

**TITLE 7: CIVIL PROCEDURE**  
**DIVISION 3: TRIAL**

**§ 3101. Right to Trial by Jury.**

(a) *Criminal Actions.* Any person accused by information of committing a felony punishable by more than five years imprisonment or by more than \$2,000 fine, or both, shall be entitled to a trial by a jury of six persons. The Commonwealth Rules of Criminal Procedure apply, except that the jury shall be of six persons or such smaller number as the parties may stipulate with the approval of the court.

(b) *Civil Actions.*

(1) In civil actions where the amount claimed or value of the property involved exceeds \$1,000 exclusive of interest and costs, the parties shall be entitled to a trial by a jury of six persons, of all legal (as distinguished from equitable) issues, to the same extent and under the same circumstances that they would be entitled to a trial by jury if the case were pending in a United States District Court and were within the jurisdiction of that court. The Commonwealth Rules of Civil Procedure which are not inconsistent with this subsection apply so far as all matters affecting trial by jury are concerned; provided, however, that there shall be no right to trial by jury in actions against the Commonwealth sounding in tort, in actions against the Commonwealth specified in 7 CMC § 2251, or in actions for annulment, divorce, adoption or eminent domain proceedings.

(2) Any party on demanding a trial by jury shall pay to the clerk of courts a jury fee, as established by the judiciary pursuant to 1 CMC § 3402.

**Source:** 5 TTC § 501; amended by PL 3-19, § 1 (§ 4); (b)(1) amended by PL 15-22, § 11.

**Commission Comment:** The Ninth Circuit Court of Appeals upheld the limited right to trial by jury in criminal cases set forth in subsection (a) in *Commonwealth of the N. Mariana Islands v. Atalig*, 723 F.2d 682 (9th Cir. 1984), *cert. denied*, 467 U.S. 1244, 104 S. Ct. 3518, 82 L. Ed. 2d 826 (1984).

The cross-reference to 1 CMC § 3402 in subsection (b)(2) is incorrect. PL 6-25, the Commonwealth Judicial Reorganization Act of 1989 (codified at 1 CMC § 3001 et seq.) repealed and reenacted provisions concerning the judiciary in title 1, division 3, but did not include necessary conforming amendments to several provisions elsewhere in the code, including this section. The proper cross reference would now appear to be 1 CMC § 3403. *Cf.* 7 CMC § 3112.

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, amendments to “The Government Liability Act” [codified at 7 CMC §§ 2201 et seq.], 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 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

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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 Tort 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.

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

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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.