

CHAPTER 85
MATTERS AFFECTING GOVERNMENT UNITS

Subchapter

- A. General Provisions
- B. Actions Against Commonwealth Parties
- C. Actions Against Local Parties

Enactment. Present Chapter 85 was added October 5, 1980, P.L.693, No.142, effective in 60 days.

Prior Provisions. Former Chapter 85, which related to matters affecting the Commonwealth, was added April 28, 1978, P.L.202, No.53, and repealed October 5, 1980, P.L.693, No.142, effective in 60 days.

Cross References. Chapter 85 is referred to in sections 761, 5522, 8332.5 of this title; section 7505 of Title 32 (Forests, Waters and State Parks); section 2385 of Title 34 (Game); section 2212 of Title 66 (Public Utilities); section 9117 of Title 74 (Transportation).

SUBCHAPTER A
GENERAL PROVISIONS

Sec.

8501. Definitions.

8502. Enforcement proceedings.

§ 8501. Definitions.

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

"Act." Includes a failure to act.

"Commonwealth party." A Commonwealth agency and any employee thereof, but only with respect to an act within the scope of his office or employment.

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

"Injury." Includes death.

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

"Local agency." A government unit other than the Commonwealth government. The term includes, but is not limited to, an intermediate unit; municipalities cooperating in the exercise or performance of governmental functions, powers or responsibilities under 53 Pa.C.S. Ch. 23 Subch. A (relating to intergovernmental cooperation); and councils of government and other entities created by two or more municipalities under 53 Pa.C.S. Ch. 23 Subch. A.

(Dec. 20, 2000, P.L.946, No.129, eff. 60 days)

2000 Amendment. Act 129 amended the def. of "local agency."

Prior Provisions. Former section 8501 was added April 28 1978, P.L.202, No.53, and repealed October 5, 1980, P.L.693, No.142. The subject matter of former section 8501 is now contained in section 8502 of this title.

Cross References. Section 8501 is referred to in sections 1123, 1515, 8332.3 of this title; section 1711 of Title 74 (Transportation).

§ 8502. Enforcement proceedings.

(a) Venue.--Except as otherwise prescribed by general rules the venue of any action or proceeding by a Commonwealth agency to enforce any statute or regulation or order of a government unit may be laid in any court having jurisdiction of the subject matter.

(b) Bond.--Neither a Commonwealth agency nor a district attorney shall be required to give bond in connection with any application for equitable relief incident to the enforcement of any statute or regulation or order of a government unit.

Cross References. Section 8502 is referred to in section 1711 of Title 74 (Transportation).

SUBCHAPTER B
ACTIONS AGAINST COMMONWEALTH PARTIES

Sec.

SOVEREIGN IMMUNITY

- 8521. Sovereign immunity generally.
- 8522. Exceptions to sovereign immunity.
- 8523. Venue and process.
- 8524. Defenses.
- 8525. Legal assistance.
- 8526. Counterclaim by the Commonwealth.
- 8527. Indemnity relating to inmate health care.

LIMITATIONS ON DAMAGES

- 8528. Limitations on damages.

References in Repealed Statute. Section 221(j) of Act 142 of 1980 provided that references in the act of September 28, 1978, P.L.788, No.152, to "this act" and to "42 Pa.C.S. § 5110" shall be deemed to be references to Subchapter B.

Cross References. Subchapter B is referred to in section 931 of this title; section 6018 of Title 64 (Public Authorities and Quasi-Public Corporations).

SOVEREIGN IMMUNITY

§ 8521. Sovereign immunity generally.

(a) General rule.--Except as otherwise provided in this subchapter, no provision of this title shall constitute a waiver of sovereign immunity for the purpose of 1 Pa.C.S. § 2310 (relating to sovereign immunity reaffirmed; specific waiver) or otherwise.

(b) Federal courts.--Nothing contained in this subchapter shall be construed to waive the immunity of the Commonwealth from suit in Federal courts guaranteed by the Eleventh Amendment to the Constitution of the United States.

Cross References. Section 8521 is referred to in section 1711 of Title 74 (Transportation).

§ 8522. Exceptions to sovereign immunity.

(a) Liability imposed.--The General Assembly, pursuant to section 11 of Article I of the Constitution of Pennsylvania, does hereby waive, in the instances set forth in subsection (b) only and only to the extent set forth in this subchapter and within the limits set forth in section 8528 (relating to limitations on damages), sovereign immunity as a bar to an action against Commonwealth parties, for damages arising out of a negligent act where the damages would be recoverable under the common law or a statute creating a cause of action if the injury were caused by a person not having available the defense of 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.

(10) Sexual abuse.--Conduct which constitutes an offense enumerated under section 5551(7) (relating to no limitation applicable) if the injuries to the plaintiff were caused by actions or omissions of the Commonwealth party which constitute negligence.

(Dec. 11, 1986, P.L.1481, No.151, eff. imd.; Nov. 26, 2019, P.L.641, No.87, eff. Nov. 26, 2019)

2019 Amendment. Act 87 added subsec. (b)(10). See sections 9 and 10(3) of Act 87 in the appendix to this title for special provisions relating to severability and applicability.

1986 Amendment. Act 151 amended subsec. (b).

Cross References. Section 8522 is referred to in sections 5522, 8528 of this title; section 1711 of Title 74 (Transportation).

§ 8523. Venue and process.

(a) Venue.--Actions for claims against a Commonwealth party may be brought in and only in a county in which the principal or local office of the Commonwealth party is located or in which the cause of action arose or where a 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 party is located within it, any judge of the Court of Common Pleas of Dauphin County shall have the power to transfer the action to any appropriate county where venue would otherwise lie.

(b) 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.

Cross References. Section 8523 is referred to in section 1711 of Title 74 (Transportation).

§ 8524. Defenses.

The following common law defenses are available:

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

Cross References. Section 8524 is referred to in section 1711 of Title 74 (Transportation).

§ 8525. Legal assistance.

When an action is brought under this subchapter against an employee of the Commonwealth government, and it is alleged that the act of the employee which gave rise to the claim was within the scope of the office or duties of the employee, the Commonwealth through the Attorney General shall defend the action, unless the Attorney General determines that the act did not occur within the scope of the office or duties of the employee. In the latter case, if it is subsequently determined that the act occurred within the scope of the office or duties of the employee, the Commonwealth shall reimburse the employee for the expense of his legal defense in such amounts as shall be determined to be reasonable by the court. If an action is brought against a Commonwealth government employee for damages on account of injury to a person or property and it is not alleged that the act of the employee which gave rise to the claim was within the scope of his office or duties, and he successfully defends the action on the basis that the act was within the scope of his office or duties, 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 expenses of the defense.

Cross References. Section 8525 is referred to in sections 6006, 6018 of Title 64 (Public Authorities and Quasi-Public Corporations); sections 1711, 1722 of Title 74 (Transportation).

§ 8526. Counterclaim by the Commonwealth.

In any action initiated under this subchapter, 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.

Cross References. Section 8526 is referred to in section 1711 of Title 74 (Transportation).

§ 8527. Indemnity relating to inmate health care.

The Commonwealth shall indemnify against liability a municipal corporation for a claim against the municipal corporation arising from an act or omission of the municipal corporation, its officials, its employees or agents when participating in a program for the provision of medical treatment in a health care facility to inmates from a Commonwealth correctional facility pursuant to a program authorized by the Department of Corrections. This indemnification shall not extend to claims of medical malpractice against any person nor to claims against the health care facility, its employees or agents nor to claims against the municipal corporation that are the result of gross negligence, wanton and reckless acts or intentional misconduct by the municipal corporation, its officials, employees or agents.

(Feb. 12, 1992, P.L.1, No.1, eff. imd.)

1992 Amendment. Act 1 added section 8527.

Cross References. Section 8527 is referred to in section 1711 of Title 74 (Transportation).

LIMITATIONS ON DAMAGES

§ 8528. **Limitations on damages.**

(a) **General rule.**--Actions for which damages are limited by reference to this subchapter shall be limited as set forth in this section.

(b) **Amount 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 \$250,000 in favor of any plaintiff or \$1,000,000 in the aggregate.

(c) **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 that property losses shall not be recoverable in claims brought pursuant to section 8522(b)(5) (relating to exceptions to sovereign immunity).

(d) **Exclusions.**--This section shall not apply to damages awarded under section 8522(b)(10).

(Nov. 26, 2019, P.L.641, No.87, eff. Nov. 26, 2019)

2019 Amendment. Act 87 amended subsec. (c)(5) and added subsec. (d). See sections 9 and 10(3) of Act 87 in the appendix to this title for special provisions relating to severability and applicability.

Cross References. Section 8528 is referred to in section 8522 of this title; section 1711 of Title 74 (Transportation).

SUBCHAPTER C
ACTIONS AGAINST LOCAL PARTIES

Sec.

GOVERNMENTAL IMMUNITY

- 8541. Governmental immunity generally.
- 8542. Exceptions to governmental immunity.

OFFICIAL IMMUNITY

- 8545. Official liability generally.
- 8546. Defense of official immunity.
- 8547. Legal assistance.
- 8548. Indemnity.
- 8549. Limitation on damages.
- 8550. Willful misconduct.

LIMITATIONS ON DAMAGES

- 8553. Limitations on damages.

JUDGMENTS

- 8557. Judgment as a bar.
- 8558. Judgments against insured local agency.
- 8559. Judgments against self-insured local agency and those not fully insured.

POWERS OF LOCAL AGENCIES

- 8563. General powers of local agencies.
- 8564. Liability insurance and self-insurance.

Venue, Interest and Intervention. Section 333 of Act 142 of 1980, which repealed the act of November 26, 1978, P.L.1399, No.330, known as the Political Subdivision Tort Claims Act, provided that actions under Subchapter C for claims against a local agency may be brought in and only in a county in which the local agency is located or in which the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose. Section 333 further provided that no interest shall accrue in any such action prior to any entry of judgment and provided that a local agency may intervene in any action brought against an employee thereof for damages on account of an injury to a person or property based on claims arising from, or reasonably related to, the office or the performance of the duties of the employee.

Cross References. Subchapter C is referred to in sections 762, 8337 of this title; section 315 of Title 3 (Agriculture); section 5311.1 of Title 35 (Health and Safety); section 3306 of Title 58 (Oil and Gas); section 6345 of Title 75 (Vehicles).

GOVERNMENTAL IMMUNITY

§ 8541. Governmental immunity generally.

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

Cross References. Section 8541 is referred to in section 8542 of this title.

§ 8542. Exceptions to governmental immunity.

(a) Liability imposed.--A local agency shall be liable for damages on account of an injury to a person or property within the limits set forth in this subchapter if both of the following conditions are satisfied and the injury occurs as a result of one of the acts 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 8541 (relating to governmental immunity generally) or section 8546 (relating to defense of official immunity); and

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

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

(1) Vehicle liability.--The operation of any motor vehicle in the possession or control of the local agency, provided that the local agency shall not be liable to any plaintiff that claims liability under this subsection if the plaintiff was, during the course of the alleged negligence, in flight or fleeing apprehension or resisting arrest by a police officer or knowingly aided a group, one or more of whose members were in flight or fleeing apprehension or resisting arrest by a police officer. 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) Care, custody or control of personal property.--The care, custody or control of personal property of others in the possession or control of the local agency. 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 local agency.

(3) Real property.--The care, custody or control of real property in the possession of the local agency, except that the local agency 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 local agency. As used in this paragraph, "real property" shall not include:

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

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

(iii) streets; or

(iv) sidewalks.

(4) Trees, traffic controls and street lighting.--A dangerous condition of trees, traffic signs, lights or other traffic controls, street lights or street lighting systems under the care, custody or control of the local agency, 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 local

agency 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) Utility service facilities.--A dangerous condition of the facilities of steam, sewer, water, gas or electric systems owned by the local agency 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 local agency 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.

(6) Streets.--

(i) A dangerous condition of streets owned by the local agency, 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 local agency 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.

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

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

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

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

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

(C) The claimant must establish that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred and that the local agency 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.

(7) Sidewalks.--A dangerous condition of sidewalks within the rights-of-way of streets owned by the local agency, 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 local agency 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. When a local agency 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 local agency shall be secondarily liable only and such other persons shall be primarily liable.

(8) Care, custody or control of animals.--The care, custody or control of animals in the possession or control of a local agency, 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 statute.

(9) Sexual abuse.--Conduct which constitutes an offense enumerated under section 5551(7) (relating to no limitation applicable) if the injuries to the plaintiff were caused by actions or omissions of the local agency which constitute negligence.

(c) Limited definition.--As used in this section 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 local agency and the competing demands therefor.

(d) Evidence.--Whenever any plaintiff claims liability under subsection (b)(1), evidence is admissible to demonstrate that the plaintiff, at any time during the course of the alleged negligence, was engaged or participating in willful misconduct, including, but not limited to, the illegal possession of controlled substances, firearms or ammunition. (June 10, 1982, P.L.452, No.132, eff. imd.; July 6, 1995, P.L.290, No.43, eff. 60 days; Nov. 26, 2019, P.L.641, No.87, eff. Nov. 26, 2019)

2019 Amendment. Act 87 added subsec. (b)(9). See sections 9 and 10(3) of Act 87 in the appendix to this title for special provisions relating to severability and applicability.

1995 Amendment. Act 43 amended subsec. (b)(1) and added subsec. (d). Section 2 of Act 43 provided that Act 43 shall apply to a cause of action that accrues on or after the effective date of Act 43.

1982 Amendment. Act 132 amended subsec. (b)(6).

Cross References. Section 8542 is referred to in sections 5522, 8553, 8557 of this title.