

AMENDMENTS TO HOUSE BILL NO. 1737

Sponsor: SENATOR BAKER

Printer's No. 2439

1 Amend Bill, page 1, lines 1 through 4, by striking out all of  
2 said lines and inserting

3 Amending Title 42 (Judiciary and Judicial Procedure) of the  
4 Pennsylvania Consolidated Statutes, in particular rights and  
5 immunities, providing for economic development agency,  
6 fiduciary and lender environmental liability protection, for  
7 agritourism activity protection and for COVID-19-related  
8 liability; and making a related repeal.

9 Amend Bill, page 1, lines 7 through 19; page 2, lines 1  
10 through 29; by striking out all of said lines on said pages and  
11 inserting

12 Section 1. Chapter 83 of Title 42 of the Pennsylvania  
13 Consolidated Statutes is amended by adding subchapters to read:

14 SUBCHAPTER F.2

15 ECONOMIC DEVELOPMENT AGENCY, FIDUCIARY AND LENDER  
16 ENVIRONMENTAL LIABILITY PROTECTION

17 Sec.

18 8368.11. Scope of subchapter.

19 8368.12. Declaration of policy.

20 8368.13. Definitions.

21 8368.14. Limitation of economic development agency environmental  
22 liability.

23 8368.15. Limitation of lender environmental liability.

24 8368.16. Limitation of fiduciary environmental liability.

25 8368.17. Defenses to liability.

26 8368.18. Savings clause.

27 8368.19. Apportionment of liability.

28 8368.20. Construction.

29 8368.21. Severability.

30 8368.22. Preemption and repeals.

31 8368.23. Applicability.

32 § 8368.11. Scope of subchapter.

33 This subchapter relates to economic development agency,  
34 fiduciary and lender environmental liability protection.

35 § 8368.12. Declaration of policy.

1 The General Assembly finds and declares as follows:

2 (1) The Commonwealth has provided grant and loan money  
3 to a variety of economic development agencies, all for the  
4 purpose of assisting these agencies in their efforts to  
5 promote the general welfare of this Commonwealth by  
6 encouraging economic development and industrial redevelopment  
7 throughout this Commonwealth.

8 (2) Economic development agencies acquire title to  
9 industrial property for financing purposes only and lease or  
10 sell the same to industrial occupants who have sole  
11 possession of the facilities for an amount of rent or  
12 installment payments under an installment sale contract which  
13 is determined solely on a basis of meeting the costs of the  
14 financing and other costs associated with ownership unrelated  
15 to profit.

16 (3) Economic development agencies acquire possession of  
17 these industrial sites from time to time when the industrial  
18 occupant defaults under its obligations to the agencies under  
19 its lease or installment sales agreements.

20 (4) Economic development agencies acquire industrial  
21 property either for the purpose of financing or redevelopment  
22 but without a motive for profit or to occupy the property for  
23 their own industrial operations.

24 (5) Economic development agencies are reluctant to  
25 acquire title to or other interests in property whether for  
26 financing or redevelopment purposes or to secure repayment of  
27 obligations unless the economic development agencies are  
28 protected from liability for environmental contamination on  
29 those sites they seek to assist to develop.

30 (6) The taking of legal title and any foreclosure or  
31 retaking of possession of property by an industrial  
32 development agency, area loan organization or industrial and  
33 commercial development authority is under the following acts:

34 (i) The act of May 17, 1956 (1955 P.L.1609, No.537),  
35 known as the Pennsylvania Industrial Development  
36 Authority Act, which expressly requires that the  
37 Pennsylvania Industrial Development Authority loan money  
38 to industrial development agencies secured by not less  
39 than a second mortgage lien.

40 (ii) The act of August 23, 1967 (P.L.251, No.102),  
41 known as the Economic Development Financing Law, which  
42 provides for issuance of debt by industrial and  
43 commercial development authorities and authorizes these  
44 authorities to take title to real property as security  
45 for the indebtedness.

46 (iii) The act of June 29, 1996 (P.L.434, No.67),  
47 known as the Job Enhancement Act.

48 (7) The maximum level of economic development and  
49 business opportunity and employment and the elimination or  
50 prevention of abandoned industrial and commercial property  
51 and Federal Government or military lands which can best be

1 provided by the promotion, attraction, stimulation,  
2 rehabilitation and revitalization of all types of industry,  
3 commerce, manufacturing and business development within this  
4 Commonwealth.

5 (8) To continue and further the stimulation of business  
6 opportunities and economic development within this  
7 Commonwealth and by which cause the reuse and rehabilitation  
8 of industrial and commercial property, it is necessary to  
9 ensure various means of financing to promote economic growth  
10 and the availability of fiduciary services to persons within  
11 this Commonwealth.

12 (9) Lenders are reluctant to provide funding for  
13 business opportunities and economic development, and  
14 fiduciaries are reluctant to provide services to persons with  
15 environmental problems, because of catastrophic risks of  
16 environmental liability and remediation costs under  
17 environmental laws relating to releases and contamination  
18 which were not caused by lenders and fiduciaries.

19 (10) When borrowers default on loans, lenders are  
20 reluctant to foreclose upon commercial property with  
21 environmental problems because lenders may be forced to  
22 assume costly environmental liabilities; thus, commercial  
23 property is being abandoned in this Commonwealth and new  
24 businesses are unable to obtain financing to purchase such  
25 properties.

26 (11) Family businesses are unable to establish trusts to  
27 convey their business interests to the next generation, and  
28 other businesses are unable to receive retirement, investment  
29 and other trust services from fiduciaries, if fiduciaries in  
30 their personal or individual capacities may be held liable  
31 for environmental contamination caused by other persons  
32 merely by virtue of owning property in their trustee  
33 capacities and providing fiduciary services.

34 (12) In order to continue to stimulate growth and  
35 continue the use or reuse of industrial and commercial  
36 property, it is necessary to provide protection to lenders,  
37 fiduciaries and economic development agencies from  
38 environmental liability and remediation costs under  
39 environmental laws for releases and contamination caused by  
40 others.

41 (13) Environmental liability for lenders, fiduciaries  
42 and economic development agencies shall be limited in scope  
43 as specifically provided in this subchapter, and this  
44 subchapter shall be interpreted as broadly as possible in  
45 order to preempt any laws, regulations or ordinances imposing  
46 environmental liability on the persons in order to promote  
47 economic development.

48 § 8368.13. Definitions.

49 The following words and phrases when used in this subchapter  
50 shall have the meanings given to them in this section unless the  
51 context clearly indicates otherwise:

1 "Board." The Environmental Hearing Board of the  
2 Commonwealth.

3 "Borrower." A person who has received an extension of  
4 credit. The term includes a debtor, a lessor, a lessee or an  
5 obligor.

6 "Conservancy." A charitable corporation, charitable  
7 association or charitable trust:

8 (1) registered with the Bureau of Corporations and  
9 Charitable Organizations;

10 (2) exempt from taxation under section 501(c)(3) of the  
11 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §  
12 501(c)(3)) or other Federal or Commonwealth statutes or  
13 regulations; and

14 (3) the purpose or powers of which include:

15 (i) retaining or protecting natural, scenic,  
16 agricultural or open-space values of real property;

17 (ii) assuring the availability of real property for  
18 agricultural, forest, recreational or open-space use;

19 (iii) protecting natural resources and wildlife;

20 (iv) maintaining or enhancing land, air or water  
21 quality; or

22 (v) preserving the historical, architectural,  
23 archaeological or cultural aspects of real property.

24 "Department." The Department of Environmental Protection of  
25 the Commonwealth.

26 "Economic development agency." The term includes:

27 (1) A redevelopment authority created under the act of  
28 May 24, 1945 (P.L.991, No.385), known as the Urban  
29 Redevelopment Law, and any nonprofit corporation created and  
30 controlled by a redevelopment authority to carry out its  
31 statutory purpose.

32 (2) An industrial development agency as defined in the  
33 act of May 17, 1956 (1955 P.L.1609, No.537), known as the  
34 Pennsylvania Industrial Development Authority Act.

35 (3) An industrial and commercial development authority  
36 created under the act of August 23, 1967 (P.L.251, No.102),  
37 known as the Economic Development Financing Law.

38 (4) An area loan organization as defined in the act of  
39 June 29, 1996 (P.L.434, No.67), known as the Job Enhancement  
40 Act.

41 (5) Any other Commonwealth or municipal authority which  
42 acquires title or an interest in property.

43 (6) A municipality or municipal industrial development  
44 or community development department organized by ordinance  
45 under a home rule charter which buys and sells land for  
46 community development purposes.

47 (7) A tourist promotion agency or the tourist promotion  
48 agency's local community-based nonprofit sponsor which  
49 engages in the acquisition of former industrial sites as part  
50 of an "Industrial Heritage" or similar program.

51 (8) A conservancy engaged in the renewal or reclamation

1 of an industrial site.

2 (9) A land bank established under 68 Pa.C.S. Ch. 21  
3 (relating to land banks).

4 "Environmental act." Any of the following:

5 (1) The act of June 22, 1937 (P.L.1987, No.394), known  
6 as The Clean Streams Law.

7 (2) The act of January 8, 1960 (1959 P.L.2119, No.787),  
8 known as the Air Pollution Control Act.

9 (3) The act of July 7, 1980 (P.L. 380, No.97), known as  
10 the Solid Waste Management Act.

11 (4) The act of October 5, 1984 (P.L.734, No.159), known  
12 as the Worker and Community Right-to-Know Act.

13 (5) The act of July 13, 1988 (P.L.525, No.93), referred  
14 to as the Infectious and Chemotherapeutic Waste Law.

15 (6) The act of October 18, 1988 (P.L.756, No.108), known  
16 as the Hazardous Sites Cleanup Act.

17 (7) The act of July 6, 1989 (P.L.169, No.32), known as  
18 the Storage Tank and Spill Prevention Act.

19 (8) The act of December 7, 1990 (P.L.639, No.165), known  
20 as the Hazardous Material Emergency Planning and Response  
21 Act.

22 (9) The act of June 11, 1992 (P.L.303, No.52), known as  
23 the Oil Spill Responder Liability Act.

24 (10) A Federal, State or local law, statute, regulation,  
25 rule, ordinance, court or administrative order or decree,  
26 common law, interpretation or guidance, in existence on or  
27 after July 18, 1995, pertaining to employees, occupational  
28 health and safety, public health or safety, natural resources  
29 or the environment.

30 "Environmental due diligence." Investigative techniques,  
31 including visual property inspections, electronic environmental  
32 database searches, review of ownership and use history of the  
33 property, environmental questionnaires, transaction screens,  
34 environmental assessments or audits.

35 "Fiduciary." A person which is considered a fiduciary under  
36 section 3(21) of the Employee Retirement Income Security Act of  
37 1974 (Public Law 93-406, 29 U.S.C. § 1002(21)) or who acts as  
38 trustee, executor, administrator, custodian, guardian of  
39 estates, conservator, committee of estates of persons who are  
40 disabled, personal representative, receiver, agent, nominee,  
41 registrar of stocks and bonds, assignee or in any other capacity  
42 for the benefit of another person.

43 "Foreclosure." The date upon which title vests in property  
44 through realizing upon a security interest, including an  
45 ownership of property recognized under applicable law as vesting  
46 the holder of the security interest with some indicia of title,  
47 legal or equitable title obtained at or in lieu of foreclosure,  
48 sheriff sales, bankruptcy distributions and their equivalents.

49 "Fund." Any of the following:

50 (1) A special fund of Commonwealth money administered by  
51 the Commonwealth or the Department of Environmental

1 Protection, including the Hazardous Sites Cleanup Fund and  
2 the Underground Storage Tank Indemnification Fund.

3 (2) A fund of Commonwealth money in existence on and  
4 after July 18, 1995, created for the funding or reimbursement  
5 of costs and damages such as response costs, emergency  
6 response measures and their equivalent relating to natural  
7 resources or the environment.

8 "Guarantor." The term includes:

9 (1) Guarantors and sureties of security interests,  
10 securities and other obligations, issuers of letters of  
11 credit and other credit enhancements, title insurers and  
12 entities which directly or indirectly acquire indicia of  
13 ownership in the course of protecting a security interest or  
14 acting as the guarantors, sureties, issuers of letters of  
15 credit or other credit enhancements or title insurers.

16 (2) Guaranties, surety bonds, title insurance policies,  
17 letters of credit and other credit enhancements, and other  
18 agreements with a guarantor relating to the obligations  
19 described in this definition.

20 (3) Directly or indirectly, an interest in property,  
21 security interest, indicia of ownership title or right to  
22 title held or acquired by a fiduciary or similar entity for  
23 the benefit of a holder of a security interest.

24 "Indicia of ownership." As follows:

25 (1) A legal or equitable interest in property, including  
26 fee title, acquired directly or indirectly:

27 (i) for securing payment of a loan or indebtedness,  
28 a right of reimbursement or subrogation under a guaranty  
29 or the performance of another obligation;

30 (ii) evidencing ownership under a lease financing  
31 transaction where the lessor does not initially select or  
32 ordinarily control the daily operation or maintenance of  
33 the property;

34 (iii) in the course of creating, protecting or  
35 enforcing a security interest or right of reimbursement  
36 of subrogation under a guaranty; or

37 (iv) to secure public funding for the environmental  
38 investigation, remediation or redevelopment of or  
39 implementation of infrastructure improvements at the  
40 property for, among other purposes, the transfer of title  
41 to the property to a third party after rehabilitation.

42 (2) The term includes evidence of interest in mortgages,  
43 deeds of trust, liens, surety bonds, guaranties, lease  
44 financing transactions where the lessor does not initially  
45 select or ordinarily control the daily operation or  
46 maintenance of the property, other forms of encumbrances  
47 against property recognized under applicable law as vesting  
48 the holder of the security interest with some indicia of  
49 title.

50 "Industrial activity." Commercial, manufacturing, public  
51 utility, mining or any other activity done to further either the

1 development, manufacturing or distribution of goods and  
2 services, intermediate and final products and solid waste  
3 created during the activities, including administration of  
4 business activities, research and development, warehousing,  
5 shipping, transport, remanufacturing, stockpiling of raw  
6 materials, storage, repair and maintenance of commercial  
7 machinery and equipment and solid waste management.

8 "Industrial site." A site which now has or once had an  
9 industrial activity on it.

10 "Lender." A person regulated or supervised by a Federal or  
11 State regulatory agency and any of its affiliates or  
12 subsidiaries, successors or assigns, including its officers,  
13 directors, employees, representatives or agents, and any Federal  
14 or State banking or lending agency or its successors, including,  
15 the Resolution Trust Corporation, Federal Deposit Insurance  
16 Corporation, Federal Reserve Bank, Board of Governors of the  
17 Federal Reserve System, Federal Home Loan Bank, National Credit  
18 Union Administrator Board, Office of the Comptroller of the  
19 Currency, Office of Thrift Supervision, Farm Credit  
20 Administration and Small Business Administration or similarly  
21 chartered Federal instrumentality. The term includes:

22 (1) The initial lender and a subsequent holder of a  
23 security interest or note, guarantor, lease financier or a  
24 successor or a receiver or other person who acts on behalf or  
25 for the benefit of a holder of a security interest.

26 (2) An economic development agency.

27 "Occupant." A party which occupies or has the right to  
28 occupy property owned by an economic development agency by an  
29 instrument, including a lease, mortgage, installment sale  
30 contract, disposition agreement or trust agreement.

31 "Person." An individual, partnership, corporation, business  
32 trust, joint-stock fund, estate trust, banking association,  
33 governmental, administrative or regulatory agency, institution  
34 or any other type of legal entity.

35 "Property." Each type of real, personal, tangible and  
36 intangible property.

37 "Redevelopment." Undertakings and activities made under the  
38 act of May 24, 1945 (P.L.991, No.385), known as the Urban  
39 Redevelopment Law, including planning, acquisition, site  
40 preparation, demolition, rehabilitation, renovation,  
41 conservation, reuse, renewal, improvement, clearance, sale and  
42 lease of real property and improvements thereon.

43 "Regulated substance." An element, compound or material  
44 which is subject to regulation under the environmental acts or  
45 an element, compound or material defined as a hazardous, toxic,  
46 regulated infectious chemotherapeutic substance or chemical  
47 contaminant, waste, a type of pollution or condition or an  
48 equivalent under the environmental acts.

49 "Release." A spill, rupture, emission, discharge, other  
50 action, occurrence, condition or any other term defined as a  
51 "release" or other threat of release or operative word or event

1 which would trigger compliance requirements or liability under  
2 the environmental acts.

3 "Response action." An action, including a response or  
4 interim response, remedial response or remedy or corrective  
5 action, closure or another action under the environmental acts  
6 in response to a release, such as testing, inspections,  
7 sampling, installations, corrective action, removals, closure,  
8 response costs, assessments or a type of claims, damages,  
9 actions, fines and penalties.

10 "Security interest." An interest in property created or  
11 established for the purpose of securing a loan, right of  
12 reimbursement or subrogation under a guaranty or other  
13 obligation or constituting a lease financing transaction. The  
14 term includes:

15 (1) Security interests created under 13 Pa.C.S.  
16 (relating to commercial code), mortgages, deeds of trust,  
17 liens, lease financing transactions in which the lessor does  
18 not initially select or ordinarily control the daily  
19 operation or maintenance of the property, trust receipt  
20 transactions and their equivalents. A security interest may  
21 arise from transactions such as sales and leasebacks,  
22 conditional sales, installment sales, certain assignments,  
23 factoring agreements, accounts receivable, financing  
24 arrangements and consignments if the transaction creates or  
25 establishes an interest in property for the purpose of  
26 securing a loan, right of reimbursement or subrogation under  
27 a guaranty or other obligation.

28 (2) A confession of judgment or money judgment whereby a  
29 lender commences an execution on the judgment with a writ of  
30 execution and by which causes property to be levied and  
31 attached.

32 § 8368.14. Limitation of economic development agency  
33 environmental liability.

34 (a) General rule.--An economic development agency that holds  
35 an indicia of ownership in property under the following shall  
36 not be liable under the environmental acts to the department or  
37 to any other person in accordance with this section:

38 (1) as a security interest for the purpose of developing  
39 or redeveloping the property;

40 (2) to finance an economic development or redevelopment  
41 activity; or

42 (3) to secure public funding for the environmental  
43 investigation, remediation or redevelopment of or  
44 implementation of infrastructure improvements at the property  
45 for, among other purposes, the transfer of title to the  
46 property to a third party after rehabilitation.

47 (b) Scope of limited liability.--

48 (1) An economic development agency shall not be liable  
49 in an action by the department, as a responsible person,  
50 unless the economic development agency, its employees or  
51 agents directly cause an immediate release or directly



1 exacerbate a release of a regulated substance on or from the  
2 property.

3 (1.1) An economic development agency, its officers,  
4 directors, agents, members, employees and its professional  
5 consultants shall not be liable, including for property  
6 damages, diminution of property value, stigma damages,  
7 natural resource damages, economic loss, bodily injury or  
8 death relating to a regulated substance currently or  
9 previously released on or from the property, in an action by  
10 a person alleging liability of any kind under the  
11 environmental acts, except if the economic development  
12 agency, its officers, directors, agents, members, employees  
13 or its professional consultants directly cause an immediate  
14 release or directly exacerbate a release of any regulated  
15 substance on or from the property.

16 (2) An economic development agency which forecloses on  
17 or assumes possession of a property shall remain within the  
18 exemption from liability under subsection (a).

19 (3) An economic development agency that conducts a  
20 remedial action in accordance with a written agreement with  
21 the department shall not be liable as a responsible party,  
22 owner, operator or occupier in an action by the department  
23 for a release or potential release of a regulated substance.

24 (4) Cooperation among governmental agencies performing a  
25 remedial action shall be as follows:

26 (i) An economic development agency and any of its  
27 successors and assigns may take no action that would  
28 disturb or be inconsistent with remedial response that is  
29 proposed, approved or implemented by the Environmental  
30 Protection Agency.

31 (ii) An economic development agency and any of its  
32 successors and assigns shall permit access to Federal and  
33 Commonwealth agencies and other parties acting under the  
34 direction of the agencies to evaluate, perform or  
35 maintain a remedial action.

36 (iii) An economic development agency or any of its  
37 successors and assigns shall perform, operate and  
38 maintain remedial actions under State laws as directed by  
39 the department.

40 § 8368.15. Limitation of lender environmental liability.

41 (a) Scope of lender liability.--A lender who engages in  
42 activities involved in the routine practices of commercial  
43 lending, including the providing of financial services, holding  
44 of security interests, workout practices, foreclosure or the  
45 recovery of money from the sale of property shall not be liable  
46 under the environmental acts or common law equivalents to the  
47 Department of Environmental Protection or to any other person by  
48 virtue of the fact that the lender engages in the commercial  
49 lending practice except if:

50 (1) the lender, its employees or agents directly cause  
51 an immediate release or directly exacerbate a release of

1 regulated substances on or from the property; or

2 (2) the lender, its employees or agents knowingly and  
3 willfully compelled the borrower to:

4 (i) do an action which caused an immediate release  
5 of regulated substances; or

6 (ii) violate an environmental act.

7 (b) Limitation of lender liability.--

8 (1) Liability under this subchapter shall be limited to  
9 the cost for a response action which may be directly  
10 attributable to the lender's activities as specified in  
11 subsection (a).

12 (2) Liability shall arise only if the lender's actions  
13 were the proximate and efficient cause of the release or  
14 violation.

15 (3) Ownership or control of the property after  
16 foreclosure shall not by itself trigger liability.

17 (4) A lender shall not be liable for a response action  
18 if the response action arises solely from a release of  
19 regulated substances which occurred prior to or commences  
20 before and continues after foreclosure, except that the  
21 lender shall be responsible for that portion of the response  
22 action which is directly attributed to the lender's  
23 exacerbation of a release.

24 (5) A release of regulated substances discovered in the  
25 course of conducting environmental due diligence shall be  
26 presumed to be a prior or continuing release on the property.

27 § 8368.16. Limitation of fiduciary environmental liability.

28 (a) Scope of fiduciary liability.--Any person who acts or  
29 has acted as a fiduciary to another person shall not be liable  
30 in its personal or individual capacity under the environmental  
31 acts or common law equivalents to the department or to any other  
32 person by virtue of the fact that the fiduciary provides or  
33 provided the services except if:

34 (1) during the time when the fiduciary services were  
35 actively provided, an event occurred which constituted a  
36 release of regulated substances according to the  
37 environmental acts at the time of the event;

38 (2) the fiduciary had the express power and authority to  
39 control property which was the cause of or the site of the  
40 release as part of actively providing services; and

41 (3) the release was caused by an act or omission which  
42 constituted gross negligence or willful misconduct of the  
43 fiduciary according to the law or standard practices at the  
44 time of the release.

45 (b) Limitation of fiduciary liability.--

46 (1) Liability under this subchapter shall be limited to  
47 only the cost for a response action which is directly  
48 attributable to the fiduciary's activities as specified in  
49 this section.

50 (2) Under subsection (a)(2), control of property shall  
51 be deemed to be in the lessee and not the lessor for leased

1 property.

2 (3) A fiduciary:

3 (i) shall not be liable for a response action if the  
4 response action arises from a release of regulated  
5 substances which occurred prior to or commences before  
6 and continues after the fiduciary takes action as  
7 specified in subsection (a); but

8 (ii) shall be responsible for that portion of a  
9 response action which is directly attributable to  
10 exacerbating a release.

11 (4) A release of regulated substances discovered in the  
12 course of conducting an environmental due diligence shall be  
13 presumed to be a prior and continuing release on the  
14 property.

15 (c) Estate claims.--Nothing in this section shall prevent  
16 claims against the fiduciary in its representative capacity.  
17 § 8368.17. Defenses to liability.

18 A lender, fiduciary or economic development agency can avoid  
19 liability under the environmental acts by showing evidence that  
20 a release or threatened release of regulated substances for  
21 which the lender, fiduciary or economic development agency  
22 otherwise is responsible under sections 8368.14 (relating to  
23 limitation of economic development agency environmental  
24 liability), 8368.15 (relating to limitation of lender  
25 environmental liability) and 8368.16 (relating to limitation of  
26 fiduciary environmental liability) was caused by any of the  
27 following:

28 (1) An act of God.

29 (2) An intervening act of a public agency.

30 (3) Migration from property owned by a third party.

31 (4) Actions taken or omitted in the course of rendering  
32 care, assistance or advice in accordance with the  
33 environmental acts or at the direction of the department.

34 (5) An act of a third party who was not an agent or  
35 employee of the lender, fiduciary or economic development  
36 agency.

37 (6) If the alleged liability for a lender or economic  
38 development agency arises after foreclosure and the lender or  
39 economic development agency exercised due care with respect  
40 to the lender's or economic development agency's knowledge  
41 about the regulated substances and took reasonable  
42 precautions based upon such knowledge against foreseeable  
43 actions of third parties and the consequences arising  
44 therefrom. A lender, fiduciary or economic development agency  
45 can avoid liability by proving any other defense which may be  
46 available to it under the environmental acts or common law.

47 § 8368.18. Savings clause.

48 Nothing in this subchapter shall affect the rights,  
49 immunities or other defenses that are available under other  
50 applicable law to a lender, fiduciary or economic development  
51 agency, including rights of contribution and indemnity. Nothing

1 in this subchapter shall be construed to create a new, different  
2 or additional liability for or create a private right of action  
3 against a lender, fiduciary or economic development agency.

4 § 8368.19. Apportionment of liability.

5 Notwithstanding anything to the contrary, if two or more  
6 persons acting independently cause distinct harm or a single  
7 harm for which there is a reasonable basis for division  
8 according to the contribution of each, a lender, fiduciary or  
9 economic development agency shall be subject to liability only  
10 for the portion of the total liability that is directly  
11 attributable to the lender, fiduciary or economic development  
12 agency.

13 § 8368.20. Construction.

14 The terms and conditions of this subchapter are to be  
15 liberally construed so as to best achieve and effectuate the  
16 goals and purposes of this subchapter. Liability shall be based  
17 on proximate and efficient causation. This subchapter shall  
18 preempt and eliminate all liability standards in effect on July  
19 18, 1995, including the concept of a person who, without  
20 participation in the management of property, holds indicia of  
21 ownership primarily to protect a security interest. Under the  
22 provisions of this subchapter, the burden of proof shall be on  
23 the person seeking to have a lender, fiduciary or economic  
24 development agency held liable for a response action or damages.

25 § 8368.21. Severability.

26 The provisions of this subchapter are severable. If a  
27 provision of this subchapter or its application to a person or  
28 circumstance is held invalid, the invalidity shall not affect  
29 other provisions or applications of this subchapter which can be  
30 given effect without the invalid provision or application.

31 § 8368.22. Preemption and repeals.

32 In the event of an inconsistency between an environmental act  
33 and this subchapter, this subchapter shall control. An  
34 environmental law enacted after July 18, 1995, may not be  
35 applied retroactively to impose liability on a lender, fiduciary  
36 or economic development agency unless there are express  
37 repealers which explain the extent of the repeal.

38 § 8368.23. Applicability.

39 This subchapter shall apply to the following:

40 (1) Each indicia of ownership, regardless of the date of  
41 acquisition.

42 (2) Each fiduciary with respect to a service provided by  
43 the fiduciary, regardless of the date the service was  
44 provided.

45 (3) Each administrative action, action, suit or claim  
46 against a lender, fiduciary or economic development agency  
47 not yet finally resolved by the department or a court or  
48 administrative hearing board having an action, suit or claim  
49 pending before it or an appeal from a lower court,  
50 notwithstanding when the release or interest in the subject  
51 property occurred.

SUBCHAPTER F.3  
AGRITOURISM ACTIVITY PROTECTION

Sec.

8368.31. Scope of subchapter.

8368.32. Definitions.

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§ 8368.31. Scope of subchapter.

This subchapter relates to agritourism activity protection.

§ 8368.32. Definitions.

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

"Agritourism activity." As follows:

(1) A farm-related tourism or farm-related entertainment activity that takes place on agricultural land and allows members of the general public, whether or not for a fee, to tour, explore, observe, learn about, participate in or be entertained by an aspect of agricultural production, harvesting, husbandry or rural lifestyle that occurs on the farm.

(2) The term shall not include overnight accommodations, weddings, concerts or provisions for food and beverage services.

"Agritourism activity provider." A person who owns, operates, provides or sponsors an agritourism activity, whether or not for a fee, or an employee of such a person.

"Dangerous condition." A condition that creates an imminent and substantial risk of injury or damages to a participant.

"Participant." An individual, other than an employee of an agritourism activity provider, who engages in an agritourism activity.

§ 8368.33. Limited civil liability for agritourism activity providers.

(a) Liability.--Except as otherwise provided by subsection

(b), an agritourism activity provider shall not be civilly liable for injury or damages to a participant if:

(1) at the time of the agritourism activity from which the injury or damages occurred, a warning sign was posted in accordance with section 8368.34 (relating to notice of limited civil liability); and

(2) the agritourism activity provider entered into a written agreement with the participant in accordance with section 8368.35 (relating to acknowledgment of limited civil liability) with respect to the agritourism activity from which the injury or damages occurred.

(b) Exceptions.--An agritourism activity provider shall not be immune from civil liability for injury or damages if any of

1 the following apply:

2 (1) The agritourism activity provider performs an act in  
3 a grossly negligent manner and causes injury or damages to a  
4 participant.

5 (2) The agritourism activity provider purposefully  
6 causes the injury or damages to a participant.

7 (3) The agritourism activity provider's action or  
8 inaction constitutes criminal conduct and causes the injury  
9 or damages to a participant.

10 (4) The agritourism activity provider recklessly fails  
11 to warn or guard against a dangerous condition that causes  
12 injury or damages to a participant.

13 § 8368.34. Notice of limited civil liability.

14 (a) Notice.--For the purpose of providing notice of the  
15 limited liability under section 8368.33 (relating to limited  
16 civil liability for agritourism activity providers), an  
17 agritourism activity provider shall post and maintain a sign  
18 with a warning notice in accordance with subsection (b). The  
19 agritourism activity provider shall post the sign in a clearly  
20 visible location at or near each entrance to the farm or at the  
21 site of each agritourism activity.

22 (b) Contents.--The warning notice shall consist of a sign  
23 that is at least three feet by two feet in dimension and states  
24 the following:

25 "WARNING: Read your written agreement or the back of  
26 your ticket. Under Pennsylvania law, except for limited  
27 circumstances, an agritourism activity provider is not  
28 liable for any injury to or death of a participant  
29 resulting from an agritourism activity. Do not  
30 participate in the activity if you do not wish to waive  
31 liability."

32 § 8368.35. Acknowledgment of limited civil liability.

33 For the purpose of enforcing the limited liability under  
34 section 8368.33 (relating to limited civil liability for  
35 agritourism activity providers), a written agreement between an  
36 agritourism activity provider and a participant shall be  
37 enforceable if the written agreement meets all the following  
38 criteria:

39 (1) The written agreement is signed before the  
40 participant engages in an agritourism activity.

41 (2) The written agreement is signed by the participant  
42 or, if the participant is a minor or care dependent person,  
43 the participant's parent or guardian.

44 (3) The written agreement is in a document separate from  
45 any other agreement between the participant and the  
46 agritourism activity provider, except for a document that  
47 includes a different warning, consent or assumption of risk  
48 statement.

49 (4) The written agreement is printed in not less than  
50 10-point bold type.

51 (5) The written agreement contains the following

1 language:

2 "AGREEMENT AND WARNING: I understand and acknowledge  
3 that, except for limited circumstances listed below,  
4 an agritourism activity provider is not liable for  
5 any injury to or death of a participant resulting  
6 from an agritourism activity. I understand that I  
7 have accepted all risk of injury, death, property  
8 damage and other loss that may result from an  
9 agritourism activity. I understand that an  
10 agritourism activity provider is not protected from  
11 liability if the provider:

12 (1) Performs an act in a grossly negligent  
13 manner and causes injury or damages to a participant.

14 (2) Purposefully causes a participant's injury.

15 (3) Acts or fails to act in a way that  
16 constitutes criminal conduct.

17 (4) Recklessly fails to warn or guard against a  
18 dangerous condition that causes injury or damages to  
19 a participant. A dangerous condition is a condition  
20 that creates an imminent and substantial risk of  
21 injury or damages to a participant."

22 (6) Notwithstanding paragraphs (1), (2), (3) and (4), a  
23 written agreement that contains substantially the same  
24 language under paragraph (5) may be printed on a ticket  
25 required for access to an agritourism activity.

26 § 8368.36. Applicability.

27 This subchapter shall apply to any cause of action that  
28 arises on or after the effective date of this section.

29 SUBCHAPTER F.4

30 COVID-19-RELATED LIABILITY

31 Sec.

32 8368.41. Definitions.

33 8368.42. School and child care liability.

34 8368.43. Personal protective equipment liability.

35 8368.44. Business or government services liability.

36 8368.45. Covered provider liability.

37 8368.46. Application of subchapter.

38 8368.47. Construction of subchapter.

39 § 8368.41. Definitions.

40 The following words and phrases when used in this subchapter  
41 shall have the meanings given to them in this section unless the  
42 context clearly indicates otherwise:

43 "Business or government services." A lawful activity  
44 conducted by a trade, business, nonprofit organization or local  
45 governmental unit which is permitted by the terms of a  
46 proclamation of disaster emergency to hold itself out as open to  
47 members of the public.

48 "Child-care facility." Any of the following:

49 (1) A child care center as defined in section 1001 of  
50 the act of June 13, 1967 (P.L.31, No.21), known as the Human  
51 Services Code.

1           (2) A children's institution as defined in section 901  
2 of the Human Services Code.

3           (3) A family child care home as defined in section 1001  
4 of the Human Services Code.

5           (4) An individual employed or contracted by a person  
6 under paragraph (1), (2) or (3).

7 "Covered provider." Any of the following:

8           (1) A health care practitioner as defined in section 103  
9 of the act of July 19, 1979 (P.L.130, No.48), known as the  
10 Health Care Facilities Act.

11           (2) A health care provider, including a registered  
12 nurse, licensed by a state or a political division of the  
13 United States. This paragraph includes licensure pursuant to  
14 a waiver.

15           (3) A health care facility as defined in section 802.1  
16 of the Health Care Facilities Act. This paragraph includes  
17 a facility authorized to operate pursuant to a waiver.

18           (4) A temporary site operated by a health care facility  
19 under paragraph (3) during the proclamation of disaster  
20 emergency.

21           (5) A health care provider as defined in section 103 of  
22 the Health Care Facilities Act or another legal entity whose  
23 primary purpose is the provision of medical care for a health  
24 care provider.

25           (6) A facility as defined in section 1001 of the Human  
26 Services Code or a parent organization of the facility.

27           (7) A business, institution of higher education,  
28 facility or organization, which provides a venue for the  
29 provision of medical care.

30           (8) A licensed, certified, registered or authorized  
31 person providing emergency medical services as defined in 35  
32 Pa.C.S. § 8103 (relating to definitions). The term includes  
33 an emergency medical services vehicle operator.

34           (9) An emergency medical services agency as defined in  
35 35 Pa.C.S. § 8103. This paragraph includes a parent  
36 organization of the agency.

37           (10) A person engaged in nursing care as defined in 28  
38 Pa. Code § 201.3 (relating to definitions), if the nursing  
39 care:

40           (i) is in support of the ADL--activities of daily  
41 living and other instrumental activities of daily living  
42 as defined in 55 Pa. Code § 2600.4 (relating to  
43 definitions) or 2800.4 (relating to definitions) and  
44 other instrumental activities; or

45           (ii) consists of covered services which nursing care  
46 providers are obligated to deliver or arrange under their  
47 requirements of licensure.

48           (11) A clinical laboratory:

49           (i) certified under section 353 of the Public Health  
50 Service Act (58 Stat. 682, 42 U.S.C. § 263a); or

51           (ii) licensed under the act of September 26, 1951



1 (P.L.1539, No.389), known as The Clinical Laboratory Act.  
2 (12) An individual employed or contracted by a person  
3 under paragraph (1), (2), (3), (4), (5), (6), (7), (8), (9),  
4 (10) or (11), who is involved in providing medical care.  
5 "COVID-19." The novel coronavirus as identified in the  
6 proclamation of disaster emergency issued by the Governor on  
7 March 6, 2020, published at 50 Pa.B. 1644 (March 21, 2020).

8 "Direct cost." The direct labor and direct material costs of  
9 producing personal protective equipment, excluding any  
10 manufacturing overhead costs.

11 "Institution of higher education." The term includes any of  
12 the following:

13 (1) A community college operating under Article XIX-A of  
14 the act of March 10, 1949 (P.L.30, No.14), known as the  
15 Public School Code of 1949.

16 (2) The State System of Higher Education. This paragraph  
17 includes a university within the system.

18 (3) The Pennsylvania State University, the University of  
19 Pittsburgh, Temple University, Lincoln University or an  
20 institution designated as State-related by the Commonwealth.

21 (4) The Thaddeus Stevens College of Technology and The  
22 Pennsylvania College of Technology.

23 (5) A rural regional college operating under Article  
24 XIX-G of the Public School Code of 1949.

25 (6) An institution of higher education located in and  
26 incorporated or chartered by the Commonwealth and entitled to  
27 confer degrees under 24 Pa.C.S. § 6505 (relating to power to  
28 confer degrees) and as provided for by the standards and  
29 qualifications prescribed by the State Board of Education  
30 under 24 Pa.C.S. Ch. 65 (relating to private colleges,  
31 universities and seminaries).

32 (7) A private school licensed under the act of December  
33 15, 1986 (P.L.1585, No.174), known as the Private Licensed  
34 Schools Act.

35 (8) A foreign corporation approved to operate an  
36 educational enterprise under 22 Pa. Code Ch. 36 (relating to  
37 foreign corporation standards).

38 (9) A community education council operating under  
39 Article XIX-D of the Public School Code of 1949.

40 "Local governmental unit." A municipality or local  
41 authority.

42 "Person." A natural person, corporation, firm, association,  
43 organization, partnership, limited liability company, business,  
44 trust, business trust, estate or foundation.

45 "Personal protective equipment." A device, equipment,  
46 substance or material, recommended by the Centers for Disease  
47 Control and Prevention, Food and Drug Administration,  
48 Environmental Protection Agency, Department of Homeland Security  
49 or another Federal authority or the Department of Health to  
50 prevent, limit or slow the spread of COVID-19, such as  
51 respirators, masks, surgical apparel, gowns, gloves and other

1 apparel intended for a medical purpose. The term includes  
2 sanitizers and disinfectants.

3 "Proclamation of disaster emergency." A proclamation of  
4 disaster emergency issued by the Governor relating to COVID-19  
5 and any renewal of the state of disaster emergency, such as the  
6 proclamation of disaster emergency issued by the Governor on  
7 March 6, 2020, published at 50 Pa.B. 1644 (March 21, 2020), and  
8 renewed on June 3, 2020, and August 31, 2020.

9 "Public health directives." Orders or guidelines issued by  
10 the Federal or State government regarding any of the following:

11 (1) The manufacturing or use of personal protective  
12 equipment during the proclamation of disaster emergency.

13 (2) Treatment or testing of individuals with or  
14 reasonably believed to have COVID-19.

15 (3) Steps necessary or recommended to prevent, limit or  
16 slow the spread of COVID-19.

17 "School entity." Any school district, charter school, cyber  
18 charter school, regional charter school, chartered school for  
19 the deaf and blind, private school, nonpublic school,  
20 prekindergarten, intermediate unit, area career and technical  
21 school, approved private school or institution of higher  
22 education operating within this Commonwealth. The term includes  
23 an individual employed by or contracted by a school entity.

24 § 8368.42. School and child care liability.

25 (a) Limited liability.--Notwithstanding any other provision  
26 of law, a school entity or child-care facility shall not be  
27 civilly liable for damages or personal injury relating to an  
28 actual or alleged exposure to COVID-19, absent a showing, by  
29 clear and convincing evidence, of gross negligence,  
30 recklessness, willful misconduct or intentional infliction of  
31 harm.

32 (b) Compliance with public health directives.--An act or  
33 omission in compliance with, or in a good faith belief that the  
34 act or omission is in compliance with, public health directives  
35 shall not be considered gross negligence, recklessness, willful  
36 misconduct or intentional infliction of harm.

37 § 8368.43. Personal protective equipment liability.

38 (a) Manufacturer, distributor, labeler and donor.--

39 (1) Notwithstanding any other provision of law, a person  
40 that manufactures, distributes, labels or donates personal  
41 protective equipment shall not be civilly liable for damage  
42 to property or personal injury, related to actual or alleged  
43 exposure to COVID-19 in connection with the use of personal  
44 protective equipment which, during the proclamation of  
45 disaster emergency, is donated or sold at direct cost to a  
46 charitable organization, the Commonwealth, a local  
47 governmental unit or covered provider, absent a showing by  
48 clear and convincing evidence of recklessness, willful  
49 misconduct or intentional infliction of harm.

50 (2) An act or omission in compliance with, or in a good  
51 faith belief that the act or omission was in compliance with,

1 public health directives shall not be considered  
2 recklessness, willful misconduct or intentional infliction of  
3 harm.

4 (b) Other manufacturers, distributors and labelers.--Subject  
5 to subsection (a), all of the following apply:

6 (1) Notwithstanding any other provision of law, a person  
7 that manufactures, distributes or labels personal protective  
8 equipment shall not be civilly liable for damage to property  
9 or personal injury related to actual or alleged exposure to  
10 COVID-19 in connection with the use of personal protective  
11 equipment, absent a showing, by clear and convincing  
12 evidence, of gross negligence, recklessness, willful  
13 misconduct or intentional infliction of harm if the person  
14 commenced manufacturing, distributing or labeling:

15 (i) only in connection with a proclamation of  
16 disaster emergency; or

17 (ii) in accord with the same standards to which it  
18 manufactured, distributed or labeled the equipment before  
19 a proclamation of disaster emergency, unless the  
20 equipment is clearly labeled to indicate otherwise.

21 (2) An act or omission in compliance with, or in a good  
22 faith belief that the act or omission was in compliance with,  
23 public health directives shall not be considered gross  
24 negligence, recklessness, willful misconduct or intentional  
25 infliction of harm.

26 (c) Users.--

27 (1) Notwithstanding any other provision of law, a person  
28 that uses or employs personal protective equipment during the  
29 proclamation of disaster emergency in compliance with public  
30 health directives related to the personal protective  
31 equipment shall not be civilly liable for damage to property  
32 or personal injury related to use of the personal protective  
33 equipment, absent a showing, by clear and convincing  
34 evidence, of gross negligence, recklessness, willful  
35 misconduct or intentional infliction of harm.

36 (2) An act or omission in compliance with, or in a good  
37 faith belief that the act or omission was in compliance with,  
38 public health directives shall not be considered gross  
39 negligence, recklessness, willful misconduct or intentional  
40 infliction of harm.

41 § 8368.44. Business or government services liability.

42 (a) Limited liability.--Notwithstanding any other provision  
43 of law, a person providing business or government services shall  
44 not be civilly liable for damage to property or personal injury,  
45 related to an actual or alleged exposure to COVID-19, absent a  
46 showing, by clear and convincing evidence, of gross negligence,  
47 recklessness, willful misconduct or intentional infliction of  
48 harm.

49 (b) Compliance with public health directives.--An act or  
50 omission in compliance with, or in a good faith belief that the  
51 act or omission is in compliance with, public health directives

1 shall not be considered gross negligence, recklessness, willful  
2 misconduct or intentional infliction of harm.

3 § 8368.45. Covered provider liability.

4 (a) Limited liability.--Notwithstanding any other provision  
5 of law, a covered provider shall not be civilly liable for  
6 damages or personal injury, related to any of the following,  
7 absent a showing, by clear and convincing evidence, of gross  
8 negligence, recklessness, willful misconduct or intentional  
9 infliction of harm:

10 (1) Provision of treatment or testing for COVID-19 to  
11 patients who have been exposed to or whom a covered provider  
12 reasonably believes may have been exposed to COVID-19.

13 (2) An act or omission proximately caused by:

14 (i) shortage of equipment, supplies or personnel  
15 which:

16 (A) was a direct result of the demand for  
17 testing for or treatment of COVID-19; and

18 (B) was beyond the reasonable control of the  
19 covered provider;

20 (ii) a number of patients in excess of the capacity  
21 of a department or of a unit of a covered provider as a  
22 direct result of the need to test for or treat COVID-19;  
23 or

24 (iii) compliance with public health directives  
25 regarding the testing for and treatment of COVID-19.

26 (b) Compliance with public health directives.--An act or  
27 omission by a covered provider in compliance with, or in a good  
28 faith belief that the act or omission was in compliance with,  
29 public health directives shall not be considered gross  
30 negligence, recklessness, willful misconduct or intentional  
31 infliction of harm.

32 § 8368.46. Application of subchapter.

33 (a) Vicarious liability.--Vicarious liability shall not  
34 attach to the employer of an individual who is otherwise immune  
35 under this subchapter or an executive order.

36 (b) Public health directives.--In determining civil  
37 liability under this subchapter, a court shall:

38 (1) For a manufacturer, distributor, labeler or donor,  
39 consider public health directives which were in effect at the  
40 time of the manufacture, distribution, labeling or sale of  
41 the personal protective equipment.

42 (2) For a person providing business or government  
43 services, user of personal protective equipment, school  
44 entity or child-care facility, consider public health  
45 directives which were in effect at the time an alleged act or  
46 omission occurred.

47 (3) For a covered provider, consider public health  
48 directives which were in effect at the time an alleged act or  
49 omission occurred.

50 (c) Proclamation of disaster emergency.--This subchapter  
51 shall apply to acts or omissions during a proclamation of

1 disaster emergency.

2 § 8368.47. Construction of subchapter.

3 This subchapter shall not be construed to:

4 (1) create a new cause of action;

5 (2) expand a civil or criminal liability otherwise  
6 imposed;

7 (3) limit a defense;

8 (4) affect the applicability of a statute which affords  
9 greater protections to defendants than are provided under  
10 this subchapter; or

11 (5) prevent an individual from filing a claim or  
12 receiving benefits under the act of June 2, 1915 (P.L.736,  
13 No.338), known as the Workers' Compensation Act, if otherwise  
14 available.

15 Section 2. Repeals are as follows:

16 (1) The General Assembly declares that the repeal under  
17 paragraph (2) is necessary to effectuate the addition of 42  
18 Pa.C.S. Ch. 83 Subch. F.2.

19 (2) The act of May 19, 1995 (P.L.33, No.3), known as the  
20 Economic Development Agency, Fiduciary and Lender  
21 Environmental Liability Protection Act, is repealed.

22 Section 3. The addition of 42 Pa.C.S. Ch. 83 Subch. F.2 is a  
23 continuation of the act of May 19, 1995 (P.L.33, No.3), known as  
24 the Economic Development Agency, Fiduciary and Lender  
25 Environmental Liability Protection Act. The following apply:

26 (1) Except as otherwise provided in 42 Pa.C.S. Ch. 83  
27 Subch. F.2, all activities initiated under the Economic  
28 Development Agency, Fiduciary and Lender Environmental  
29 Liability Protection Act shall continue and remain in full  
30 force and effect and may be completed under 42 Pa.C.S. Ch. 83  
31 Subch. F.2. Orders, regulations, rules and decisions which  
32 were made under the Economic Development Agency, Fiduciary  
33 and Lender Environmental Liability Protection Act and which  
34 are in effect on the effective date of section 2 of this act  
35 shall remain in full force and effect until revoked, vacated  
36 or modified under 42 Pa.C.S. Ch. 83 Subch. F.2. Contracts,  
37 obligations and collective bargaining agreements entered into  
38 under the Economic Development Agency, Fiduciary and Lender  
39 Environmental Liability Protection Act are not affected nor  
40 impaired by the repeal of the Economic Development Agency,  
41 Fiduciary and Lender Environmental Liability Protection Act.

42 (2) Except as set forth in paragraph (3), any difference  
43 in language between 42 Pa.C.S. Ch. 83 Subch. F.2 and the  
44 Economic Development Agency, Fiduciary and Lender  
45 Environmental Liability Protection Act is intended only to  
46 conform to the style of the Pennsylvania Consolidated  
47 Statutes and is not intended to change or affect the  
48 legislative intent, judicial construction or administration  
49 and implementation of the Economic Development Agency,  
50 Fiduciary and Lender Environmental Liability Protection Act.

51 (3) Paragraph (2) does not apply to the addition of

1 paragraph (9) of the definition of "economic development  
2 agency" in 42 Pa.C.S. § 8368.13.  
3 Section 4. This act shall take effect as follows:  
4 (1) The following provisions shall take effect  
5 immediately:  
6 (i) This section.  
7 (ii) The addition of 42 Pa.C.S. Ch. 83 Subch. F.4.  
8 (2) The remainder of this act shall take effect  
9 immediately.