

TITLE 1: GOVERNMENT
DIVISION 8: PUBLIC EMPLOYMENT

§ 8317. Members of Retirement Fund: Immunity From or Indemnification for Civil Liability; Defense of Members.

(a) For purposes of this section, “member” means a trustee or employee of the fund.

(b) Notwithstanding any law to the contrary, no member shall be liable in any civil action founded upon a statute or the case law of this Commonwealth for damage, injury, or loss caused by or resulting from the member’s performing or failing to perform any duty which is required or authorized to be performed by a person holding the position to which the member was appointed, unless the member acted with a malicious or improper purpose, except when the plaintiff in a civil action is the Commonwealth.

(c) Except as provided in subsections (d) and (f) of this section, the Commonwealth shall indemnify a member from liability by paying any judgment in, or settlement or compromise of, any civil action arising under federal law, the law of another state, or the law of a foreign jurisdiction, including fees and costs incurred, unless the loss, injury or damage for which the judgment or settlement amount required to be paid:

(1) Is fully covered by a policy of insurance for civil liability purchased by the Commonwealth;

(2) Is caused by or is the result of the member’s performing an act authorized or required to be performed by a person holding the position to which the member was appointed so as to effect a malicious or improper purpose; or

(3) Is caused by or is the result of the member’s failure to perform an act required or authorized to be performed by a person holding the position to which the member was appointed so as to effect a malicious or improper purpose.

(d) The Commonwealth shall not indemnify a member who would otherwise be entitled to indemnification under subsection (c) of this section if the member fails to cooperate fully under the defense of the civil action which is made available to the member under subsection (c) of this section. The Commonwealth shall not indemnify a member for any portion of a judgment that represents punitive or exemplary damages.

(e) The Attorney General shall represent and defend a member in any civil action for which immunity is conferred under subsection (b) of this section, or when the Attorney General determines that indemnification is available to the member under subsection (c) of this section and the member against whom the action is brought has submitted a written request for representation and has provided the Attorney General with all process or complaint served upon the member within a reasonable period of time, but no more than five days after being served with the process or complaint. The Attorney General may terminate the representation and defense of the member at any time if, after representation and defense is accepted, the Attorney General determines that indemnification would not be available to the member under subsection (c) of this section.

(f) A member may retain counsel of the member’s own choice at the member’s own expense. If the member chooses to retain counsel at the member’s own expense, the Commonwealth shall not indemnify the member even though the

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member would have been entitled to indemnification under subsection (c) of this section. The Attorney General may enter an appearance in any action in which the member is represented by counsel of the member's own choice, even though no request for the appearance has been made by the member.

(g) Nothing in this section precludes a member from compromising or settling any claim against the member at the member's own expense. If such a settlement or compromise is effected, however, he shall be deemed to have waived any claims which the member might have made under this section unless the provisions of subsection (i) of this section apply.

(h) If the Attorney General denies representation to the member under subsection (c) of this section and the member proceeds to judgment in the action for which representation was denied, the member may commence an action against the Commonwealth in the Superior Court to recover reasonable costs and fees incurred by the member in defending against that action, including attorney's fees, court costs, investigative costs, and expert witness fees. The Commonwealth shall pay the judgment or reimburse the member if the member has satisfied the judgment in an action for which representation was denied, provided the member was found not liable in that action or the member established by a preponderance of the evidence that the member is entitled to indemnification under subsection (c) of this section. A finding of negligence against the member in the civil action for which representation was denied shall not be binding upon the Superior Court in any action brought under this subsection. The member shall commence any action under this subsection no later than two years after entry of judgment in the action for which the member was denied representation if no appeal is filed, or two years after the conclusion of the final appeal from the judgment if an appeal is filed.

(i) If the Attorney General denies representation to the member under subsection (e) of this section and the member negotiates a compromise or settlement without any entry of judgment in the action for which representation was denied, the member may seek to introduce a bill in the legislature to secure an appropriation to reimburse the member for the amount of the settlement or that portion which constitutes a reasonable settlement, and for reasonable costs and fees incurred by the member in defending against that action, including attorney's fees, court costs, investigative costs, and expert witness fees.

(j) Any moneys which the Commonwealth is required to pay a member under this section shall be paid from an appropriation made by the legislature at the next session after the requirement to pay inures to the member. The appropriation shall be sufficient to include any postjudgment interest which the member was required to pay if the member has personally satisfied the judgment, or at an appropriate rate for the period from the entry of judgment for which indemnification is available until the appropriation is enacted if the judgment was not satisfied. Any bill necessary to effect a payment required by subsections (h) and (i) of this section shall be submitted by the member to a legislator; all other bills necessary to effect payments required by this section shall be initiated by the Attorney General.

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(k) This section shall not be construed as eliminating, waiving, reducing, or limiting any defense, immunity, or jurisdictional bar conferred upon or available to a member or the Commonwealth by any other statute or by case law.

(l) This section shall apply to all causes and actions not reduced to judgment. This section shall apply to any action arising under federal law, the law of another state, or the law of foreign jurisdiction.

Source: PL 6-41, § 16.