subdivision for damages on account of an injury to a person or property in which it is judicially determined that the act or omission of the employee caused the injury and that such act or omission was, or that the employee in good faith reasonably believed that such act or omission was, within the scope of his office or duties, damages shall be recoverable only within the limits set forth in chapter 4 (relating to limitations on damages).

Section 307. Willful misconduct.

In any action against a political subdivision or employee thereof for damages on account of an injury caused by the act or omission of the employee in which it is judicially determined that the act or omission of the employee caused the injury and that such act or omission constituted a crime, actual fraud, actual malice or willful misconduct, the provisions of sections 302 (relating to defense of official immunity), 304 (relating to indemnity) and 306 (relating to limitation on damages) shall not apply.

CHAPTER 4 LIMITATIONS ON DAMAGES

Section 401. Limitation on damages generally.

Actions for which damages are limited by reference to this chapter shall be limited as set forth in this chapter.

Section 402. Amounts recoverable.

Damages arising from the same cause of action or transaction or occurrence or series of causes of action or transactions or occurrences shall not exceed \$500,000 in the aggregate.

Section 403. Types of losses recognized.

Damages shall be recoverable only for:

- (1) Past or future loss of earnings and earning capacity.
- (2) Pain and suffering in the following instances;
 - (i) death; or
 - (ii) only in cases of permanent loss of a bodily function, permanent disfigurement or permanent dismemberment where the medical and dental expenses referred to in paragraph (3) are in excess of \$1,500.
- (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) Loss of support.
- (6) Property losses.

Section 404. Prejudgment interest.

No interest shall accrue prior to any entry of judgment.

Section 405. Insurance benefits.

If a claimant receives or is entitled to receive benefits under a policy of

insurance other than a life insurance policy as a result of losses for which damages are recoverable under section 403 (relating to types of losses recognized), the amount of such benefits shall be deducted from the amount of damages which would otherwise be recoverable by such claimant.

CHAPTER 5 JURISDICTION, VENUE AND PROCEDURE

Section 501. Jurisdiction.

The court of common pleas shall have original jurisdiction in all causes brought pursuant to the provisions of this act.

Section 502. Venue.

Venue shall lie in the judicial district in which the cause of action accrued or where the political subdivision is located, except where such political subdivision is located in more than one judicial district, the action shall be brought in the judicial district where the cause of action accrued or in the judicial district in which the principal office or place of business of such political subdivision is located.

Section 503. Exclusive procedure for filing claims.

No claim or action shall be allowed against a political subdivision or its employees unless the claim has been filed in accordance with the provisions of this act.

Section 504. Filing procedure.

(a) Notice to political subdivision.—Any person claiming damages of a political subdivision pursuant to the terms of this act shall, within 180 days of the date of origin of the claim, notify the clerk or secretary or other designated officer of such political subdivision in writing of said claim, stating briefly the facts upon which the claim is based. The time for giving such written notice of the claim does not include the time during which the individual injured is unable, due to incapacitation or disability from the injury, to give notice, not exceeding 90 days of incapacity. In the event that the individual's injuries result in death, the time for giving notice shall commence with such individual's death.

(b) Bar for failure to notify.—Failure to comply with the notice requirement as required by subsection (a) shall be a bar to any subsequent action to recover damages unless such failure is reasonably explained or unless the political subdivision otherwise had actual or constructive notice of the incident or condition giving rise to an individual's claim.

(c) Effect of other statutes.—The time periods as otherwise provided by law for commencement of actions based upon death, personal injury or property damage shall govern the institution of legal proceedings for the recovery of monetary damages in suits brought pursuant to the provisions of this act.

Section 505. Judgment as a bar.

The judgment in an action cognizable under section 301 (relating to official liability generally) shall constitute a complete bar to any action by

the claimant, by reason of the same subject matter, against the political subdivision of which the defendant in such action is an employee. The judgment in an action under section 202 (relating to exceptions to governmental immunity) shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee whose act or omission gave rise to the claim.

CHAPTER 6 JUDGMENTS

Section 601. Enforcement of judgments generally.

Judgments recovered against political subdivisions under the provisions of this act shall be enforced in the same manner and to the same extent as judgments are now enforced against such political subdivisions under the laws of the Commonwealth, except as herein provided.

Section 602. Judgments against insured political subdivisions.

If the judgment is obtained against a political subdivision that has procured a contract or policy of public liability insurance protection, the holder of the judgment may use the methods of collecting the judgment as are provided by the policy or contract and the laws of the Commonwealth to the extent of the limits of coverage provided.

Section 603. Judgments against self-insured political subdivision and those not fully insured.

For the payment of any judgment obtained under the provisions of this act against a political subdivision that is a self-insurer or not fully covered by liability insurance, the manner of paying a money judgment shall be based upon a proof of indebtedness or evidence of any estimated tax levy necessary for payment of the judgment and any other evidence or statements which the court of original jurisdiction may require. As an alternative to paying the money judgment in this manner, the court may provide for the judgment to be paid over a period of not less than one nor more than ten years. The interest rate on any judgment where payment is extended more than three years shall be at the rate prescribed by law for the first three years and at the rate of 6% for each remaining year.

CHAPTER 7 POWERS OF POLITICAL SUBDIVISION

Section 701. Purchase of liability insurance authorized.

A political subdivision shall have the authority to purchase insurance on itself or its employees for any liability arising from the performance of their duties within the scope of their employment.

Section 702. Employment of risk manager authorized.

A political subdivision shall have the authority to employ a professional risk manager whose responsibility it shall be to administer a public liability insurance program for the political subdivision and initiate any risk management program for the political subdivision and its employees.

Section 703. Joint action by political subdivision authorized.

Any two or more political subdivisions may join together, enter into any agreements, or jointly contract for the development of a group risk management program either through the provisions of the act of July 12, 1972 (P.L.762, No.180), entitled "An act relating to intergovernmental cooperation" or any other applicable law in the Commonwealth. Any two or more political subdivisions may join together, enter into any agreements, or jointly contract for the purchasing of public liability insurance. Any two or more political subdivisions may pool their public liability insurance risks through the provisions of the act of July 12, 1972 (P.L.762, No.180), or any other applicable law of the Commonwealth.

Section 704. Insurance pooling and coinsurance.

The pooling of insurance risks, reserves, claims or losses shall not be construed to be transacting insurance nor otherwise subject such political subdivisions to the provisions of the laws of the Commonwealth regulating insurance or insurance companies. Such political subdivisions may be coinsured under a master policy and the total premium may be prorated among such political subdivisions. Any county may undertake a group risk management program or public liability insurance program on behalf of itself and any other political subdivisions covered by this act within the county that wish to voluntarily participate in such programs.

Section 705. Funding of self-insurance.

Any political subdivision may self-insure, which must be funded on an annual basis by appropriations to establish a reserve for self-insurance purposes.

Section 706. Rules and regulations.

A political subdivision may promulgate rules and regulations not inconsistent with this act in order to implement the intent of the act.

Section 707. Delegation of duties.

Any duties placed upon a political subdivision under the provisions of this act may be delegated to an independent contractor by a written agreement.

CHAPTER 8 MISCELLANEOUS PROVISIONS

Section 801. General laws and rules applicable.

The laws of the Commonwealth and the rules of civil procedure as promulgated and adopted by the Supreme Court of Pennsylvania insofar as applicable and not inconsistent herewith shall apply to and govern actions under this act.

Section 802. Repeals.

(a) The following act or parts of acts are repealed absolutely:

Clause 53.1 of section 2403, act of June 23, 1931 (P.L.932, No.317), reenacted and amended June 28, 1951 (P.L.662, No.164), known as "The Third Class City Code."

Clause LXVIII of section 1502, act of June 24, 1931 (P.L.1206, No.331), reenacted and amended May 27, 1949 (P.L.1955, No.569), known as "The First Class Township Code."

The third paragraph of clause (q) of subsection B of section 4, act of May 2, 1945 (P.L.382, No.164), known as the "Municipality Authorities Act of 1945."

Act of May 15, 1945 (P.L.538, No.210), entitled "An act relating to the liabilities of elected and appointed officers of the various political subdivisions and limiting surcharges to the actual financial loss sustained."

Act of May 20, 1949 (P.L.1642, No.495), entitled "An act relating to property owned by cities of the second class A, authorizing special funds for its maintenance, and authorizing council to insure against liability arising out of the ownership or control of such property."

Subdivision (x) and section 2199.18, act of July 28, 1953 (P.L.723, No.230), known as "Second Class County Code."

Subsection (b) of section 431, act of August 9, 1955 (P.L.323, No.130), known as "The County Code."

Clause 37.1 of section 1202, act of February 1, 1966 (1965 P.L.1656, No.581), known as "The Borough Code."

Sections 1576 and 7723(d) of Title 75 (Vehicles), act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes.

Act of July 10, 1975 (P.L.50, No.29), entitled "An act providing for liability insurance for officers and employees of incorporated towns."

(b) The following acts or parts of acts are repealed to the extent indicated:

Clause XIII of section 702, act of May 1, 1933 (P.L.103, No.69), reenacted and amended July 10, 1947 (P.L.1481, No.567), known as "The Second Class Township Code," insofar as inconsistent.

Section 774, act of March 10, 1949 (P.L.30, No.14), known as the "Public School Code of 1949," insofar as inconsistent.

Section 11, act of March 19, 1951 (P.L.28, No.4), entitled "An act relating to the civil defense of this State and its coordination with national defense; providing for the establishment of a State Council of Civil Defense, local and district councils of civil defense, Mobile Support Units; prescribing the powers, duties and immunities thereof and of their personnel; authorizing mutual aid compacts and providing penalties," insofar as it relates to political subdivisions and their agents, employees and representatives.

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," insofar as inconsistent.

Section 5522 of Title 42 (Judiciary and Judicial Procedure), act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, insofar as inconsistent.

(c) All other acts or parts of acts are repealed to the extent of any inconsistency.

Section 803. Effective date and application.

This act shall take effect in 60 days and shall apply to all causes of action

arising thereafter. Nothing in this act shall be construed to apply its provisions to any cause of action, which arose or which would otherwise have arisen prior to such effective date had this act been in effect at such time.

APPROVED—The 26th day of November, A. D. 1978.

MILTON J. SHAPP