

## No. 2004-225

## AN ACT

HB 447

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for certain immunity for persons who donate vehicles and equipment to volunteer fire companies and for sentences for certain drug offenses committed with firearms.

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 sections to read:

**§ 8338.1. Liability for damages from donated vehicles or equipment to volunteer fire companies.**

*(a) General rule.—A person is not subject to civil liability arising from the nature or condition of vehicles or equipment which were reasonably believed to be in good condition, donated in good faith to a volunteer fire company and for which all known defects were disclosed by the person to the volunteer fire company. Any person donating vehicles or equipment shall reveal all known defects to the donee. This section does not apply to an injury or death to any person that results from an act or omission of the donor constituting gross negligence, recklessness or intentional misconduct.*

*(b) Nonliability.—This section shall not be construed as establishing any liability.*

*(c) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:*

*“Donate.” To give or distribute without requiring anything of monetary value from the ultimate recipient. For purposes of this section, a volunteer fire company may donate to another volunteer fire company, notwithstanding that the donor has charged a processing fee to the donee, provided the ultimate recipient or user is not required to give anything of monetary value.*

*“Person.” An individual, corporation, partnership, organization, association or government entity. In the case of a corporation, partnership, organization, association or governmental entity, the term also includes, but is not limited to, an officer, director, partner, deacon, trustee, council member or other elected or appointed individual responsible for the governance of such entity.*

*“Volunteer ambulance service.” Any nonprofit chartered corporation, association or organization which is located in this Commonwealth and which is regularly engaged in the service of providing emergency medical care and transportation of patients.*

**“Volunteer fire company.”** Any nonprofit chartered corporation, association or organization which is located in this Commonwealth and which provides fire protection services and other voluntary emergency services within this Commonwealth. Voluntary emergency services provided by a volunteer fire company may include voluntary ambulance and voluntary rescue services.

**“Volunteer rescue service.”** Any nonprofit chartered corporation, association or organization which is located in this Commonwealth and which provides rescue services in this Commonwealth.

**§ 9712.1. Sentences for certain drug offenses committed with firearms.**

(a) **Mandatory sentence.**—Any person who is convicted of a violation of section 13(a)(30) of the act of April 14, 1972 (P.L.233, No.64), known as *The Controlled Substance, Drug, Device and Cosmetic Act*, when at the time of the offense the person or the person’s accomplice is in physical possession or control of a firearm, whether visible, concealed about the person or the person’s accomplice or within the actor’s or accomplice’s reach or in close proximity to the controlled substance, shall likewise be sentenced to a minimum sentence of at least five years of total confinement.

(b) **Limitation on aggregate sentences.**—Where a defendant is subject to a mandatory minimum sentence under 18 Pa.C.S. § 7508(a) (relating to drug trafficking sentencing and penalties) and is also subject to an additional penalty under subsection (a) and where the court elects to aggregate these penalties, the combined minimum sentence may not exceed the statutory maximum sentence of imprisonment allowable under *The Controlled Substance, Drug, Device and Cosmetic Act*.

(c) **Proof at sentencing.**—Provisions of this section shall not be an element of the crime, and notice thereof to the defendant shall not be required prior to conviction, but reasonable notice of the Commonwealth’s intention to proceed under this section shall be provided after conviction and before sentencing. The applicability of this section shall be determined at sentencing. The court shall consider any evidence presented at trial and shall afford the Commonwealth and the defendant an opportunity to present any necessary additional evidence and shall determine, by a preponderance of the evidence, if this section is applicable.

(d) **Authority of court in sentencing.**—There shall be no authority in any court to impose on an offender to which this section is applicable any lesser sentence than provided for in subsection (a) or to place such offender on probation or to suspend sentence. Nothing in this section shall prevent the sentencing court from imposing a sentence greater than that provided in this section. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory sentences provided in this section.

(e) **Appeal by Commonwealth.**—If a sentencing court refuses to apply this section where applicable, the Commonwealth shall have the right to

*appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this section.*

*(f) Definition.—As used in this section, the term “firearm” shall have the same meaning as that given to it in section 9712 (relating to sentences for offenses committed with firearms).*

Section 2. The Pennsylvania Commission on Crime and Delinquency is directed to establish a public information campaign aimed at high drug trafficking areas informing the public of the five-year mandatory sentence established by 42 Pa.C.S. § 9712.1. The commission shall seek all available funding, including Federal funding or funding available from nonprofit corporations, and shall seek to engage pro bono services from public relations and advertising firms and other entities.

Section 3. This act shall take effect in 60 days.

APPROVED—The 1st day of December, A.D. 2004.

EDWARD G. RENDELL