

No. 1986-151

AN ACT

SB 408

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for damages in civil actions involving bad checks; and further providing for exceptions to sovereign immunity.

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

Section 1. Title 42 of the Pennsylvania Consolidated Statutes is amended by adding a section to read:

§ 8304. Damages in actions on bad checks.

(a) *General rule.*—*In a civil action to recover damages and costs following a conviction for passing a bad check pursuant to 18 Pa.C.S. § 4105 (relating to bad checks) and failure to make full restitution, the payee shall, upon obtaining judgment, be entitled to recover damages in an amount equal to \$100 or triple the amount for which the check was drawn, whichever is greater.*

(b) *Limitation.*—*Damages recovered under this section may not exceed by more than \$500 the value of the check and shall be awarded only if:*

(1) *the payee made written demand of the issuer for payment of the amount of the check not less than ten days before commencing the action; and*

(2) *the issuer failed to tender to the payee, prior to commencement of the action, an amount of money not less than the amount demanded.*

(c) *Restriction.*—*Notwithstanding subsection (a), if partial restitution has been made, damages recovered under this section may not exceed triple the amount of the unpaid restitution.*

Section 2. Section 8522(b) of Title 42 is amended to read:

§ 8522. Exceptions to sovereign immunity.

* * *

(b) *Acts which may impose liability.*—*The following acts by a Commonwealth party may result in the imposition of liability on the Commonwealth and the defense of sovereign immunity shall not be raised to claims for damages caused by:*

(1) *Vehicle liability.*—*The operation of any motor vehicle in the possession or control of a Commonwealth party. 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.*—*Acts of health care employees of Commonwealth agency medical facilities or institutions or by a Commonwealth party who is a doctor, dentist, nurse or related health care personnel.*

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

(4) Commonwealth real estate, highways and sidewalks.—A dangerous condition of Commonwealth agency real estate and sidewalks, including Commonwealth-owned real property, leaseholds in the possession of a Commonwealth agency and Commonwealth-owned real property leased by a Commonwealth agency to private persons, and highways under the jurisdiction of a Commonwealth agency, except conditions described in paragraph (5).

(5) Potholes and other dangerous conditions.—A dangerous condition of highways under the jurisdiction of a Commonwealth agency 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 injury 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. Property damages shall not be recoverable under this paragraph.

(6) Care, custody or control of animals.—The care, custody or control of animals in the possession or control of a Commonwealth party, including but not limited to police dogs and horses and animals incarcerated in Commonwealth agency laboratories. 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 statute.

(7) Liquor store sales.—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.—Acts of a member of the Pennsylvania military forces.

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

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

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

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

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

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

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

Section 3. (a) Section 1 of this act shall take effect in 90 days.

(b) The remainder of this act shall take effect immediately.

APPROVED—The 11th day of December, A. D. 1986.

DICK THORNBURGH