

TITLE 7: CIVIL PROCEDURE
DIVISION 2: ACTIONS AND SPECIAL PROCEEDINGS

§ 2201. Short Title and Definitions.

(a) This article may be cited as the Government Liability Act of 1983, as amended.

(b) *Definitions.* As used in this Chapter:

(1) “Act” includes any omission or failure to act.

(2) “Claim” is a demand for compensation for injury or loss to person or property. It includes any civil action.

(3) “Claim or judgment” includes any portion of a claim or judgment.

(4) “Employee” means an officer, elected or appointed official, exempted service, excepted service, classified or unclassified employee, or servant of a public entity, whether or not compensated, but does not include an independent contractor of the Commonwealth. Employee includes former employees of the Commonwealth. Members of the Commonwealth Casino Commission are not employees of the Commonwealth but and shall be indemnified and defended as if they were employees of the Commonwealth.

(5) “Employment” includes office or employment.

(6) “Injury” means death, injury to a person, damage or loss of property, or any other injury that a person may suffer to his person, reputation, character, feelings or estate, of such nature that it would be actionable if inflicted by a private person. For purposes of this section, a person includes a corporation or other legal person.

(7) “Occurrence” means any incident or event which results in damage to person(s) or property generally compensable in tort.

(8) “Settlement” includes any compromise.

Source: PL 3-51, § 1; amended by PL 15-22, § 4; (b)(4) amended by PL 16-51 § 7 (Jan. 15, 2010); subsection (b)(4) amended by PL 19-24 § 13 (Dec. 4, 2015), modified.

Commission Comment: The Commission inserted proper code section references pursuant to [1 CMC § 3806\(c\)](#).

PL 3-51 took effect March 29, 1983. For the significance of the effective date, see [7 CMC § 2207](#). In enacting PL 3-51, the legislature repealed 6 TTC §§ 251(1)(c), 252, and 253. PL 3-51, § 7. For other Trust Territory Code provisions, see article 3 of this chapter ([7 CMC §§ 2251 et seq.](#)).

PL 15-22 was enacted into law by override on July 28, 2006. PL 15-22 contained the following title and findings and purpose, in addition to a repealer of [7 CMC §§ 2301-2307](#), an amendment of [7 CMC § 3101\(b\)\(1\)](#), and severability and savings clause provisions:

Section 1. Title. This Act may be cited as the “Commonwealth Employees’ Liability Reform and Tort Compensation Act of 2006.”

Section 2. Findings and Purpose. The legislature finds that the Public Employee Legal Defense and Indemnification Act has failed to achieve its purpose in a cost effective manner. Commonwealth employees are still

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being unnecessarily sued in their individual capacities for actions performed as employees of the Commonwealth, even though the Commonwealth is liable for their actions and no individual liability can attach to the employee. Some private lawyers are using the Act as a litigation tool, and suing Commonwealth employees and the Commonwealth under circumstances where the Commonwealth alone is the party that will pay any damages assessed by the court, and the suit against the employee is completely unnecessary. Because of conflict of interest rules of the legal profession, private lawyers must frequently be hired to defend these employees. This obligates the Commonwealth to spend considerable money for employees' lawyers to perform legal tasks which are often duplicative of those being performed by the Attorney General in defending the Commonwealth in the same suit. Frequently, this can lead to excessive litigation costs which may force the Commonwealth to settle or compromise cases for amounts in excess of a reasonable determination of liability, and even cases where there may be no Commonwealth liability.

In addition, the United States Supreme Court, in construing the Federal Tort Claims Act, has ruled in such a manner as to limit the defenses available to individual government employees for actions taken within the scope of their employment. As the Commonwealth Government Liability Act closely tracks provisions of the Federal Tort Claims Act, this raises the specter of individual liability for Commonwealth employees for good faith actions taken within the scope of their employment for which, because of this legal precedent, there may be little or no defense. *See Westfall v. Erwin*, 484 U.S. 292 (1988).

Following the decision of the United States Supreme Court in *Westfall*, the United States Congress passed amendments to the Federal Tort Claims Act to overcome the effects of the *Westfall* decision. The amendments provided, in relevant part, that federal employees sued in their individual capacities were automatically dismissed from lawsuits after certification to the court by the United States Attorney General that the employee was acting within the scope of his/her employment at the time of the actions which triggered the lawsuit. The government is simply substituted as the proper defendant if the government is not already in the case.

These proposed amendments to the Commonwealth Government Liability Act would accomplish the same purpose for the Commonwealth. This Act also would require that any person having a claim against the Commonwealth would have to file notice of that claim with the Attorney General prior to bringing suit. The Attorney General would then have 90 days in which to investigate the claim before any legal action could be commenced. This mandatory time period would allow the Commonwealth to investigate claims and settle valid ones without the expense of litigation, resulting in less expense to the Commonwealth and greater net recoveries for deserving plaintiffs. This is also in accord with current federal requirements under the Federal Tort Claims Act.

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This Act would also clarify current ambiguities in Commonwealth law concerning the availability of jury trials in tort cases, and the total amount for which the Commonwealth is liable per claim and per occurrence. There would be no jury trials in tort actions except as requested, or assented to, by the Commonwealth. Government liability in tort cases would remain capped at \$50,000 for wrongful death. Other tort liability would be capped at \$100,000 per person and \$200,000 per occurrence. The inclusion of the “per occurrence” cap limits the government’s liability to a reasonable amount in cases where there are multiple claimants.

The legislature finds that this Act is a necessary and proper use of the legislative power.

The Commission removed “and” after “but” in subsection (b)(4) pursuant to [1 CMC § 3806\(g\)](#).