

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1025 Session of
1999

INTRODUCED BY KUKOVICH, LAVALLE, BOSCOLA, WILLIAMS, KITCHEN,
HUGHES, COSTA, BODACK, KASUNIC, BELAN, WOZNIAK, SCHWARTZ AND
TARTAGLIONE, SEPTEMBER 15, 1999

REFERRED TO JUDICIARY, SEPTEMBER 15, 1999

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, further providing for
3 health information, for consumer protections, for arbitration
4 and settlement provisions, for interest on certain judgments
5 and for certain rights of physicians and patients; abolishing
6 economic loss doctrine in certain actions involving
7 computers; providing for duties and defenses of accountants,
8 for workplace safety and toxic-free workplace actions, for
9 limitations on protective orders and settlement provisions,
10 for whistleblowers protections and for employee terminations;
11 adding exceptions to sovereign and governmental immunity;
12 abolishing the defense of high public official immunity in
13 certain cases; authorizing citizens' suits through the use of
14 private attorney general actions in certain cases; and
15 repealing certain acts.

16 The civil justice system in this Commonwealth stands at the
17 paradigm of the American system of government. The world has now
18 come to recognize that a viable, just and fair legal system is
19 one which acts as a safety valve with regard to the pressures
20 built into a complex and heterogeneous society. The public has
21 come to understand the importance of the court system in
22 guaranteeing the right to redress grievances. Unfortunately, the
23 current legal climate has become a battleground for forces which
24 are attempting to restrict the very legal rights which have made

1 America a great and productive society. Those restrictions of
2 rights frequently take the form of immunity legislation,
3 restrictive rules, secrecy and other devices and artifices
4 calculated to pressure a plaintiff, both financially and from a
5 temporal point of view, while shielding or protecting
6 wrongdoers. It is the purpose of this act to recognize that the
7 common law augmented by statute operates as a deterrent to
8 wrongful misconduct against consumer interests.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Section 5526 of Title 42 of the Pennsylvania
12 Consolidated Statutes is amended by adding a paragraph to read:
13 § 5526. Five year limitation.

14 The following actions and proceedings must be commenced
15 within five years:

16 * * *

17 (5) An action to recover damages for injury to a person
18 or for the death of a person caused by the exposure to
19 asbestos or other toxic substance shall be commenced within
20 five years from the date the person was informed by a
21 competent medical professional that the person has an injury
22 which is related to such exposure, or the date of the
23 person's death, whichever date occurs first.

24 Section 2. Chapters 61 and 73 of Title 42 are amended by
25 adding subchapters to read:

26 SUBCHAPTER F

27 HEALTH INFORMATION ACCURACY, PRESERVATION AND

28 CONFIDENTIALITY

29 Sec.

30 6171. Short title of subchapter.

1 6172. Definitions.

2 6173. Preservation and accuracy of health information.

3 6174. Limitations on disclosure.

4 6175. Duty to maintain confidentiality.

5 6176. Recordkeeping requirements.

6 6177. Prohibition on disclosure to employers.

7 6178. Regulations by Department of Health.

8 6179. Applicability of other laws.

9 6180. Cause of action.

10 § 6171. Short title of subchapter.

11 This subchapter shall be known and may be cited as the Health
12 Information Accuracy, Preservation and Confidentiality Act.

13 § 6172. Definitions.

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

17 "Health information." Any information or medical records, in
18 whatever form, pertaining to medical and health care services
19 performed by or at the direction of an individual health care
20 provider or an institutional health care provider which identify
21 the patient or client, or from whom the identity of the patient
22 or client can reasonably be determined, which is in the
23 possession of an information source. The term includes medical
24 records relating to the evaluation, diagnosis or treatment of an
25 injury, illness or condition.

26 "Individual health care provider." A physician, nurse,
27 emergency medical services workers, chiropractor, psychologist,
28 nurse-midwife, physician assistant, dentist or other person
29 providing medical, nursing or other health care services of any
30 kind.

1 "Information source." The term shall include:

2 (1) An individual health care provider.

3 (2) An institutional health care provider.

4 (3) An ambulatory service facility.

5 (4) A health maintenance organization as defined in the
6 act of December 29, 1972 (P.L.1701, No.364), known as the
7 Health Maintenance Organization Act.

8 (5) A medical or health service plan with a certificate
9 of authority issued by the Insurance Department, including,
10 but not limited to, hospital plan corporations as defined in
11 40 Pa.C.S. Ch. 61 (relating to hospital plan corporations)
12 and professional health services plan corporations as defined
13 in 40 Pa.C.S. Ch. 63 (relating to professional health
14 services plan corporations).

15 (6) A commercial insurer with a certificate of authority
16 issued by the Insurance Department providing health or
17 accident insurance.

18 (7) A self-insured employer providing health or accident
19 coverage or benefits for its employees.

20 (8) An administrator of a self-insured or partially
21 self-insured health or accident plan providing covered
22 services.

23 (9) Any health and welfare fund that provides health or
24 accident benefits or insurance pertaining to covered
25 services.

26 (10) The Department of Public Welfare for those covered
27 services it purchases or provides through the medical
28 assistance program under the act of June 13, 1967 (P.L.31,
29 No.21), known as the Public Welfare Code.

30 (11) Any other payor for covered services, other than an

1 individual.

2 (12) An employee or agent of any of the enumerated
3 entities.

4 "Institutional health care provider." A hospital, nursing
5 home, hospice, drug and alcohol services provider, clinic, blood
6 bank, plasmapheresis or other blood product center, organ or
7 tissue bank, sperm bank, clinical laboratory or any health care
8 institution required to be licensed in this Commonwealth.

9 "Medical record." The written or graphic documentation,
10 electronic or sound record, videotape, photograph or computer
11 record of services pertaining to medical or health care
12 performed by or at the direction of an individual health care
13 provider or institutional health care provider. The term
14 includes diagnostic documentation such as X-rays,
15 electrocardiograms, electroencephalograms and test results.

16 § 6173. Preservation and accuracy of health information.

17 (a) Contemporaneous entry of health information.--Entries
18 into health information shall be made contemporaneously. It
19 shall be unlawful to amend, add to or delete health information,
20 except that an entry correcting an error or clarifying an entry
21 previously made or adding information not available at the time
22 the information source was initially created may be made if the
23 correction, clarification or addition is dated and timed, if
24 necessary, to show its subsequent status.

25 (b) Destruction of health information unlawful.--It shall be
26 unlawful willfully to destroy health information, including,
27 without limitation, diagnostic slides, specimens, surgical
28 hardware or X-rays without the written consent of the patient. A
29 violation of this section shall be punishable as a summary
30 offense.

1 (c) Consequences of alteration or destruction of health
2 information.--The alteration or willful destruction of health
3 information for the purpose of affecting civil liability of the
4 information source shall constitute a basis for a cause of
5 action as provided in section 6180 (relating to cause of
6 action). If it is shown that there has been such an alteration
7 or destruction of health information, the factfinder may take
8 this into account in determining whether the health care
9 provider breached the standard of care due to the patient. The
10 alteration or destruction of health information shall also
11 constitute a ground for suspension of the license of an
12 individual health care provider. There shall be a duty on the
13 part of an individual health care provider who becomes aware of
14 an alteration or destruction of health information for the
15 purpose of affecting the civil liability of the information
16 source to report the alteration or destruction to the
17 appropriate State licensing authorities.

18 § 6174. Limitations on disclosure.

19 (a) Disclosure limited.--All health information in the
20 possession or custody of an information source shall be kept
21 confidential and may not be released or its contents disclosed
22 to anyone, except:

23 (1) To the patient.

24 (2) To the subject's primary care physician, provided
25 that the subject has indicated the identity of that primary
26 care physician to whom such information may be released.

27 (3) To a person specifically designated in a written
28 consent under subsection (b).

29 (4) To an agent, employee or medical staff member of a
30 health care provider when disclosure is necessary for

1 purposes of diagnosis or treatment.

2 (5) To prevent death or severe illness in an emergency
3 where disclosure of health information is necessary for
4 treatment of the patient or client.

5 (6) To a peer review organization or committee as
6 defined in the act of July 20, 1974 (P.L.564, No.193), known
7 as the Peer Review Protection Act, a nationally recognized
8 accrediting agency or any Federal or State government agency
9 with oversight responsibilities over health care providers or
10 as otherwise provided by law.

11 (7) To an insurer, but only to the extent necessary to
12 reimburse a health care provider or to make payment of a
13 claim submitted under an insured's policy.

14 (8) Pursuant to an order of a court after application
15 showing good cause with proper notice and an opportunity to
16 be heard. The court shall weigh the need for disclosure
17 against the privacy interest of the individual and possible
18 harm resulting from disclosure.

19 (b) Required elements of written consent to disclosure.--A
20 written consent to disclosure of health care information shall
21 include:

22 (1) The specific name of the individual or organization
23 permitted to make the disclosure.

24 (2) The name or title of the individual to whom or the
25 name of the organization to which the disclosure is to be
26 made.

27 (3) The name of the patient whose records are to be
28 disclosed.

29 (4) The specific purpose or purposes of the disclosure.

30 (5) The amount and kind of information to be disclosed.

1 (6) The signature of the patient or, if the patient is
2 12 years of age or younger, the signature of the patient's
3 parent or guardian.

4 (7) The date on which the consent is signed.

5 (8) A statement that the consent is subject to
6 revocation at any time except to the extent that the person
7 who is to make the disclosure has already acted in reliance
8 on it.

9 (9) The date, event or condition upon which the consent
10 will expire, if not earlier revoked.

11 In no event shall a written consent under this act be deemed
12 valid more than one year after the date to consent was signed.

13 (c) Expired, deficient, revoked or false consent.--A
14 disclosure may not be made on the basis of a consent which:

15 (1) has expired;

16 (2) on its face substantially fails to conform to any of
17 the requirements set forth under subsection (b);

18 (3) is known to have been revoked; or

19 (4) is known by the person holding the information to be
20 materially false.

21 (d) Notice requirement.--Each disclosure made with the
22 subject's written consent must be accompanied by the following
23 written statement:

24 This information has been disclosed to you from records
25 the confidentiality of which is protected by law. You may
26 not make any further disclosure of this information
27 unless further disclosure is expressly permitted by the
28 written consent of the person to whom it pertains. A
29 general authorization for the release of health
30 information or medical records is not sufficient for this

1 purpose.

2 (e) Authorization.--Nothing in this subchapter shall require
3 in litigation that an individual be required to sign an
4 authorization.

5 § 6175. Duty to maintain confidentiality.

6 In the event that health information is disclosed under
7 section 6174(a)(6) or (7) (relating to limitations on
8 disclosure), an information source shall take all necessary
9 steps to maintain the confidentiality of the patient and that
10 patient's health information and medical records. Unless there
11 is a compelling need to disclose the actual identity of the
12 patient or client, all information relating to the identity of
13 the patient or client or from which the identity can be
14 reasonably determined shall not be disclosed.

15 § 6176. Recordkeeping requirements.

16 Information sources shall maintain, as a permanent part of
17 the patient's medical records, a record of all disclosures of
18 health information to any person not employed by or affiliated
19 with it. The record shall include the name and address of each
20 person receiving the health information and a description of the
21 information disclosed.

22 § 6177. Prohibition on disclosure to employers.

23 Health information may not be disclosed to the patient's
24 employer without the written consent of the patient. In the case
25 of disclosure to an employer, the written consent must also
26 include a statement why the disclosure is necessary and that the
27 patient understands the reason for the disclosure.

28 § 6178. Regulations by Department of Health.

29 Within one year of the enactment of this subchapter, the
30 Department of Health shall promulgate standards for the

1 implementation of administrative, technological and physical
2 safeguards by information sources to protect against
3 unauthorized disclosure of individually identifiable health
4 information.

5 § 6179. Applicability of other laws.

6 Nothing in this subchapter is intended to alter limitations
7 on disclosure of health information that are prescribed in law.

8 § 6180. Cause of action.

9 (a) Recovery.--Any person aggrieved by a violation of this
10 subchapter shall have a cause of action against the person who
11 committed the violation and may recover:

12 (1) Compensatory damages, but not less than liquidated
13 damages, computed at the rate of \$1,000 for each violation.

14 (2) Punitive damages.

15 (3) Reasonable attorney fees and litigation costs.

16 (b) Effect of each disclosure.--Each unauthorized disclosure
17 of health care information shall be considered a separate
18 violation.

19 SUBCHAPTER D

20 EFFECT OF ARBITRATION PROVISIONS

21 Sec.

22 7371. Purpose.

23 7372. Definitions.

24 7373. Consumer protection.

25 7374. Confidentiality of settlement agreements.

26 § 7371. Purpose.

27 Consumers are increasingly affected by arbitration clauses
28 contained in agreements which may not be completely understood
29 by them. The purpose of this subchapter is to assure that
30 consumers do not give up their right to sue without full

1 knowledge of their rights.

2 § 7372. Definitions.

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

6 "Arbitration clause." Language requiring arbitration,
7 conciliation or mediation in an agreement, except such language
8 required by law.

9 § 7373. Consumer protection.

10 The signatory to an agreement containing an arbitration
11 clause may rescind the agreement within five business days of
12 executing it. No arbitration clause contained in an agreement
13 shall be enforceable unless the clause's language is reproduced
14 in bold print of at least ten-point type and there is a separate
15 signature line for the same with the following insertion
16 following the clause and immediately preceding this line:

17 You do not have to agree to arbitration, conciliation or
18 mediation. You have a right to go to court to resolve any
19 disputes you may have. You have the right to discuss this
20 matter with an attorney of your choice. You also have the
21 right to rescind your signature to this agreement within
22 five business days of the date of the execution of this
23 agreement.

24 § 7374. Confidentiality of settlement agreements.

25 No person shall make a settlement of a dispute, payment of
26 money or other resolution of a claim which has been asserted in
27 an action or submitted for arbitration contingent upon the
28 confidentiality of the terms and conditions of the resolution of
29 the claim, the return of any documents or an agreement
30 prohibiting a person or the person's counsel from sharing

1 information with others. This section is not intended to modify
2 any law, regulation or rule relating to the imposition of
3 protective orders pursuant to discovery proceedings. For the
4 purposes of this section, "person" shall include a Commonwealth
5 agency and a local agency.

6 Section 3. Section 8101 of Title 42 is amended to read:

7 § 8101. Interest on judgments.

8 Except as otherwise provided by another statute, a judgment
9 for a specific sum of money shall bear simple interest [at the
10 lawful rate] from the date of the verdict or award, or from the
11 date of the judgment, if the judgment is not entered upon a
12 verdict or award[.], to the date of payment of the judgment
13 calculated by adding 1% to the prime rate as reported in the
14 first edition of the Wall Street Journal published in each
15 calendar year for which damages were awarded, unless the fact-
16 finder found that a higher rate of interest had been agreed upon
17 by the parties, in which case it shall constitute the rate and
18 terms of interest to be added to the amount of the verdict,
19 award or judgment.

20 Section 4. Title 42 is amended by adding a chapter to read:

21 CHAPTER 82

22 PHYSICIAN'S AND PATIENT'S RIGHTS

23 Sec.

24 8201. Purpose.

25 8202. Review of records and testimony.

26 8203. Right to counsel.

27 8204. Cause termination.

28 8205. Covenants not to compete.

29 8206. Denial of privileges.

30 8207. Peer review.

1 8208. Inspection of records.

2 § 8201. Purpose.

3 The purpose of this chapter is to assure that physicians may
4 provide the best professional services consistent with the
5 interests of the patient and third parties.

6 § 8202. Review of records and testimony.

7 A physician shall have a right to freely review health
8 information of a patient or to testify on any matter regarding a
9 patient's health if the law and rules of procedure and evidence
10 otherwise allow such review or testimony. A physician may bring
11 an action for damages or in equity against any person who
12 coerces, threatens, intimidates or retaliates against the
13 physician for giving testimony on behalf of a patient.

14 § 8203. Right to counsel.

15 A physician shall have the right to the assistance of counsel
16 during negotiations with a health care provider regarding the
17 terms of an employment contract, a capitation arrangement or
18 other payment schedule or system.

19 § 8204. Cause termination.

20 A physician's employment or other compensatory arrangement
21 shall not be terminated without good cause. For the purposes of
22 this section, the absence of good cause shall mean such conduct
23 inimical to the orderly functioning of the employment
24 relationship as would permit discharge for willful misconduct
25 under the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897,
26 No.1), known as the Unemployment Compensation Law.

27 § 8205. Covenants not to compete.

28 A provision constituting a covenant not to compete in a
29 physician's employment agreement or in an agreement for the sale
30 of a physician's professional practice shall be void as against

1 public policy.

2 § 8206. Denial of privileges.

3 A physician shall not be denied privileges at the facilities
4 of a health care provider without a hearing before an
5 independent tribunal after written notice of the basis of the
6 proposed refusal or termination of privileges. The physician
7 shall have the right to be heard, the right to the assistance of
8 counsel, the right to present evidence in the physician's favor
9 and the right to a written statement of the findings and
10 decision of the tribunal.

11 § 8207. Peer review.

12 The act of July 20, 1974 (P.L.564, No.193), known as the Peer
13 Review Protection Act, shall not be construed to prevent a
14 physician from reviewing the physician's own file regarding any
15 matter subject to peer review. A physician's patient shall also
16 be entitled to review and copy any document regarding the
17 physician's privileges or adverse action taken against the
18 physician, any incident report or other document pertaining to
19 the competency of the physician.

20 § 8208. Inspection of records.

21 An insurer of health care, health maintenance or health care
22 provider after written notice shall within ten days provide to
23 its insured, member, participant or patient an opportunity to
24 inspect and to receive copies of all information and records
25 relating to or pertaining to its delay, failure or refusal to
26 approve or provide in a timely manner comprehensive health
27 services to such member, participant or insured.

28 Section 5. Chapter 83 of Title 42 is amended by adding a
29 section to read:

30 § 8313. Economic loss not applicable in certain actions.

1 In an action to recover for damages because of the failure of
2 a computer or computer system, including both hardware and
3 software, the doctrine of economic loss shall not be applicable.

4 Section 6. Chapter 83 of Title 42 is amended by adding a
5 subchapter to read:

6 SUBCHAPTER F

7 ACCOUNTANTS' RIGHTS

8 Sec.

9 8361. Obligation to report wrongdoing.

10 § 8361. Obligation to report wrongdoing.

11 A certified public accountant, public accountant or
12 individual or entity providing accounting services shall be
13 obligated to report to the appropriate Federal, State or local
14 government authorities wrongdoing discovered during employment
15 without fear of reprisal or retaliation from the employer. For
16 the purposes of this subchapter, retaliation means the
17 termination or severing of any relationship as a consequence of
18 the one providing the accounting services reporting to the
19 government authorities alleged wrongdoing by the accountant's
20 client. To the extent that a good faith report of wrongdoing is
21 made by the accountant, the accountant shall be entitled to
22 introduce the report of wrongdoing in defense of any action
23 brought against the accountant claiming that the accountant
24 permitted wrongdoing to occur.

25 Section 7. Title 42 is amended by adding a chapter to read:

26 CHAPTER 84

27 WORKPLACE SAFETY AND EMPLOYMENT RIGHTS

28 Subchapter

29 A. Unsafe Conditions

30 B. Workplace Safety Actions

1 C. Environmental Safety

2 D. Protections for Employees

3 E. Employee Termination

4 SUBCHAPTER A

5 UNSAFE CONDITIONS

6 Sec.

7 8401. Scope of subchapter.

8 8402. Prohibiting certain defenses.

9 8403. Protective orders.

10 § 8401. Scope of subchapter.

11 The existing law relating to liability for defective products
12 shall continue in effect except as amended by the provisions of
13 this subchapter.

14 § 8402. Prohibiting certain defenses.

15 (a) Nondefense.--It shall not be a defense for any
16 manufacturer of a product to aver that the person injured was a
17 fellow servant or employee of the workers who assembled,
18 designed, engineered or installed the product which is alleged
19 to have caused the injury, without regard to limitations and
20 immunities of the act of June 2, 1915 (P.L.736, No.338), known
21 as the Workers' Compensation Act.

22 (b) Unsafe conditions.--A person who suffers an injury as a
23 result of products and systems utilized beyond their safe
24 operating lives, altered in an unsafe manner or upon which safe
25 maintenance or improvement has not been performed shall not be
26 barred from suit based on the person's employment relationship
27 with the provider of the machines, tools or equipment alleged to
28 have caused the injury, without regard to the limitations and
29 immunities of the Workers' Compensation Act.

30 (c) Directed misuse.--A person who suffers an injury as a

1 result of the employer's willfully directing the misuse of any
2 product, including, but not limited to, machinery, tools,
3 chemicals or substances, shall not be barred from suit based on
4 the person's employment relationship with the provider of the
5 products alleged to have caused the injury, without regard to
6 the limitations and immunities of the Workers' Compensation Act.

7 (d) Standards.--In any trial of any product liability
8 action, the court shall not permit evidence of government or
9 industry standards to be admitted into evidence by the defendant
10 in the defense of the action for any purpose.

11 § 8403. Protective orders.

12 (a) General rule.--In any action subject to this section, no
13 person shall seek and no court shall enter a protective order
14 which is inconsistent with the provisions of this section, and
15 any order to the contrary shall be void and of no effect.

16 (b) Scope.--No person subject to a protective order shall be
17 forbidden from making any document or other information
18 furnished to that person pursuant to such order available to any
19 of the following:

20 (1) Federal, State or local regulatory or law
21 enforcement agency, or legislative or judicial body, where
22 the person furnishing such information reasonably believes
23 that such agency or body has regulatory, law enforcement,
24 legislative or adjudicative authority with respect to the
25 product involved in such action, and the opposing counsel are
26 notified that documents or information has been furnished
27 within five days after they are made available.

28 (2) An attorney whom the person furnishing such
29 information reasonably believes is duly licensed to practice
30 law in a state or the District of Columbia and representing a

1 person claiming losses from the same product as is involved
2 in this action provided that the attorney receiving the
3 documents or other information agrees, in writing, to be
4 bound by the protective order and to be subject to the
5 jurisdiction of the court issuing it in connection with the
6 matter relating to it, and a copy of the agreement is
7 promptly furnished to opposing counsel.

8 (3) Nothing in this section shall authorize or require
9 the disclosure of trade secrets as defined in 18 Pa.C.S. §
10 3930 (relating to theft of trade secrets).

11 (c) Settlement restriction.--In any action, no person shall
12 request, as a condition of settlement, that the claimant or the
13 claimant's attorney agree to any of the following:

14 (1) To return or destroy documents related in any way to
15 the action, provided that it shall not be improper to
16 continue a valid protective order in effect or to enter a
17 valid postdismissal protective order.

18 (2) In the case of an attorney, not to represent any
19 other claimant in a similar action or in any other action
20 against any of the defendants.

21 (d) Other rights.--Nothing in this section shall impair or
22 diminish any other right of any person to obtain access to any
23 document or information related in any way to an action subject
24 to this subchapter.

25 SUBCHAPTER B

26 WORKPLACE SAFETY ACTIONS

27 Sec.

28 8411. Cause of action for injuries arising out of certain
29 acts by employers.

30 8412. Hazard-free work environment.

1 8413. Toxic injury-free workplace.

2 8414. Concealment of public hazards.

3 8415. Injunctions authorized.

4 § 8411. Cause of action for injuries arising out of certain
5 acts by employers.

6 (a) Action authorized.--An employee shall have a cause of
7 action against the employer for damages which result from the
8 employer's reckless, willful or wanton disregard for the safety
9 of the employee or which results from the employer's intentional
10 misconduct.

11 (b) Certain defenses prohibited.--In a claim brought under
12 this section, the employer shall not raise the defense of
13 assumption of the risk or the defense of the employee's
14 comparative fault or misuse of a product or violation of a
15 safety regulation.

16 (c) Relationship to claims under the Workers' Compensation
17 Act.--The cause of action authorized by this section shall not
18 diminish any rights or interests which an employee may have
19 under the act of June 2, 1915 (P.L.736, No.338), known as the
20 Workers' Compensation Act, and shall exist without regard to the
21 limitations, defenses and immunities of that act. The filing of
22 an action as authorized by this section shall not affect the
23 employee's eligibility for benefits under the Workers'
24 Compensation Act, except that compensatory damages recovered
25 under this section shall be reduced by the amount of benefits
26 received under that act. The employer found liable on the action
27 brought under this section shall have no right to subrogation
28 for benefits paid under the Workers' Compensation Act.

29 § 8412. Hazard-free work environment.

30 (a) Cause of action.--An employee who suffers an injury

1 caused by the removal of a warning, guard or other safety device
2 from a machine, tool or other implement may bring an action for
3 damages against the employer if the employer knew or should have
4 known of the removal. The action shall be brought within two
5 years of the injury.

6 (b) Relationship to claims under the Workers' Compensation
7 Act.--The cause of action authorized by this section shall not
8 diminish any rights or interests which an employee may have
9 under the act of June 2, 1915 (P.L.736, No.338), known as the
10 Workers' Compensation Act, and shall exist without regard to the
11 limitations, defenses and immunities of that act. The filing of
12 an action as authorized by this section shall not affect the
13 employee's eligibility for benefits under the Workers'
14 Compensation Act, except that compensatory damages recovered
15 under this section shall be reduced by the amount of benefits
16 received under that act. The employer found liable on the action
17 brought under this section shall have no right to subrogation
18 for benefits paid under the Workers' Compensation Act.

19 (c) Defenses to action.--There shall be no recovery if the
20 employee removed the warning, guard or other safety device
21 unless the removal was at the direction of the employer;
22 knowledge by the employee of the removal alone shall not be a
23 defense.

24 (d) Definition.--As used in this section, the term
25 "employer" shall include any person in control of the workplace
26 premises but shall be limited to an employer who employs 25 or
27 more persons.

28 § 8413. Toxic injury-free workplace.

29 (a) Cause of action.--An employee who suffers an injury
30 caused by or becomes diseased from unreasonable exposure to

1 levels of a toxic substance may bring an action for damages
2 against the employer if the employer knew or should have known
3 of the hazardous exposure. This action shall be brought within
4 two years of the time at which the employee's injury or disease
5 manifests itself to a degree sufficient to give reasonable
6 notice that a cause of action may exist.

7 (b) Relationship to claims under the Workers' Compensation
8 Act.--The cause of action authorized by this section shall not
9 diminish any rights or interests which an employee may have
10 under the act of June 2, 1915 (P.L.736, No.338), known as the
11 Workers' Compensation Act, and shall exist without regard to the
12 limitations, defenses and immunities of that act. The filing of
13 an action as authorized by this section shall not affect the
14 employee's eligibility for benefits under the Workers'
15 Compensation Act, except that compensatory damages recovered
16 under this section shall be reduced by the amount of benefits
17 received under that act. The employer found liable on the action
18 brought under this section shall have no right to subrogation
19 for benefits paid under the Workers' Compensation Act.

20 (c) Defenses to action.--There shall be no recovery if the
21 employee brought the toxic substance onto the premises unless
22 this was at the direction of the employer; knowledge by the
23 employee of the toxicity of the substance alone shall not be a
24 defense.

25 (d) Definition.--As used in this section, the term
26 "employer" shall include any person in control of the workplace
27 premises, but shall be limited to an employer who employs 25 or
28 more persons.

29 § 8414. Concealment of public hazards.

30 (a) Agreement to conceal public hazard unenforceable.--Any

1 portion of an agreement that has as its purpose or effect the
2 concealment of a public hazard is void and may not be enforced.

3 (b) Order to conceal public hazard prohibited.--A court may
4 not enter an order that has as its purpose or effect the
5 concealment of a public hazard.

6 (c) Penalty.--A person who intentionally, knowingly or
7 recklessly conceals a public hazard commits a misdemeanor of the
8 first degree.

9 (d) Standing.--Any person has standing to contest an order
10 that violates this section.

11 (e) Procedure and venue.--A person may contest an order that
12 violates this section by bringing an action in any court of
13 competent jurisdiction.

14 (f) Attorney fees.--Any party or attorney that prevails in
15 litigation under this section shall have the right to petition
16 the court for attorney fees and costs to be charged against the
17 losing or settling party.

18 (g) Applicability.--This section applies only to an order
19 rendered or a contract or agreement entered into on or after the
20 effective date of this section. An order rendered or a contract
21 or agreement entered into before the effective date of this
22 section is governed by the law in effect at the time the order
23 was rendered or the contract or agreement was entered into and
24 that law is continued in effect for that purpose.

25 (h) Definition.--As used in this section, the term "public
26 hazard" means an instrument, device or substance or a condition
27 of an instrument, device or substance that has caused or may
28 cause bodily injury to more than one individual.

29 § 8415. Injunctions authorized.

30 (a) Final injunction.--A court in which an action brought

1 under this chapter has been filed may issue an injunction
2 subsequent to the verdict or in connection with the settlement
3 of the action if the court is satisfied that the public safety
4 is furthered by the results of its issuance. Such an injunction
5 may provide for recalls of products, the issuance of safety
6 warnings, the evaluation of the etiology of a risk, the
7 implementation of standards, the furnishing of education or such
8 other relief as may be appropriate. No injunction shall issue
9 without notice and opportunity to be heard by any person who
10 might be adversely affected. The court shall find from the
11 evidence introduced at trial or during discovery that the relief
12 granted is necessary for the safety of the public, but the
13 parties shall not be required to specifically plead such relief
14 in order to request the court to order it.

15 (b) Temporary injunctions.--Further, any tribunal within the
16 Commonwealth shall be empowered to issue mandatory injunctions
17 in connection with any suit for damages providing for recalls,
18 safety warnings, evaluation of the etiology of a risk,
19 implementation of safety standards, mandatory education or such
20 other relief as may be appropriate after notice and opportunity
21 to be heard.

22 (c) Statement.--In the case of a verdict, an injunction may
23 be issued without specific findings of fact or conclusions of
24 law, but the relief shall be clearly stated and the court shall
25 explain in writing why the relief granted is necessary to affect
26 the wrong proven at trial.

27 (d) Findings of fact and conclusions of law.--In the case of
28 a settlement, the court, upon issuing an injunction, shall issue
29 findings of fact and conclusions of law after notice and an
30 opportunity to be heard for the relief granted. The parties

1 shall be encouraged to stipulate to injunctions in the
2 settlement of any civil case in the event where the public
3 interest may be served.

4 (e) Pleadings.--It shall not be necessary to specifically
5 plead for or ask for an injunction in the complaint or any other
6 pleading.

7 SUBCHAPTER C

8 ENVIRONMENTAL SAFETY

9 Sec.

10 8421. Definitions.

11 8422. Strict liability.

12 8423. Causation.

13 8424. Limitation of action.

14 § 8421 Definitions.

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

18 "Facility."

19 (1) Any building, structure, installation, equipment,
20 pipe or pipeline, including any pipe into a sewer or publicly
21 owned treatment works, well, pit, pond, lagoon, impoundment,
22 ditch, landfill, storage container, motor vehicle, rolling
23 stock or aircraft.

24 (2) Any watercraft of any description or other
25 artificial contrivance used or capable of being used as a
26 means of transportation on water.

27 (3) Any site or area where a hazardous substance has
28 been deposited, stored, disposed of or placed or otherwise
29 come to be located.

30 The term does not include any consumer product in consumer use.

"Hazardous substance." The term includes:

(1) Substances designated under section 311(b)(2)(A) of the Federal Water Pollution Control Act (62 Stat. 1155, 33 U.S.C. § 1321(b)(2)(A)).

(2) Elements, compounds, mixtures, solutions or substances designated under section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Public Law 96-510, 42 U.S.C. § 9602).

(3) Hazardous wastes having the characteristics identified under or listed under section 3001 of the Solid Waste Disposal Act (Public Law 89-272, 42 U.S.C. § 6921).

(4) Toxic pollutants listed under section 307(a) of the Federal Water Pollution Control Act (62 Stat. 1155, 33 U.S.C. § 1317(A)).

(5) Hazardous air pollutants listed under section 112 of the Clean Air Act (Public Law 95-95, 42 U.S.C. § 7412).

(6) Imminently hazardous chemical substances or mixtures with respect to which the administrator of the United States Environmental Protection Agency has taken action under section 7 of the Toxic Substances Control Act (Public Law 94-469, 15 U.S.C. § 2606).

(7) Hazardous wastes as defined by regulations promulgated under this subchapter.

"Release." Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment which occurred at a point in time or which continues to occur. The term does not include:

(1) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, watercraft or pipeline

1 pumping station engine.

2 (2) Release of source, by-product or special nuclear
3 material from nuclear incident, as those terms are defined in
4 section 11 of the Atomic Energy Act of 1954 (68 Stat. 921, 42
5 U.S.C. § 2014), if the release is subject to requirements
6 with respect to financial protection established by the
7 Federal Nuclear Regulatory Commission under section 170 of
8 the Atomic Energy Act of 1954 (42 U.S.C. § 2210).

9 (3) Release of source, by-product or special nuclear
10 material from any processing site designated pursuant to
11 section 102(a)(1) or 302(a) of the Uranium Mill Tailings
12 Radiation Control Act of 1978 (Public Law 95-604, 42 U.S.C. §
13 7912(a)(1) or 7942(a)).

14 § 8422. Strict liability.

15 For the purpose of this subchapter, a person is responsible
16 for a release of a hazardous substance from a facility if the
17 person:

18 (1) owned or operated the facility at the time the
19 hazardous substance was placed or came to be located in or on
20 the facility during the time of the release or threatened
21 release or at any time between those occurrences;

22 (2) owned or possessed the hazardous substance and
23 arranged, by contract, agreement or otherwise, for the
24 disposal, treatment or transport for disposal or treatment of
25 the hazardous substance; or

26 (3) accepted the hazardous substance for transport to a
27 disposal or treatment facility and either selected the
28 facility to which it was transported or disposed of the
29 substance in a manner contrary to law.

30 A person who is responsible for a release of a hazardous

1 substance from a facility shall be strictly liable for all
2 damages recoverable at common law which result from the release
3 or to which the release significantly contributes.

4 § 8423. Causation.

5 In adjudicating the question of whether a plaintiff's
6 personal injury or disease was caused by the release of a
7 hazardous substance, the question shall be submitted to the
8 trier of fact if the plaintiff shows evidence sufficient to
9 enable the trier of fact to find that it is more likely than not
10 that the plaintiff's exposure to the hazardous substance found
11 in the release caused or increased the risk of injury or disease
12 suffered by the plaintiff.

13 § 8424. Limitation of action.

14 An action authorized by this subchapter shall be brought
15 within two years from the time at which the injury or disease
16 manifested itself to the degree sufficient to give reasonable
17 notice that a cause of action may exist.

18 SUBCHAPTER D

19 PROTECTIONS FOR EMPLOYEES

20 Sec.

21 8451. Short title of subchapter.

22 8452. Hazardous condition warning and refusal.

23 8453. Whistleblower protection.

24 § 8451. Short title of subchapter.

25 This subchapter shall be known and may be cited as the
26 Hazardous Condition and Warning Act.

27 § 8452. Hazardous condition warning and refusal.

28 (a) Rights of employees.--No employer may discharge or
29 discipline an employee for:

30 (1) reporting a hazardous condition;

1 (2) refusing to be exposed to a hazardous condition;
2 (3) warning another employee of a hazardous condition to
3 which the latter is or could be exposed.

4 (b) Determining existence of hazardous condition.--In the
5 case of a refusal or warning, each of the following shall apply:

6 (1) A reasonable individual, having knowledge by
7 education, training and experience necessary for the
8 performance of the employee's job, in the circumstances
9 confronting the employee, would conclude that a hazardous
10 condition exists.

11 (2) There is sufficient time, due to the urgency of the
12 situation, to eliminate or abate the hazardous condition
13 through resort to regular statutory enforcement procedures.

14 (3) The employee notifies the employer of the hazardous
15 condition and requests its correction or abatement.

16 (4) The employer is unable or unwilling to correct or
17 abate the hazardous condition.

18 (c) Employee's remedy.--An employee who has been discharged
19 or disciplined in violation of this section may file suit
20 requesting compensatory and punitive damages, including, but not
21 limited to, attorney fees.

22 (d) Definitions.--As used in this section, the following
23 words and phrases shall have the meanings given to them in this
24 subsection:

25 "Employer." The term shall not include a Commonwealth agency
26 or a political subdivision or its agency.

27 "Hazardous condition." A condition in a workplace that:

28 (1) Causes or creates a substantial risk of death,
29 disease or serious physical harm, either imminently or a
30 result of long-term exposure.

1 (2) Contains a risk that is greater than the ordinary
2 expected risk inherent in an employment after all feasible
3 safety and health precautions have been taken.

4 (3) Results from the employer's violation of health and
5 safety standards established by Federal or State statutes or
6 regulations, local ordinances, collective bargaining
7 agreements or industrial codes.

8 § 8453. Whistleblower protection.

9 No employer may discharge, threaten or otherwise discriminate
10 or retaliate against an employee regarding the employee's
11 compensation or terms, conditions, location or privileges of
12 employment because the employee reports or is about to make a
13 report, verbally or in writing, to the employer or an
14 appropriate authority of an instance of wrongdoing under this
15 chapter. The remedies, penalties and enforcement procedure for
16 violations of this section shall be as provided in the act of
17 December 12, 1986 (P.L.1559, No.169), known as the Whistleblower
18 Law. The damages shall be provided by section 8452(c) (relating
19 to hazardous condition warning and refusal).

20 SUBCHAPTER E

21 EMPLOYEE TERMINATION

22 Sec.

23 8471. Purpose.

24 8472. Definitions.

25 8473. Right to terminate.

26 8474. Exceptions.

27 8475. Issue preclusion.

28 8476. Cause of action.

29 § 8471. Purpose.

30 Many employees in this Commonwealth are terminated without

1 explanation. The purpose of this subchapter is to require that
2 good cause exists to justify an employment termination, thereby
3 stabilizing the work force, and providing a reasonable comfort
4 level to employees while ensuring employers' flexibility.

5 § 8472. Definitions.

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

9 "Good cause." Legitimate business reasons as would be
10 acceptable to a reasonable employer existing at the time of the
11 termination.

12 "Legitimate business reasons." The term includes any conduct
13 inimical to the orderly functioning of the business, including
14 drug or alcohol use which represents actual impairment of the
15 employee during working hours, theft from the employer or other
16 criminal conduct affecting the employment relationship.

17 § 8473. Right to terminate.

18 (a) Good cause required.--In order for an employee to be
19 terminated, good cause must be shown. Within three business days
20 of the termination, the employee shall be given the reason in
21 writing for the termination. If exigent circumstances prevent
22 the giving of the reasons, the reasons shall be provided in
23 writing within 20 days of termination together with an
24 explanation as to what prevented earlier notice.

25 (b) Elements of good cause.--A termination is for good cause
26 if it is not arbitrary, based on false information or
27 accusations or motivated by a violation of public policy
28 including statutory or regulatory protections.

29 § 8474. Exceptions.

30 Good cause need not be shown where termination is due to bona

1 fide plant closing or economic reasons, provided that such
2 layoffs or terminations do not represent an intent to evade the
3 intent of this chapter. This chapter is inapplicable in any
4 circumstance if:

5 (1) a collective bargaining agreement is in force which
6 includes provisions relating to employee termination
7 procedures and the procedures require good cause for
8 termination; or

9 (2) the employee is employed by a Commonwealth agency or
10 a local agency.

11 This chapter is in addition to and not in abrogation of any
12 collective bargaining rights or other employee protections
13 provided by law.

14 § 8475. Issue preclusion.

15 An unappealed finding in an unemployment compensation
16 proceeding that an employee was terminated for a compelling and
17 necessitous reason or for other reasons inimical to an
18 employer's interests shall be binding upon the parties to the
19 extent that both in advance of the decision have agreed in
20 writing that it would be conclusive on the termination issue and
21 that the employee would be reinstated if the final decision was
22 that the termination was not for a compelling and necessitous
23 reason.

24 § 8476. Cause of action.

25 An employee terminated without cause shall have a cause of
26 action for damages, including actual economic loss and loss of
27 employment opportunity. This cause of action shall not abrogate
28 any other damage remedy or equitable relief available to the
29 employee. Attorney fees, costs and punitive damages shall be
30 allowed if the employer's conduct was intentional, undertaken in

1 bad faith, was willful or wanton or exhibited a reckless
2 indifference to the rights of the employee. Any action brought
3 by the employee in bad faith, maliciously, or in reckless
4 indifference to the facts shall result in an award to the
5 employer of attorney fees and costs.

6 Section 8. Section 8522(b)(2) of Title 42 is amended to
7 read:

8 § 8522. Exceptions to sovereign immunity.

9 * * *

10 (b) Acts which may impose liability.--The following acts by
11 a Commonwealth party may result in the imposition of liability
12 on the Commonwealth and the defense of sovereign immunity shall
13 not be raised to claims for damages caused by:

14 * * *

15 (2) Medical-professional liability.--Acts of health care
16 employees of Commonwealth agency medical facilities or
17 institutions or by a Commonwealth party who is a doctor,
18 dentist, nurse or related health care personnel and acts
19 which constitute corporate negligence by a Commonwealth
20 agency providing health care.

21 * * *

22 Section 9. Section 8542(a) of Title 42 is amended and
23 subsection (b) is amended by adding paragraphs to read:

24 § 8542. Exceptions to governmental immunity.

25 (a) Liability imposed.--A local agency shall be liable for
26 damages on account of an injury to a person or property within
27 the limits set forth in this subchapter if both of the following
28 conditions are satisfied and the injury occurs as a result of
29 one of the acts set forth in subsection (b):

30 (1) The damages would be recoverable under common law or

1 a statute creating a cause of action if the injury were
2 caused by a person not having available a defense under
3 section 8541 (relating to governmental immunity generally) or
4 section 8546 (relating to defense of official immunity); and

5 (2) The injury was caused by the negligent acts of the
6 local agency or an employee thereof acting within the scope
7 of his office or duties with respect to one of the categories
8 listed in subsection (b). As used in this paragraph,
9 "negligent acts" shall [not] include acts or conduct which
10 constitutes a crime, actual fraud, actual malice or willful
11 misconduct if the acts or conduct is done within the scope of
12 the office or duties.

13 (b) Acts which may impose liability.--The following acts by
14 a local agency or any of its employees may result in the
15 imposition of liability on a local agency:

16 * * *

17 (9) Medical professional liability.--Acts of health care
18 employees of a local agency or of the medical facilities or
19 institutions operated by a local agency.

20 (10) Toxic substances in schools.--A condition in or on
21 a school building or property resulting in pupils being
22 unreasonably exposed to levels of pesticide if the school
23 district or other local agency owning or operating the
24 building knew or should have known of the hazardous exposure.

25 (11) Willful misconduct of certain local agency
26 officials.--An act of willful misconduct by a public official
27 of a local agency done with the knowledge and actual or
28 implicit permission of the local agency.

29 (12) Failure to maintain computer system in connection
30 with 911 emergency response system.--The failure of a local

1 agency to maintain, upgrade or correct its computer system
2 which administers a 911 emergency response system unless the
3 agency can demonstrate that it made a good faith attempt to
4 maintain, upgrade or correct the system.

5 (13) Supervisory negligence.--The failure to supervise
6 in circumstances where the conduct or failure to act would be
7 negligent at common law.

8 * * *

9 Section 10. Section 8546 of Title 42 is amended to read:

10 § 8546. Defense of official immunity; high public official
11 immunity.

12 (a) General rule.--In any action brought against an employee
13 of a local agency for damages on account of an injury to a
14 person or property based upon claims arising from, or reasonably
15 related to, the office or the performance of the duties of the
16 employee, the employee may assert on his own behalf, or the
17 local agency may assert on his behalf:

18 (1) Defenses which are available at common law to the
19 employee.

20 (2) The defense that the conduct of the employee which
21 gave rise to the claim was authorized or required by law, or
22 that he in good faith reasonably believed the conduct was
23 authorized or required by law.

24 (3) The defense that the act of the employee which gave
25 rise to the claim was within the policymaking discretion
26 granted to the employee by law. For purposes of this
27 subsection, all acts of members of the governing body of a
28 local agency or of the chief executive officer thereof are
29 deemed to be within the policymaking discretion granted to
30 such person by law.

1 (b) High public official immunity.--In the case of a high
2 public official of a local agency, the common law defense of
3 official immunity is abolished if the claim arises out of
4 willful misconduct.

5 Section 11. Chapter 85 of Title 42 is amended by adding a
6 subchapter to read:

7 SUBCHAPTER D
8 CITIZENS SUITS

9 Sec.

10 8571. Citizens suits.

11 8572. Private attorney general.

12 § 8571. Citizens suits.

13 An incorporated or unincorporated association, one of whose
14 purposes relates to environmental concerns, shall have standing
15 to bring an action with regard to environmental matters.

16 § 8572. Private attorney general.

17 Any person may bring an action in the capacity of a private
18 attorney general for such equitable relief as may be authorized
19 by law, including consequential damages, attorney fees and costs
20 and, upon a showing of wanton or reckless misconduct, punitive
21 damages.

22 Section 12. This act shall take effect in 60 days.