COMMONWEALTH OF PENNSYLVANIA

LEGISLATIVE JOURNAL

TUESDAY, MAY 14, 1996

SESSION OF 1996 180TH OF THE GENERAL ASSEMBLY No. 32

HOUSE OF REPRESENTATIVES

The House convened at 11:05 a.m., e.d.t.

THE SPEAKER (MATTHEW J. RYAN) PRESIDING

PRAYER

The SPEAKER. Without objection, the prayer from today's special session will be printed in today's regular session Journal.

REV. WILLARD L. STRUNK, Chaplain of the House of Representatives and pastor of Grover Church of Christ, Grover, Pennsylvania, offered the following prayer:

Let us pray:

Our Father God, You who are our refuge and strength and ever-present help in trouble, therefore we will not fear. But when we consider Your ways, we stand in awe at Your greatness and Your holiness, and we realize that we fall short, that we have erred against You, so we seek Your forgiveness. O Lord, we thank You for that forgiveness and for every blessing that You graciously bestow upon us.

Today, as we come into this place and as these members of the House of Representatives assemble, we would come without fear and trepidation, knowing that You lead and direct as we allow You to do so. We pray that they would not neglect Your innumerable resources and Your great wisdom. We ask for confidence and justice as they consider the decisions before them this day.

And, Father, as we consider our marvelous Commonwealth, with its great resources, its beauty, its heritage, and the beautiful citizens of this State, we commit to You these leaders of courage and thoughtfulness, who give direction to those who dwell here, praying, O Lord, that You would lead and direct each of them and each citizen of Pennsylvania as we yield ourselves unto You, that we may live well-ordered lives, for we pray it in the name of the Holy One. Amen.

PLEDGE OF ALLEGIANCE DISPENSED WITH

The SPEAKER. Without objection, the Pledge of Allegiance will be dispensed with.

JOURNAL APPROVAL POSTPONED

The SPEAKER. Without objection, the approval of the Journal of Monday, May 13, 1996, will be postponed until printed.

JOURNALS APPROVED

The SPEAKER. The Journals for Tuesday, October 17, 1995, and Wednesday, October 18, 1995, will stand approved as printed. The Chair hears no objection.

LEAVES OF ABSENCE

The SPEAKER. The Chair recognizes the gentleman, Mr. Itkin, who requests leave for today's session for the lady from Philadelphia, Ms. WASHINGTON, and the lady from Philadelphia, Ms. BISHOP. Without objection, leaves are granted.

BILLS REPORTED FROM COMMITTEE, CONSIDERED FIRST TIME, AND TABLED

HB 748, PN 827 By Rep. CLYMER

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, providing for qualifications of Auditor General and State Treasurer.

STATE GOVERNMENT.

HB 2289, PN 2958 By Rep. CLYMER

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, providing for a maximum number of consecutive terms of office for members of the General Assembly.

STATE GOVERNMENT.

BILL REMOVED FROM TABLE

The SPEAKER. The Chair recognizes the gentleman, Mr. Perzel.

Mr. PERZEL. Mr. Speaker, I move that HB 1266, PN 1427, be taken from the table.

On the question,
Will the House agree to the motion?
Motion was agreed to.

BILL RECOMMITTED

The SPEAKER. The Chair recognizes the gentleman, Mr. Perzel.

Mr. PERZEL. Mr. Speaker, I move that HB 1266 be recommitted to the Committee on Appropriations.

On the question,
Will the House agree to the motion?
Motion was agreed to.

GUESTS INTRODUCED

The SPEAKER. The Chair is pleased to welcome to the hall of the House today Allison Gallo, a senior at Bellefonte High School in Centre County. She is the guest page of Representative Rudy here today. Her mother, Barb Gallo, is also a guest today, seated to the left of the rostrum. Would the Gallos please rise.

There are two other guest pages that I will introduce at this time. Here as the guests of Representative Patricia Vance are Greg Zehner and Noel Lawley. They are from East Pennsboro Middle School. Would these students please rise.

I saw four students rise, and I only had two names. I will have two more names in a minute.

ALTOONA AREA HIGH SCHOOL GIRLS BASKETBALL TEAM PRESENTED

The SPEAKER. The Chair recognizes the gentleman, Mr. Geist.

Mr. GEIST. Thank you very much, Mr. Speaker.

It certainly is a pleasure for me today to be here to honor the Altoona High School girls basketball team, the quad-A State champions.

Seated in the back, if they would stand up, I would like to have the members of the team back there stand up. There is one special young lady back there with them who played for Altoona High School, played on other State championship teams, and is now the assistant coach, Jennyfer Moran, and she is one dynamic young lady at Keith Junior High School.

Winning State championships in women's basketball has become the expected norm in the city of Altoona, and last year at this time we were here with a completely different team. The unique thing about it is, in my book, it is just not winning the State championship, it is that five women off that last year's team got Division I scholarships. This year's team has at least three. And when you consider what that is, that advantage to those families, that is like getting a $100,000 contract a year for playing high school basketball, and in the city of Altoona, that is just an absolutely wonderful thing to do.

Our coach, Art Taneyhill, behind us, is hanging it up after 20 years, building the most successful program in the United States of America. Twice he has been the United States coach of the number one high school team, USA Today's rankings, and has produced so many All-Americans, All-State players, that it is going to be a tremendous job to fill his shoes when he leaves.

Now, the good news for all you folks is that he will be back here again with the boys team, because he is going to go over and coach the Altoona High School boys team now, and once again we will be seeing Art Taneyhill and the Altoona teams, both boys and girls, down here in Harrisburg.

Behind me we have three of the players who are seniors on that team, and rather than read a House citation to you today, I thought I would ask Courtney Kaup, who is first team All-State, to say just a few words for the team very quickly, and then we will adjourn.

Thank you all very much for your attentiveness.

Courtney.

Miss KAUP. On behalf of the Altoona Lady Lions, I would like to thank Mr. Geist and the House of Representatives for inviting us down here today. It is a great honor, and it is really appreciated by all of us.

Also, I would like to thank Blair County for all their support throughout the years, and it is really appreciated. Thank you.

HOUSE BILLS INTRODUCED AND REFERRED

No. 2620 By Representatives PESCI, ROBERTS, JAMES, BELARDI, PHILLIPS, HALUSKA, COY, THOMAS, HERMAN, CALTAGIRONE, TRAVAGLIO, LYNCH, CAWLEY, VAN HORNE, D. W. SNYDER, DALEY, CLYMER, FAIRCHILD, E. Z. TAYLOR, GEORGE, MICHLOVIC, WALKO, KUKOVICH, BATTISTO, SANTONI, KAISER, MICOZZIE, MELIO, FICHTER, LAUGHLIN, BOSCOLA, HENNESSEY, ITKIN, LEDERER, TIGUE, OLASZ, CORPORA, JOSEPHS, L. I. COHEN, STABACK, VEON, HESS, ROONEY, GODSHALL, CURRY, PISTELLA, SAINATO, McCALL, YOUNGBLOOD, McGEEHAN, RAMOS, STERN and KENNEY

An Act amending the act of July 13, 1987 (P.L.348, No.67), known as the Vietnam Veterans Health Initiative Act, extending the expiration date.

Referred to Committee on VETERANS AFFAIRS AND EMERGENCY PREPAREDNESS, May 14, 1996.

No. 2621 By Representatives VEON, DeLUCA, COY, LUCYK, WALKO, CAPPABIANCA, GEORGE, CALTAGIRONE, BELARDI, SANTONI, SURRA, KUKOVICH, THOMAS, READSHAW, GAMBLE, ROBERTS, SHANER, JAROLIN, OLASZ, VAN HORNE, CURRY, STABACK, TIGUE, MELIO, DALEY, EVANS, ROONEY, TRAVAGLIO, STURLA, BLAUM, JAMES, MUNDY, BOSCOLA and TRELLO

An Act amending the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act, further providing for insurance rates.

Referred to Committee on LABOR RELATIONS, May 14, 1996.

HOUSE RESOLUTION INTRODUCED AND REFERRED

No. 377 By Representatives CAWLEY and TIGUE

A Resolution directing the Judiciary Committee to conduct hearings and propose legislation strengthening guardianship laws relating to incapacitated persons.

Referred to Committee on RULES, May 14, 1996.

GUESTS INTRODUCED

The SPEAKER. The Chair is pleased to welcome to the hall of the House today Megan Thomas and Steve Richardson from Mechanicsburg High School. They are here today as the guests of Representative Jerry Nailor, seated in the well of the House. Would the guests please rise.

These are the two that we missed that stood up before, I think.

BILLS REPORTED FROM COMMITTEE, CONSIDERED FIRST TIME, AND TABLED

HB 2517, PN 3557 (Amended) By Rep. GANNON

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, defining the offense of trademark counterfeiting; and providing penalties.

JUDICIARY.

HB 2580, PN 3558 (Amended) By Rep. GANNON

An Act amending the act of December 19, 1990 (P.L.1391, No.215), known as the Motivational Boot Camp Act, further providing for definitions.

JUDICIARY.

HB 2592, PN 3480 By Rep. GANNON

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for exceptions to the interception and disclosure of communications by inmates of county correctional institutions.

JUDICIARY.

SB 1204, PN 2006 (Amended) By Rep. GANNON

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for hindering apprehension or prosecution.

JUDICIARY.

SB 1323, PN 2007 (Amended) By Rep. GANNON

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for regulations on dissemination of criminal history record information.

JUDICIARY.

MASTER ROLL CALL

The SPEAKER. The Chair is about to take today's master roll call. Members will proceed to vote.

The following roll call was recorded:

PRESENT–200

Adolph	Evans	Lynch	Sather
Allen	Fairchild	Maitland	Saylor
Argall	Fajt	Major	Schroder
Armstrong	Fargo	Manderino	Schuler
Baker	Feese	Markosek	Scrimenti
Bard	Fichter	Marsico	Semmel
Barley	Fleagle	Masland	Serafini
Battisto	Flick	Mayernik	Shaner
Bebko-Jones	Gamble	McCall	Sheehan
Belardi	Gannon	McGeehan	Smith, B.
Belfanti	Geist	McGill	Smith, S. H.
Birmelin	George	Melio	Snyder, D. W.
Blaum	Gigliotti	Merry	Staback
Boscola	Gladeck	Michlovic	Stairs
Boyes	Godshall	Micozzie	Steelman
Brown	Gordner	Mihalich	Steil
Browne	Gruitza	Miller	Stern
Bunt	Gruppo	Mundy	Stetler
Butkovitz	Habay	Myers	Stish
Buxton	Haluska	Nailor	Strittmatter
Caltagirone	Hanna	Nickol	Sturla
Cappabianca	Harhart	Nyce	Surra
Carn	Hasay	O'Brien	Tangretti
Carone	Haste	Olasz	Taylor, E. Z.
Cawley	Hennessey	Oliver	Taylor, J.
Chadwick	Herman	Perzel	Thomas
Civera	Hershey	Pesci	Tigue
Clark	Hess	Petrarca	Travaglio
Clymer	Horsey	Petrone	Trello
Cohen, L. I.	Hutchinson	Pettit	Trich
Cohen, M.	Itkin	Phillips	True
Colafella	Jadlowiec	Pistella	Tulli
Colaizzo	James	Pitts	Vance
Conti	Jarolin	Platts	Van Horne
Cornell	Josephs	Preston	Veon
Corpora	Kaiser	Ramos	Vitali
Corrigan	Keller	Raymond	Walko
Cowell	Kenney	Readshaw	Waugh
Coy	King	Reber	Williams
Curry	Kirkland	Reinard	Wogan
Daley	Krebs	Rieger	Wozniak
DeLuca	Kukovich	Roberts	Wright, D. R.
Dempsey	LaGrotta	Robinson	Wright, M. N.
Dent	Laughlin	Roebuck	Yewcic
Dermody	Lawless	Rohrer	Youngblood
DeWeese	Lederer	Rooney	Zimmerman
DiGirolamo	Leh	Rubley	Zug
Donatucci	Lescovitz	Rudy	
Druce	Levdansky	Sainato	Ryan,
Durham	Lloyd	Santoni	Speaker
Egolf	Lucyk		

ADDITIONS–0

NOT VOTING–0

EXCUSED–3

Bishop Farmer Washington

CALENDAR

BILLS ON THIRD CONSIDERATION

BILLS PASSED OVER

The SPEAKER. On page 1 of today's calendar, HB 873, HB 2442, and SB 1371 are all over. The Chair hears no objection.

Page 2. SB 1047 is over.

* * *

The House proceeded to third consideration of **HB 2165, PN 2717,** entitled:

An Act amending Title 34 (Game) of the Pennsylvania Consolidated Statutes, further providing for protection of property.

On the question,

Will the House agree to the bill on third consideration?

Bill was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?

Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

YEAS–199

Adolph	Fairchild	Lynch	Sather
Allen	Fajt	Maitland	Saylor
Argall	Fargo	Major	Schroder
Armstrong	Feese	Manderino	Schuler
Baker	Fichter	Markosek	Scrimenti
Bard	Fleagle	Marsico	Semmel
Barley	Flick	Masland	Serafini
Battisto	Gamble	Mayernik	Shaner
Bebko-Jones	Gannon	McCall	Sheehan
Belardi	Geist	McGeehan	Smith, B.
Belfanti	George	McGill	Smith, S. H.
Birmelin	Gigliotti	Melio	Snyder, D. W.
Blaum	Gladeck	Merry	Staback
Boscola	Godshall	Michlovic	Stairs
Boyes	Gordner	Micozzie	Steelman
Brown	Gruitza	Mihalich	Steil
Browne	Gruppo	Miller	Stern
Bunt	Habay	Mundy	Stetler
Butkovitz	Haluska	Myers	Stish
Buxton	Hanna	Nailor	Strittmatter
Caltagirone	Harhart	Nickol	Sturla
Cappabianca	Hasay	Nyce	Surra
Carone	Haste	O'Brien	Tangretti
Cawley	Hennessey	Olasz	Taylor, E. Z.
Chadwick	Herman	Oliver	Taylor, J.
Civera	Hershey	Perzel	Thomas
Clark	Hess	Pesci	Tigue
Clymer	Horsey	Petrarca	Travaglio
Cohen, L. I.	Hutchinson	Petrone	Trello
Cohen, M.	Itkin	Pettit	Trich
Colafella	Jadlowiec	Phillips	True
Colaizzo	James	Pistella	Tulli
Conti	Jarolin	Pitts	Vance
Cornell	Josephs	Platts	Van Horne
Corpora	Kaiser	Preston	Veon
Corrigan	Keller	Ramos	Vitali
Cowell	Kenney	Raymond	Walko
Coy	King	Readshaw	Waugh
Curry	Kirkland	Reber	Williams
Daley	Krebs	Reinard	Wogan
DeLuca	Kukovich	Rieger	Wozniak
Dempsey	LaGrotta	Roberts	Wright, D. R.
Dent	Laughlin	Robinson	Wright, M. N.
Dermody	Lawless	Roebuck	Yewcic
DeWeese	Lederer	Rohrer	Youngblood
DiGirolamo	Leh	Rooney	Zimmerman
Donatucci	Lescovitz	Rubley	Zug
Druce	Levdansky	Rudy	
Durham	Lloyd	Sainato	Ryan,
Egolf	Lucyk	Santoni	Speaker
Evans			

NAYS–0

NOT VOTING–1

Carn

EXCUSED–3

Bishop Farmer Washington

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk present the same to the Senate for concurrence.

* * *

The House proceeded to third consideration of **HB 2382, PN 3131,** entitled:

An Act amending Title 30 (Fish) of the Pennsylvania Consolidated Statutes, further providing for disabled veterans.

On the question,

Will the House agree to the bill on third consideration?

Bill was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?

Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

YEAS–200

Adolph	Evans	Lynch	Sather
Allen	Fairchild	Maitland	Saylor
Argall	Fajt	Major	Schroder
Armstrong	Fargo	Manderino	Schuler
Baker	Feese	Markosek	Scrimenti
Bard	Fichter	Marsico	Semmel
Barley	Fleagle	Masland	Serafini
Battisto	Flick	Mayernik	Shaner
Bebko-Jones	Gamble	McCall	Sheehan
Belardi	Gannon	McGeehan	Smith, B.
Belfanti	Geist	McGill	Smith, S. H.
Birmelin	George	Melio	Snyder, D. W.
Blaum	Gigliotti	Merry	Staback
Boscola	Gladeck	Michlovic	Stairs
Boyes	Godshall	Micozzie	Steelman
Brown	Gordner	Mihalich	Steil
Browne	Gruitza	Miller	Stern
Bunt	Gruppo	Mundy	Stetler
Butkovitz	Habay	Myers	Stish
Buxton	Haluska	Nailor	Strittmatter
Caltagirone	Hanna	Nickol	Sturla
Cappabianca	Harhart	Nyce	Surra
Carn	Hasay	O'Brien	Tangretti
Carone	Haste	Olasz	Taylor, E. Z.
Cawley	Hennessey	Oliver	Taylor, J.
Chadwick	Herman	Perzel	Thomas
Civera	Hershey	Pesci	Tigue
Clark	Hess	Petrarca	Travaglio
Clymer	Horsey	Petrone	Trello
Cohen, L. I.	Hutchinson	Pettit	Trich
Cohen, M.	Itkin	Phillips	True
Colafella	Jadlowiec	Pistella	Tulli
Colaizzo	James	Pitts	Vance
Conti	Jarolin	Platts	Van Horne
Cornell	Josephs	Preston	Veon
Corpora	Kaiser	Ramos	Vitali
Corrigan	Keller	Raymond	Walko
Cowell	Kenney	Readshaw	Waugh
Coy	King	Reber	Williams
Curry	Kirkland	Reinard	Wogan
Daley	Krebs	Rieger	Wozniak
DeLuca	Kukovich	Roberts	Wright, D. R.
Dempsey	LaGrotta	Robinson	Wright, M. N.
Dent	Laughlin	Roebuck	Yewcic
Dermody	Lawless	Rohrer	Youngblood
DeWeese	Lederer	Rooney	Zimmerman
DiGirolamo	Leh	Rubley	Zug
Donatucci	Lescovitz	Rudy	
Druce	Levdansky	Sainato	Ryan,
Durham	Lloyd	Santoni	Speaker
Egolf	Lucyk		

NAYS–0

NOT VOTING–0

EXCUSED–3

Bishop	Farmer	Washington

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk present the same to the Senate for concurrence.

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BILLS PASSED OVER

The SPEAKER. SB 19 is over.

Page 3 of today's calendar. SB 80, SB 577, and HB 974 on page 3 are over.

* * *

The House proceeded to third consideration of **HB 2488, PN 3277,** entitled:

An Act amending the act of June 25, 1982 (P.L.629, No.178), entitled "An act providing for an annual assessment for the necessary expenses of the association of district attorneys in counties of the first class," further providing for annual assessments for the association of district attorneys.

On the question,

Will the House agree to the bill on third consideration?

Bill was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?

The Chair recognizes the gentleman from Bucks County, Mr. DiGirolamo.

Mr. DiGIROLAMO. Thank you, Mr. Speaker.

HB 2488 very simply removes a cap that has been in place since 1982 on the assessment for the District Attorneys Association. It removes that cap and allows first-class counties to be charged the same as all the other counties, using the same formula. Very simple, commonsense bill. I ask for an affirmative vote.

The SPEAKER. The Chair thanks the gentleman.

On the question recurring,

Shall the bill pass finally?

The SPEAKER. Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

YEAS–193

Adolph	Evans	Lynch	Sather
Allen	Fairchild	Maitland	Saylor
Argall	Fajt	Major	Schroder
Armstrong	Fargo	Manderino	Schuler
Baker	Feese	Markosek	Scrimenti
Bard	Fichter	Marsico	Semmel
Barley	Fleagle	Masland	Serafini
Battisto	Flick	Mayernik	Shaner
Bebko-Jones	Gamble	McCall	Sheehan
Belardi	Gannon	McGeehan	Smith, B.
Belfanti	Geist	McGill	Smith, S. H.
Birmelin	George	Melio	Snyder, D. W.
Blaum	Gigliotti	Merry	Staback
Boscola	Gladeck	Michlovic	Stairs
Boyes	Godshall	Micozzie	Steelman
Brown	Gordner	Mihalich	Steil
Browne	Gruitza	Miller	Stern
Bunt	Gruppo	Mundy	Stetler
Buxton	Habay	Nailor	Stish

Caltagirone	Haluska	Nickol	Strittmatter
Cappabianca	Hanna	Nyce	Sturla
Carone	Harhart	O'Brien	Surra
Cawley	Hasay	Olasz	Tangretti
Chadwick	Haste	Oliver	Taylor, E. Z.
Civera	Hennessey	Perzel	Taylor, J.
Clark	Herman	Pesci	Thomas
Clymer	Hershey	Petrarca	Tigue
Cohen, L. I.	Hess	Petrone	Travaglio
Cohen, M.	Horsey	Pettit	Trello
Colafella	Hutchinson	Phillips	Trich
Colaizzo	Itkin	Pistella	True
Conti	Jadlowiec	Pitts	Tulli
Cornell	Jarolin	Platts	Vance
Corpora	Kaiser	Preston	Van Horne
Corrigan	Keller	Ramos	Veon
Cowell	Kenney	Raymond	Vitali
Coy	King	Readshaw	Walko
Curry	Kirkland	Reber	Waugh
Daley	Krebs	Reinard	Wogan
DeLuca	Kukovich	Rieger	Wozniak
Dempsey	LaGrotta	Roberts	Wright, D. R.
Dent	Laughlin	Robinson	Wright, M. N.
Dermody	Lawless	Roebuck	Yewcic
DeWeese	Lederer	Rohrer	Zimmerman
DiGirolamo	Leh	Rooney	Zug
Donatucci	Lescovitz	Rubley	
Druce	Levdansky	Rudy	Ryan,
Durham	Lloyd	Sainato	Speaker
Egolf	Lucyk	Santoni	

NAYS–7

Butkovitz	James	Myers	Youngblood
Carn	Josephs	Williams	

NOT VOTING–0

EXCUSED–3

Bishop	Farmer	Washington

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk present the same to the Senate for concurrence.

The SPEAKER. Did the gentleman, Mr. Vitali, seek recognition?

Mr. VITALI. Mr. Speaker, it is a moot point now, but some of the Democrats are operating without a presession report, so I was going to ask Mr. DiGirolamo, and perhaps I can just make this request to subsequent speakers, if they just give a brief explanation of the bill as it is voted.

The SPEAKER. If I understand what you have said, that is something that is peculiar to your caucus leadership, is it not?

Mr. VITALI. It is, but nevertheless, I am not suggesting you take any action with regard to the reports. I am just suggesting that speakers, as a courtesy, the prime sponsor simply give a brief explanation, because many of us rely on those aids and are without them at the moment.

The SPEAKER. Thank you.

* * *

The House proceeded to third consideration of **SB 790, PN 1936,** entitled:

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for collection and payment of court costs, restitution and fines.

On the question,
Will the House agree to the bill on third consideration?

Mr. **CALTAGIRONE** offered the following amendment No. **A2233**:

Amend Sec. 2 (Sec. 9730.1), page 4, line 24, by striking out "OF A COUNTY OR HIS DESIGNEE" and inserting
of the judicial district, county commissioner or designee of either

Amend Sec. 2 (Sec. 9730.1), page 4, line 29, by striking out "OR HIS DESIGNEE" and inserting
of the judicial district, county commissioner or designee of either

Amend Sec. 2 (Sec. 9730.1), page 5, line 15, by inserting after "COURT"
or the county commissioners

On the question,
Will the House agree to the amendment?

The SPEAKER. On the question of the amendment, the Chair recognizes the gentleman, Mr. Caltagirone.

Mr. CALTAGIRONE. Thank you, Mr. Speaker.

I believe this is an agreed-to amendment. SB 790 goes a long way towards ensuring that collectible costs, fines, and restitution will not languish on the court ledger. This provides for the county commissioners to contract with private collectors, and it will strengthen the intent of the bill. I had submitted this amendment so that all the counties will have an appropriate recourse for the collection of court costs, restitution, and fines, after the defendant is no longer on probation or parole or has served the maximum sentence.

Some questions concerning the jurisdiction of the president judge after sentencing has been served were brought forward to me after this amendment was prepared, and if the president judge does not assert the authority to contract for fines or fees or restitution with a private collection agency, this would allow the county commissioners to do so.

The county commissioners were in support of this amendment, as were the clerks of courts. I would ask for an affirmative vote. Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The gentleman, Mr. Thomas.

Mr. THOMAS. Mr. Speaker, may I interrogate the sponsor of this amendment?

The SPEAKER. The gentleman, Mr. Caltagirone, indicates he will stand for interrogation. You may begin.

Mr. THOMAS. Mr. Speaker, my interest is only in clarification. In what context does your amendment apply, or what are you hoping to achieve through your amendment?

Mr. CALTAGIRONE. Basically, what this would allow is for county commissioners to contract with private collectors for fines and costs and restitution, in addition to the president judges of the particular counties. The clerks of courts had asked for this, and the County Commissioners Association also supports the amendment.

Mr. THOMAS. Thank you.

Thank you, Mr. Speaker.

The SPEAKER. The Chair recognizes the gentleman from Delaware, Mr. Gannon.

Mr. GANNON. Thank you, Mr. Speaker.

Mr. Speaker, this amendment is agreed to.

On the question recurring,

Will the House agree to the amendment?

The following roll call was recorded:

YEAS–200

Adolph	Evans	Lynch	Sather
Allen	Fairchild	Maitland	Saylor
Argall	Fajt	Major	Schroder
Armstrong	Fargo	Manderino	Schuler
Baker	Feese	Markosek	Scrimenti
Bard	Fichter	Marsico	Semmel
Barley	Fleagle	Masland	Serafini
Battisto	Flick	Mayernik	Shaner
Bebko-Jones	Gamble	McCall	Sheehan
Belardi	Gannon	McGeehan	Smith, B.
Belfanti	Geist	McGill	Smith, S. H.
Birmelin	George	Melio	Snyder, D. W.
Blaum	Gigliotti	Merry	Staback
Boscola	Gladeck	Michlovic	Stairs
Boyes	Godshall	Micozzie	Steelman
Brown	Gordner	Mihalich	Steil
Browne	Gruitza	Miller	Stern
Bunt	Gruppo	Mundy	Stetler
Butkovitz	Habay	Myers	Stish
Buxton	Haluska	Nailor	Strittmatter
Caltagirone	Hanna	Nickol	Sturla
Cappabianca	Harhart	Nyce	Surra
Carn	Hasay	O'Brien	Tangretti
Carone	Haste	Olasz	Taylor, E. Z.
Cawley	Hennessey	Oliver	Taylor, J.
Chadwick	Herman	Perzel	Thomas
Civera	Hershey	Pesci	Tigue
Clark	Hess	Petrarca	Travaglio
Clymer	Horsey	Petrone	Trello
Cohen, L. I.	Hutchinson	Pettit	Trich
Cohen, M.	Itkin	Phillips	True
Colafella	Jadlowiec	Pistella	Tulli
Colaizzo	James	Pitts	Vance
Conti	Jarolin	Platts	Van Horne
Cornell	Josephs	Preston	Veon
Corpora	Kaiser	Ramos	Vitali
Corrigan	Keller	Raymond	Walko
Cowell	Kenney	Readshaw	Waugh
Coy	King	Reber	Williams
Curry	Kirkland	Reinard	Wogan
Daley	Krebs	Rieger	Wozniak
DeLuca	Kukovich	Roberts	Wright, D. R.
Dempsey	LaGrotta	Robinson	Wright, M. N.
Dent	Laughlin	Roebuck	Yewcic
Dermody	Lawless	Rohrer	Youngblood
DeWeese	Lederer	Rooney	Zimmerman
DiGirolamo	Leh	Rubley	Zug
Donatucci	Lescovitz	Rudy	
Druce	Levdansky	Sainato	Ryan,
Durham	Lloyd	Santoni	Speaker
Egolf	Lucyk		

NAYS–0

NOT VOTING–0

EXCUSED–3

Bishop	Farmer	Washington

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question,

Will the House agree to the bill on third consideration as amended?

Mr. **CHADWICK** offered the following amendment No. **A2668**:

Amend Title, page 1, line 2, by inserting after "Statutes,"
providing for medical and health related malpractice procedure; prescribing the powers and duties of the Insurance Department; providing for a joint underwriting plan, for the Arbitration Panels for Health Care, for compulsory screening of claims, for collateral sources requirement, and for limitation on contingent fee compensation; establishing a Catastrophe Loss Fund; providing for disclosure by physicians, for damages, for liability and practice and procedure in medical malpractice actions and for professional liability;

Amend Title, page 1, line 5, by removing the period after "fines" and inserting

; providing penalties; and making repeals.

Amend Bill, page 2, lines 7 through 9, by striking out all of said lines and inserting

Section 1. Title 42 of the Pennsylvania Consolidated Statutes is amended by adding a chapter to read:

CHAPTER 86
MEDICAL MALPRACTICE

Subchapter
A. Preliminary Provisions.
B. Professional Liability Claims.
C. Pretrial Procedure.
D. Trial Procedure.
E. Mandatory Reporting.
F. Arbitration Agreements.
G. Medical Professional Liability Catastrophe Loss Fund.
H. Availability of Insurance.
I. Disciplinary Proceedings.
J. Miscellaneous Provisions.

SUBCHAPTER A
PRELIMINARY PROVISIONS

Sec.
8601. Declaration of policy.
8602. Definitions.

§ 8601. Declaration of policy.–The General Assembly finds and declares as follows:

(1) There are serious problems with the current system for resolving the claims of individuals who believe themselves to have been injured by the medical negligence of health care providers. Those problems include, but are not limited to, the following:

(i) The cost of resolving those medical negligence claims is rapidly increasing and is becoming an increasingly large and important component of the cost of health care and of the expenses incurred by health care consumers.

(ii) The current system further increases costs by inducing health care providers to engage in defensive health care practices, such as the conduct of tests and procedures primarily to produce protection against legal actions.

(iii) The current system unnecessarily increases costs by allowing individuals to receive compensation for expenses for which they have already been, or are entitled to be, compensated.

(iv) These costs are ultimately borne by consumers of health care in this Commonwealth, increasing the costs they must pay for health care.

(v) The current system also inefficiently resolves medical negligence claims in that an excessive period of time elapses between the filing of a claim in court and its resolution.

(vi) The imposition of damages for delays in the resolution of claims, unless imposed as a sanction for dilatory, obdurate or vexatious conduct, is unfair and adversely affects the substantive rights of the individuals against whom they are imposed.

(2) It is necessary to take actions to:

(i) Seek to limit the costs of the present system while increasing its efficiency and equity.

(ii) Make professional liability insurance readily available.

§ 8602. Definitions.–The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Administrator." The office of administrator for Arbitration Panels for Health Care.

"Arbitration panel." Arbitration Panels for Health Care.

"Claims made." A policy of professional liability insurance that would limit or restrict the liability of the insurer under the policy to only those claims made or reported during the currency of the policy period and would exclude coverage for claims reported subsequent to the termination even when such claims resulted from occurrences during the currency of the policy period.

"Commissioner." The Insurance Commissioner of this Commonwealth.

"Director." The director of the Medical Professional Liability Catastrophe Loss Fund.

"Fund." The Medical Professional Liability Catastrophe Loss Fund established in subchapter G (relating to Medical Professional Liability Catastrophe Loss Fund).

"Government." The Government of the United States, any state, any political subdivision of a state, any instrumentality of one or more states, or any agency, subdivision, or department of any such government, including any corporation or other association organized by a government for the execution of a government program and subject to control by a government, or any corporation or agency established under an interstate compact or international treaty.

"Health care provider." A primary health center or a person, corporation, facility, institution or other entity licensed or approved by the Commonwealth to provide health care or professional medical services as a medical doctor, an osteopath, a certified nurse midwife, a podiatrist, hospital nursing home or birth center.

"Informed consent." The consent of a patient to the performance of a major invasive procedure.

"Licensure Board." The State Board of Medicine, the State Board of Osteopathic Medicine, the State Board of Podiatry, the Department of Public Welfare and the Department of Health.

"Patient." A natural person who receives or should have received health care from a licensed health care provider.

"Primary health center." A community-based nonprofit corporation meeting standards prescribed by the Department of Health, which provides preventive, diagnostic, therapeutic and basic emergency health care by licensed practitioners who are employees of the corporation or under contract to the corporation.

"Professional liability insurance." Insurance against liability on the part of a health care provider arising out of any tort or breach of contract causing injury or death resulting from the furnishing of medical services which were or should have been provided.

SUBCHAPTER B
PROFESSIONAL LIABILITY CLAIMS

Sec.
8611. Informed consent.
8612. Absence of warranty.
8613. Collateral source.
8614. Punitive damages.
8615. Statute of limitations.
8616. Dilatory or frivolous motions, claims and defenses.

§ 8611. Informed consent.

(a) General rule.–Except in emergencies and in other situations as the court deems appropriate, a physician owes a duty to a patient to obtain the informed consent of the patient or his authorized representative prior to performing a major invasive procedure.

(b) Description of procedure.–Consent is informed if the patient has been given a description of the procedure and the risks and alternatives that a physician acting in accordance with accepted medical standards of medical practice would provide.

(c) Presumption.–

(1) Written consent to a procedure shall create a presumption that the following is true:

(i) The patient consented to the procedure.

(ii) The patient was apprised of all risks or alternatives to the procedure that a physician acting in accordance with accepted medical standards of medical practice would provide.

(2) The presumption under paragraph (1) shall only be overcome by clear and convincing evidence.

(d) Construction.–Nothing in this section shall be construed as imposing a duty on a physician to apprise a patient of information:

(1) the patient knows or should know;

(2) the patient has requested not to be revealed to him; or

(3) which would be detrimental to the patient's health if it were known by the patient.

(e) Higher duty.–A physician shall not be held to a higher duty to obtain a patient's consent than provided in this section in the absence of a written contract with the patient which expressly imposes the higher duty on the physician.

(f) Expert testimony.–Expert testimony is required to determine whether the procedure was a major invasive procedure and to identify the risks of a procedure, the alternatives to a procedure and the risks of these alternatives as well as the causal connection between the conduct and the injury.

(g) Failure to obtain consent.–A health care provider is liable for failure to obtain the informed consent only if the health care provider had a duty to do so, failed to do so and it is shown that a reasonable patient would not have agreed to the procedure had he or she been fully informed. An action alleging failure to obtain informed consent shall sound in negligence only.

§ 8612. Absence of warranty.

A health care provider is neither a warrantor nor a guarantor of a cure or an effective treatment to an individual in the absence of a written contract with the individual expressly imposing such a duty on the health care provider.

§ 8613. Collateral source.

(a) Certain benefits not recoverable.–Public benefits which a claimant has received prior to trial, or which a claimant will receive in the future, as a consequence of the injury which gives rise to the claim at issue, shall not be recoverable as an item of damage.

(b) Group benefits not recoverable.–Group benefits that a claimant has received prior to trial, or will receive in the future, from a group hospital, medical or disability program as a consequence of the injury which gives rise to the claim at issue, shall not be recoverable as an item of damage.

(c) Deduction from verdict.–

(1) Following the rendering of a verdict by the trier of fact, the court shall deduct from said verdict all amounts of public and group benefits as set forth in subsections (a) and (b).

(2) The court shall be advised of the existence of provisions for subrogation in a contract applicable to amounts recovered by the plaintiff.

(3) The trier of fact shall be directed by special interrogatory to identify each element of damages and the dollar amount allocated to each element of damages to enable the court to enter appropriate offsets as required hereunder.

(d) Exceptions.–The partial abrogation of the collateral source in subsections (a) and (b) do not apply to the following:

(1) A financial benefit that a claimant has received or may receive by virtue of an insurance policy or other benefits program for which the premium was paid out-of-pocket by the claimant, a member of the claimant's family residing in the same household or a person obligated by law to provide support to the claimant.

(2) Life insurance, pension or profit-sharing plans or other deferred compensation plans.

(3) Public benefits paid or payable under a program which, under Federal statute, provides a right of reimbursement that supersedes State law for the amount of benefits paid from a verdict or settlement and which right of reimbursement supersedes State law.

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

"Group benefits." Compensation or benefits, the cost of which has been paid by the employer of the claimant, a member of the claimant's household or an individual legally responsible for the claimant.

"Public benefits." Compensation or benefits paid, payable or required by the Federal Government, a State government or a local government and any other public programs providing medical benefits, including, but not limited to, Social Security and workers' compensation.

§ 8614. Punitive damages.

(a) General rule.–Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others. In assessing punitive damages, the trier of fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause and the wealth of the defendant.

(b) Gross negligence insufficient.–A showing of gross negligence is insufficient to support an award of punitive damages.

(c) Limit on punitive damages.–Punitive damages shall not exceed 200% of the compensatory damages awarded.

(d) Vicarious liability.–Punitive damages shall not be awarded against a party who is only vicariously liable for the actions of its agent which caused the injury unless it can be shown, by clear and convincing evidence, that the party knew of and endorsed the conduct by its agent which resulted in the award of punitive damages.

(e) Award of punitive damages.–

(1) Where punitive damages are claimed, the trier of fact shall first state only whether or not punitive damages shall be awarded subject to the standard set forth in subsection (a). In any action where a defendant has been found liable for punitive damages, the trier of fact shall separately determine the amount of such damages. Evidence of a defendant's wealth or financial condition shall be discoverable or admissible only after a finding of liability for punitive damages has been made under this subsection.

(2) If a claim for punitive damages is found by the court to be without a reasonable basis to support a good faith belief that a punitive damage claim exists, the court, upon motion or upon its own initiative, shall impose upon the person who signed the pleading or a representative party, or both, an appropriate sanction which may include an order to pay to the other party the amount of the reasonable expenses incurred because of the claim being filed, including a reasonable attorney fee.

§ 8615. Statute of limitations.

(a) General rule.–Except as provided in subsection (b) or (c), an action asserting a medical negligence claim must be commenced within two years of the date the injured individual knew, or should have known by using reasonable diligence, of the injury and its cause or within four years from the date of the breach of duty or other event causing the injury, whichever is earlier.

(b) Foreign object.–If the injury is, or was, caused by a foreign object left in the individual's body, the four-year limitation in subsection (a) shall not apply.

(c) Minors.–If the injured individual is a minor under eight years of age, the action must be commenced within four years after the minor's parent or guardian knew, or should have known by using reasonable diligence, of the injury and its cause or within four years from the minor's eighth birthday, whichever is earlier.

(d) Death and survival actions.–If the claim is brought under 42 Pa.C.S. § 8301 (relating to death action) or 8302 (relating to survival action), the action must be commenced within the time period set forth in subsections (a), (b) and (c) or within two years after the death, whichever is earlier.

(e) Actions not revived.–No cause of action barred prior to the effective date of this section shall be revived by reason of the enactment of this section.

(f) Health care providers.–If the basic coverage insurance carrier receives notice of a complaint filed against a health care provider subject to more than four years after the breach of duty or other event causing the injury occurred which complaint is filed within the time limits set forth in this section, the action shall be defended and paid by the fund. If the complaint is filed after four years because of the willful concealment by the health care provider or the provider's basic coverage insurance carrier, the fund shall have the right of full indemnity, including defense costs, from the health care provider or the insurance carrier.

§ 8616. Dilatory or frivolous motions, claims and defenses.

(a) Signature.–On a pleading, motion or other paper filed in an action, the signature of an attorney or party constitutes a certification of all of the following:

(1) The attorney or party has read the document that is being signed.

(2) To the best of the attorney's or party's knowledge, information and belief formed after reasonable inquiry, the document is well-grounded in fact.

(3) Claims or defenses are warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law. This paragraph applies only to a signature by an attorney.

(4) The document is not being filed for purposes of delay or of needless increase in the cost of the litigation.

(b) Pleading, etc., not signed.–If a pleading, motion or other paper filed in an action is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party.

(c) False pleading.–If a certification under subsection (a) is false, the court, upon motion or upon its own initiative, shall impose upon the person who signed the document or a represented party, or both, an appropriate sanction. A sanction under this subsection may include an order to pay to the other party the amount of the reasonable expenses incurred because of the filing, including a reasonable attorney fee.

SUBCHAPTER C
PRETRIAL PROCEDURE

Sec.
8621. Complaint.
8622. Limitation on discovery.
8623. Expert reports.
8624. Discovery conference.
8625. Conciliation schedule.
8626. Pretrial conference.
8627. Affidavit of noninvolvement.

§ 8621. Complaint.

(a) Complaint to be signed.– A complaint of a plaintiff represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name. The attorney's address shall be stated. The signature of an attorney constitutes a certificate that the attorney has read the pleading; that the attorney has performed a reasonable investigation of the facts and applicable law; and that, based upon that investigation, there is good ground to support the alleged facts and each cause of action asserted against a defendant.

(b) Standard of care.–If a complaint alleges that a defendant deviated from a standard of care, the signature of an attorney further constitutes certification that the attorney has a report from a qualified expert which states the standard of care; the expert's opinion that, based upon the information available after reasonable investigation, there is reason to believe the defendant deviated from that standard; and the information upon which the expert bases the opinion.

(c) Sanctions.–If a certification under subsections (a) and (b) is false or if the expert in subsection (b) is not qualified, the court, upon motion or upon its own initiative, shall impose upon the person who signed the document or a represented party, or both, an appropriate sanction. A sanction under this section may include dismissal of the action with prejudice, or an order to pay to the other party the amount of the reasonable expenses incurred because of the filing, including a reasonable attorney fee.

§ 8622. Limitation on discovery.

Discovery shall be completed within one year after a claim is commenced. Discovery may be extended for an additional period of up to 180 days upon filing of a petition with the court showing good cause for extension within one year after a claim is commenced.

§ 8623. Expert reports.

No party shall be permitted to have a witness testify as an expert unless the other parties have been provided with a trial expert report as required by section 8621 (relating to complaint). A plaintiff shall distribute trial expert reports within three months after commencement of the action. A defendant shall distribute trial expert reports within six months after commencement of the action. The trial expert report shall state the substance of the facts and opinions to which the expert will testify and summarize the grounds for each opinion. A party may be exempted from the requirements of this section upon the filing of a petition showing good cause for the exemption.

§ 8624. Discovery conference.

(a) When called.–At any time after commencement of the action, the court may direct the attorneys for the parties to appear for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes all of the following:

(1) A statement of the issues as they then appear.

(2) A proposed plan and schedule of discovery.

(3) Any limitations proposed to be placed on discovery.

(4) Any other proposed orders with respect to discovery.

(5) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion.

(b) Participation.–Each party and each attorney are under a duty to participate in good faith in the framing of a discovery plan. Notice of the motion shall be served on all parties. Objections of additions to matters set forth in the motion shall be served not later than ten days after service of the motion.

(c) Order.–Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery; setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

(d) Combination.–Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference required by section 8626 (relating to pretrial conference).

§ 8625. Conciliation schedule.

(a) When held.–Within 90 days after the conclusion of the discovery period set forth in section 8622 (relating to limitation on discovery), the court shall hold at least one mandatory conciliation conference. The procedure for the conciliation conference shall be set forth in the Pennsylvania Rules of Civil Procedure.

(b) Conference request.–Any party may file a petition requesting that a conciliation conference be held prior to or after the conclusion of the discovery period. The petition shall certify that the parties agree the claim is ready for a conciliation conference and that meaningful settlement discussions would be helpful. The court may schedule a conference in this event.

§ 8626. Pretrial conference.

(a) General rule.–At least 30 days prior to trial, the court shall direct the attorneys for the parties to appear before it for a conference to consider:

(1) The simplification of the issues.

(2) The necessity or desirability of amendments to the pleadings.

(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof.

(4) The limitation of the number of expert witnesses.

(5) Such other matters as may aid in the disposition of the action.

(b) Order.–The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings and the agreements made by the parties as to any of the matters considered and which limits the issues for trial to those not disposed of by admissions or agreements of counsel. The order controls the subsequent course of the action unless it is modified to prevent manifest injustice. The court, in its discretion, may establish, by rule, a pretrial calendar on which actions may be placed for consideration.

§ 8627. Affidavit of noninvolvement.

The court shall dismiss without prejudice a defendant who files with the court an affidavit verifying that the defendant did not treat the patient does not employ a person who treated the patient and did not supervise a person while that person was engaged in the treatment of the patient. In any action which involves more than one defendant, a codefendant shall have the right to challenge an affidavit of noninvolvement by submitting an affidavit of challenge setting forth fact which contradict the assertion that the moving physician did not treat the patient, did not employ a person who treated the patient and did not supervise a person while that

person was engaged in the treatment of the patient. In the event that a defendant falsely files an affidavit of noninvolvement or a codefendant makes false statements in the affidavit of challenge, the court, upon motion or upon its own initiative, shall impose upon the person who signed the affidavit or represented party, or both, an appropriate sanction, including an order to pay to the other party the amount of the reasonable expenses incurred because of the filing, including a reasonable attorney fee.

SUBCHAPTER D
TRIAL PROCEDURE

Sec.
8631. Qualifications of expert.
8632. Advance payments.
8633. Delay damages.
8634. Periodic payment of future damages.

§ 8631. Qualifications of expert.

No person shall testify as a medical expert unless such person has educational and professional knowledge as a general foundation for his testimony, is duly licensed in any state of the United States and, in addition, has had personal experience and practical familiarity with the medical subject that is being considered and has been actively engaged in direct patient care in the practice of the medical subject about which he will testify. No person shall testify as a medical expert against a defendant board-certified specialist unless such person is board certified.

§ 8632. Advance Payments.

(a) General rule.–No advance payment made by the defendant health care provider or his professional liability insurer to or for the plaintiff shall be construed as an admission of liability for injuries or damages suffered by the plaintiff. Evidence of an advance payment shall not be admissible in a proceeding.

(b) Final award.–A final award in favor of the plaintiff shall be reduced to the extent of an advance payment. The advance payment shall insure to the exclusive benefit of the defendant or the insurer making the payment.

§ 8633. Delay damages.

Except as a sanction imposed by the court on a finding of dilatory, obdurate or vexatious conduct, no damages for delay shall be awarded and no interest shall accrue prior to judgment.

§ 8634. Periodic payment of future damages.

(a) General rule.–In any action in which a final verdict has been reached and which final verdict includes an award of future damages, the courts shall include in the judgment a requirement that future damages be paid by periodic or installment payments if the amount of future damages exceeds $200,000 or if, irrespective of the amount of the future damages, all parties concerned petition the court for payment of future damages by periodic or installment payments.

(b) Specific finding.–In entering a judgment ordering the payment of future damages by periodic payments, the courts shall make a specific finding as to the amount of periodic payments which will compensate the judgment creditor for future damages.

(c) Security.–As a condition to authorizing periodic payments of future damages, the courts shall require the judgment debtor to post security or to purchase an annuity adequate to assure full payment of future damages awarded by the judgment.

(d) Continuation of payment.–Money damages awarded for loss of future earnings shall not be reduced, nor payments terminated, by reason of the death of the judgment creditor. The payments shall continue to be made to individuals to whom the judgment creditor owed a duty of support immediately prior to death. If the judgment creditor dies without dependents, the obligation of the judgment debtor shall cease and remaining security, or any remaining portion of the annuity purchased, shall revert to the judgment debtor.

(e) Reduction to present value.–Notwithstanding any provision of in this section, a plaintiff may elect to accept payment of future damages reduced to its present value in lieu of any judgment for periodic payments.

SUBCHAPTER E
MANDATORY REPORTING

Sec.
8641. Reporting by malpractice insurers.
8642. Immunity for reporting.
8643. Action by professional licensure boards.
8644. Annual reports to general assembly.

§ 8641. Reporting by malpractice insurers.

Each malpractice insurer which makes payment under a policy of insurance in settlement, or partial settlement of, or in satisfaction of a judgment in a medical malpractice action or claim shall provide to the appropriate State board a true and correct copy of the report required to be filed with the Federal Government by section 421 of the Health Care Quality Improvement Act of 1986 (Public Law 99-660, 42 U.S.C. § 11101 et seq.). The copy of the report required by this section shall be filed simultaneously with the report required by section 421 of the Health Care Quality Improvement Act of 1986. The Insurance Department shall monitor and enforce compliance with this section. The Bureau of Professional and Occupational Affairs and the professional licensure boards shall have access to information pertaining to compliance.

§ 8642. Immunity for reporting.

A malpractice insurer or person who reports under section 8641 (relating to reporting by malpractice insurers) in good faith and without malice shall be immune from a civil or criminal liability arising from the report.

§ 8643. Action by professional licensure boards.

Upon receipt of a report under section 8641 (relating to reporting by malpractice insurers), the appropriate professional licensure board and the Bureau of Professional and Occupational Affairs shall review the report and conduct an investigation. If the information obtained through the investigation warrants, the board shall promptly initiate a disciplinary proceeding against the health care provider. Information received under this subchapter shall not be considered public information for the purposes of the act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law, or the act of July 3, 1986 (P.L.388, No.84), known as the Sunshine Act, until used in a formal disciplinary proceeding.

§ 8644. Annual reports to General Assembly.

Each professional licensure board shall submit annually a report to the Consumer Protection and Professional Licensure Committee of the Senate and the Professional Licensure Committee of the House of Representatives. The report shall contain the number of reports received under section 8641 (relating to reporting by malpractice insurers), the status of the investigations of those reports, any disciplinary action which has been taken and the length of time from receipt of each report to final board action.

SUBCHAPTER F
ARBITRATION AGREEMENTS

Sec.
8651. Valid written agreement.
8652. Additional parties.
8653. Employees.
8654. Minors.
8655. Conditions.
8656. Mandatory provisions.
8657. Commencement of proceedings.
8658. Service of complaints.
8659. Applicability of laws and rules of evidence.
8660. Discovery.
8661. Appointment of expert witness.
8662. Powers and duties of arbitration panel.
8663. Vote required for deciding matters.
8664. Selection of arbitrators.
8665. Compensation of arbitrators.

§ 8651. Valid written agreement.

A written agreement with a health care provider for binding arbitration of claims arising out of medical treatment entered into before, during or following the treatment is valid and enforceable.

§ 8652. Additional parties.

A person, corporation or entity not a signatory to the agreement may join in the arbitration at the request of any party with all the rights and obligations of the original parties. No signatory may refuse to arbitrate because of the participation of such additional party. An additional participant shall execute a written statement to be bound by the arbitration proceedings and agreement or sign the agreement, and shall then be treated as a party.

§ 8653. Employees.

The employees of a health care provider shall be deemed to be parties to every health care arbitration agreement signed by their employer. An arbitration agreement will bar an action at law against any health care provider based upon the conduct of any employee.

§ 8654. Minors.

A minor child shall be bound by a health care arbitration agreement executed on behalf of the child by any parent, irrespective of whether that parent is also a minor. An agreement so executed shall not be voidable because of the minority of the parent, and for such purposes a minor who is a parent shall be deemed to have the full legal capacity as if that parent were above the age of majority.

§ 8655. Conditions.

Every health care arbitration agreement shall be subject to the following conditions:

(1) The agreement is not a condition to the rendering of health care services by any party and the agreement has been executed by the recipient of health care services at the inception of, during or following the term of provision of services by a health care provider.

(2) A person receiving emergency care may execute an arbitration agreement after the emergency care is completed.

(3) The agreement is a separate instrument complete in itself and not a part of any other contract or instrument.

(4) The agreement may not limit, impair or waive any substantive rights or defenses of any party, including the statute of limitations.

(5) The agreement shall not limit, impair or waive the procedural rights to be heard, to present material evidence, to cross-examine witnesses, and to be represented by an attorney, or other procedural rights of due process of any party.

(6) The patient or, if appropriate, members of his family must be given a copy of the health care arbitration agreement.

§ 8656. Mandatory provisions.

(a) Caption.–Every health care arbitration agreement shall be clearly captioned "Health Care Arbitration Agreement."

(b) Date and nature of services.–Every health care arbitration agreement in relation to health care services rendered during hospitalization shall specify the date of commencement of hospitalization. Every health care arbitration agreement in relation to health care services not rendered during hospitalization shall state the nature of the services being provided.

(c) Validity and cancellation.–Every health care arbitration agreement may be canceled by any signatory within 30 days of its execution. However, no health care arbitration agreement shall be valid after three years from the date of its execution. An employee of a health care provider who is not a signatory to an agreement may cancel such agreement as to himself until 30 days following his notification that he is a party to a dispute or issue on which arbitration has been demanded pursuant to such agreement. If any person executing a health care arbitration agreement dies before the period of cancellation as outlined above, the personal representative of the decedent shall have the right to cancel the health care arbitration agreement within 30 days of the date of his appointment as the legal representative of the decedent's estate. If, however, no legal representative is appointed within six months of the death of said decedent, the next of kin of such decedent shall have the right to cancel the health care arbitration agreement within eight months from the date of death.

(d) Notice to patient.–Every health care arbitration agreement shall contain immediately above the signature lines, in upper case type, in printed letters of at least 3/16 inch in height, a caption and paragraph as follows:

AGREEMENT TO ARBITRATE
HEALTH CARE
NEGLIGENCE CLAIMS
NOTICE TO PATIENT

YOU CANNOT BE REQUIRED TO SIGN THIS AGREEMENT IN ORDER TO RECEIVE TREATMENT. BY SIGNING THIS AGREEMENT, YOUR RIGHT TO TRIAL BY A JURY OR A JUDGE IN A COURT WILL BE BARRED AS TO ANY DISPUTE RELATING TO INJURIES THAT MAY RESULT FROM NEGLIGENCE DURING YOUR TREATMENT OR CARE AND WILL BE REPLACED BY AN ARBITRATION PROCEDURE. THIS AGREEMENT MAY BE CANCELED WITHIN 30 DAYS OF SIGNING. THIS AGREEMENT PROVIDES THAT ANY CLAIMS WHICH MAY ARISE OUT OF YOUR HEALTH CARE WILL BE SUBMITTED TO A PANEL OF ARBITRATORS, RATHER THAN TO A COURT FOR DETERMINATION. THIS AGREEMENT REQUIRES ALL PARTIES SIGNING IT TO ABIDE BY THE DECISION OF THE ARBITRATION PANEL.

§ 8657. Commencement of proceedings.

Arbitration proceedings shall be commenced by serving a notice of demand for arbitration together with a complaint on all parties to the arbitration agreement from whom damages are sought. The serving of the complaint shall toll the statute of limitations as to all parties named in the notice and complaint.

§ 8658. Service of complaints.

Service of complaints shall be made personally or by certified mail, and proof of the mailing of notice shall be prima facie evidence of service.

§ 8659. Applicability of laws and rules of evidence.

Except as provided herein, the arbitration proceedings and the panel are bound by the common and statutory law of this Commonwealth, the Pennsylvania Rules of Civil Procedure and the Pennsylvania Rules of Evidence.

§ 8660. Discovery.

After selection of the arbitration panel, the parties may exercise all discovery rights, remedies and procedures available as if the matter were pending in the court of common pleas. Discovery shall be completed within six months from the date of service of the demand for arbitration. A party may be granted an extension of time to complete discovery by the arbitration panel upon a showing of good cause.

§ 8661. Appointment of expert witness.

The arbitration panel may, upon the application of either party or upon its own motion, appoint a disinterested and qualified expert to make any necessary professional or expert examination of the claimant or relevant evidentiary matter and to testify as a witness in respect thereto. Such an expert witness shall be allowed necessary expenses and a reasonable fee to be fixed by the arbitration panel and paid by the parties.

§ 8662. Powers and duties of arbitration panel.

The arbitration panel is authorized and empowered to:

(1) examine the relevant facts to determine if a case exists for recovery;

(2) make findings of fact;

(3) take depositions and testimony;

(4) assure both parties full access to the facts;

(5) subpoena witnesses and administer oaths;

(6) apply to the court of common pleas to enforce the attendance and testimony of witnesses and the production and examination of books, papers and records;

(7) consider and approve offers of settlement involving fiduciaries, minors and incompetent parties;

(8) make determination as to liability and award of damages; and

(9) exercise all other powers and duties conferred upon it by law.

§ 8663. Vote required for deciding matters.

A majority vote of the full arbitration panel shall be required to decide all matters.

§ 8664. Selection of arbitrators.

Unless the parties agree in writing to the selection of a single arbitration, the arbitration proceeding shall be conducted by a panel of three arbitrators. Each side of the proceeding shall select one arbitrator and the two arbitrators thus selected shall agree and select the third neutral arbitrator. The neutral arbitrator shall be the chair at the arbitration hearing and shall decide evidentiary and procedural questions during the hearing.

§ 8665. Compensation of arbitrators.

If there is a single arbitrator, the parties shall share equally in the payment of the arbitrator's compensation and expenses. If there are three arbitrators, each side shall pay the compensation and expenses of the arbitrator selected by the side and the parties shall share equally in payment of the compensation and expenses of the third neutral arbitrator.

SUBCHAPTER G
MEDICAL PROFESSIONAL LIABILITY
CATASTROPHE LOSS FUND

Sec.
8667. Professional liability insurance and fund.
8668. Director and administration of fund.
8669. Liability of excess carriers.

§ 8667. Professional liability insurance and fund.

(a) General rule.–Every health care provider as defined in this act, practicing medicine or podiatry or otherwise providing health care services in this Commonwealth shall insure his professional liability only with an insurer licensed or approved by this Commonwealth, or provide proof of self-insurance in accordance with this section.

(1) Amounts.–

(i) A health care provider, other than hospitals, who conducts more than 50% of his health care business or practice within this Commonwealth shall insure or self-insure his professional liability in the amount of $100,000 per occurrence and $300,000 per annual aggregate, and hospitals located in this Commonwealth shall insure or self-insure their professional liability in the amount of $100,000 per occurrence, and $1,000,000 per annual aggregate, hereinafter known as "basic coverage insurance" and they shall be entitled to participate in the fund. In the event that amounts which shall become payable by the fund shall exceed the amount of $20,000,000 in any year basic coverage insurance commencing in the ensuing year shall become $150,000 per occurrence and $450,000 per annual aggregate for health care providers other than hospitals for which basic coverage insurance shall become $150,000 per occurrence and $1,000,000 per annual aggregate.

(ii) In the event that amounts which shall become payable by the fund shall exceed the amount of $30,000,000 in any year basic coverage insurance commencing in the ensuing year shall become 200,000 per occurrence and $600,000 per annual aggregate for health care providers other than hospitals for which basic coverage insurance shall become $200,000 per occurrence and $1,000,000 per annual aggregate.

(2) A health care provider who conducts 50% or less of his health care business or practice within this Commonwealth shall insure or self-insure his professional liability in the amount of $200,000 per occurrence and $600,000 per annual aggregate and shall not be required to contribute to or be entitled to participate in the fund set forth in this subchapter or the plan set forth in subchapter H (relating to availability of insurance).

(3) All self-insurance plans shall be submitted with such information as the commissioner shall require for approval and shall be approved by the commissioner upon his finding that the plan constitutes protection equivalent to the insurance requirements of a health care provider.

(4) A fee shall be charged by the Insurance Department to all self-insurers for examination and approval of their plans.

(5) Self-insured health care providers and hospitals if exempt from this act shall submit the information required under section 8679 (relating to annual reports to insurance commissioner) to the commissioner.

(b) Nonliability.–No insurer providing professional liability insurance shall be liable for payment of any claim against a health care provider for any loss or damages awarded in a professional liability action in excess of the basic coverage insurance, as provided in subsection (a)(1) for each health care provider against whom an award is made unless the health care provider's professional liability policy or self-insurance plan provides for a higher annual aggregate limit.

(c) Governments.–A government may satisfy its obligations under this act, as well as the obligations of its employees to the extent of their employment, by either purchasing insurance or assuming such obligation as a self-insurer.

(d) Contingency fund.–There is hereby created a contingency fund for the purpose of paying all awards, judgments and settlements for loss or damages against a health care provider entitled to participate in the fund as a consequence of any claim for professional liability brought against such health care provider as a defendant or an additional defendant to the extent such health care provider's share exceeds his basic coverage insurance in effect at the time of occurrence as provided in subsection (a)(1). This fund shall be known as the Medical Professional Liability Catastrophe Loss Fund. The limit of liability of the fund shall be $1,000,000 for each occurrence for each health care provider and $3,000,000 per annual aggregate for each health care provider.

(e) Surcharge.–

(1) The fund shall be funded by the levying of an annual surcharge on or after January 1 of every year on all health care providers entitled to participate in the fund. The surcharge shall be determined by the director and subject to the prior approval of the commissioner. The surcharge shall be based on the cost to each health care provider for maintenance of professional liability insurance and shall be the appropriate percentage thereof, necessary to produce an amount sufficient to reimburse the fund for the payment of all claims paid and expenses incurred during the preceding calendar year and to provide an amount necessary to maintain an additional $15,000,000.

(2) Health care providers having approved self-insurance plans shall be surcharged an amount equal to the surcharge imposed on a health care provider of like class, size, risk and kind as determined by the director. The fund and all income from the fund shall be held in trust, deposited in a segregated account, invested and reinvested by the director, and shall not become a part of the General Fund of the Commonwealth.

(3) Notwithstanding the above provisions relating to an annual surcharge, the commissioner shall have the authority, during September of each year, if the fund would be exhausted by the payment in full of all claims which have become final and the

expenses of the office of the director, to determine and levy an emergency surcharge on all health care providers then entitled to participate in the fund. Such emergency surcharge shall be the appropriate percentage of the cost to each health care provider for maintenance of professional liability insurance necessary to produce an amount sufficient to allow the fund to pay in full all claims determined to be final as of August 31 of each year and the expenses of the office of the director, as of December 31 of each year.

(4) The annual and emergency surcharges on health care providers and any income realized by investment or reinvestment shall constitute the sole and exclusive sources of funding for the fund. No claims or expenses against the fund shall be deemed to constitute a debt of the Commonwealth or a charge against the General Fund of the Commonwealth. The director shall issue rules and regulations consistent with this section regarding the establishment and operation of the fund including all procedures and the levying, payment and collection of the surcharges except that the commissioner shall issue rules and regulations regarding the imposition of the emergency surcharge. A fee shall be charged by the director to all self-insurers for examination and approval of their plans.

(f) Penalty.–The failure of any health care provider to comply with any of the provisions of this section or any of the rules and regulations issued by the director shall result in the suspension or revocation of the health care provider's license by the licensure board.

(g) Exemptions.–

(1) Any physician who exclusively practices the specialty of forensic pathology shall be exempt from the provisions of this act.

(2) All health care providers who are members of the Pennsylvania military forces are exempt from the provisions of this act while in the performance of their assigned duty in the Pennsylvania military forces under orders.

(h) Definition.–For the purposes of this section, "health care business or practice" shall mean the number of patients to whom health care services are rendered by a health care provider within an annual period.

§ 8668. Director and administration of fund.

(a) Director.–The fund shall be administered by a director who shall be appointed by the Governor and whose salary shall be fixed by the Executive Board. The director may employ and fix the compensation of such clerical and other assistants as may be deemed necessary and may promulgate rules and regulations relating to procedures for the reporting of claims to the fund.

(b) Office.–The director shall be provided with adequate offices in which the records shall be kept and official business shall be transacted, and the director shall also be provided with necessary office furniture and other supplies.

(c) Notice.–The basic coverage insurance carrier or self-insured provider shall promptly notify the director of any case where it reasonably believes that the value of the claim exceeds the basic insurer's coverage or self-insurance plan or falls under section 8615 (relating to statute of limitations). Such information shall be confidential, notwithstanding the act of July 19, 1974 (P.L.486, No.175) referred to as the Public Agency Open Meeting Law, and act of June 21, 1957 (P.L.390, No.212) referred to as the Right-To-Know Law. Failure to so notify the director shall make the basic coverage insurance carrier or self-insured provider responsible for the payment of the entire award or verdict, provided that the fund has been prejudiced by the failure of notice.

(d) Defense.–The basic coverage insurance carrier or self-insured provider shall be responsible to provide a defense to the claim, including defense of the fund, except as provided for in section 8615. In such instances where the director has been notified in accordance with subsection (c), the director may, at his option, join in the defense and be represented by counsel.

(e) Settlement and release.–In the event that the basic coverage insurance carrier or self-insured provider enters into a settlement with the claimant to the full extent of its liability as provided above, it may obtain a release from the claimant to the extent of its payment, which payment shall have no effect upon any excess claim against the fund or its duty to continue the defense of the claim.

(f) Authority of director.–The director is authorized to defend, litigate, settle or compromise any claim payable by the fund. A health care provider's basic insurance coverage carrier shall have the right to approve any settlement entered into by the director on behalf of its insured health care provider. If the basic insurance coverage carrier does not disapprove a settlement prior to execution by the director, it shall be deemed approved by the basic insurance coverage carrier. In the event that more than one health care provider defendant is party to a settlement, the health care provider's basic insurance coverage carrier shall have the right to approve only that portion of the settlement which is contributed on behalf of its insured health care provider.

(g) Purchase of insurance.–The director is hereby empowered to purchase, on behalf of the fund, as much insurance or re-insurance as is necessary to preserve the fund.

(h) Adjustment of claims.–Nothing in this act shall preclude the director from adjusting or paying for the adjustment of claims.

§ 8669. Liability of excess carriers.

(a) General rule.–No insurer providing excess professional liability insurance to any health care provider eligible for coverage under the Medical Professional Liability Catastrophe Loss Fund shall be liable for payment of any claim against a health care provider for any loss or damages except those in excess of the limits of liability provided by the Medical Professional Liability Catastrophe Loss Fund.

(b) Insolvency.–No carrier providing excess professional liability insurance for a health care provider covered by the Medical Professional Liability Catastrophe Loss Fund shall be liable for any loss resulting from the insolvency or dissolution of the catastrophe loss fund.

SUBCHAPTER H
AVAILABILITY OF INSURANCE

Sec.
8671. Plan to assure availability of insurance.
8672. Participation in plan.
8673. Plan operation, rates and deficits.
8674. Authority of Insurance Commissioner.
8675. Financing and payment of premiums.
8676. Selection of insurer to administer plan.
8677. Approval of policies on "claims made" basis.
8678. When plan exclusive source of insurance.
8679. Annual reports to Insurance Commissioner.
8680. Studies and recommendations for changes.
8681. Professional corporations, professional associations and partnerships.

§ 8671. Plan to assure availability of insurance.

The commissioner shall establish and implement or approve and supervise a plan assuring that professional liability insurance will be conveniently and expeditiously available, subject only to payment or provisions for payment of the premium, to those providers who cannot conveniently obtain insurance through ordinary methods at rates not in excess of those applicable to similarly situated health care providers under the plan. The plan may provide reasonable means for the transfer of health care providers insured thereunder into the ordinary insurance market, at the same or lower rates pursuant to regulations established by the commissioner. The plan may be implemented by a joint underwriting association that results in all applicants being conveniently afforded access to the insurance coverages on reasonable and not unfairly discriminatory terms.

§ 8672. Participation in plan.

The plan shall consist of all insurers authorized to write insurance pursuant to section 202(c)(4) and (11) of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921. The plan shall provide for equitable apportionment of the financial burdens of insurance provided to applicants under the plan and the costs of operation of the plan among all participating insurers writing such insurance coverage.

§ 8673. Plan operation, rates and deficits.

(a) General rule.–Subject to the supervision and approval of the commissioner, insurers may consult and agree with each other and with other appropriate persons as to the organization, administration and operation of the plan and as to rates and rate modifications for insurance coverages provided under the plan. Rates and rate modifications adopted or changed for insurance coverages provided under the plan shall be approved by the commissioner in accordance with the act of June 11, 1947 (P.L.538, No.246), known as The Casualty and Surety Rate Regulatory Act, except as may be inconsistent with subsection (c).

(b) Deficit.–In the event that the Joint Underwriting Association suffers a deficit in any calendar year, the board of directors of the Joint Underwriting Association shall so certify to the director of the Catastrophe Loss Fund and the commissioner. Such certification shall be subject to the review and approval of the commissioner. Within 60 days following such certification and approval, the director of the fund shall make sufficient payment to the Joint Underwriting Association to compensate for said deficit. A deficit shall exist whenever the sum of the earned premiums collected by the Joint Underwriting Association and the investment income therefrom is exhausted by virtue of payment of or allocation for the Joint Underwriting Association's necessary administrative expenses, taxes, losses, loss adjustment expenses and reserves, including reserves for:

(1) Losses incurred.

(2) Losses incurred but not reported.

(3) Loss adjustment expenses.

(4) Unearned premiums.

(c) Premium increase.–Within 60 days following the certification that the Joint Underwriting Association has suffered a deficit, as set forth in subsection (b), the board of directors of the Joint Underwriting Association shall file with the commissioner and the commissioner shall approve a premium increase sufficient to generate the requisite income to:

(1) reimburse the fund for any payment made by the fund to compensate for said deficit; and

(2) increase premiums to a level actuarially sufficient to avoid an operating deficit by the Joint Underwriting Association during the following 12 months.

The Joint Underwriting Association shall reimburse the fund with interest at a rate equal to that earned by the fund on its invested assets within one year of any payment made by the fund as compensation for any deficit incurred by the Joint Underwriting Association.

§ 8674. Authority of Insurance Commissioner.

To carry out the objectives of this subchapter, the commissioner may adopt rules, make orders, enter into agreements with other governmental or private entities and individuals and form and operate or authorize the formation and operation of bureaus and other legal entities.

§ 8675. Financing and payment of premiums.

The plan shall assure that there is available through the private sector or otherwise, to all applicants, adequate premium financing or provision for the installment payment of premiums subject to customary terms and conditions.

§ 8676. Selection of insurer to administer plan.

The commissioner may select an insurer to administer any plan established under this article. Such insurer shall be admitted to transact the business of insurance in this Commonwealth.

§ 8677. Approval of policies on "claims made" basis.

The commissioner shall not approve a policy written on a "claims made" basis by any insurer doing business in this Commonwealth unless such insurer shall guarantee to the commissioner the continued availability of suitable liability protection for health care providers subsequent to the discontinuance of professional practice by the health care provider or the sooner termination of the insurance policy by the insurer or the health care provider for so long as there is a reasonable probability of a claim for injury for which the health care provider may be held liable.

§ 8678. When plan exclusive source of insurance.

If the private insurance market unfairly discriminates against higher risk physicians by denying professional liability insurance coverage to 50% or more of all physicians in insurance rating classes 3, 4 or 5, or their equivalents, the commissioner, after notice in the Pennsylvania Bulletin and public hearings, may declare that the plan established under this article shall be the sole and exclusive source of professional liability insurance for health care providers within this Commonwealth. The commissioner may dissolve the plan if he determines that it is no longer necessary and that an adequate market will be maintained for professional liability insurance for health care providers by the private insurance market. The commissioner may reestablish the plan if he shall find that the private industry has failed to provide an adequate market for professional liability insurance by denying professional liability insurance coverage to 50% or more of all rating classes 3, 4 or 5, or their equivalents, and may declare it the sole and exclusive source of such insurance under the procedure set forth in this section.

§ 8679. Annual reports to Insurance Commissioner.

The plan shall report to the commissioner annually on a date and on a form prescribed by the commissioner the total amount of premium dollars collected, the total amount of claims paid and expenses incurred therewith, the total amount of reserve set aside for future claims, the nature and substance of each claim, the date and place in which each claim arose, the amounts paid, if any, and the disposition of each claim, judgment of arbitration panel, judgment of court, settlement or otherwise, and such additional information as the commissioner shall require.

§ 8680. Studies and recommendations for changes.

The plan shall conduct studies and review member records for the purpose of determining the causes of patient compensation claims and make recommendations for legislative, regulatory and other changes necessary to reduce the frequency and severity of such claims.

§ 8681. Professional corporations, professional associations and partnerships.

(a) Basic coverage.–The Joint Underwriting Association shall offer basic coverage insurance to such professional corporations, professional associations and partnerships entirely owned by health care providers who cannot conveniently obtain insurance through ordinary methods at rates not in excess of those applicable to similarly situated professional corporations, professional associations and partnerships.

(b) Excess coverage.–In the event that a professional corporation, professional association or partnership entirely owned by health care providers elects to be covered by basic coverage insurance and upon payment of the annual surcharge as required by section 8667 (relating to professional liability insurance and fund), the professional corporation, professional association or partnership shall be entitled to such excess coverage from the Medical Professional Liability Catastrophe Loss Fund as is provided in this act.

(c) Participation in fund.–

(1) Any professional corporation, professional association or partnership which acquires basic coverage insurance from the Joint Underwriting Association under subsection (a) or from an insurer licensed or approved by the Commonwealth shall be required to participate in and contribute to the Medical Professional Liability Catastrophe Loss Fund as provided in this act.

(2) Any professional corporation, professional association or partnership which participates in or contributes to the Medical Professional Liability Catastrophe Loss Fund shall be subject to all other provisions of this chapter.

SUBCHAPTER I
DISCIPLINARY PROCEEDINGS

Sec.
8682. Investigations.
8683. Hearings.
8684. Hearing examiners' decisions.
8685. Evidence.
8686. Review by state licensing boards.
8687. Disposition of certain moneys.

§ 8682. Investigations.

The State Board of Medical Education and Licensure, the State Board of Osteopathic Examiners and the State Board of Podiatry Examiners shall employ such qualified investigators and attorneys as are necessary to fully implement their authority to revoke, suspend, limit or otherwise regulate the licenses of physicians, issue reprimands, fines, require refresher educational courses or require licensees to submit to medical treatment.

§ 8683. Hearings.

(a) Hearing examiner.–The State Board of Medical Education and Licensure, the State Board of Osteopathic Examiners and the State Board of Podiatry Examiners shall appoint, with the approval of the Governor, such hearing examiners as shall be necessary to conduct hearings in accordance with the disciplinary authority granted by the act of December 20, 1985 (P.L.457, No.112), known as the Medical Practice Act of 1985 and the act of October 5, 1978 (P.L.1109, No.261), known as the Osteopathic Medical Practice Act.

(b) Rules and regulations.–The State Board of Medical Education and Licensure or the State Board of Osteopathic Examiners shall have the power to adopt and promulgate rules and regulations setting forth the functions, powers, standards and duties to be followed by any hearing examiners appointed under the provisions of this section.

(c) Authority of examiners.–Hearing examiners shall have the power to conduct hearings in accordance with the regulations of the State Board of Medical Education and Licensure or the State Board of Osteopathic Examiners, and to issue subpoenas requiring the attendance and testimony of individuals or the production of pertinent books, records, documents and papers by persons whom they believe to have information relevant to any matter pending before the examiner. Such examiner shall also have the power to administer oaths.

§ 8684. Hearing examiners' decisions.

The hearing examiner shall hear evidence submitted and arguments of counsel, if any, with reasonable dispatch, and shall promptly record his decision, supported by findings of fact, and a copy thereof shall immediately be sent to the State Board of Medical Education and Licensure or the State Board of Osteopathic Examiners and to counsel of record, or the parties, if not represented.

§ 8685. Evidence.

In all hearings, proof may be made by oral testimony or by deposition or interrogatories. Such depositions shall be taken in the manner and upon the notice required by the rules for taking depositions in civil cases and may be introduced into evidence without regard to the availability of the witness to testify at the time of trial. Any witness, however, may be subpoenaed by any party to the controversy to testify pursuant to the rules appropriate to civil actions and shall be considered to be the witness of the party who offered the deposition.

§ 8686. Review by state licensing boards.

(a) Review.–If application for review is made to the State Board of Medical Education and Licensure, the State Board of Osteopathic Examiners or the State Board of Podiatry Examiners within 20 days from the date of any decision made as a result of a hearing held by a hearing examiner, the State Board of Medical Education and Licensure, the State Board of Osteopathic Examiners or the State Board of Podiatry Examiners shall review the evidence, and if deemed advisable by the board, hear argument and additional evidence.

(b) Decision.–As soon as practicable, the State Board of Medical Education and Licensure, the State Board of Osteopathic Examiners or the State Board of Podiatry Examiners shall make a decision and shall file the same with its finding of the facts on which it is based and send a copy thereof to each of the parties in dispute.

§ 8687. Disposition of certain moneys.

(a) State Board of Medical Education.–All fees, charges and fines collected under the provisions of the act of December 20, 1985 (P.L.457, No.112), known as the Medical Practice Act of 1985, are hereby specifically appropriated for the exclusive use by the State Board of Medical Education and Licensure in carrying out this chapter.

(b) State Board of Osteopathic Examiners.–All fees, charges and fines collected under the provisions of the act of October 5, 1978 (P.L.1109, No.261), known as the Osteopathic Medical Practice Act, are hereby specifically appropriated for the exclusive use by the State Board of Osteopathic Examiners in carrying out this chapter.

(c) State Board of Podiatry Examiners.–All fees, charges and fines collected under the provisions of the act of March 2, 1956 (1955, P.L.1206, No.375), entitled, as amended, "An act relating to and defining the practice of podiatry; conferring powers and imposing duties on the State Board of Podiatry Examiners and the Department of State; requiring licensure; providing for the granting, cancellation, suspension and revocation of licenses; preserving the rights of existing licenses; providing for the promulgation of rules and regulations; transfer of jurisdiction and records to the board; regulation of schools of chiropody and podiatry; reciprocity; and providing penalties, and remedies," are hereby specifically appropriated for the exclusive use by the State Board of Podiatry Examiners in carrying out this chapter.

SUBCHAPTER J
MISCELLANEOUS PROVISIONS

Sec.
8691. Immunity from liability for official actions.
8692. Cancellation of insurance policy.
8693. Mandatory risk management programs.
8694. Waiver of consent to settle.
8695. Rates.
8696. Nonseverability.

§ 8691. Immunity from Liability for Official Actions.

There shall be no liability on the part of and no cause of action for libel or slander that shall arise against any member insurer, the State Board of Medicine, the State Board of Osteopathic Medicine, the State Board of Podiatry, the director or the commissioner or his representatives for any action taken by any of them in the performance of their respective powers and duties under this chapter.

§ 8692. Cancellation of Insurance Policy.

Any termination of a professional liability insurance policy by cancellation, except for suspension or revocation of the insured's license or approval by the Commonwealth to provide health care services or for reason of nonpayment of premium, is not effective against the insured covered thereby, unless notice of cancellation shall have been given within 60 days after the issuance of such contract of insurance against the insured covered thereunder and no cancellation shall take effect unless a written notice stating the reasons for the cancellation and the date and time upon which termination becomes effective has been received by the commissioner at his office. Mailing of such notice to the commissioner at his principal office address shall constitute notice to the commissioner.

§ 8693. Mandatory risk management programs.

(a) Hospitals, etc.–Hospitals, nursing homes and public health centers qualifying as a health care provider as defined in this chapter shall submit to the commissioner for review and approval an institutional plan of risk management.

(b) Insurers.–Every insurance company or exchange or self-insurance plan providing professional liability coverage to individuals defined as health care providers in this chapter shall submit to the Insurance Department for review and approval a program of risk management to be offered to all such individuals.

§ 8694. Waiver of consent to settle.

A health care provider who insures in accordance with the requirements of this act and who does not retain a contractual right of prior approval before permitting its basic coverage insurance carrier and the fund to enter into settlement negotiations shall not be liable for payment of any claim for any loss or damages in excess of the coverage afforded the provider by the basic coverage and/or fund coverage. Insurers providing professional liability insurance must offer such a policy at a premium rate 5% lower than the premium for a policy which contains the contractual right of prior approval to enter into settlement negotiations.

§ 8695. Rates.

(a) Filing.–All professional liability insurers and the Joint Underwriting Association must file for new professional liability insurance rates within 90 days of the effective date of this chapter.

(b) Rate reduction.–The rates charged by insurers under the filing required by subsection (a) shall be reduced by at least 10% from the total premium for the same selection of coverage and coverage limits on the effective date of this chapter.

(c) Cap on rates.–No professional liability insurers may increase rates between the effective date of this chapter and January 1, 1997 by greater than 5% per annum.

(d) Review by commissioner.–An insurer aggrieved by the rate reductions or rate increase limitations mandated in this section may seek relief from the commissioner, which relief may be granted when the commissioner deems necessary in extraordinary circumstances.

(e) Additional rate reduction.–In the event that all sections of this chapter remain in full force and effect for five years from its effective date, companies providing professional liability insurance must provide a premium rate reduction of 5% within 60 days of that date.

§ 8696. Nonseverability.

The provisions of this chapter are nonseverable. If any provision of this chapter or its application to any person or circumstance is held invalid, the remaining provisions or applications of this chapter are void.

Section 2. Section 9730 heading and (b) of Title 42 are amended to read:

Amend Sec. 2, page 4, line 10, by striking out "2" and inserting

3

Amend Bill, page 6, line 12, by striking out all of said line and inserting

Section 4. (a) The act of October 15, 1975 (P.L.390, No.111), known as the Health Care Services Malpractice Act, is repealed.

(b) All other acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 5. This act shall take effect in 60 days.

On the question,

Will the House agree to the amendment?

The SPEAKER. The Chair recognizes the gentleman, Mr. Chadwick.

Mr. CHADWICK. Eight years ago this House passed a comprehensive medical malpractice insurance reform bill. It passed with bipartisan support, and it passed overwhelmingly. It had the support of Republicans and Democrats. It had the support of the medical community and the trial bar. Unfortunately, that bill died in the Senate because the trial bar walked away from that agreement. I say "unfortunately" because if that bill had passed and been signed into law 8 years ago, we would not be here today. Instead, we were left with a ticking time bomb – a time bomb that blew up last year when the CAT Fund (Medical Professional Liability Catastrophe Loss Fund) saw an emergency surcharge of 68 percent on top of its 102-percent base premium, followed immediately by a 164-percent premium for 1996.

Something is badly wrong in this State when a Delaware County dermatologist—

The SPEAKER. Will the gentleman yield for a moment, please.

Mr. Lloyd, do you seek recognition?

Mr. LLOYD. Mr. Speaker, I just wanted to interrogate on the amendment once he is finished.

The SPEAKER. If I may interrogate the gentleman, Mr. Lloyd, for a moment.

Mr. Lloyd, our list shows you having amendments before Mr. Chadwick, but we struck your amendments. Was that accurate?

Mr. LLOYD. That is correct.

The SPEAKER. Thank you.

Mr. Chadwick is recognized.

Mr. CHADWICK. Thank you, Mr. Speaker.

Something is wrong in this State when a Delaware County dermatologist who successfully treats a case of athlete's foot can subsequently be sued for failure to detect an abdominal tumor. Something is wrong when physicians are forced to order tests not because they will disclose anything but to protect themselves in the event of a lawsuit. Something is wrong in Pennsylvania when an ob-gyn (obstetrician-gynecologist) stands an 80-percent chance of being sued during their career. And something is very badly wrong when doctors move away, retire, or stop doing certain procedures because of the threat of being sued.

Our good friends in the legal community continue to claim that there is no malpractice litigation crisis in this country, but they hope that you will not read the January issue of their own magazine, the American Bar Association Journal, which contains an article recommending that lawyers shelter their own assets offshore, in the Cook Islands, to protect themselves from, quote, "Expanding theories of liability, disregard for precedent by judges and juries, and unpredictable damage awards,..." unquote. A lawyer is even quoted in the article saying, and I quote, "I don't want someone to do to me what I do to people all day in court," unquote.

Before this debate is over, someone will also try to tell you that this crisis can be averted by tinkering with the CAT Fund. That is nonsense. Why would we merely treat the symptoms when we know how to cure the disease? The cure is comprehensive medical malpractice insurance reform, as contained in amendment 2668.

This amendment would restore balance and sanity to the malpractice litigation system and drive down the cost of insurance. It would crack down on lawyers who file frivolous lawsuits and make it more difficult to file those suits in the first place. It would create a voluntary – and I want to underline that word – voluntary arbitration system to allow for faster, cheaper disposition of malpractice claims. It would make desperately needed reforms in the areas of informed consent, collateral sources, expert witnesses, and punitive damages, and physicians themselves are willing to be part of the solution to this crisis. The amendment requires that insurers report malpractice awards to the appropriate

State licensing board, and it requires that board to take appropriate actions against physicians where warranted.

What this amendment does not do – and this is very important – what this amendment does not do is limit pain and suffering awards, nor does it cap attorney fees or in any way prevent the victim of medical malpractice from being fully and fairly compensated for their injuries. In fact, when I talked to tort reform experts from around the country preparing for this, what I have been struck by is the fact that invariably they say, your approach is pretty conservative; you are going a lot less far than they have done in many other States. In the largest State in our country, California, they have capped pain and suffering awards in medical malpractice cases. We have not done that.

The time to act is now, before this crisis gets any worse. I implore each and every one of you to support these badly needed reforms.

And one last point. I expect that there will be a number of motions and other procedural attempts to defeat this amendment. I urge each and every one of you to see them for what they are. We dare not put our heads back in the sand for another 8 years. We will never have a better chance than we do today. Together let us all strike a blow for reform and pass medical malpractice insurance reform. Thank you.

The SPEAKER. The gentleman, Mr. Lloyd, from Somerset.

Mr. LLOYD. Thank you, Mr. Speaker.

Mr. Speaker, I would like to interrogate the maker of the amendment.

The SPEAKER. The gentleman, Mr. Chadwick, indicates that he will stand for interrogation. You may begin.

Just a moment; he is going to get ready for it.

Mr. LLOYD. Mr. Speaker, I voted for the medical malpractice amendment that you referred to that passed 6 or 8 years ago, and I voted for the product liability bill which passed the House about 6 or 8 years ago, and I voted to provide an optional threshold and impose restrictions on lawsuits in Act 6 for car insurance. So I guess as you look around the House today, you have got some folks who are definitely with you, some folks who are definitely against you, and you probably have a third or maybe more of us who could be persuaded to vote with you if we understood what it was you wanted to do, and that is what I want to try to understand.

I am on page 3 of the amendment, lines 40 through 45, the section on informed consent. Can you tell me today under the law what is the duty imposed on a physician with regard to getting informed consent?

Mr. CHADWICK. Under current law it applies to surgery only, and a physician is required to give the patient enough information that a patient can make a reasonable decision as to whether or not to go forward. That is the current law.

Mr. LLOYD. And this changes the current law by extending it to anything other than an emergency and those situations as the court deems appropriate. So essentially, you are expanding the requirement of informed consent beyond where it applies today.

Mr. CHADWICK. You are correct to the extent that it gives the court latitude to make determinations like that.

Mr. LLOYD. Well, I guess that is one thing I do not understand. If I am a practitioner and I want to know whether or not I need to get informed consent, how do I know what the court is going to deem appropriate, whether the court is going to say that some procedure which I am doing in my office that under common law today or under whatever statute exists today, I do not need informed consent, it is not an emergency; how do I know whether some court is going to say I was supposed to have informed consent?

Mr. CHADWICK. I do not see where there is going to be a dramatic change in this area. There is clear precedent under current law for what constitutes a major invasive procedure. Unless the courts deviate from that, a physician can rely on the precedents that the court has used in the past, and there are clear definitions in this section of what constitutes a major invasive procedure.

Mr. LLOYD. All right. Well, let us go to page 4. Lines 19 through 25 talk about what happens if you do not obtain consent when you are supposed to, and I can understand lines 19 through 23. I have a problem with 23 and 24 in which it says that "An action alleging failure to obtain informed consent shall sound in negligence...." Suppose it was intentional. Why is that an action in negligence?

Mr. CHADWICK. Under current law, that failure would be an action in battery. It is better as an action in negligence because it is easier for the plaintiff to prove. This actually is an improvement for plaintiffs by going – excuse me; I have a frog in my throat – going into negligence as opposed to the current law, which is battery.

Mr. LLOYD. You are not intending to take away the ability to seek a remedy if the failure to obtain informed consent was intentional.

Mr. CHADWICK. Absolutely not.

Mr. LLOYD. On lines 50 through 53, the trier of fact – and let us assume for the sake of discussion that is the jury – is supposed to have special interrogatories identifying each element of the damage claim. How does it work today? Is there a general verdict today? Is that the way these actions occur?

Mr. CHADWICK. I am not sure that you can say that there is an absolute rule that applies to all cases, because in some complicated cases, judges will request specific enumerations, and in others, they do not. It almost depends on the judge and on the case.

Mr. LLOYD. On page 5, the section dealing with punitive damages. The standard on lines 23 through 25, "Punitive damages may be awarded for conduct that is outrageous" – that does not strike me as a word of art, but maybe it is – "because of the defendant's evil motive or his reckless indifference to the rights of others." Is that a common standard?

Mr. CHADWICK. Yes. That is the language precisely contained in the Second Restatement of Torts, which was adopted by the Pennsylvania Supreme Court.

Mr. LLOYD. Okay. On page 5, lines 33 and 34, you are placing a cap on punitive damages. You are saying that that is 200 percent of the compensatory damages.

Assuming that we are going to allow punitive damages only for conduct which is outrageous, why then would we cap the punitive damages at all?

Mr. CHADWICK. The answer is that as a matter of public policy, it is my view that the punitive damages should bear some rational relationship to the amount of actual damage incurred by the victim.

We have all heard of cases where a court awarded $1 in actual damages and $1 million in punitives. That is outrageous and it has no place in our law. I think that there ought to be some rational

relationship between the amount of damage that was incurred by the plaintiff and the amount of punitives that are awarded.

Now, if you want to say that it ought to be 300 percent or 400 percent or 150 percent, those numbers are all all right with me. I picked 200 percent, but I just want to make sure that we can no longer have a case where there is virtually no actual damage and large amounts of punitives.

Mr. LLOYD. On page 6, the statute of limitations. What is the statute of limitations today?

Mr. CHADWICK. As a general rule, it is 2 years.

Mr. LLOYD. Two years. And it is 2 years from what point? Two years from the time you have discovered or should have discovered?

Mr. CHADWICK. Yes.

Mr. LLOYD. And this would change that in what way, because this adds an extra one which says, "...four years from the date of the breach of duty...."

Mr. CHADWICK. Yes, because it is possible that the breach of duty occurred, say, 6 years ago and the date of discovery was today.

Mr. LLOYD. So in other words, if you have got a complicated operation, we are going to assume that if nothing happened within the first 4 years of that operation, whatever happened afterwards is so sufficiently speculative that we ought not hold the physician responsible for it.

Mr. CHADWICK. That is correct. However, I want to make sure that you are aware that there is a section relating to foreign objects. There is an exception for that. A foreign object would be something left in the patient's body by the surgeon.

Mr. LLOYD. Right. Right; I did see that.

I do not understand lines 26 through 36 on health-care providers. It says that "If the basic coverage insurance carrier receives notice of a complaint filed against a health care provider subject to more than four years" – now, I think maybe the "subject to" is a typographical error – "more than four years after the breach of duty or other event..." and so forth, that "...the action shall be defended...."

You are not saying that if there is a claim against the provider, that somehow a different statute of limitations applies, are you?

Mr. CHADWICK. Let me clarify that and perhaps answer some other questions that might be coming.

That language is contained already in Act 111. It was simply transferred over into this amendment, because as you know, we are repealing Act 111 and moving the whole subject of medical malpractice into Title 42. That came with Act 111. That is nothing that was new to my amendment.

Mr. LLOYD. Well, but my concern is that we are not imposing on the fund a duty to defend and potentially pay claims which would be barred against the provider because of the statute of limitations.

Mr. CHADWICK. That is not my intention, and I do not believe it does that. That is certainly not the way I intended it.

Mr. LLOYD. On page 7, dealing with pretrial proceedings, I guess one of my concerns is – and I have never tried a malpractice case in my life, so I do not know what is normal – but in order to file the complaint, you essentially are going to have to have your expert already in place and you are going to have to attest to the findings which the expert made in order to have a valid complaint. Is that current practice?

Mr. CHADWICK. I think a lot of lawyers are already doing that, but under current law, you can file the complaint and then go find an expert and try to find some grounds under which to make the case stick.

Mr. LLOYD. All right. Now, on line 36 – and this causes me some concern – if a certification under (a) and (b) is false or if the expert is not qualified, the court, upon motion and so forth, shall impose sanctions. Suppose the attorney believes that the expert is in fact qualified. You get to trial and the qualifications are challenged and the court rules that the expert is not qualified. This language appears to say that sanctions must be imposed even though counsel and the plaintiff thought in good faith that they were complying with the law.

Mr. CHADWICK. The qualifications-of-experts section of this legislation is very clear and very specific as to what it takes to be qualified as an expert. I do not think there is going to be much question in that area. If you meet those criteria—

Mr. LLOYD. Well, with regard to how clear it is, that is my next question. Page 9, line 42, it says, to be a qualified expert, it is someone who "...has been actively engaged in direct patient care...." That means he does not have to be engaged in direct patient care at the time that he is an expert witness?

Mr. CHADWICK. That is correct.

Mr. LLOYD. All right. "...has been actively engaged...." I mean, it is not clear to me what being actively engaged means, whether there is any time period at all? I mean, are you intending some timeframe? I mean, my concern about imposing sanctions and having a hard-and-fast rule is, how do I know, in order to avoid the sanctions, whether somebody has been actively engaged in direct patient care in the practice of the subject about which he will testify? He might think he is testifying about X, but as the trial develops, it may be that the defense says, no, this is not a case about X; this is a case about Y, and he thought, you know, he thought he was an expert. Now he is not.

Mr. CHADWICK. I think the intent of this section is absolutely clear. What we are saying is that if someone is going to testify as an expert at trial, that person must have actually been engaged actively in seeing patients at some time so that they have actual experience and not just textbook experience in these kinds of cases. I think that is absolutely clear. That is all we are asking, that at some point in their life or in their career they were actively engaged in seeing patients so they have actual experience.

Mr. LLOYD. With regard to lines 44 through 46, it says, to be an expert, if you are going to testify against a board-certified specialist, you have to be a board-certified specialist in that same specialty. Am I correct in assuming that if the issue at hand does not involve something which requires that specialty, that then the plaintiff's expert does not have to be a board-certified specialist?

Mr. CHADWICK. I think that is correct. And I should also point out that this is already the standard in workers' compensation, and it is consistent with the higher court decision.

Mr. LLOYD. The next question I have is on page 12. Lines 15 through 19 talk about getting out of an arbitration agreement, and you can get out of an arbitration agreement following the provision of the services. So I as a patient sign an arbitration agreement before the doctor does anything, and then after the fact, I can walk away from that?

Mr. CHADWICK. Yes, you can.

Mr. LLOYD. And there is no— I do not have to jump over any hurdle other than saying I want out.

Mr. CHADWICK. Absolutely.

Mr. LLOYD. With regard to, on page 14, where you—

Mr. CHADWICK. If I may add one thing. The whole purpose of this is to provide patients with an opportunity for a faster, cheaper way to resolve their claims, not to take any right whatsoever away from anybody.

Mr. LLOYD. Now, on page 14, you begin to move the CAT Fund out of Act 111 into this amendment. Can you tell us whether there are any substantive changes, and if there are, what are the major substantive changes?

Mr. CHADWICK. None.

Mr. LLOYD. None. Okay.

The same on page 18, the section on JUA'S (joint underwriting associations), availability of insurance. That is current law?

The final point which I had raised with you before and I want to put on the record is that the section dealing with, on page 21, disciplinary proceedings deals with using hearing examiners for certain boards and it imposes certain time limits for decisions. We passed an act in the last session – I believe it was Act 45 of 1993 – which creates a uniform time schedule for hearing examiners under the BPOA (Bureau of Professional and Occupational Affairs). I think with your repealer language at the end, that the two provisions are inconsistent. It is not your intention to have them be inconsistent.

Mr. CHADWICK. I do not have a problem with the way we were before Act 45.

Mr. LLOYD. On page 23, the miscellaneous provisions. The provision that starts on line 13, "Immunity from liability for official actions." Is that current law?

Mr. CHADWICK. Can you hold on that one 1 second.

Mr. GANNON. Mr. Speaker?

The SPEAKER. The gentleman, Mr. Gannon.

Mr. GANNON. Mr. Speaker, to make a motion.

Mr. LLOYD. Mr. Speaker, I did not yield the floor.

The SPEAKER. Will the gentleman yield.

It would be improper for you to make a motion at this time.

Mr. GANNON. Thank you, Mr. Speaker.

The SPEAKER. The gentleman, Mr. Lloyd.

Mr. LLOYD. Mr. Speaker, I am waiting for the gentleman, Mr. Chadwick, to get the answer to the last question.

Mr. CHADWICK. I am going to go out on a little bit of a limb and tell you that I think it is current law, but we are doublechecking.

Mr. LLOYD. Well, my concern is that we are basically protecting State officials and board members from libel or slander, and there does not appear to be any requirement at least that they have acted in good faith, and that is a concern. And if you do not know the answer to that, that is fine, but that is a concern of mine.

The final point I have a question about is on the last page with regard to the rate rollback. You are proposing on lines 4 through 7 that there be a mandatory 10-percent rate rollback in malpractice premiums. Then in lines 8 through 10 you are saying that between now and the end of the year, that rates may not go up by more than 5 percent. I am having a hard time reconciling those two provisions.

Mr. CHADWICK. With your permission, may I first go back and tell you that we have confirmed that the prior section we were discussing is current law.

Mr. LLOYD. Is current law. Okay. Thank you.

Mr. CHADWICK. Now, your question regarding lines 8 through 10—

Mr. LLOYD. My question is that lines 4 through 7 say that if I am a doctor, I am going to get a 10-percent cut. Lines 8 through 10 say that between the date of enactment – and let us assume June 30 – and January 1 of next year, that there is a cap of a 5-percent increase. Why is there an increase contemplated within 6 months of passing this bill at the same time that there is a mandatory rate rollback?

Mr. CHADWICK. Well, if you look at lines 11 through 15, there is relief available to any company that is aggrieved, and we are simply attempting to put some limits on that.

Mr. LLOYD. And that is the language I think that was in Act 6.

Mr. CHADWICK. Yes. Much of what I did here I attempted to follow along with what we did with Act 6.

Mr. LLOYD. So in other words, there may be some insurance carriers that would otherwise have come in for a rate increase?

Mr. CHADWICK. That is correct.

Mr. LLOYD. And you are trying to take care of that and say that if they get a rate increase, under no circumstances should it be greater than 5 percent.

Mr. CHADWICK. If we pass this legislation intact, I am certain that the savings in there will more than compensate for that.

Mr. LLOYD. Thank you, Mr. Speaker.

GERMANENESS QUESTIONED

The SPEAKER. The gentleman, Mr. Gannon.

Mr. GANNON. Thank you, Mr. Speaker.

Mr. Speaker, I listened very patiently to the debate and the interrogation on the last speakers concerning this amendment, and it became more and more evident as the interrogation proceeded that this particular amendment is really not relevant to the bill that is before us that deals with fines and costs in criminal proceedings, Mr. Speaker.

This totally involves a civil matter, civil litigation. It involves regulation of insurance companies. It involves cancellation of insurance risk management, and the prime sponsor of the amendment, when he presented it, said that this was insurance reform.

Mr. Speaker, it has nothing to do with this particular bill, and I would offer a motion that this amendment is not germane.

The SPEAKER. The gentleman, Mr. Gannon, raises, under rule 27, the question of germaneness. Is that accurate?

Mr. GANNON. Yes, Mr. Speaker.

The SPEAKER. All right.

The question of germaneness is determined by the House.

On the question,

Will the House sustain the germaneness of the amendment?

The SPEAKER. On that question, the gentleman, Mr. Gannon, desires to be recognized again or I am sure the gentleman, Mr. Chadwick, desires recognition.

Mr. CHADWICK. At some point.

Mr. GANNON. Would that be for the first or second time?

The SPEAKER. The Chair recognizes the gentleman, Mr. Chadwick.

Mr. CHADWICK. Thank you, Mr. Speaker.

I do not think anybody in this room thinks this amendment is not germane to SB 790. Clearly, clearly, this subject can go into Title 42.

This is the vote on medical malpractice. Vote how you will, but it is clearly germane. Thank you, Mr. Speaker.

The SPEAKER. The gentleman, Mr. Caltagirone, from Berks County on the question of germaneness.

Mr. CALTAGIRONE. Thank you, Mr. Speaker.

I would agree with my colleague, Chairman Gannon, that this amendment is not germane. Master surgery has to be done to this amendment, and I think the appropriate place for that to take place is in the Judiciary operating room.

We had 1 full day of hearings from 9 a.m. to 5 p.m. on this particular issue. We did not finish our work, and I would like that opportunity to see if we can come back with a clean bill without all of these other issues that are hanging up in the air.

I would ask the members to please support Chairman Gannon's motion. Thank you.

The SPEAKER. The gentleman, Mr. Cohen, on the question of germaneness.

Mr. COHEN. Thank you, Mr. Speaker.

Mr. Speaker, I also join with Representative Gannon and Representative Caltagirone in agreeing that this amendment is not germane.

The mere fact that Mr. Lloyd had to repeatedly ask the question so many times about whether given provisions change existing law shows there was nothing in the context of the law which Mr. Chadwick is seeking to amend that deals with this subject.

This is an insurance subject that Mr. Chadwick is raising. That is not the subject of SB 790. I, too, join in urging that we find this amendment not germane.

The SPEAKER. The gentleman, Mr. DeWeese.

Mr. DeWEESE. As an advocate for the committee system, I would concur with Chairman Caltagirone and Chairman Gannon that this measure would be more appropriately looked at in the confines of the Judiciary Committee, and I would ask that the motion of the gentleman on nongermaneness be sustained. Thank you.

The SPEAKER. Does the gentleman, Mr. Gannon, desire recognition for the second time?

Mr. GANNON. Thank you, Mr. Speaker.

Just to reiterate what the other speakers said concerning germaneness, this is a Judicial Code. The amendment before us deals with medical insurance, medical malpractice insurance, certainly not even relevant. It is not germane to the issue before the House, and I would ask that the House vote that this is not germane.

The SPEAKER. The Chair thanks the gentleman.

On the question of germaneness, those believing the amendment offered by the gentleman, Mr. Chadwick, to be germane shall vote in the affirmative; those believing it not to be germane will vote in the negative.

On the question recurring,

Will the House sustain the germaneness of the amendment?

The following roll call was recorded:

YEAS–108

Adolph	Egolf	Lucyk	Schuler
Allen	Fairchild	Lynch	Scrimenti
Armstrong	Fajt	Maitland	Semmel
Baker	Fargo	Major	Serafini
Bard	Fleagle	Markosek	Sheehan
Barley	Flick	Marsico	Smith, B.
Battisto	Gamble	Masland	Smith, S. H.
Belardi	Geist	McCall	Staback
Belfanti	Gladeck	McGill	Stairs
Birmelin	Godshall	Merry	Steelman
Boyes	Habay	Miller	Steil
Brown	Hanna	Nailor	Stern
Browne	Harhart	Nickol	Stetler
Carone	Hasay	Nyce	Stish
Cawley	Haste	Perzel	Strittmatter
Chadwick	Herman	Pettit	Taylor, E. Z.
Clark	Hershey	Phillips	Tigue
Clymer	Hess	Pitts	Trich
Colafella	Hutchinson	Platts	True
Conti	Jadlowiec	Reinard	Tulli
Cornell	King	Robinson	Vance
Corrigan	Krebs	Rohrer	Van Horne
Coy	Laughlin	Rubley	Vitali
Dempsey	Leh	Rudy	Waugh
Dent	Lescovitz	Sather	Wright, D. R.
DiGirolamo	Levdansky	Saylor	Wright, M. N.
Druce	Lloyd	Schroder	Zimmerman

NAYS–90

Argall	Evans	Mayernik	Rooney
Bebko-Jones	Feese	McGeehan	Sainato
Blaum	Fichter	Melio	Santoni
Boscola	Gannon	Michlovic	Shaner
Bunt	George	Micozzie	Snyder, D. W.
Butkovitz	Gigliotti	Mihalich	Sturla
Buxton	Gordner	Mundy	Surra
Caltagirone	Gruitza	Myers	Tangretti
Cappabianca	Gruppo	O'Brien	Taylor, J.
Carn	Haluska	Olasz	Thomas
Civera	Hennessey	Oliver	Travaglio
Cohen, L. I.	Itkin	Pesci	Trello
Cohen, M.	James	Petrarca	Veon
Colaizzo	Josephs	Petrone	Walko
Corpora	Kaiser	Pistella	Williams
Cowell	Keller	Preston	Wogan
Curry	Kenney	Ramos	Wozniak
Daley	Kirkland	Raymond	Yewcic
DeLuca	Kukovich	Readshaw	Youngblood
Dermody	LaGrotta	Reber	Zug
DeWeese	Lawless	Rieger	
Donatucci	Lederer	Roberts	Ryan,
Durham	Manderino	Roebuck	Speaker

NOT VOTING–2

Horsey Jarolin

EXCUSED–3

Bishop Farmer Washington

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was declared germane.

On the question recurring,
Will the House agree to the amendment?

The SPEAKER. The Chair recognizes the gentleman from Philadelphia County, Mr. Cohen, on the question.

Mr. COHEN. Thank you, Mr. Speaker.

Mr. Speaker, I would call the attention of the members to page 13 of the amendment. It is in subchapter F, "Arbitration Agreements," paragraph (d). Mr. Speaker, we should be familiar with this language, because this language is going to be what our constituents are going to be confronted with every time they have an operation if this bill passes. It says:

AGREEMENT TO ARBITRATE
HEALTH CARE
NEGLIGENCE CLAIMS
NOTICE TO PATIENT
YOU CANNOT BE REQUIRED TO SIGN THIS AGREEMENT IN ORDER TO RECEIVE TREATMENT. BY SIGNING THIS AGREEMENT, YOUR RIGHT TO TRIAL BY A JURY OR A JUDGE IN A COURT WILL BE BARRED AS TO ANY DISPUTE RELATING TO INJURIES THAT MAY RESULT FROM NEGLIGENCE DURING YOUR TREATMENT OR CARE AND WILL BE REPLACED BY AN ARBITRATION PROCEDURE. THIS AGREEMENT MAY BE CANCELED WITHIN 30 DAYS OF SIGNING. THIS AGREEMENT PROVIDES THAT ANY CLAIMS WHICH MAY ARISE OUT OF YOUR HEALTH CARE WILL BE SUBMITTED TO A PANEL OF ARBITRATORS, RATHER THAN TO A COURT FOR DETERMINATION. THIS AGREEMENT REQUIRES ALL PARTIES SIGNING IT TO ABIDE BY THE DECISION OF THE ARBITRATION PANEL.

Now, I would submit, Mr. Speaker, that when you are really hurting badly and you are getting ready for an operation and you are in great pain and you are somewhat disabled, you are not in a mood to negotiate with your doctor or your doctor's staff. If something is given to you, you are most likely going to sign it, and the fact that you can change your mind within 30 days does not mean that within 30 days all will be over. You are going to, in all likelihood, still be in a continuing relationship with your doctor, needing his care. Especially if things have gone badly in the operation, you will be needing the doctor's care.

So these exemptions in this bill, saying that the person is not required to sign it and has 30 days to cancel it, do not deal with the great disparity of bargaining power between the doctor and the patient. There is no equality of bargaining power here, and basically large numbers of patients, if not the overwhelming majority of patients, are going to be signing away their rights to a jury trial under this proposal. That is a very significant thing.

Secondly, Mr. Speaker, this amendment takes away from the Supreme Court power to determine procedures for how cases ought to be run. The Supreme Court has repeatedly declared such things unconstitutional. This amendment is very poorly drafted in the sense that it takes away that power from the Supreme Court and will enmesh everybody in an awful lot of litigation which will go on for years and not bring any closure to the situation.

Third, this proposal simply does not recognize the various realities about the situation in Pennsylvania. Pennsylvania has lower rates in medical malpractice than the average State. Pennsylvania has lower medical malpractice rates than the average State. The rates in Pennsylvania, we are in the bottom third of malpractice rates in the average State. Rates in Pennsylvania have gone down, and throughout Pennsylvania and throughout the Nation, the vast majority of people who have possible malpractice claims choose not to file them. The figures are, seven out of eight malpractice claims are not filed. There is a sense, which Mr. Mihalich will probably discuss in greater detail, that there are really too few medical malpractice claims filed, not too many.

This amendment in totality serves to take away rights of citizens to sue doctors. It sets up arbitrary bureaucratic requirements for who is allowed to testify. It sets up arbitrary obstacles to people pursuing legitimate medical malpractice claims. I urge people here to protect their citizens who may be ill, who may go to a doctor, who may have an operation that may result in serious injury, and allow these people to sue to get the benefits they will need to support themselves for the rest of their lives as a result of this serious injury.

There is a word called "iatrogenic," which Mr. DeWeese, I am sure, knows but which many of us do not know. "Iatrogenic" means an injury or illness caused by a doctor. There are many, many iatrogenic injuries in Pennsylvania and throughout this country. The word exists to describe this problem, because the problem is widespread. This amendment will take away a right to sue that has been in existence for many, many years. It will not take away the right to sue entirely, but for many, many people, it will set up a bureaucratic obstacle course which will be impossible to surmount.

Pennsylvania has not dealt with medical malpractice by passing a law; other States have. Nevertheless, our rates are lower than other States which have engaged in medical tort reform. There is no real problem in Pennsylvania. The average rates in Pennsylvania are pretty low, and I would urge that this amendment be defeated. Thank you.

The SPEAKER. The gentleman from Westmoreland, Mr. Mihalich.

Mr. MIHALICH. Thank you, Mr. Speaker.

Mr. Speaker, I, too, would like to put this amendment into a perspective that perhaps many of us have lost sight of, and that is that there are two sides of this coin. It appears that our problem, as we are identifying it, is the number of lawsuits put against or placed against doctors. Perhaps that is not the problem we want to solve.

I have yet to hear anybody on this floor talk about the patients or the victims of these accidents. A few years ago, Mr. Speaker, a team of doctors, lawyers, and analysts of Harvard University conducted the biggest and most comprehensive investigation ever undertaken of medical malpractice, and they concluded that 150,000 Americans are killed annually by medical treatment with more than half of those deaths due to negligence. Medical injury, according to them, accounts for more deaths than all other types of accidents combined, and that includes automobiles, death-on-the-job accidents, and coal mines and so forth. Further in their conclusions they state that perhaps there are not enough lawsuits filed, that perhaps there should be more.

So that is the other side of the coin, Mr. Speaker, and that side of the coin which I am interested in is, how would legislation such as this affect these people, these victims, and that is somebody not removed from any of us here. It could be us or members in our family. It is something that we have to be conscious of. But certainly there are a lot, by some people's standards, a lot of lawsuits being filed, but perhaps, again, maybe there should be and maybe there should be more.

ARTICLES SUBMITTED FOR THE RECORD

Mr. MIHALICH. Rather than go through the summaries of that study, Mr. Speaker, I want to submit for the record the summaries as explained by the Harrisburg Patriot and also Business Week magazine. Thank you, Mr. Speaker.

Mr. MIHALICH submitted articles for the Legislative Journal.

(For articles, see Appendix.)

GUESTS INTRODUCED

The SPEAKER. The Chair at this time welcomes to the hall of the House a group from the Pittsburgh School District, eighth grade classes, here as the guests of Representative Don Walko. Would the students please wave.

The Chair also welcomes to the hall of the House, as the guest of Representative Greg Fajt, Mr. Ed Schenk. He is seated to the left of the Speaker. Mr. Schenk— Well, he disappeared. I do not know where he is.

REPORT OF COMMITTEE OF CONFERENCE PRESENTED

Mr. CORNELL presented the Report of the Committee of Conference on **SB 1441, PN 2008.**

CONSIDERATION OF SB 790 CONTINUED

The SPEAKER. The Chair recognizes the gentleman from Columbia County, Mr. Gordner.

Mr. GORDNER. Thank you, Mr. Speaker, and I will be very brief on this subject.

The sponsor of this amendment started off his remarks by referring to the CAT surcharges and the increase in the CAT surcharges that most doctors and podiatrists and other people in the medical professions were hit with last November and December, and I like most of the members here, I am sure, received frantic phone calls back then in regard to those surcharges, and I like most of the members here feel that something needs to be done as a result of them. But this is going well beyond what needs to be done for that issue, and I think it is such a broad topic that it is something that really should not be discussed in this way today.

There are two bills that are moving – one in the House and one in the Senate, or at least are there getting ready to move in the House – that deal with the CAT Fund, the Medical Professional Liability Catastrophe Loss Fund. HB 2294, which is in the House Insurance Committee, is sponsored by the chairman of that committee and has been subject to a couple of hearings in that committee. It should be ready to move sometime within the next few weeks or months on that specific issue. Over in the Senate, SB 1122, chaired by Senator Holl, or I should say sponsored by Senator Holl, has already moved out of committee in regard to that topic to address that very important issue as to bringing that ridiculous surcharge increase down.

I would say that we should not be addressing such a broad issue in regard to this matter in an amendment to this bill. Instead, I think if we are all patient, by, I believe, the end of June, we should have either HB 2294 or SB 1122, which adequately deal with the problem of the Medical Professional Liability Catastrophe Loss Fund and the surcharges that our doctors and our podiatrists have faced.

As a result of that, I am going to be against the Chadwick amendment, and I am going to be further supporting these two bills as mentioned as they make their way through, and I believe that we should be seeing them and be able to vote on them sometime in the near future. Thank you, Mr. Speaker.

The SPEAKER. The gentleman, Mr. Sturla.

Mr. STURLA. Thank you, Mr. Speaker.

Will the maker of the amendment rise for a brief interrogation?

The SPEAKER. The gentleman, Mr. Chadwick, indicates he will stand for interrogation. You may begin.

Mr. STURLA. Thank you, Mr. Speaker.

Mr. Speaker, I probably fit into that category that Representative Lloyd described earlier as undecided on this, and while I have not voted in the past on these issues, it is something that I believe is an issue we need to deal with, and in that sense I commend you for bringing this issue up. However, I wish we would have had a little more time to look at it and discuss it before it was brought up.

On page 3 of the amendment, going back to this issue of informed consent, the definition of "Informed consent" on lines 13 and 14 says, "The consent of a patient to the performance of a

major invasive procedure." Would you consider a blood transfusion a major invasive procedure?

Mr. CHADWICK. Under the bill, whether or not a procedure is a major invasive procedure is up to an expert. That is actually—

Mr. STURLA. I am sorry, Mr. Speaker; I could not hear you. Could you repeat that again?

Mr. CHADWICK. Sure; I will wait until your earphones are in.

Under the bill, it requires an expert to determine what is and is not a major invasive procedure.

Mr. STURLA. An expert in court, or is it predetermined somehow by a medical board or a—

Mr. CHADWICK. Page 4, line 14, "Expert testimony.–Expert testimony is required to determine whether the procedure was" – was – "a major invasive procedure and to identify the risks of a procedure,..." and so on and so forth.

Mr. STURLA. So until somebody takes someone to court to try whether a blood transfusion is a major procedure or not, we do not know?

Mr. CHADWICK. Well, yes; like many other sections of this bill, as time goes on, the courts will address different sections of it. That is to be expected with any piece of legislation. As time goes on, the courts will clarify different aspects of this as people test it. You can always expect litigation to probe and test any section of new legislation, and this will be no different.

Mr. STURLA. Okay. The concern I have is that I know in my district there were several lawsuits brought against physicians and hospitals as a result of someone contracting AIDS (acquired immune deficiency syndrome) through a blood transfusion, and even though the physicians in some of those cases gave the patients informed consent about the procedure itself – i.e., gallbladder surgery or heart surgery – they did not inform them about the potential of contracting AIDS through a blood transfusion, and I guess my concern is where this lies, or do we have to try it again before it is considered a major event?

Mr. CHADWICK. I was just reminded that blood has, in the past under our law, been addressed under products law and has been considered inherently an unsafe product, so that is already covered in the law.

Mr. STURLA. So a physician would be required to inform—

Mr. CHADWICK. Yes, it is a products liability issue, and it has been for a long time under Pennsylvania law, the same as drugs.

Mr. STURLA. Okay. Thank you, Mr. Speaker.

Mr. Speaker, I guess then on page 6 at the top of the page, lines 1 through 8, where it talks about the statute of limitations, are you saying then that the— I mean, my question, again, related to AIDS, and the person "...should have known by using reasonable diligence...." Are you saying that if this is a blood-related issue, it does not apply under this law?

Mr. CHADWICK. Under Pennsylvania law for a long time, that has been considered a products liability issue, and you would use products liability law to determine liability in that case, and we do not address that in this legislation.

Mr. STURLA. Okay. Thank you, Mr. Speaker.

On page 9, lines 44 through 46, it says, "No person shall testify as a medical expert against a defendant board-certified specialist unless such person is board certified." Now, I understand you are saying if I am being accused of something, I at least have a right to have someone who is – and I am board certified – I at least have a right to have someone who is board certified testifying against me so they are at least equal or equivalent in level. Is there any corresponding requirement if in fact the plaintiff has people who are testifying who are board certified, that in the defense the physician's people who testify have to be board certified?

Mr. CHADWICK. We do not address that in this legislation at all.

Mr. STURLA. Okay.

Mr. CHADWICK. And remember that, as always, the expertise of any expert can be taken into account by the jury in rendering a decision.

Mr. STURLA. But you feel that we should not just allow that up to the jury in this particular case, that we should require that a physician be board certified if in fact they are testifying against someone who is board certified. Is that correct?

Mr. CHADWICK. The primary thrust here is to protect a defendant who is board certified from having someone testify against him who is not board certified. The primary thrust is not about who the defendant brings in to defend him.

Mr. STURLA. Okay.

Mr. Speaker, on page 11, the section dealing with arbitration agreements, this is perhaps the area that has been of most concern to me over the time that I have had a chance to look at this bill, and if we go to line 46 where it deals with these written agreements being entered into "...before, during or following the treatment...," my concern, I guess, lies, one, with entering into these agreements "before." Would it be your assumption that when someone goes in to a doctor who has been treating them for 10 years or so, their family doctor, that before that family physician treats them, they would say to the patient, oh, by the way, I know we have a level of trust here that has gone on for 10 years, but before I treat you any further, would you please sign a paper here that says you will arbitrate instead of suing me. Is that the intent here?

Mr. CHADWICK. No; absolutely not, and I want to point out that you have an absolute right as a patient to walk away from that agreement after the treatment.

Mr. STURLA. Oh, I understand that, Mr. Speaker—

Mr. CHADWICK. We have bent over backwards in this language to make sure that we are not attempting to take away anyone's substantive rights whatsoever, only to provide a mutually agreeable mechanism for more quickly and more inexpensively resolving claims. This has nothing to do with removing substantive rights, and there is clear language in here that says that you can— In fact, well, I could read it to you, but you can read it for yourself. There is clear language in here that protects you from any substantive loss of rights.

Mr. STURLA. Mr. Speaker, I understand that there is not any substantive loss of rights simply because I signed this. Would you agree, though, and I do not know enough about previous case law, but the fact that I as a patient would be intimidated by the fact that my physician was asking me to sign this paper, in essence waiving my rights, is that not in itself enough reason for it to be thrown out in court even if I agree to something?

Mr. CHADWICK. No.

Mr. STURLA. Mr. Speaker, on page 12, line 48, it talks about – 47 and 48 – "However, no health care arbitration agreement shall be valid after three years from the date of its execution." If I exercise my rights as I read them back on page, let me find it here— Where is it that you put the time limits on these things, 2 and 4 years?

Mr. CHADWICK. Do you mean the statute of limitations?

Mr. STURLA. Yes.

Under that statute of limitations, it says in one case I have up to 4 years to file. If I have signed one of these agreements but decide to file at 3 years and 1 day, does that mean that my arbitration agreement is no longer in effect?

Mr. CHADWICK. Yes, but if you want to arbitrate, there is nothing that prevents you from executing a new agreement.

Mr. STURLA. Okay.

Mr. CHADWICK. This is a voluntary process for both sides.

Mr. STURLA. Mr. Speaker, on page 14, lines 47 and 48, where it talks about "A health care provider, other than hospitals, who conducts more than 50% of his health care business or practice within this Commonwealth...," what determines 50 percent of his health-care business? Is it the value of the business itself or the amount of the dollar volume of business that is done or the number of patients, or what constitutes 50 percent of the business?

Mr. CHADWICK. I will be very candid with you. I do not know, because this was not part of my amendment. This is part of what we carried over from Act 111. This is not new; it is existing law, and it has been used since 1975 in Pennsylvania. Whatever their standard is, we are not changing that.

Mr. STURLA. So it has already been established then?

Mr. CHADWICK. Absolutely.

Mr. STURLA. Mr. Speaker, on page 24, going again to these issues about the rates, as Representative Lloyd pointed out, you say that there needs to be a 10-percent reduction in premiums as a result of passage of this legislation, I am assuming. Is that correct, on section (b)?

Mr. CHADWICK. Yes.

Mr. STURLA. And then, by January of 1997, those rates can increase by 5 percent. Is that 5 percent over the reduced rate after the 10 percent has been taken off or 5 percent over the rate as it currently exists?

Mr. CHADWICK. Within 90 days of the effective date of this act – and it takes effect 60 days after it is adopted and signed into law by the Governor -- within 90 days, each insurer must file for new rates. That is contained at the very top of page 24.

Mr. STURLA. Okay.

Mr. CHADWICK. Those rates are required to be reduced by 10 percent unless – unless – under lines 11 through 15, there is an application for extraordinary relief. At some point there will be a ruling as to what those rates must be. If there is any permission for an increase, that permission for an increase is limited to 5 percent through January 1 of 1997.

Mr. STURLA. Okay, Mr. Speaker. I guess my question comes, though, and section (c) there says, "Cap on rates.–No professional liability insurers may increase rates between the effective date of this chapter...." Now, the effective date of this chapter will be before the 10-percent rollback goes into place.

Mr. CHADWICK. That is correct.

Mr. STURLA. And so theoretically, I could take whatever I am charging them now, roll it back 10 percent with my new rate structure, but because I can increase it by 5 percent from the effective date, as of the effective date it is still the old rate, so I can increase it 5 percent over the effective rate by January 1, 1997. So if I am charging somebody $1,000 now and the effective date occurs now, 90 days later I am required to file new rates, and that drops 10 percent, so now I am down to $900 that I am charging that person, but by 1997 I can go to 5 percent above that, so I can charge them $1,050. Is that correct? By the end of the year.

Mr. CHADWICK. Remember, Mr. Speaker, that any rate change has to be approved by the commissioner. You can try to do all kinds of things, but this is no different than auto insurance. Now, you can try to do all kinds of things with your rates there, but you have got to get them by the commissioner. This is no different than that.

The SPEAKER. The gentleman will yield.

Conferences on the floor, please be subdued. So you understand, it is the intention of the Chair to declare a luncheon recess in the next 5 or 10 minutes, if this debate ends in that period of time.

You may resume.

Mr. STURLA. Thank you, Mr. Speaker.

Mr. Speaker, in section (e) on that same page, it talks about an additional rate reduction of 5 percent that must occur within 5 years. After I get past January 1, 1997, are there any limits on rate increases other than at the 5-year anniversary where it has to roll back another 5 percent?

Mr. CHADWICK. The only limit would be that which you can get by the commissioner.

Mr. STURLA. Okay.

Mr. Speaker, one final question. Assuming that these rate rollbacks occur and that there are substantial savings to physicians, is there any requirement that any of these savings that have been passed on by the insurance companies get passed on to the consumer?

Mr. CHADWICK. Mr. Speaker, we have spent the past several years sticking it to the physician community in this State. We stuck it to them on workers' compensation rates, we stuck it to them on auto insurance rates, we stuck it to them on medical assistance – no; enough is enough.

Mr. STURLA. Thank you, Mr. Speaker.

REPUBLICAN CAUCUS

The SPEAKER. The Chair recognizes the Republican caucus chairman, Mr. Fargo.

Mr. FARGO. Thank you, Mr. Speaker.

The Republican members will caucus this afternoon at 2:30. We will be back on the floor at 3 o'clock. This will give us an opportunity during that one-half hour to have a quick overview of SB 1441 after it came out of conference committee.

So we will caucus at 2:30, be back on the floor to vote at 3 o'clock, and we will break upon the word of the Speaker. Thank you.

DEMOCRATIC CAUCUS

The SPEAKER. Mr. Cohen, the Democratic caucus chairman.

Does the gentleman, Mr. Cohen, desire recognition with respect to any announcements for your caucus?

Mr. COHEN. Mr. Speaker, I want to know what the rest of the floor schedule is for today.

The SPEAKER. It is the understanding of the Chair that the Republican side is going to break now for lunch, go to caucus from 2:30 till 3 o'clock, return to the floor, at the very least conclude the

amendment that Mr. Chadwick has offered to this particular bill, and conclude this bill, and whatever else can be handled on the calendar.

Mr. COHEN. Okay.

Our calendar has not changed today, Mr. Speaker?

The SPEAKER. Not to my knowledge, unless the floor leader has some different information. I am not aware that it has changed.

Mr. COHEN. Okay. Thank you, Mr. Speaker.

Mr. Speaker, I will then call a Democratic caucus for 2 p.m., 2 p.m. in the Democratic caucus room.

COMMERCE AND ECONOMIC DEVELOPMENT COMMITTEE MEETING

Mr. HASAY. Mr. Speaker?

The SPEAKER. The gentleman, Mr. Hasay.

Mr. HASAY. Thank you, Mr. Speaker.

Mr. Speaker, at the break, to remind the members, there will be a meeting of the House Commerce and Economic Development Committee in room 39 at the break. Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

VOTE CORRECTION

The SPEAKER. The gentleman, Mr. Horsey, do you seek recognition?

Mr. HORSEY. Yes, Mr. Speaker.

Mr. Speaker, would it be appropriate to correct the record at this time, or offer a correction?

Mr. Speaker, on amendment 2668, the question of germaneness, I inadvertently hit the dial but my vote did not register. I meant to be a "nay" vote.

The SPEAKER. The remarks of the gentleman will be spread upon the record.

Mr. HORSEY. Thank you very much, Mr. Speaker.

RECESS

The SPEAKER. Are there any further announcements by committee chairmen? Are there any reports of committee? Any further business from the Republican leadership or Democrat leadership prior to the recess? Corrections of the record prior to the recess?

Hearing none, this House will stand in recess until 3 p.m., unless sooner recalled by the Chair.

RECESS EXTENDED

The time of recess was extended until 3:30 p.m.

AFTER RECESS

The time of recess having expired, the House was called to order.

BILLS REPORTED FROM COMMITTEES, CONSIDERED FIRST TIME, AND TABLED

HB 2380, PN 3560 (Amended) By Rep. BUNT

An Act amending the act of October 21, 1988 (P.L.1036, No.116), known as the Hardwoods Development Council Act, further providing for definitions, for the Hardwoods Development Council and for the council's powers and duties; and providing for a transfer of functions from the Department of Commerce to the Department of Agriculture.

AGRICULTURE AND RURAL AFFAIRS.

HB 2522, PN 3559 (Amended) By Rep. GANNON

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, prohibiting the provision of certain stimulants to minors; and providing penalties.

JUDICIARY.

SB 397, PN 410 By Rep. GEIST

An Act designating a section of S.R.8001, S.R.0422 and S.R.4005 in Indiana County as Jimmy Stewart Boulevard.

TRANSPORTATION.

SB 509, PN 2009 (Amended) By Rep. BUNT

An Act amending Title 3 (Agriculture) of the Pennsylvania Consolidated Statutes, adding provisions relating to weights and measures; regulating the use and sale; providing for the inspection of weighing and measuring devices; regulating the sale and packaging of commodities; authorizing the regulation of persons engaged in selling, installing and repairing commercial weighing and measuring devices; providing for certain standards, for testing and for the sale and packaging of certain commodities; providing for the licensing of public weighmasters and defining their powers and duties; regulating the sale and delivery of solid fuel and other commodities sold by weight; regulating the manufacture, sale, offering for sale, giving away and use of weights and measures and of weighing and measuring devices; providing for the approval and disapproval of such weighing and measuring devices; regulating the delivery of light fuel oil to domestic consumers; providing for certain powers and duties of the Department of Agriculture; imposing penalties; and making repeals.

AGRICULTURE AND RURAL AFFAIRS.

GUESTS INTRODUCED

The SPEAKER. The Chair is pleased to welcome to the hall of the House today, as the guests of Representative Leh, the fourth grade class from the Brandywine Heights School District in Berks County. Would the students please wave so we know which ones you are in the balcony. There we are.

FILMING PERMISSION

The SPEAKER. The Chair advises the members of the House that a film crew from Pennsylvania Blue Shield, headed by Mr. Ted Weigand, will be videotaping during the consideration of this bill, SB 790. The crew may begin at this time.

The crew has been advised of our rules with respect to filming and have agreed to abide by them.

SENATE MESSAGE

AMENDED SENATE RESOLUTION
RETURNED FOR CONCURRENCE

The clerk of the Senate, being introduced, informed that the Senate has concurred in the amendments made by the House of Representatives by amending said amendments to **SR 81, PN 2003.**

Ordered, That the clerk present the same to the House of Representatives for its concurrence.

BILLS REPORTED FROM COMMITTEE, CONSIDERED FIRST TIME, AND TABLED

HB 2617, PN 3535 By Rep. HASAY

An Act amending the act of October 28, 1966 (1st Sp.Sess., P.L.55, No.7), known as the Goods and Services Installment Sales Act, further providing for the minimum service charge.

COMMERCE AND ECONOMIC DEVELOPMENT.

HB 2619, PN 3537 By Rep. HASAY

An Act amending the act of April 8, 1937 (P.L.262, No.66), known as the Consumer Discount Company Act, further providing for use of licensee name, for dishonored checks, for larger loan limit, for annual fee and for delinquent payments.

COMMERCE AND ECONOMIC DEVELOPMENT.

ANNOUNCEMENT BY SPEAKER

The SPEAKER. A moment ago I announced that permission had been granted to film a portion of this afternoon's proceedings and that the filmtakers were representatives of Blue Shield.

Some people may be interested in my remarks. Members will take their seats.

I have since had people that I believe represent the pro and the con of the amendment that is presently before the House enter into a discussion with the representatives of the television crew to make sure that no one felt that they were prejudiced by the presence of obviously someone interested in the very subject that happens to be before the House, and they came back satisfied that the show goes on and advised me and I in turn advise you that this particular TV filming is done without audio and is just general background information on the television, their television cameras.

I accept the responsibility for this little bit of a mixup. I do not know whether it was or it was not, but I think it is probably inappropriate, under usual circumstances, to have any special interest – by that, I mean a group that is interested in a matter that is being considered by the House – to be here on the floor, and I will think long and hard before granting permission again.

POINT OF ORDER

The SPEAKER. With that, the Chair recognizes the gentleman, Mr. Lloyd.

And I hope I have put to rest the television thing and we are not going to go and debate it.

Mr. LLOYD. Well, actually, Mr. Speaker, I do have a point of order. I guess it is a point of order.

The SPEAKER. I was afraid of this.

Mr. LLOYD. I am concerned – and I am not sure how all this came about, and I agree with you that this ought to be the exception rather than the rule – I am concerned about films taken on the floor of the House by any organization which makes campaign contributions and which is involved in advocating the election or defeat of members of this chamber, and I am concerned about what they are allowed to do with the film which they shoot here. Is there any limitation?

The SPEAKER. I have been assured that this film is to be used only within the company as part of, I am going to call it a training film, is the way it was described secondhand to me, for their employees. You know, I guess there are government days.

Mr. LLOYD. All right. Thank you, Mr. Speaker.

The SPEAKER. Mr. Mayernik is recognized.

Mr. MAYERNIK. Thank you, Mr. Speaker.

I would ask for some latitude on this issue, if I may, with you.

This House is very well respected, and we have an attire in this House of Representatives whenever we come in, and during the summer months we have individuals on the camera crews coming in wearing tennis shoes, blue jeans, not attired in suits and ties, and some people with baseball hats on, some people with shorts. I would ask, if there are any camera crews to come in in the future, that they meet the same attire that we have, to keep our decorum here in the House.

The SPEAKER. I suspect, if we looked around and we polled on a silent basis or secret basis, that most of our members would prefer to be in their attire than in our attire.

Mr. MAYERNIK. I understand that, Mr. Speaker.

The SPEAKER. No, I am not going to enforce that.

Mr. MAYERNIK. Thank you, sir.

The SPEAKER. These individuals are carrying around cumbersome equipment that has grease on it, that would make the ordinary, expensive clothing such as you wear dirty, rip it perhaps. No, I will not do that.

Mr. MAYERNIK. Well, could we limit the baseball hats and the shorts then?

The SPEAKER. Limit it to baseball hats?

Mr. MAYERNIK. No baseball hats and no shorts, because that is what was happening.

I will raise the objection when it happens later on.

The SPEAKER. When you see it, you raise the objection. That is fine.

Mr. MAYERNIK. Thank you, sir.

The SPEAKER. Good. This will be a valuable part of their training film.

Dr. King is recognized.

Mr. KING. Thank you, Mr. Speaker.

I would just like to go on record sharing Representative Lloyd's views of this particular matter, and especially today, cognizant of the extreme position that the filming crew represents on this particular issue. I would like the Speaker to take a few more minutes, and I suggest that maybe you could rescind your approval for this particular filming on this particular issue, because I think in spite of the fact that you have said to the contrary, I think that some Speaker in the future may look upon this as a precedent-setting act. Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

In about 2 minutes they will have used up their time taking this portion of the film, and it will not be necessary to worry about the subject matter.

Anyone further on this subject?

Mr. Gordner is recognized.

Mr. GORDNER. Mr. Speaker, just to clarify that they have been admonished that they are not to record the voting on the tote boards.

The SPEAKER. They have.

Mr. GORDNER. Thank you, Mr. Speaker.

The SPEAKER. The Parliamentarian has talked to the camera crew and explained to them our practice.

ANNOUNCEMENT BY SPEAKER

The SPEAKER. The Chair is pleased to advise the members of the House that Representative Nicholas A. Micozzie became a proud grandfather for the sixth time of a beautiful 6-pound-14-ounce baby girl, Anna Marie, born on Monday, May 13, to his daughter, Kelly, and her husband, Ernie. Congratulations.

GUESTS INTRODUCED

The SPEAKER. The Chair is pleased to welcome to the hall of the House today the students and faculty and friends from the Tioga County Christian Academy, here as the guests of Representative Matt Baker. The visitors are in the balcony. Would they please wave so that we can acknowledge their presence.

The gentleman, Mr. Olasz.

Mr. OLASZ. Mr. Speaker, I would like to have a copy of your remarks regarding the proper dress of the House chamber so that I can send them to our former colleague, Mr. Davies.

The SPEAKER. I will see to it when the record is printed.

CONSIDERATION OF SB 790 CONTINUED

The SPEAKER. The question recurs, will the House agree to the amendment offered by the gentleman, Mr. Chadwick, being amendment A2668 to SB 790?

With that, the Chair recognizes the gentleman from Delaware County, Mr. Gannon.

Mr. GANNON. Thank you, Mr. Speaker.

Mr. Speaker, I listened to the debate on this amendment this morning, and a number of members have come to me expressing some concerns about provisions of this bill. Those concerns specifically address whether or not some of the provisions of this bill would withstand constitutional muster. During the lunch break I had an opportunity to take a look at the proposal again, and quite frankly, I think there are some serious, very serious constitutional issues here that should be resolved by the Judiciary Committee. I do not think we are going to be able to resolve them on the floor of this House.

Someone asked, by way of illustration, and I guess at first blush would be whether or not the General Assembly can dictate to the courts what their procedures would be. This amendment, the way it is drafted, sets up a procedure for discovery; it sets up a procedure for determining who or who could not be an expert witness in a case. It also sets up an arbitration scheme, Mr. Speaker. We have three arbitration plans already in place in the Commonwealth of Pennsylvania. Of course, we have common-law arbitration, which goes back to precolonial days. We also have statutory arbitration, which is presently in place, where two parties can agree to binding arbitration, and that arbitration scheme provides a process where a case can be heard by arbitrators, but it also sets out a process for appeal by either side if they are not satisfied with the arbitrator's decision. The arbitration provisions in this bill have no provision for what happens after the arbitration. Do we start back at square one, Mr. Speaker? If the legislation is silent on where we would go after the arbitration, then that would be my guess. We would be back where we started from, where we started from, Mr. Speaker, and it seems to me that that is not judicial economy, does not speed up the process of cases.

Another thing that this amendment does, Mr. Speaker, is it sets up a process that violates what I think and what I have been told is equal protection. What we are doing is we are taking a class of individuals, those who have been injured as a result of the negligence of another, and within that class we are setting up a subclass, or we are setting up certain rights and remedies for one as opposed to the other. What we are saying is that someone who would be injured as a result of the negligence of a doctor – for example, if they had a spinal cord injury and were totally paralyzed – we are going to treat that person differently than if they were injured in an automobile accident as a result of the negligence of another. I think that creates and presents some serious due process questions, Mr. Speaker, insofar as the rights and remedies of those individuals.

The proposal also changes the criteria for encouraging settlements of cases. It does away with what we call delay damages.

Arguably, the arbitration provision in the proposal would eliminate the right of a person to have a trial by jury, which is guaranteed by the Constitution, and it seems to me that in reading this arbitration, it is almost trying to set up some type of administrative process to deal with medical malpractice cases.

Now, I have had a number of conversations with members, Mr. Speaker, and what I have told them is, the Judiciary Committee is seeking some direction from the members of the General Assembly. I have pointed out those provisions that members have come to me and expressed some concern about

whether or not they would pass constitutional muster in their present form, and I have my own reservations.

CONSTITUTIONAL POINT OF ORDER

Mr. GANNON. What I am going to ask, Mr. Speaker, is that we have a motion as to whether or not these provisions are constitutional. I am going to argue that they are not constitutional, and what I am going to do is tell the General Assembly that if they find those provisions unconstitutional, as I am recommending—

The SPEAKER. Will the gentleman yield.

Has the gentleman now raised the question of constitutionality?

Mr. GANNON. Yes, Mr. Speaker.

The SPEAKER. Let me put that question to the House and caution the gentleman that once the question of constitutionality has been raised, the gentleman has the opportunity to debate it but once. Up until this point, I considered what you were doing as debate on the issue because of your terminology throughout, but if you continue once I have put the question, that will count against you as your only opportunity to debate.

Mr. GANNON. Thank you, Mr. Speaker.

The SPEAKER. The question before the House is the question of constitutionality raised by the gentleman from Delaware County, Mr. Gannon.

Mr. Gannon, would you state for the benefit of the House what sections of the Constitution and/or which Constitution, U.S. or Pennsylvania, you believe is involved in this question.

Mr. GANNON. Yes, Mr. Speaker.

I believe we have some violations of the equal protection and due process clauses of both the Federal and State Constitutions and also violations of the separation of powers in the State Constitution.

On the question,

Will the House sustain the constitutionality of the amendment?

The SPEAKER. On the question of constitutionality, this debate is available and open to any member one time.

The gentleman, Mr. Cohen.

Mr. COHEN. Mr. Speaker, I would just like to briefly agree with Mr. Gannon's concerns. Mr. Gannon raised many constitutional issues. I think there is a near 100-percent chance that this bill will be found unconstitutional on one or more of the bases that Mr. Gannon laid forward here a few minutes ago. I think this would be a very safe vote, a vote that you could talk to any lawyer or any legally informed person and they would agree with Mr. Gannon's concerns.

I would urge that we find this amendment to be unconstitutional.

The SPEAKER. The gentleman, Mr. Sturla, on the question of constitutionality.

Mr. STURLA. Thank you, Mr. Speaker.

Mr. Speaker, would you frame the question for us so that members understand what a "yes" vote is doing and what a "no" vote is doing here?

The SPEAKER. The question that will be placed before the House is, those voting "aye" will vote to declare the amendment to be constitutional; those voting "no" will be voting that the amendment is unconstitutional.

The gentleman, Mr. Dermody.

Mr. DERMODY. Thank you, Mr. Speaker.

Mr. Speaker, I would like to interrogate the maker of the motion.

The SPEAKER. The gentleman, Mr. Gannon, will stand for interrogation. You may begin.

Mr. DERMODY. Thank you, Mr. Speaker.

Mr. Speaker, if we vote with you that this amendment is unconstitutional, will you take any steps to make it constitutional?

Mr. GANNON. Yes, Mr. Speaker. I have had conversations with a number of members, and what I have said is, look, we would certainly, as a committee, as part of the committee process, which we are in, in looking at this bill, invite people to come in before us who are a lot smarter than I am and ask them, look, is there a way that we can take those sections of the bill that are unconstitutional or appear to be unconstitutional and fashion them in such a way that they would pass constitutional muster and still achieve the objective of the sponsor?

Mr. DERMODY. Thank you, Mr. Speaker.

The SPEAKER. On the question of constitutionality, the Chair recognizes the gentleman, Mr. Chadwick.

Mr. CHADWICK. Thank you, Mr. Speaker.

I think the gentleman, Mr. Cohen, probably said it all, whether he knew it or not, when he said that this was a safe vote. This motion is an attempt to provide cover for those who do not want to have to make a vote on the merits.

This amendment is every bit as constitutional as it was germane The reason that the Supreme Court threw out the arbitration sections of Act 111 of the 1975 act was because it was mandatory. We took that into account when we made the arbitration system in this amendment voluntary.

With regard to the other actions the gentleman talked about, we have already in this legislature many times involved ourselves in court procedures. I would give you four examples: the Pennsylvania rape shield law, the contempt-of-court law, the criminal proceedings law, and the rules of evidence, the last three of which, I might remind the members, are all contained in Title 42, which is where we are right now, a Title 42 bill.

One last point. The gentleman, Mr. Gannon, raised the subject of equal protection. I know not all of us have a legal background, but I would recommend to the members that they consider this: In an equal protection argument, if there is no fundamental right at stake, which there is certainly not here, you use what is known as a rational basis test, which is the lowest level of test, and if all you have to do to find State action appropriate is find some rational basis between the government action taken and the class of people affected, clearly we can meet that test with this legislation.

This motion is about whether or not this amendment is going to become passed. We all know that over the last 3 hours, while we were in recess, unfortunately, the special interests worked very hard to try to change some votes, based on the printout of that germaneness vote that we had a while back, and I am sorry that that had to be the case, but that was the case.

The truth is, this is the vote on medical malpractice; this is the big one. A "yes" vote is a vote for medical malpractice litigation reform; a "no" vote is a vote against it. Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The gentleman, Mr. George, on the question of constitutionality.

Mr. GEORGE. Mr. Speaker, I do not know much about constitutionality. I have to leave that up to all these geniuses, especially these attorneys who seem to be battling. But I have a concern for those people in that I want to do the right thing, so with your permission, Mr. Speaker, I want to ask Mr. Chadwick just a question or two.

The SPEAKER. The gentleman, Mr. Chadwick, indicates he will stand for interrogation. You may begin.

Mr. GEORGE. Thank you, Mr. Speaker.

Mr. Speaker, I assume, since you drafted this measure, that you are absolutely certain that in no way have you taken anyone's rights in the future by its conception. Is that right?

Mr. CHADWICK. That is correct, Mr. Speaker. I do not believe in taking substantive rights away from anyone, especially anyone who is injured as a result of medical malpractice. I would not do that, and this bill does not do that.

Mr. GEORGE. Well, I am certain that you would not, but I am a little concerned that an individual such as myself who might be under duress, that somebody would shove a paper in to me before they would agree to operate. Would that hold up in court in that I always was told that in no way can you sign your rights away? You are sure that I would not be signing my rights away? I mean, are you sure?

Mr. CHADWICK. Yes, Mr. Speaker. Thank you for that question.

The legislation is very specific when it says that anyone who signs an arbitration agreement does not waive any of their substantive rights, and furthermore, you have the ability to step back from that agreement entirely if you change your mind.

Mr. GEORGE. You have an agreement within 30 days. Is that it?

Mr. CHADWICK. Yes.

Mr. GEORGE. So that is the protection that you are giving these people that all 203 of us represent. You are sure that is all the protection they need?

Mr. CHADWICK. No. There is more than that, if you will wait—

Mr. GEORGE. No. I am only asking you about that one phase. We are talking about constitutionality, and as a layperson, I am insisting that in no way can anyone force me to sign away my privileges, my rights, and while I am lying there in a semicoma, like I think some of you are in today, that you might be forcing someone who does not really have your intellect to sign their rights away. Now, you said no. I guess that is the answer you are going to give me. Mr. Speaker, I thank you for that.

I just want to say one thing, Mr. Speaker.

Mr. CHADWICK. Mr. Speaker, do I have the opportunity to answer that question? Can he cut off the interrogation before I answer that question? That is an interesting question. I would like to know the answer to that.

Mr. GEORGE. Well, Mr. Speaker, if I do not want to talk to him, I am not going to talk to him.

The SPEAKER. Mr. Chadwick, I think that was the answer.

The Chair recognizes the gentleman, Mr. George, on the question of constitutionality.

Mr. GEORGE. On the question of constitutionality, my concern, Mr. Speaker – and I hope it is yours – is that this is a very clouded issue that we do not know, and we are not just dealing with some kind of action where someone runs into someone or there is some damage or some tort claim. I am talking about the fact that all of us want to see the insurance rates reduced, but I do not want to see people lose their benefits, their privileges, and their rights and then sometime later find out that we did not reduce those rates.

So, Mr. Speaker, I believe in my heart that I am going to vote that this is not constitutional, because I am afraid of what will take place in the future. Thank you, Mr. Speaker.

The SPEAKER. The gentleman, Mr. Masland, from Cumberland County.

Mr. MASLAND. Thank you, Mr. Speaker.

In response to your question, Mr. Speaker, I just happened to be up here talking about constitutionality. I would like to point something out before I get to my remarks. Although I am not Mr. Chadwick, I hope this will suffice.

If you look at page 12 of the amendment, section 8655, "Conditions," under paragraphs (4) and (5), I believe that those set forth the arbitration protections that you are interested in.

I would also suggest you look on page 13 at the top of the page where it talks about notice to patient. I think that that also sets forth some protections.

Now, I am no constitutional scholar, but I did have occasion last session to look at this issue with respect to a bill that I had introduced that would have set a sliding scale for contingent fees. Fortunately, I had my research on hand and I could refer to it, and I just would like to point some things out – although most people probably have already made up their mind – let me point some things out that the Pennsylvania Supreme Court has said on this issue.

Historically, there was the 1975 Pennsylvania Health Care Services Malpractice Act. That set up these arbitration panels; that put limits on attorney's fees; it did a host of other things. The first time that was challenged was in 1978, and the court upheld the constitutionality of the whole act. It said it fully complied with the basic elements of due process. It looked at the rational-basis concept that Representative Chadwick mentioned and found that the act passed constitutional muster. Then again in 1980 the court looked back at the act because there was another appeal, and it said that the act and its procedures did not violate any guarantee of the Constitution; that is our Constitution. I would submit that that answers the question.

Now, the court did go on to say that there was a problem, not with the way the act was framed but with the way the act was working, and that was because the arbitration system was mandatory. This bill does not set up a mandatory system for arbitration, and again I would submit that that renders it constitutional.

When you are looking as to whether or not something is constitutional under equal protection or due process, you have to look at whether the State had a rational reason. Let me just suggest a few rational reasons which have been effective not only in the earlier Pennsylvania decisions I mentioned but across the country

with bills that go far beyond the one that Representative Chadwick has introduced.

In California where they have a very, very restrictive bill, they found that the insurance crisis alone in California provided a rational basis. They also felt that the problem with frivolous claims, trying to combat that, provided a rational basis. The purpose of encouraging settlements, which I think this bill will do, is also a rational basis.

Those are just a few things that I would submit to you. Although I may not be a legally informed person in Representative Cohen's eyes, I hope that the Supreme Court and their earlier decisions will be helpful. Thank you.

The SPEAKER. On the question of constitutionality, those voting "aye" will vote to declare the amendment to be constitutional; those voting "no" will vote to declare the amendment to be unconstitutional.

On the question recurring,

Will the House sustain the constitutionality of the amendment?

The following roll call was recorded:

YEAS–111

Adolph	DiGirolamo	Lloyd	Semmel
Allen	Egolf	Lynch	Serafini
Argall	Fairchild	Maitland	Sheehan
Armstrong	Fajt	Major	Smith, B.
Baker	Fargo	Manderino	Smith, S. H.
Bard	Fleagle	Markosek	Snyder, D. W.
Barley	Flick	Marsico	Stairs
Battisto	Gamble	Masland	Steelman
Belfanti	Geist	McCall	Steil
Birmelin	Gladeck	McGill	Stern
Boyes	Godshall	Merry	Stetler
Brown	Habay	Miller	Stish
Browne	Hanna	Nailor	Strittmatter
Bunt	Harhart	Nickol	Taylor, E. Z.
Carone	Hasay	Nyce	Thomas
Cawley	Haste	Perzel	Tigue
Chadwick	Herman	Pettit	Trello
Clark	Hershey	Phillips	Trich
Clymer	Hess	Pitts	True
Colafella	Hutchinson	Platts	Tulli
Conti	Jadlowiec	Readshaw	Vance
Cornell	Jarolin	Reinard	Vitali
Corrigan	King	Rohrer	Waugh
Coy	Krebs	Rubley	Wright, D. R.
Curry	Laughlin	Sather	Wright, M. N.
DeLuca	Leh	Saylor	Yewcic
Dempsey	Lescovitz	Schroder	Zimmerman
Dent	Levdansky	Schuler	

NAYS–89

Bebko-Jones	Fichter	McGeehan	Rudy
Belardi	Gannon	Melio	Sainato
Blaum	George	Michlovic	Santoni
Boscola	Gigliotti	Micozzie	Scrimenti
Butkovitz	Gordner	Mihalich	Shaner
Buxton	Gruitza	Mundy	Staback
Caltagirone	Gruppo	Myers	Sturla
Cappabianca	Haluska	O'Brien	Surra
Carn	Hennessey	Olasz	Tangretti
Civera	Horsey	Oliver	Taylor, J.
Cohen, L. I.	Itkin	Pesci	Travaglio
Cohen, M.	James	Petrarca	Van Horne
Colaizzo	Josephs	Petrone	Veon
Corpora	Kaiser	Pistella	Walko
Cowell	Keller	Preston	Williams
Daley	Kenney	Ramos	Wogan
Dermody	Kirkland	Raymond	Wozniak
DeWeese	Kukovich	Reber	Youngblood
Donatucci	LaGrotta	Rieger	Zug
Druce	Lawless	Roberts	
Durham	Lederer	Robinson	Ryan, Speaker
Evans	Lucyk	Roebuck	
Feese	Mayernik	Rooney	

NOT VOTING–0

EXCUSED–3

Bishop	Farmer	Washington

The majority having voted in the affirmative, the question was determined in the affirmative and the constitutionality of the amendment was sustained.

On the question recurring,

Will the House agree to the amendment?

The SPEAKER. The Chair recognizes the gentleman from Bucks County, Mr. Clymer.

Mr. CLYMER. Thank you, Mr. Speaker.

On a very brief note, on a personal basis each of us are acquainted with the medical profession. I daresay, without exception, each of us want the best physician available to take care of our particular problem and any physical ailment of a family member.

Today, those physicians seeking to establish themselves have incurred thousands of dollars of indebtedness. Having to pay a hefty surcharge increase on their CAT Fund insurance has to be considered a serious negative for those planning a future in the medical profession. And, Mr. Speaker, does it make sense to discourage the brightest and most qualified of our young people from becoming members of the healing arts profession? I think not.

Also, consider the fact that in Pennsylvania, because of our highly trained corps of medical professionals, we have many outstanding medical centers that bring in patients not only from other States but from around the world. Good jobs are the result of this highly qualified medical profession. Medical research centers bring in Federal dollars that create high levels of employment in some of our most populous cities, and again, the physicians play an important role.

Mr. Speaker, the Chadwick amendment is important to the future of our medical profession. While we can take some satisfaction that health-care services provide good jobs, the issue is a matter of healing versus suffering, of life versus death.

Mr. Speaker, I urge support for the Chadwick amendment. Thank you.

The SPEAKER. The lady from Indiana, Ms. Steelman.

Ms. STEELMAN. Thank you, Mr. Speaker.

Will the maker of the amendment stand for interrogation?

The SPEAKER. The gentleman indicates he will stand for interrogation. You may begin.

Ms. STEELMAN. I find myself in company with Representative Lloyd and Representative Sturla, which is pretty good company, in that I am prepared to be convinced that this is something that we should vote for, but looking at the language, I do have some questions, and one of them circles back to an issue that was raised earlier on page 3 of the amendment. Am I understanding correctly that there is a duty to the physician to obtain informed consent to a major invasive procedure but there are not guidelines even now, because there is not anything in the bill, as to what a major invasive procedure is?

Mr. CHADWICK. The only guideline under current law is a reasonable-man test.

Ms. STEELMAN. Well, indeed, in this case is the reasonable man, reasonable person, supposed to be a reasonable physician or is it supposed to be a reasonable layperson's concept of what a major invasive procedure is?

Mr. CHADWICK. No. As I understand the current law, the physician would have a duty to explain those risks and consequences and so forth that would allow a reasonable patient to make a decision based on that information.

Ms. STEELMAN. I am afraid that that is still not quite clarifying for me the issue.

Mr. CHADWICK. I apologize; I am doing my best. Perhaps I do not understand the lady's question.

Ms. STEELMAN. I am asking how the physician knows that she is supposed to obtain informed consent from the patient that as— Obviously I think everyone would say certainly an appendectomy, anything that involves surgery, I would suppose everyone would consider that to be a major invasive procedure.

However, suppose there is a situation, for example, in the case of phenylketonuria, which is treated in infants and young children by a very restrictive diet. It is a dietary therapy so, in a sense, it is not invasive. In fact, it involves withholding from the patient rather than even imposing anything on the child patient. However, the consequences of failing to prescribe or inappropriately prescribing that diet can be severe mental retardation or death to the patient.

So under those circumstances, yes, a reasonable man might suppose that that, too, would be a major invasive procedure, but it looks as if from the bill as though a lot of these things will then have to be fought out in the courts?

Mr. CHADWICK. Under current law, surgery is the only thing which requires this kind of informed consent. Under this bill, at least there is an opportunity through expert testimony to make a determination as to what kinds of things should and should not require informed consent. Today it is just surgery.

Ms. STEELMAN. But by that time we are already drawing people into court in order to have experts argue over whether the disputed procedure is a major invasive procedure or not. There really is not any other way for a physician to know from the language in the existing amendment other than to say probably surgery, because that is what is in statute now, and otherwise, take it to the lawyers and the expert witnesses.

Mr. CHADWICK. The only alternative to doing what we have done would be to create page after page, line after line of specific procedures and say yes or no after them, and it would change as technology, as medicine, changed and evolved, and it would be virtually unworkable. Any new law – as I said earlier in an interrogation this morning – any new law is eventually going to be tested and probed and require court clarification. This law will be no different than any other law in that regard, and within a short period of time, we will have clarification in this area when there have been a couple of tests.

Ms. STEELMAN. I am not entirely sure I agree with you, but setting that aside for the moment and circling back to the issue of informed consent itself, what does it mean, from the point of view of relief from future legal liability, for the doctor to obtain informed consent? Does this actually provide any protection? Why are we mandating that this be done?

Mr. CHADWICK. The answer to that, if the lady would refer to the bottom of page 3 – we were looking for the section, and I apologize it took so long to find it – at the bottom of page 3 where it says "Presumption," on line 51. The protections for the physicians or the health-care provider would be those contained under the word "Presumption." There is a presumption that the patient consented to the procedure, that he was apprised of the risks and so forth. That would be the answer to the lady's question.

Ms. STEELMAN. So that would then be something that the physician's attorney might present in court, saying that because informed consent was given to the procedure, that therefore, even though a highly undesirable result occurred, the physician is still protected. Protected from what? Obviously not— I mean, still could not possibly be protected against negligence, but against what?

Mr. CHADWICK. Most of us in law school, when we took contracts, the very first case we saw in the casebook was Hawkins v. McGee, the hairy hand case, and that case helped distinguish between a contract or a guarantee of a result and negligence or just a poor performance without intent of a medical procedure.

There is a section in here that says that a health-care provider is not a guarantor, because in medicine, there are no guarantees. So what this says in this bill is that if a physician did properly – and I want to underline the word "properly" – inform the patient of the risks inherent in a procedure, and for reasons beyond the control of the physician the result was not all that might have been hoped for, at the very least the physician is protected from a lawsuit that was filed on the basis of failure to warn, because anyone who has been around medical malpractice knows that there are a lot of cases filed that say failure to warn, failure to warn the patient of the different risks that are inherent in a procedure. There is no guarantee. But if the physician has properly warned the patient and obtained the proper consent form, at the very least we ought to say to that physician, you are protected from a lawsuit on those specific grounds, and that is what this legislation does.

Ms. STEELMAN. I understand that, although it might be well to remember that even in the hall of this House, most of us did not go to law school.

Mr. CHADWICK. I appreciate that.

Ms. STEELMAN. But your mention of the proper consent form brings up another question that was in my mind, and that is, why in the language of the bill there is a requirement, as far as I can see, or at least a suggestion, that written consent to the procedure is desired but there is not any language that specifies that the consent form must in any way outline even what the procedure is absent the risks and possible consequences of it.

I am asking this because it seems to me that under the circumstances that may well prevail in a malpractice situation, if you had a consent form that actually outlined the substance of the physician's and the patient's discussion and that was what the patient signed and kept a copy of and the physician kept a copy of, that would seem at least to very much reduce the possibility that a year or two later physician's lawyer and patient's lawyer will be confronting each other in court with the statement on the part of physician's lawyer that physician did indeed describe to patient the risk of contracting hepatitis from the blood transfusion as part of the surgery and patient's lawyer saying patient has absolutely no recollection that that was ever a part of the discussion and patient now has hepatitis and is somewhat disturbed. What was the rationale for making the consent language so very vague?

Mr. CHADWICK. Well, it is only vague in the sense— Can the lady hear me?

Ms. STEELMAN. Barely.

THE SPEAKER PRO TEMPORE (ROBERT D. REBER, JR.) PRESIDING

The SPEAKER pro tempore. Would the gentleman suspend.

Could we please have a little order in the House. Even with the Speaker at the Speaker's rostrum, it is extremely difficult to hear. Order in the chamber, please.

The gentleman, Mr. Chadwick, is recognized to respond to the lady's question.

Mr. CHADWICK. Thank you, Mr. Speaker.

The language is only vague in the sense that there is not a specific form for consent contained actually in the bill. Currently most physicians who obtain written informed consent use a basic blank form which they fill in themselves, depending on the type of case, the type of procedure, and the different risks involved. It would be very difficult to have a single form that is usable in all cases, not only because so many different cases have so many different risk procedures, but also because medicine is changing so quickly, technology is changing so quickly, and frankly, there are new risks involved in some procedures that we never knew about. It would be very hard to standardize all of those on a form. I will say that if you look at the presumption, starting in line 51, it says that written consent shall create these presumptions. So we are saying, if you want these presumptions, physician, you better get it in writing. But I find it would be very difficult to have a single form because of the differences in risks and procedures.

Ms. STEELMAN. No. What I am asking about is not, why did you not put language into the bill for the procedural consent that is as restrictive as the prescribed language for consent to arbitration. I was asking what the basis was of the decision not to require a consent form that would indeed start out with a blank form and require that in order to create the presumption that the risks and alternatives had been described to the patient, that the risks and alternatives should be at least summarized on the form. That, it seems to me, is something that could have been done that seems as though it would very much reduce the problem of lost memory, and I am wondering why that is not here.

Mr. CHADWICK. I guess that I just do not see how we do that without creating a different form for every disease, for every injury, for every condition. The language is clear in that it requires this informed consent, and clearly, an injured person who feels that they did not properly get that informed consent would have the ability to litigate that question. I guess I just do not see the merit in going any farther than that.

Ms. STEELMAN. I think the way you create the form is to have a couple of lines at the top and then a lot of blank lines further down the page to be filled in by the physician.

But moving on from there to page 9, the subchapter on trial procedure, and specifically the "Qualifications of expert." When you are requiring that in order to be qualified to testify as a medical expert, that the individual has to have personal experience and practical familiarity with the medical subject that is being considered and has been actively engaged in direct patient care, I would like to ask some questions about the degree of specificity that is implied by the term "medical subject."

To circle back to my example of a case of phenylketonuria earlier. If there is a case of phenylketonuria, the doctor's handling of it does not have a desirable outcome, the case goes to court, would a board-certified pediatrician be considered an expert witness in this case because the therapy was prescribed by a pediatrician, or in order to be an expert in this case, would there be a requirement not only that the expert witness be a pediatrician but be a pediatrician with specific experience in genetic disease and its therapy or even in specifically the treatment of phenylketonuria? How broadly is "medical subject" to be defined? Is it the whole range of the specialty or is it in fact the specific condition that would be under discussion in a given case?

Mr. CHADWICK. It would be— One second.

If the defendant is a board-certified pediatrician and the plaintiff desires to bring in a pediatrician to testify against him, that physician would have to be board certified. You could also bring in a separate expert who knew about phenylketonuria. But clearly, if a pediatrician came in to testify against a board-certified pediatrician, that pediatrician would have to be board certified. The bill does not address the issue of whether or not the phenylketonuria expert would have to be board certified.

Ms. STEELMAN. The scenario that I was proposing actually is of a board-certified pediatrician but a board-certified pediatrician for the plaintiff who is not necessarily also an expert in the therapy of genetic disease.

Mr. CHADWICK. That is okay.

Ms. STEELMAN. You are saying that in this PKU case, that even if the defendant were a board-certified pediatrician with special expertise and training in genetic disease, that any board-certified pediatrician would be considered an adequate expert witness for the plaintiff under those circumstances.

Mr. CHADWICK. That would be my intention if the plaintiff intended to rely on a board-certified pediatrician; absolutely.

Ms. STEELMAN. And in fact, the response that you gave to the earlier question brings up the last of my questions, which is, what about those individuals who are not perhaps board certified in a particular specialty but nevertheless may have a level of expertise that is relevant to a specific case? For example, in the case of drug therapy, if you have, say, an internist who is being sued by a patient, what is the standing before the court, if this were to become law, of a pharmacologist who would not even have an M.D. (doctor of medicine), let alone be board certified, but might very well be the most effective possible witness and the most informative possible witness on the subject of drug therapy, drug

interactions, the relevant facts at issue in the case? Would this person then be barred from testifying as an expert against the board-certified internist because of his or her lack of board certification?

Mr. CHADWICK. If a defendant is board certified, any plaintiff expert who is in the same field – the same field – who is going to testify against that defendant would have to be board certified. Obviously, if the defendant is not board certified, then the plaintiff's witness would not have to be. If there are experts who go beyond that and who are not in the same field as the defendant, that is a different story.

Ms. STEELMAN. So in this case where the defendant is a board-certified internist, nevertheless the plaintiff could call upon a pharmacologist or a forensic pathologist or a neuroanatomist even, if that was the direction in which the development of the pathology associated with the proposed negligence on the defendant's part lay, and those would be people who would be allowed to testify, and there would be no restriction on their testimony?

Mr. CHADWICK. The only restriction is on board certification of people in the same specialty as the defendant.

Ms. STEELMAN. So essentially in that kind of case, the only specialist, the only person who might not be allowed to testify would be an internist who is not board certified?

Mr. CHADWICK. That is probably the case. I never like to make blanket rules, because you just never know what is going to happen in a specific case in a specific courtroom with a specific judge, but that is probably the case.

Let me tell you what the intention of this section is. The intention of this section is to make sure that if you have a highly qualified defendant, that the experts who testify against him are highly qualified, and that if a person is going to testify against a physician, that they ought to be actively engaged or have at some point in their careers been actively engaged in seeing patients and have some personal expertise in the area. What we want to do is do away with professional witnesses who have never seen a patient.

Ms. STEELMAN. Actually, come to think of it, that does raise another question with regard to some of these academic experts such as a pharmacologist. Would a pharmacologist then be enjoined from testifying, because they certainly have not been engaged in direct patient care. If a pharmacologist or a biochemist or, as I say, an anatomist or neuroanatomist were to be called in to provide expert testimony, perhaps on the symptoms of spongiform encephalopathy, would that person be refused the opportunity to testify simply because, as a Ph.D. (doctor of philosophy) anatomist, they would never have actually engaged in patient care?

Mr. CHADWICK. What an expert is going to testify to is whether or not a physician properly treated their patient. Anyone who is going to testify as to whether or not a physician properly treated their patient ought to have some experience in treating patients for those kinds of conditions so that they know the real world – not the academic world, the real world. We are saying that if someone is going to say to somebody you did not do the right job in treating that patient, the person who says that ought to have treated some patients themselves in that field.

Ms. STEELMAN. Then if I am understanding you correctly, you are saying that someone who might have expertise in the area, that anybody who does not have an M.D. degree would not be able to testify in a medical malpractice case – bottom line.

Mr. CHADWICK. Well, I hate to slight the osteopaths, but—

Ms. STEELMAN. Pardon me?

Mr. CHADWICK. I think we know where we are on this.

Ms. STEELMAN. I am glad you know where you are, because although I feel better informed than I did at the beginning of the questioning, I cannot say that all of my concerns with this language have been completely dispelled.

I am finished with my interrogation. May I comment briefly on the bill, Mr. Speaker?

The SPEAKER pro tempore. The lady is in order. She may proceed.

Ms. STEELMAN. Thank you.

I think the intention of this amendment is good, and I think that many of us here in the chamber are in sympathy with the goals. But I have to say that I am disturbed by the process through which we are being asked to either vote up or down on this very significant piece of legislation without any opportunity to modify it through discussion, and I am also concerned by the fact that the maker of the amendment talks about the goals of the amendment. Unfortunately, if this amendment becomes law, as has been pointed out before on the floor when we have been discussing disputed interpretations of language, the courts will not pay very much attention to whatever it was that we had in mind. The courts will not even pay a lot of attention to what we say in this chamber today as far as our legislative intent. The courts will construe pretty strictly what is finally put down in the law itself, and I think that that is something we all need to think about very carefully.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the lady.

The Chair recognizes the gentleman from Allegheny County, Mr. Michlovic.

Mr. MICHLOVIC. Thank you, Mr. Speaker.

Mr. Speaker, will the gentleman, Mr. Chadwick, stand for a brief interrogation?

The SPEAKER pro tempore. The gentleman so designates that he will. The gentleman, Mr. Michlovic, may proceed with his interrogation.

Mr. MICHLOVIC. Thank you, Mr. Speaker.

On page 5 of your amendment, lines 35 through 40, you talk about vicarious liability, and it reads that "Punitive damages shall not be awarded against a party who is...vicariously liable for the actions of its agent which caused the injury unless it can be shown, by clear and convincing evidence...." Is that "clear and convincing evidence" a more strict standard than we have today, a more strict burden of proof?

Mr. CHADWICK. The answer is yes. Today it only requires a preponderance.

Mr. MICHLOVIC. Thank you, Mr. Speaker.

And, Mr. Speaker, it continues on, "...that the party knew of and endorsed the conduct by its agent which resulted in the award of punitive damages." Can you think of an example where a hospital or a supervisor would not only know of but actually endorse a practice of a physician that has caused harm to somebody?

Mr. CHADWICK. Let me turn that around and ask the gentleman if he can imagine a case where a hospital ought to be

liable for punitive damages for the actions of a physician which it knew nothing about and did not endorse?

Mr. MICHLOVIC. Well, you answer my question first, and I will respond to your question in my summation.

My question again to you is, can you give me an example of any case where, on a practice or a procedure where a doctor has injured somebody, that the hospital not only knew of but now the hospital endorsed that practice?

Mr. CHADWICK. I am not sure how to answer that question. Punitive damages, if you look at the Second Restatement of Torts, which is what the Pennsylvania State Supreme Court has adopted, it says that punitive damages may only be awarded where the conduct is outrageous because of the defendant's evil motive.

Now, if you can come up with a case where you can show that a hospital was guilty of outrageous conduct because of their evil motive in the actions of a doctor at that hospital, then absolutely that hospital would be liable for punitive damages. But absent of finding of outrageous conduct because of evil motive, there should be no liability for punitive damages to the hospital anyway under the basic standard that is in the Second Restatement.

Mr. MICHLOVIC. Mr. Speaker, what would constitute this endorsement by the hospital or by the supervisor of a doctor? What would constitute? Is it a written document? What would be required to comply under this law as an endorsement before somebody could actually go against both the doctor and the hospital to collect punitive damages?

Mr. CHADWICK. That, Mr. Speaker, would be a question for the jury, and there would be an opportunity to present your case to the jury, and they would determine whether or not based on the specific facts of the case there was that conduct. A jury question.

Mr. MICHLOVIC. Thank you, Mr. Speaker.

I am done with my interrogation. I would like to make a comment.

The SPEAKER pro tempore. The gentleman is in order. He may proceed.

Mr. MICHLOVIC. Mr. Speaker, in compliance with the gentleman's question to me, I will respond that there are a number of cases on national TV that we have seen where hospitals, their supervisors, knew of practices of doctors that injured people seriously, some to the point where people have actually died because of practices that the hospital or the supervisor knew, and in those cases, the plaintiffs, the families, applied and sought punitive damages from the courts. That certainly, knowing the information, knowing that this practice was going on, and then not taking any action to either remove that physician from that responsibility, was found by the jury to be an outrageous example.

I am afraid that we are putting not only a greater burden of proof here in the language, but we are putting language in there, this endorsement policy, that just makes it impossible, absolutely impossible, for any plaintiff to get punitive damages.

And I want to remind the members of the hall of the House that while we are hearing from the doctors and people in the medical field that have to buy insurance premiums that the punitive damages are the problem, let me remind you that it is the punitive damages in the history of our courts that have forced changes, that have forced practices, that have made people change their policy, change their ways of behavior, change their actions and their conduct so that they can continue to practice medicine. The punitive damages may sound high to many of us, but it is the only thing that has forced change in the medical malpractice.

I would suggest to you that when you receive questions and you receive lobbying from individual physicians in your district, you ask them a single question, a simple question: What have you or your organization done about the 5 percent of physicians in this State, in this country, that are causing the problem here? Has your organization set up a peer review group so that you can go to them and say, confidentially or however it is, that this doctor does not know what he is doing; this surgeon is too old to be in the operating room? No. The answer is no. They have not done anything like that to protect the consumer, to protect their patients, to protect those people that they are supposed to be caring for. No, they just sort of duck. They duck and they shirk their responsibility in trying to address this problem as they ought to as a professional group of physicians. That is their responsibility. When they are in the operating room, they are the ones with the expertise to determine whether or not a doctor or a friend is capable anymore of providing the kind of service, if that doctor may be capable but made a mistake, and they have not taken as an organization, as a professional group, that responsibility, and I do not think that we as a body ought to sell out all of the clients, and even ourselves as potential patients for those doctors, on our rights to go after those doctors in a court of law for punitive damages so that another patient after us does not meet the same kind of treatment that we feel should have never occurred. That is what punitive damages are all about.

If we essentially do away with punitive damages, as this section does in the law, we are not only providing a higher burden of proof, but we are now saying that the hospital or the supervisor somehow has to endorse that practice. They are not going to endorse it. There is no way anybody is going to endorse that practice. Now you pass this provision; after that, there will be no punitive damages. You are virtually eliminating the prospect of punitive damages, and in the course of doing that, you are virtually eliminating the chance of changing behavior that we need, that we must change in the future.

Mr. Speaker, I urge a negative vote on the Chadwick amendment. Thank you.

The SPEAKER pro tempore. The Chair thanks the gentleman.

The lady from Delaware County, Mrs. Durham, is recognized.

Mrs. DURHAM. Thank you, Mr. Speaker.

Earlier in today's debate there was a question as to what is major surgery. Well, my family doctors always define "major surgery" like this: When the surgery is on someone else, it is minor, but when the surgery is on you, it is major surgery. So I would like you to think about that as we vote today to affect the rights of each and every patient.

Those of us that sit here on the House floor have heard a lot of legal terms in our tenure here, but I venture to say that if I went around the House floor and began to question each and every one of you as to the difference between arbitration and trial, you would not be able to fully understand and explain that to someone who is going to be writing their rights away. That is what the Chadwick amendment does.

If you look at the Chadwick amendment, he talks about arbitration, and he says, oh, you can change your mind. Yes, you can change your mind – 30 days after you signed. Now, I venture to say that if you have been malpracticed, you may not know

within 30 days that the doctor has done you wrong. Now, of course, if you are like the poor man in Tampa, Florida, who had the wrong leg cut off or the poor man who had the wrong kidney removed, of course then you would know right away that there was medical malpractice.

We voted earlier that this bill was constitutional. I voted that it was not constitutional, and I did that because I do not believe that when you are signing your rights away to a trial by jury, which is guaranteed to us by the Constitution, that most people understand the difference between an arbitration panel where there is no right to appeal and a trial by jury.

There are some good things in the Chadwick amendment, but there are some things that distress me very much. For example, when you go to your doctor, you do expect to be cured or you at least expect to have some effective treatment to give you relief. If Scotty Chadwick were your doctor, you do not get that.

If you look on line 27, page 4, it says, "A health care provider is neither a warrantor nor a guarantor of a cure or an effective treatment to an individual...," and then he goes on further to say unless you are given a written contract. Now, can you imagine going to your doctor with poison ivy and have him saying to you, well, I will only treat you if you want to be cured if I sign a contract. How ludicrous, Mr. Speaker; how ludicrous.

If you look at the Chadwick arbitration language, he says you cannot be required to sign this agreement in order to receive treatment. However, can you envision a situation where you have said, I am not signing for arbitration, doc, and he says, well, I am not doing the surgery. Now, tell me, Mr. Speaker, is that not taking away someone's rights?

There are some good things in the Chadwick amendment, but most of it needs to be looked at closely. I urge you to vote "no" on the Chadwick amendment.

The SPEAKER pro tempore. The Chair thanks the lady.

The Chair now recognizes the gentleman from Washington, Mr. Trich.

Mr. TRICH. Thank you, Mr. Speaker.

What I would like to do is just spend about 2 minutes' time, and I promise to my colleagues that I will be very brief in these remarks.

We have all heard today a great deal talked about in very legal terms on this particular amendment, but keep in mind that what we are truly talking about is a step towards malpractice reform, and that is something that I do not believe any of us should lose track of as we decide how we are going to vote this amendment, up or down, today.

Two years ago I spent a great deal of time on this very issue, on malpractice reform. I even took an opportunity to take a trip to Washington, D.C., to talk to two very diverse individuals – Senator Orrin Hatch and Senator Ted Kennedy – to see where they stood on the whole issue of health-care reform, and the one area of common ground that I found between those two very different people dealt with the issue of malpractice reform. The only argument between their two staffs was how much you and I as consumers in this country are paying for the expenses that evolve around the issue of malpractice reform. Senator Kennedy's staff said it amounted to about 15 cents on a dollar; Senator Orrin Hatch's staff said about 30 cents on a dollar. But the bottom line is, unless we deal with malpractice reform, you and I as consumers and our country and our Commonwealth are going to be spending a lot of money on health-care issues that we do not need to spend.

Right now, many of our physicians are practicing what is known as courtroom preventive medicine. The bills that they pay for their insurance, for malpractice insurance, are only the tip of the iceberg. The real expense is the double, triple, and quadruple testing that they are forced to do in order to protect themselves should they end up in court.

You and I, members of this House, and the Commonwealth of Pennsylvania citizens are paying for that bill. Therefore, I support the amendment. I think it is an absolute step in the right direction on the malpractice issue. I would urge my colleagues to look at this not as Democrats or Republicans, not looking at it as a trial lawyers' issue or a Pennsylvania Medical Society issue, but rather for what it is – a step towards malpractice reform. I urge my colleagues to vote "yes" on this measure.

The SPEAKER pro tempore. The Chair thanks the gentleman.

The gentleman from Philadelphia, Representative Williams. Representative Williams is recognized.

Mr. WILLIAMS. Thank you, Mr. Speaker.

Mr. Speaker, may I ask that the maker of the amendment stand for a period of interrogation?

The SPEAKER pro tempore. The gentleman, Mr. Chadwick, so designates that he will. The gentleman may proceed.

Mr. WILLIAMS. Thank you, Mr. Speaker.

I would like to just simply ask, because there has been much conversation today, and some of it I have understood and some of it I have not, I would just like to know specifically – and you may have stated this already – what is the motivation and the need for this particular amendment?

Mr. CHADWICK. I think it is a combination of things, but the bottom line is that the malpractice litigation system in this State – not just in the State, really, but in this country – is spiraling out of control, and there has to be something done to bring it under control. If we do not, you are not going to be able to get available or affordable health care. The insurance situation is a catastrophe right now, and we need to address it, and it is only going to get worse.

Mr. WILLIAMS. Who states that— When you say it is spiraling out of control, what do you offer as factual?

Mr. CHADWICK. Let me give you an example. I think it was last year – I will have to check my facts; I think it was 1995 – but it is pretty common knowledge that one-half of 1 percent of all tort cases are medical malpractice cases, and yet 5 of the 10 largest awards last year – 50 percent – were medical malpractice cases.

An ob-gyn in Pennsylvania stands an 80-percent chance of being sued at some time during their career. We have cases like the one I described earlier coming out of Delaware County where ridiculous lawsuits – not just frivolous, downright ridiculous lawsuits – are being filed against physicians. And even though the physicians are successful in having those cases thrown out, they are not thrown out until the physician's insurance carrier has hired an attorney who has gone to work, who has filed the papers, who has attended the hearings, and run up the cost of malpractice insurance. I mean, something has got to give.

Mr. WILLIAMS. So the issue is savings? Is the motivation savings? Costs? Financial?

Mr. CHADWICK. No; the issue is only in part savings. The issue is also justice and fairness for the health-care providers of

this State who are being assaulted on an almost daily basis by ludicrous lawsuits.

Mr. WILLIAMS. So you are saying it is financial and it is fairness and justice.

Mr. CHADWICK. It is fairness and justice, and it is also financial. It is both.

Mr. WILLIAMS. Okay.

The other part I am interested, what controls, if any – and I may have missed this – will be offered or are offered with regard to that, quote, unquote, "voluntary form" which is to be signed? I think there was a specific example which is not theory, which is fact, and I can substantiate the fact that, you know, when you tell a client, I guess, or a patient to sign the form or I will not do the surgery, how are we going to protect the patient in that situation?

Mr. CHADWICK. There are not one but two different places in this legislation where we address that specific issue. One, we address in the legislation the protections, and number two, we actually put on the agreement to arbitrate the following specific language: "YOU CANNOT BE REQUIRED TO SIGN THIS AGREEMENT IN ORDER TO RECEIVE TREATMENT. BY SIGNING THIS AGREEMENT, YOUR RIGHT TO TRIAL BY A JURY OR A JUDGE...WILL BE BARRED...," and so on and so forth. Let me get to the other substantive parts: "THIS AGREEMENT MAY BE CANCELED WITHIN 30 DAYS OF SIGNING." It says, on page 12—

Mr. WILLIAMS. Mr. Speaker, I do not mean to interrupt you. You are sort of like saying words, and I am not sure how they are answering my question, so I just want to know, specifically the question is, where in the legislation does it protect the patient from the doctor saying, if you do not sign this, I am not going to proceed?

Mr. CHADWICK. Page 12, line 15, "The agreement is not a condition to the rendering of health care services by any party...."

Mr. WILLIAMS. And what happens if they do that?

Mr. CHADWICK. They are in violation of the law.

Mr. WILLIAMS. What happens then?

Mr. Speaker, he does not have to find the answer. I think that that answer is already answered.

I would like to proceed with my closing comments.

The SPEAKER pro tempore. Well, let me just say this: Does Representative Chadwick have any— He has no desire to answer.

The gentleman from Philadelphia may proceed.

Mr. WILLIAMS. I think, Mr. Speaker, that everyone in this chamber that took a moment to stop— Mr. Speaker, the silence which was in this chamber, the silence which was in this chamber at the moment when I asked, how will this be enforced, was filled with air, with silence, and that is the way the law will speak to how patients will be protected in the State of Pennsylvania, not by theory but by fact, how patients in the State of Pennsylvania will be protected when a doctor does – and I do not mean maybe but will, because it has happened in situations when people want to go for auto insurance or property insurance, so certainly this is no different – when people will be presented with the situation when the doctor says, I want to protect my house and my home, because these are real people we are talking about. That is exactly, that is exactly what those people who are opposing this legislation are concerned about.

The fact is, there is no way to enforce this. That discussion which may happen in an emergency room on any given moment between a doctor and possibly a pregnant woman will not be revealed anyplace in this Commonwealth, and there is not going to be a policeman standing right outside the waiting room saying, aha, I caught you; you are denying appropriate care by forcing this woman to sign a document she does not choose to sign, and I think a previous speaker spoke to that. That is ludicrous. It is ridiculous. That is at best. And in fact, it is a lie; it is a lie. There is no way to enforce this, and there is no major penalty, and do not come back to me speaking at the mike talking about, oh, we are going to fine them $300. Are you going to throw them in jail for 10 years? Throw them in jail. Tell me you are going to do that. Then we will begin to talk about some level of accountability and fair play.

It amazes me that every time this Commonwealth, for the past year, has decided to save money, we do it on the backs of people. "Save money" – that is the part, quote, unquote; if he wants to divide it, fine, I will be polite and divide it. If he does not want to say it is all financial, it is truth and justice and all the American apple-pie way and all that kind of nonsense, we will put that in there, and I will speak to that later.

The fact is, on the money part, we do it on somebody's back. Every time we do it on somebody's back. We take the Constitution, we rip it up and put dollar signs in front of it. What, are we selling Pennsylvanians? Are we selling people down the river here? Is that what we do? We run out to the back of the lobby and say, give me some change? Oh, by the way, my wife has some little problem; can you make sure we can protect her? Call my little doctor administrator friend on the phone and say, oh, by the way, my daughter is being admitted; make sure we get a good doctor to protect her. This is not legislation. This is not a piece of paper that disappears. These are people's lives we are talking about.

When are you going to start to feel the pain? Each one of us are a little cloister club here, protected from the realities of the real world. We have our cars; we have our medical benefits; we have all our little salaries; we can talk to the doctor; we can be protected. The fact is, you and I both know that that person is forced to sign that piece of paper, because there is not a doctor in the Commonwealth who will operate without it, if they do not have common sense. If they have common sense, they will protect their rights.

Oh, by the way, let us talk about apple pie and truth and justice. Where is truth and justice now? When do we start protecting the other person? I thought it was amazing: A doctor proceeded to walk past my receptionist, walk past my administrator, into my office, demanding he speak to me about the fact that his rights were being denied. And by the way, I asked him, where does he set up shop in my district to take care of the people in my district who do not have medical coverage? He did not have an answer for that. He said to me, "This isn't about profits," as he fixed his Gucci tie and his lapel and his pin-striped suit, and I guess he got in his Mercedes and went with his little butt back home. The fact is, there is nothing about truth and justice in this particular amendment; it is all about saving some money and doing some special-interest business for the insurance companies.

Oh, and by the way, the last time I saw us cap insurance in the State of Pennsylvania, oh, remember that great cap we did with auto insurance. Come to Philadelphia County, where we have a D.A. running around trying to lock up people because they do not pay their insurance rates.

This is not going to cut premiums. This is a big scam/sham, and we should be ashamed to even be involved in it. Thank you, Mr. Speaker.

THE SPEAKER (MATTHEW J. RYAN) PRESIDING

MOTION TO RECOMMIT

The SPEAKER. The gentleman from Beaver County, Mr. Veon.

Mr. VEON. Thank you, Mr. Speaker.

Mr. Speaker, I would like to make a motion.

The SPEAKER. The gentleman will state his motion.

Mr. VEON. I would like to make a motion to recommit this bill, with the Chadwick amendment, to the Judiciary Committee, Mr. Speaker.

The SPEAKER. That would be all amendments?

The gentleman, Mr. Veon, moves that SB 790, together with amendment A2668, be recommitted to the Committee on Judiciary.

On the question,

Will the House agree to the motion?

The SPEAKER. On that question, the Chair recognizes the gentleman, Mr. Veon.

Mr. VEON. Thank you, Mr. Speaker.

The SPEAKER. For the purpose of the record, amendment A2233 would also be part of that recommittal, it having already been accepted and made part of the bill.

The gentleman, Mr. Veon.

Mr. VEON. Thank you very much, Mr. Speaker.

Mr. Speaker, I certainly appreciate the work that the gentleman, Mr. Chadwick, has done on an issue that I know is very near and dear to his heart. I recognize that issue is important to a lot of members on this floor.

Mr. Speaker, I submit that this is also a very important issue to a lot of members on this floor. It is a very complicated, very complex, very controversial issue that we are dealing with here today. And yet despite that complexity, despite it being controversial and complex, I would submit to the members of the House that we have given very, very little attention to the content of this amendment.

Mr. Speaker, because of the nature of the way this amendment was brought to the floor on this bill, the House Democratic Caucus members had an opportunity to caucus on this long, complicated, complex, and controversial amendment for one-half hour this morning, from 10:30 to 11 o'clock, and quite frankly, because of the many other things going on today in the House, not more than 15 or 20 members of the House Democratic Caucus were in attendance. That is not enough time to deal with an issue like this.

Mr. Speaker, my second reason. The gentleman, Mr. Gordner, I think, pointed out and I think the members who have paid attention to the entire issue of trying to find ways to bring the cost of malpractice insurance to doctors down have been paying attention to the other bills that the gentleman, Mr. Gordner, referred to on the House floor today – bills in the Senate and the House that would in fact, I think by everybody's recognition, bring relief to the high cost of medical malpractice insurance for doctors.

Mr. Speaker, my third reason that this bill ought to be recommitted to committee: The gentleman, Mr. Gannon, the chairman of the Judiciary Committee, mentioned to the members here today that we have only had one public hearing, again on a complicated, complex, and controversial issue. That is certainly not enough, in my opinion, for the members here in this House, on this important issue, to make an informed decision.

Mr. Speaker, my fourth reason that this bill ought to be recommitted to committee: As I mentioned, this amendment was brought to the floor today as an amendment to SB 790, and, Mr. Speaker, I submit that there are members on our side of the aisle who would very, very much want to support Mr. Chadwick's general idea and general concept but we will have no opportunity today to offer any amendment on the content of a very controversial and complex issue. I think that is the wrong way to handle this issue. There are members on this side of the aisle, again, who would support Mr. Chadwick's general principle but we will not have an opportunity today to offer any amendments to the language that is in front of us on our desk. That is not fair to the members on this side of the aisle who would like to be able to make those changes and still support this basic concept.

And my fifth reason, Mr. Speaker, that this bill ought to be recommitted to committee: The members on the House floor today have to recognize, this is a Senate bill. If this amendment is put into this bill, this bill as amended with the Chadwick language, as controversial and as complex as it is, without an opportunity for anybody to amend it, is going straight to the Senate. This has a very good chance of becoming law if in fact this amendment is put into this Senate bill.

Mr. Speaker, I would submit that those are five very good reasons that this bill ought to be recommitted, and I would submit to the members that all of you would have an opportunity to tell your doctors that there were good reasons for this bill to go back to committee, that you are supporting the general principles and concepts in the gentleman, Mr. Chadwick's amendment.

And I think these are five very good reasons, and I would ask and encourage the members of this House to do the right thing on this controversial and complex issue and resubmit this bill with this amendment to committee. Thank you, Mr. Speaker.

The SPEAKER. The gentleman, Mr. Mihalich, from Westmoreland County.

Mr. MIHALICH. Mr. Speaker, so that I might cast a more fully informed vote on this recommittal motion, I would like to ask the sponsor of the amendment one question.

The SPEAKER. The gentleman indicates he will stand for interrogation. You may begin.

Mr. MIHALICH. Thank you.

During your deliberations in developing this amendment or during the committee study of this amendment, did you in fact make comparisons or make any investigations or collect from various hospitals and sources instruments of informed consent, or the contracts or whatever you want to call them?

Mr. CHADWICK. No. They vary hospital by hospital. They vary physician by physician. There is no standard form.

Mr. MIHALICH. That is the reason I asked my question the way I did: Did you collect various ones from different hospitals, or did you make a comparison?

Mr. CHADWICK. I have seen many, but I did not collect them.

Mr. MIHALICH. If you have seen many, then maybe you can answer a further question.

Do you think that these informed consent agreements, or whatever you want to call them, would meet the test of the law that we passed here last year – I think we refer to it as the plain language law – in which, if I might remind you – and I do not want to ask a question out of the clear blue – they had, among other things, highlighted language wherever there was a question about signing away rights, whether they were printed in such a way, in good language that could be understood, and thirdly, the length of them and how much time was given to the patients to consider these?

Mr. CHADWICK. Boy, I hate to go down this road too far because I have not seen all of them, but the ones I am familiar with were pretty simple and pretty straightforward. Now, that comes from the perspective of someone who went to law school, and I understand that I have a different perspective than others might, but the ones I have seen were awfully simple and straightforward and easy to understand.

Mr. MIHALICH. Well, I did not go to law school, but I have done a lot of reading in my lifetime, and unfortunately, I had reason to read several of those or go over them, and in some cases it was a rather enlightening experience in that I had very, very good doctors who, when they presented these to me – sometimes three and four pages long – they volunteered, saying, "Let's forget about this thing here. Let me explain to you verbally what's in here." And they did a good job at it, and I felt very comfortable about it. But there were other instances, in my own case and when I acted with the power of attorney for some other members of my family, I did not have time, I did not have the ability to peruse those, and I think it would have been well if we would at least, at least – and I say the very least – ensure that these informed consent agreements were written in a manner that would conform to the law that we passed last year, the plain language law.

I saw none of the informed consent agreements that had any highlights of any kind. Most of them were all single-spaced. Some of them were three and four pages long. And as I say, I was very fortunate in that, in the one instance I can remember, I had a doctor who said, "You can't read that and understand it in the time that you have. Let me explain it to you," and he did a very, very good job. But I would say – and I am guessing here – that that was the exception rather than the rule, and I know that there are standard forms that are presented to patients when they enter the hospital for any reason and there are further consent agreements that are offered to them during the course of their treatment.

I think it is a very, very important thing, it is a very, very important point, and I think it is one where we could have collected these agreements from throughout the State and had the committee peruse those and find out whether or not they were in fact workable in that they would give the patients or the consumers adequate information and present it in such a fashion that they could digest it in the time allotted to them.

And on the basis of your answer, Mr. Speaker, this did not occur. I would suggest that the proper vote on your amendment be that we recommit it to the committee where such perusal can take place. Thank you.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Montgomery County, Mr. Reber.

Mr. REBER. Thank you very much, Mr. Speaker.

Mr. Speaker, I think the first speaker on this amendment this morning, Representative Lloyd, really, in my mind, set the tone for the motion, if you will, that is currently before the House. In my 16 years in the House of Representatives and on the House Judiciary Committee, to the best of my recollection, I cannot recall the committee operating in a committee setting, working on a bill of this magnitude and on this particular topic, where we addressed all the substantive and procedural issues that have been raised. Representative Lloyd pointed out a number of questions this morning, very valid questions, not necessarily contradictory to the position of the advocate, the sponsor of this amendment, but particulars that in my mind lace this particular piece of legislation and froth it, if you will, with litigation possibilities.

Mr. Speaker, I think we have changed the purpose of the bill. Ergo, I think a germaneness vote was in fact in order.

Mr. Speaker, I think there was an articulation of reasons why the bill was unconstitutional, notwithstanding the fact that I think in committee that could be cleaned up. Ergo, I think an unconstitutionality vote was in order.

But most importantly, Mr. Speaker, I think the fact that Chairman Gannon has already, approximately 6 weeks ago, held his first committee meeting on this particular complex piece of legislation, and it is my understanding that immediately upon the conclusion of the budgetary season, which is almost upon us, we were going to return to those duties and move in a deliberate fashion to attempt to get this bill before the committee so we in the committee could deliberate, advocate, and debate the issues that are taking place here today. That is the correct setting, and frankly, I think Mr. Veon very articulately stated reasons why many of us want to support appropriate medical malpractice reform but we are not going to be able to do it in good conscience in this kind of setting.

If ever in my 15 1/2 years in the House of Representatives I have ever seen a justifiable basis to recommit a bill to committee, you are all living it today.

Mr. Speaker, I would very respectfully ask for the members to listen to the admonishment of Representative Gannon, the chairman of the committee; trust him at his word that we are going to complete the hearing process; trust him at his word that we are going to deliberate it in an open committee meeting; and allow us to bring to the floor in the near future a bill for true, meaningful, and hopefully, constitutionally sustainable medical malpractice reform. I respectfully urge a motion to recommit.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Montgomery County, Mr. Godshall.

Mr. GODSHALL. Thank you, Mr. Speaker.

I have also been in this House for 14 years. I have seen malpractice bills time and time again get drafted by various members, only to languish and then die in the Judiciary Committee. For 14 years, this is what I have seen.

Many of us here today really believe this bill is true and meaningful reform. Many of us still believe the bill is controversial or complex. Many of us feel that this bill deserves to be voted on by the members of this House. I would urge you not to send it back

to committee where we will never see it come back again on the House floor.

The SPEAKER. Does the gentleman, Mr. Gannon, seek recognition?

Mr. GANNON. On the motion, Mr. Speaker.

The SPEAKER. The gentleman is recognized.

Mr. GANNON. Mr. Speaker, I just want to concur in the remarks of Representative Veon and Representative Reber. A bill of this magnitude, and to quote Representative Reber, deserves more consideration than we can give it here on the House floor.

There are a number of members who would like to make or look at some possible changes in this proposal so that they would feel much more comfortable with it than they do right now, and these are members that support the idea of medical malpractice reform. They realize fully that there are problems with this proposal as it is.

Very rarely does a piece of legislation get through the House, from the time of its introduction to the time we send it to the Senate, without some amendments, some improvements, some changes, but that is what we are being asked to do today. We are being asked to pass a piece of legislation exactly as it was introduced. This is a copy of the bill that was introduced.

Now, I have been only on watch on the Judiciary Committee for a short time, and one of the first things I did was committed to hold hearings on this bill, to have the committee take a look, serious look, at a serious piece of legislation. We will do that, to give the members an opportunity to deliberate this, to debate this, to offer changes and amendments to this, but only after we have heard from all sides, Mr. Speaker. It is very unfair, I think, to the members of the General Assembly to ask them to pass judgment on this and send it over to the Senate without an opportunity to have serious deliberations and debate and an opportunity to make the improvements that many of us, that many of us see need to be made on this legislation before it should or would become law.

I urge a "yes" vote on the motion to recommit this to the Judiciary Committee.

The SPEAKER. The gentleman from Beaver, Mr. Colafella.

Mr. COLAFELLA. Thank you, Mr. Speaker.

Mr. Speaker, I rise to ask not for recommittal for this particular piece of legislation.

This particular piece of legislation has been around for years, and this is simply an attempt to delay passage of this legislation. Yeah, hearings will be held. They will be held in September and October, and then the session will be over, and in the next session this bill will be introduced again and we will hear the same thing, that hearings will be held and things like that.

I ask not to recommit.

The SPEAKER. The gentleman, Mr. Chadwick.

Mr. CHADWICK. Thank you, Mr. Speaker.

I had a real nice speech planned. Mr. Colafella just gave it for me. I am grateful for that.

Let me just say this: Everyone understands that delay is defeat on this issue. If you recommit this bill, you kill it. A vote to recommit is a vote against medical malpractice insurance reform. Please vote "no."

On the question recurring,

Will the House agree to the motion?

The following roll call was recorded:

YEAS–95

Bebko-Jones	Fichter	Melio	Santoni
Belardi	Gannon	Michlovic	Scrimenti
Blaum	George	Micozzie	Shaner
Boscola	Gigliotti	Mihalich	Staback
Butkovitz	Gordner	Mundy	Stetler
Buxton	Gruitza	Myers	Sturla
Caltagirone	Haluska	O'Brien	Surra
Cappabianca	Hennessey	Olasz	Tangretti
Carn	Horsey	Oliver	Taylor, J.
Civera	Itkin	Pesci	Thomas
Cohen, L. I.	James	Petrarca	Tigue
Cohen, M.	Josephs	Petrone	Trich
Colaizzo	Kaiser	Preston	Van Horne
Corpora	Keller	Ramos	Veon
Corrigan	Kenney	Raymond	Vitali
Cowell	Kirkland	Readshaw	Walko
Curry	Kukovich	Reber	Williams
Daley	LaGrotta	Rieger	Wogan
DeLuca	Lawless	Roberts	Wozniak
Dermody	Lederer	Robinson	Youngblood
DeWeese	Lucyk	Roebuck	Zug
Donatucci	Manderino	Rooney	
Durham	Mayernik	Rudy	Ryan,
Evans	McGeehan	Sainato	Speaker
Feese			

NAYS–105

Adolph	Egolf	Lescovitz	Saylor
Allen	Fairchild	Levdansky	Schroder
Argall	Fajt	Lloyd	Schuler
Armstrong	Fargo	Lynch	Semmel
Baker	Fleagle	Maitland	Serafini
Bard	Flick	Major	Sheehan
Barley	Gamble	Markosek	Smith, B.
Battisto	Geist	Marsico	Smith, S. H.
Belfanti	Gladeck	Masland	Snyder, D. W.
Birmelin	Godshall	McCall	Stairs
Boyes	Gruppo	McGill	Steelman
Brown	Habay	Merry	Steil
Browne	Hanna	Miller	Stern
Bunt	Harhart	Nailor	Stish
Carone	Hasay	Nickol	Strittmatter
Cawley	Haste	Nyce	Taylor, E. Z.
Chadwick	Herman	Perzel	Travaglio
Clark	Hershey	Pettit	Trello
Clymer	Hess	Phillips	True
Colafella	Hutchinson	Pistella	Tulli
Conti	Jadlowiec	Pitts	Vance
Cornell	Jarolin	Platts	Waugh
Coy	King	Reinard	Wright, D. R.
Dempsey	Krebs	Rohrer	Wright, M. N.
Dent	Laughlin	Rubley	Yewcic
DiGirolamo	Leh	Sather	Zimmerman
Druce			

NOT VOTING–0

EXCUSED–3

Bishop	Farmer	Washington

Less than the majority having voted in the affirmative, the question was determined in the negative and the motion was not agreed to.

On the question recurring,

Will the House agree to the amendment?

The SPEAKER. The Chair at this time has a list of potential debaters that goes as follows: Jarolin, Hanna, Godshall, Mihalich, Gannon, and Mr. Sturla.

And on that happy note, the Chair recognizes the gentleman from Luzerne, Mr. Jarolin.

It appears that the gentleman from Clinton, Mr. Hanna, declines recognition at this time.

And the gentleman, Mr. Godshall, from Montgomery, what does he elect to do?

And from the other end of the State, from Westmoreland County, Mr. Mihalich? The gentleman, Mr. Mihalich, is recognized.

Mr. MIHALICH. Thank you, my colleagues, for your warm reception. I will not forget it. It is not often that you get applause before you speak.

Earlier today I made some references to the Harvard study, and I would like to clarify for several of my colleagues who asked me questions about it. They asked me where I got the information. It came out of that rabid, radical Business Week magazine. In there they covered the Harvard study, and although I submitted it for the record, I would like to quote one small paragraph from there.

They say that "...4% of admissions involved treatment-caused injuries." They are talking about admissions to hospitals. "One-fourth of the injuries involved negligence. One-seventh resulted in death.

"On average, only" – and listen to this – "On average, only one malpractice claim was filed for every 7.5 patients suffering a negligent injury, and only half of these were ultimately paid. So," – and I am quoting from the study now, as they quote the study – " 'the legal system is paying just 1 malpractice claim for every 15 torts inflicted in hospitals,' " end quote. "Those suffering non-negligent injuries – that is, caused by care not yet deemed inappropriate – got nothing. Thus, the study concludes that rather than a surplus, there is a litigation deficit because so many injured people wind up uncompensated."

I think that is the other side of the coin that we have not heard from so much today. I know the motivation of many people here who are talking about saving money on insurances, but I think the larger issue here is the welfare of the people who utilize our health services. I gave the illustration before where I thought the committee or the sponsor did not adequately pursue the development of this amendment because they did not make a formal study of what "consent" means, "informed consent." And on the basis of that, I think that this ought to be defeated. Thank you very much, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

Does the gentleman, Mr. Gannon, desire recognition?

On the question recurring,

Will the House agree to the amendment?

The following roll call was recorded:

YEAS–129

Adolph	Fajt	Lynch	Scrimenti
Allen	Fargo	Maitland	Semmel
Argall	Feese	Major	Serafini
Armstrong	Fichter	Markosek	Shaner
Baker	Fleagle	Marsico	Sheehan
Bard	Flick	Masland	Smith, B.
Barley	Gamble	Mayernik	Smith, S. H.
Battisto	Geist	McCall	Snyder, D. W.
Belfanti	Gigliotti	McGill	Stairs
Birmelin	Gladeck	Merry	Steelman
Boyes	Godshall	Miller	Steil
Brown	Gruppo	Nailor	Stern
Browne	Habay	Nickol	Stetler
Bunt	Haluska	Nyce	Stish
Carone	Hanna	Olasz	Strittmatter
Cawley	Harhart	Perzel	Sturla
Chadwick	Hasay	Petrone	Tangretti
Clark	Haste	Pettit	Taylor, E. Z.
Clymer	Herman	Phillips	Travaglio
Cohen, L. I.	Hershey	Pistella	Trello
Colafella	Hess	Pitts	Trich
Colaizzo	Hutchinson	Platts	True
Conti	Jadlowiec	Readshaw	Tulli
Cornell	Jarolin	Reinard	Vance
Corrigan	Kenney	Robinson	Vitali
Coy	King	Rohrer	Waugh
DeLuca	Krebs	Rubley	Wozniak
Dempsey	Laughlin	Sainato	Wright, D. R.
Dent	Leh	Sather	Wright, M. N.
DiGirolamo	Lescovitz	Saylor	Yewcic
Druce	Levdansky	Schroder	Zimmerman
Egolf	Lloyd	Schuler	Zug
Fairchild			

NAYS–71

Bebko-Jones	Evans	Manderino	Roebuck
Belardi	Gannon	McGeehan	Rooney
Blaum	George	Melio	Rudy
Boscola	Gordner	Michlovic	Santoni
Butkovitz	Gruitza	Micozzie	Staback
Buxton	Hennessey	Mihalich	Surra
Caltagirone	Horsey	Mundy	Taylor, J.
Cappabianca	Itkin	Myers	Thomas
Carn	James	O'Brien	Tigue
Civera	Josephs	Oliver	Van Horne
Cohen, M.	Kaiser	Pesci	Veon
Corpora	Keller	Petrarca	Walko
Cowell	Kirkland	Preston	Williams
Curry	Kukovich	Ramos	Wogan
Daley	LaGrotta	Raymond	Youngblood
Dermody	Lawless	Reber	
DeWeese	Lederer	Rieger	Ryan,
Donatucci	Lucyk	Roberts	Speaker
Durham			

NOT VOTING–0

EXCUSED–3

Bishop	Farmer	Washington

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

The SPEAKER. The Chair recognizes the gentleman, Mr. Lloyd.

Mr. LLOYD. Thank you, Mr. Speaker.

Mr. Speaker, all day I have voted with Mr. Chadwick on procedural motions, because I believe that this is an issue that ought to be addressed, and I believe that if it goes back to committee, it will not be addressed. But, Mr. Speaker, I do believe that there are things which need to be fixed in this amendment. Unlike what we have done on some previous occasions when we have had controversial measures on the House floor, today we have not had any amendments offered to the amendment, and so things which some of us who have supported Mr. Chadwick think should be fixed have not been fixed.

Mr. Speaker, I am concerned that given that fact, that if this bill goes to the Senate in its current form, that it will die in the Senate Rules Committee. Therefore, Mr. Speaker, I believe the appropriate thing to do is to keep this bill in the House in a posture in which it would be open to amendment.

MOTION TO PLACE BILL ON THIRD CONSIDERATION POSTPONED CALENDAR

Mr. LLOYD. In order to accomplish that, Mr. Speaker, I move that this bill be placed on the third consideration postponed calendar.

The SPEAKER. The gentleman, Mr. Lloyd, moves that SB 790, PN 1936, together with amendments, be placed on the third consideration postponed calendar.

On the question,

Will the House agree to the motion?

The SPEAKER. On that question, the Chair recognizes the gentleman, Mr. Chadwick.

Mr. CHADWICK. Mr. Speaker, a large majority of this body just voted for medical malpractice insurance reform; 127 of you said the time has come.

Again, I will say what I said before: delay is defeat. This is simply another opportunity to try to kill the bill in another way. The time is now. The votes were on the board on three different motions to try to kill this bill; all three defeated. Overwhelmingly on final passage of the amendment, the members support this legislation. It is time to send it to the Senate.

Please vote "no" on the motion to postpone.

On the question recurring,

Will the House agree to the motion?

The following roll call was recorded:

YEAS–93

Bebko-Jones	George	McGeehan	Santoni
Belardi	Gigliotti	Melio	Scrimenti
Blaum	Gordner	Michlovic	Shaner
Boscola	Gruitza	Mihalich	Staback
Butkovitz	Haluska	Mundy	Steelman
Buxton	Hanna	Myers	Stetler
Caltagirone	Horsey	O'Brien	Sturla
Cappabianca	Itkin	Olasz	Surra
Carn	James	Oliver	Taylor, J.
Carone	Jarolin	Pesci	Thomas
Cohen, M.	Josephs	Petrarca	Tigue
Colaizzo	Kaiser	Petrone	Trello
Corpora	Keller	Pistella	Trich
Cowell	Kenney	Preston	Van Horne
Curry	Kirkland	Ramos	Veon
Daley	Kukovich	Readshaw	Vitali
DeLuca	LaGrotta	Reber	Walko
Dermody	Lawless	Rieger	Williams
DeWeese	Lederer	Roberts	Wogan
Donatucci	Lloyd	Robinson	Wozniak
Durham	Lucyk	Roebuck	Wright, D. R.
Evans	Manderino	Rooney	Yewcic
Feese	Mayernik	Sainato	Youngblood
Gannon			

NAYS–106

Adolph	DiGirolamo	Leh	Saylor
Allen	Druce	Lescovitz	Schroder
Argall	Egolf	Levdansky	Schuler
Armstrong	Fairchild	Lynch	Semmel
Baker	Fajt	Maitland	Serafini
Bard	Fargo	Major	Sheehan
Barley	Fichter	Markosek	Smith, B.
Battisto	Fleagle	Marsico	Smith, S. H.
Belfanti	Flick	Masland	Snyder, D. W.
Birmelin	Gamble	McCall	Stairs
Boyes	Geist	McGill	Steil
Brown	Gladeck	Merry	Stern
Browne	Godshall	Micozzie	Stish
Bunt	Gruppo	Miller	Strittmatter
Cawley	Habay	Nailor	Tangretti
Chadwick	Harhart	Nickol	Taylor, E. Z.
Civera	Hasay	Nyce	Travaglio
Clark	Haste	Perzel	True
Clymer	Hennessey	Pettit	Tulli
Cohen, L. I.	Herman	Phillips	Vance
Colafella	Hershey	Pitts	Waugh
Conti	Hess	Platts	Wright, M. N.
Cornell	Hutchinson	Raymond	Zimmerman
Corrigan	Jadlowiec	Reinard	Zug
Coy	King	Rohrer	
Dempsey	Krebs	Rubley	Ryan,
Dent	Laughlin	Sather	Speaker

NOT VOTING–1

Rudy

EXCUSED–3

Bishop	Farmer	Washington

Less than the majority having voted in the affirmative, the question was determined in the negative and the motion was not agreed to.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

The SPEAKER. The Chair recognizes the gentleman, Mr. Cohen.

Mr. Cohen, if you are asking the House to consider amendment A2754, it will be necessary for the rules of the House to be suspended.

RULES SUSPENDED

Mr. COHEN. Thank you, Mr. Speaker.

Mr. Speaker, I have two amendments prepared dealing with deficiencies in this legislation.

I would like to move to suspend the rules in order that these amendments can be considered now.

The SPEAKER. The question before the House is the motion of the gentleman, Mr. Cohen, to suspend the rules to permit him to offer— Which amendment, Mr. Cohen?

Mr. COHEN. Mr. Speaker, amendment A2753 deals with rate-making reform. Amendment A2754 allows the suing of a company doctor by an employee.

The SPEAKER. And which amendment would you first offer?

Mr. COHEN. I wish to offer both amendments, Mr. Speaker.

The SPEAKER. I understand that. In what order?

Mr. COHEN. I would wish to offer 2753 first, Mr. Speaker.

The SPEAKER. Thank you.

The question before the House is the motion of the gentleman, Mr. Cohen, to suspend the rules of the House to permit him to offer amendments 2753 and 2754.

On the question,

Will the House agree to the motion?

The SPEAKER. On that question, the gentleman, Mr. Chadwick.

Mr. CHADWICK. Thank you, Mr. Speaker.

If you believe that general practitioners should pay insurance premiums for neurosurgeons, I suppose you should vote for this. But this amendment is crazy. Vote "no."

The SPEAKER. The question before the House is on suspension of the rules. It is not on an amendment at this time.

On the question recurring,

Will the House agree to the motion?

The following roll call was recorded:

YEAS–106

Battisto	Evans	Lucyk	Rooney
Bebko-Jones	Fajt	Manderino	Sainato
Belardi	Feese	Mayernik	Santoni
Belfanti	Gannon	McCall	Scrimenti
Blaum	George	McGeehan	Shaner
Boscola	Gigliotti	McGill	Staback
Butkovitz	Gordner	Melio	Steelman
Buxton	Gruitza	Michlovic	Stetler
Caltagirone	Haluska	Micozzie	Sturla
Cappabianca	Hanna	Mihalich	Surra
Carn	Horsey	Mundy	Tangretti
Cawley	Itkin	Myers	Thomas
Civera	James	Olasz	Travaglio
Cohen, L. I.	Jarolin	Oliver	Trello
Cohen, M.	Josephs	Pesci	Trich
Colaizzo	Kaiser	Petrarca	Van Horne
Corpora	Keller	Petrone	Veon
Corrigan	Kenney	Pistella	Vitali
Cowell	Kirkland	Preston	Walko
Coy	Kukovich	Ramos	Williams
Curry	LaGrotta	Raymond	Wozniak
Daley	Laughlin	Readshaw	Wright, D. R.
DeLuca	Lawless	Reber	Yewcic
Dermody	Lederer	Rieger	Youngblood
DeWeese	Lescovitz	Roberts	
Donatucci	Levdansky	Robinson	Ryan,
Durham	Lloyd	Roebuck	Speaker

NAYS–93

Adolph	Fairchild	Lynch	Schuler
Allen	Fargo	Maitland	Semmel
Argall	Fichter	Major	Serafini
Armstrong	Fleagle	Markosek	Sheehan
Baker	Flick	Marsico	Smith, B.
Bard	Gamble	Masland	Smith, S. H.
Barley	Geist	Merry	Snyder, D. W.
Birmelin	Gladeck	Miller	Stairs
Boyes	Godshall	Nailor	Steil
Brown	Gruppo	Nickol	Stern
Browne	Habay	Nyce	Stish
Bunt	Harhart	O'Brien	Strittmatter
Carone	Hasay	Perzel	Taylor, E. Z.
Chadwick	Haste	Pettit	Taylor, J.
Clark	Hennessey	Phillips	Tigue
Clymer	Herman	Pitts	True
Colafella	Hershey	Platts	Tulli
Conti	Hess	Reinard	Vance
Cornell	Hutchinson	Rohrer	Waugh
Dempsey	Jadlowiec	Rubley	Wogan
Dent	King	Sather	Wright, M. N.
DiGirolamo	Krebs	Saylor	Zimmerman
Druce	Leh	Schroder	Zug
Egolf			

NOT VOTING–1

Rudy

EXCUSED–3

Bishop	Farmer	Washington

A majority of the members elected to the House having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

Mr. **COHEN** offered the following amendment No. **A2753**:

Amend Sec. 1, page 19, by inserting between lines 46 and 47

§ 8674.1. Rating classes.

(a) General rule.–The Insurance Department shall establish and implement, or approve and supervise, a plan whereby all professional liability insurers authorized to write insurance pursuant to section 202(c)(4) and (11) of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, shall place physicians and osteopaths in three insurance rating classes. There shall be no subclasses. The loss and loss adjustment expense costs for each class shall be set by the department and shall be the same for all companies. Class 2 loss and loss adjustment expense costs shall be twice class 1 loss and loss adjustment expense costs, and class 3 loss and loss adjustment expense costs shall be five times class 1 loss and loss adjustment expense costs. There shall be no deviation of premiums within each class, except as provided in subsection (b).

(b) Additional provisions.–The plan also shall provide:

(1) That each insurer develop and submit for approval of the department expenses to be added to the loss and loss adjustment expense costs that are established by the department for each class.

(2) That each insurer shall develop and submit to the department an experience rating plan which provides that the premium for each health care provider within a class shall be based upon the individual health care provider's experience.

(3) That the department may approve deviations in the premiums for each class of health care providers on the basis of no more than two territories, urban and nonurban, approved or established by the department.

(c) Penalty.–An insurer who fails to comply with the requirements of this subsection shall pay a civil penalty of $25,000 and thereafter a fine of $1,000 daily until this section is complied with.

On the question,

Will the House agree to the amendment?

The SPEAKER. The gentleman, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Speaker.

Mr. Speaker, this amendment represents the key insurance reform provision adopted by the State of Wisconsin in 1990. This reform had the effect of immediately reducing the rates of the medical specialties—

The SPEAKER. Will the gentleman, Mr. Cohen, yield.

For what purpose does the gentleman rise?

Mr. TANGRETTI. Mr. Speaker, to inquire whether these amendments have been circulated. I do not think I have it, but—

The SPEAKER. The gentleman immediately in front of you is distributing them.

Mr. TANGRETTI. Okay.

The SPEAKER. The gentleman, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Speaker.

Mr. Speaker, as I was saying before, this reform when adopted in Wisconsin had the effect of immediately reducing the rates of the medical specialties and eventually the savings in medical liabilities insurance for the entire medical community.

Currently there are numerous rating classes and subclasses of doctors for the purposes of obtaining medical liability insurance. Many of these classes are so small as to make real actuarial projections difficult, if not impossible. An insurance class that includes a little over 200 neurosurgeons statewide divided among several insurers guarantees high rates because each insurer is going to be insuring only 50 people or so.

Public policy also dictates that we consider medical malpractice insurance system-wide and not just by individual doctor or individual specialty. As a practical matter, several physicians, whether in general practice or specialty, contribute to the medical decisions made by and for a patient. Medical providers are not totally independent actors in the patient care picture. They should not be treated as such in medical malpractice insurance rating schemes.

This amendment collects the 10 to 18 rating classes currently used by Pennsylvania's insurers into three classes. All these classes are determined under the amendment by loss cost adjustments. The Wisconsin experience generally categorizes the three classes as general practice, minor surgery, major surgery. This amendment also allows for minor deviations within classes for urban and nonurban territories and individual health-care provider's experience.

If you want to lower some of the more obscene insurance rates paid by some medical specialties in Pennsylvania, please support this amendment. Allow the compression of classification into a very small number of classifications so that the risk will be divided among a much larger pool of people.

I urge support for this amendment.

The SPEAKER. The gentleman, Mr. Chadwick.

Mr. CHADWICK. Thank you, Mr. Speaker.

I do not know about the rest of you, but I do not want to go home to my family physician and tell him that I just voted that he should have to pay malpractice premiums for neurosurgeons and ob-gyn's. What the gentleman, Mr. Cohen, is doing is saying that the answer to the malpractice insurance crisis in this State is to make those whose premiums are very low because they are in low-risk specialties pay some of the premiums for those who are in the very high-risk specialties so we can bring down the cost of those high-risk premiums by subsidizing them with taking more money from the people who are involved in very low-risk specialties. That is crazy. That is not reform.

Let us vote this amendment down. Thank you, Mr. Speaker.

The SPEAKER. Does the gentleman, Mr. Reinard, desire recognition?

Mr. REINARD. Yes, Mr. Speaker.

Mr. Speaker, I was just going to continue where the previous speaker spoke and say that we heard about this same kind of concept when we were dealing with automobile insurance reform previously, about taking all the rate classifications in Pennsylvania and kind of merging them into one or two classes to offset the high costs that the drivers in the city of Philadelphia have.

I think it is a bad idea. I think it is a wrong move, and I do not think the physicians are going to appreciate being grouped into that type of class either.

The SPEAKER. The gentleman, Mr. Cohen, for the second time on the question.

Mr. COHEN. I yield to Mr. Gannon, Mr. Speaker.

The SPEAKER. The gentleman, Mr. Gannon.

Mr. GANNON. Thank you, Mr. Speaker.

Mr. Speaker, this is a very important amendment. We sat in our offices last week and we had doctor after doctor after doctor come into our office and tell us that their medical malpractice premiums were so high that they were on the verge of leaving the practice of medicine, and most of those doctors that stood before us were the people that we go to when we are seriously ill, and these are the

specialists – the neurosurgeons, the heart doctors, the cancer specialists, the orthopedic specialists – these are the guys that are being thrown out of practice.

I do not want to have to go back to my district and tell that neurosurgeon that may save the life of one of my family members or one of my constituents that I did not do anything to cut his premiums so he could stay in the practice of medicine. I do not want to hear him tell me, I am not doing neurosurgery anymore. I do not want to have the cancer specialist tell me, I am not doing any cancer patients anymore. I do not want to hear the orthopedic surgeon tell me, I am not doing back surgery anymore; I am not relieving pain anymore because my medical malpractice premiums are too high.

The whole purpose of this amendment is to do something about what the specific demand was made to this General Assembly last week when those physicians were here. It brings down those malpractice premiums for those doctors that need the relief the most and the doctors that we go to when we have our most serious, serious medical problems.

I urge a "yes" vote on the Cohen amendment.

The SPEAKER. The lady from Philadelphia, Ms. Manderino.

Ms. MANDERINO. Thank you, Mr. Speaker.

Will the maker of the amendment stand for a brief interrogation?

The SPEAKER. The gentleman, Mr. Cohen, indicates he will. You may begin.

Ms. MANDERINO. Thank you.

Mr. Speaker, you outlined the Wisconsin plan as having three categories. Am I correct in assuming that neurosurgeons would be in category 3 – major surgery?

Mr. COHEN. Yes, Mr. Speaker, you would be correct in that.

Ms. MANDERINO. And I would also be correct in assuming that general family physicians would be in classification No. 1 – general practice?

Mr. COHEN. You are correct.

Ms. MANDERINO. Thank you, Mr. Speaker. I have finished my interrogation.

Just briefly on the bill, I think that the specialties and the general practitioners are appropriately segregated by this bill. I think the fear that the maker of the original amendment dealing with malpractice tried to raise is a false fear. I think the categories make logical sense and do exactly what insurance risk pooling should do – appropriately group people and appropriately spread the risk – and it makes a lot of sense.

I think we should support this amendment.

The SPEAKER. The gentleman, Mr. Masland, from Cumberland County.

Mr. MASLAND. Thank you, Mr. Speaker.

Very briefly. As I look at this bill, I think it is maybe a shot in the dark. The previous speaker is saying we can assume that this physician will be in this category and this physician will be in another category, but it certainly is not clear from the bill when you take 60 different classes and lump them all into 3.

Now, the previous speaker to that, Representative Gannon, gave many, many good arguments, but I would submit they are not arguments to vote for this amendment; they are arguments to vote for the bill itself. You do not want to go back to your district and tell some of your doctors, some of your neurosurgeons, some of your specialists that you have not done anything. The bill does do it. This amendment does not.

There is a separate vehicle dealing with the CAT Fund that the Governor is working on at this moment. I would suggest that this amendment is more appropriate to that bill as opposed to this and urge a "no" vote. Thank you.

The SPEAKER. The lady, Ms. Steelman.

Ms. STEELMAN. Thank you, Mr. Speaker.

Will the maker of the amendment stand for interrogation?

The SPEAKER. He will. You may begin.

Ms. STEELMAN. Mr. Speaker, could you give us some idea of the range in premiums between general practitioners and specialists that exists in the current medical malpractice insurance market in Pennsylvania?

Mr. COHEN. Currently— Mr. Speaker, we have average figures—

Ms. STEELMAN. That is fine.

Mr. COHEN. —not range figures. For internal medicine the average is $4,069. This is 1995 figures. For general surgery the average is $15,663. For ob-gyn the average is $19,634.

Ms. STEELMAN. On the basis— Do you have a family practice number?

Mr. COHEN. We believe it is generally comparable to the internal medicine figure.

Ms. STEELMAN. Okay.

Mr. COHEN. It would be somewhere around $4,069 or less.

Ms. STEELMAN. So in fact, we are looking at a range between the lower level and the highest level that is about a factor of five, which is exactly the same as the factor of five that is proposed in this amendment. So the major difference is going to be that at those higher risk specialty levels, the higher risk specialists are going to be lumped with each other, but they are still going to be separated from the lowest risk specialties within the profession.

Second question, since I am not that experienced with the issue of setting insurance rates, this amendment would speak specifically to fixing relative loss and loss adjustment expense costs. What other factors besides those two elements go into the final determination of insurance rates, and what percentage, roughly, of the total cost of insurance is attributable to the two factors that would be capped, controlled, in your amendment?

Mr. COHEN. Mr. Speaker, they can deviate under this amendment by urban and nonurban.

Ms. STEELMAN. That is not the point I was trying to get at.

Mr. COHEN. Okay.

Ms. STEELMAN. When the insurance rates are being set—

Mr. COHEN. Yes.

Ms. STEELMAN. —what other factors beyond that geographic element that is included in the bill would be included? Insurance rates cannot just be fixed by loss and loss adjustment expense costs. What other elements go into it?

Mr. COHEN. Individual experience of the health provider. There is individual experience of the company if the health provider is employed, as so many are nowadays, by an HMO (health maintenance organization) or a hospital.

Ms. STEELMAN. And would you have a rough idea of the percentage of the final cost of a premium that would be attributable to the loss and loss adjustment expense costs that would be more or less fixed by the amendment? I am trying to get

a feel for how effective this would be at actually influencing the final premium that the individual ob-gyn in my county would have to pay. Would those costs be 60 percent, 70 percent?

Mr. COHEN. Mr. Speaker, I think the effect of this is that this spreads the risk over a broader pool. I really cannot answer your question as to what percentage an insurer would assign to the various factors. I assume that might vary from insurer to insurer.

Ms. STEELMAN. I am asking because I am trying to get an idea of how beneficial this might be. But rather than look at the abstract structure in order to infer benefits from it, perhaps I should move on to my third question, which is, what has the Wisconsin experience been with premiums? This was passed in 1990, so it sounds as though it has been in effect long enough that there should be some history we should be able to look at. Can you give us an idea what premiums are like in Wisconsin relative to Pennsylvania and whether they have gone down, gone up more slowly than our insurance premiums over the last 6 years, gone up faster?

Mr. COHEN. I am told that the insurance premiums for general practitioners went slightly up – by "slightly," I mean by about $100 – initially. They are going back down now to get back down to where they were. The specialties, I am told, dramatically decreased. I do not have specific numbers.

Ms. STEELMAN. Thank you.

That concludes my interrogation.

What I have been hearing from the doctors who have talked to me has been that over the last 6 years, everybody's premiums have been going up, whether they would be class 1 or class 3, under this, and that the premiums for people in the high-risk occupations, specialties, are going up faster even than the ones for those in the low-risk specializations. So it appears to me as though this bill has been presented to a lot of doctors and has been accepted by a lot of doctors as something that, it is hoped, will freeze or reduce their insurance premiums, but because the bill is different from what has been passed in a lot of other States, there is not very much track record to look at.

On the other hand, the amendment that Representative Cohen has introduced does have a track record. It does appear to do what the doctors wanted to do; that is, to slow the increase in premiums and in fact to reverse that increase and give doctors some real decreases—

Mr. BLAUM. Mr. Speaker?

Ms. STEELMAN. —in the cost of medical malpractice insurance. It appears to me that this is a good—

The SPEAKER. The gentleman, Mr. Blaum.

Ms. STEELMAN. —amendment, and I would suggest support for it.

The SPEAKER. Will the lady yield.

Ms. STEELMAN. Thank you, Mr. Speaker.

The SPEAKER. The gentleman, Mr. Blaum. For what purpose does he rise?

Mr. BLAUM. Thank you, Mr. Speaker.

Mr. Speaker, I simply cannot hear. I think this is a very important amendment, and I wish— I cannot hear the lady speak.

The SPEAKER. The gentleman, Mr. Blaum, very correctly points out that the noise level is unacceptably high.

Conferences on the floor, please break up.

The gentleman, Mr. Habay.

Mr. HABAY. Mr. Speaker, thank you.

I wish to briefly interrogate the gentleman on the amendment.

The SPEAKER. The gentleman, Mr. Cohen, agrees. You may proceed.

Mr. HABAY. Thank you, Mr. Speaker.

I just wanted to ask the sponsor of the amendment if there was a fiscal note attached or any level of financing from the Commonwealth.

Mr. COHEN. No, Mr. Speaker. There is no cost to the Commonwealth in this amendment.

Mr. HABAY. Thank you.

The SPEAKER. Mr. Jarolin from Luzerne County.

Mr. JAROLIN. Thank you, Mr. Speaker.

I would like to ask the maker of the amendment for a little interrogation.

The SPEAKER. The gentleman, Mr. Cohen, will consent to it. You may begin.

Mr. JAROLIN. I do not know, Mr. Speaker, whether I have passed over this, I did not find it, or what, but in these particular three categories that you have here, I see no mention throughout most of this legislation about dentists and the dentists' practice, which are real, real high malpractice suits. Is there any category out of these three that would be dental?

Mr. COHEN. Mr. Speaker, I assume that it will be the same as in the current system. If dentists are in general practice, I assume there is the same division in the dental profession as there is elsewhere. If the dentist is in general practice, I assume he would be covered under general practice. If the dentist prefers complicated oral surgery, I assume he would be in major surgery, or minor surgery if they are routine operations.

Mr. JAROLIN. Would there be any possibility, Mr. Speaker, about insurance companies getting around that particular law because it had not been mentioned specifically?

Mr. COHEN. Mr. Speaker, I apologize; I could not hear the gentleman.

The SPEAKER. Will the gentleman yield.

Conferences on the floor, please break up.

The gentleman, Mr. Jarolin.

Mr. JAROLIN. Thank you, Mr. Speaker.

My question to you was, is there the possibility that insurance companies, in the case of malpractice against either an oral surgeon dentist or a regular dentist, could bypass all of these laws by just not having dental repair work in this particular legislation? You have named the rest of the surgeons, you have named the rest of the medical practices, but you have not named the dental surgeons or—

Mr. COHEN. No, Mr. Speaker. I do not think it is possible. We do not change current law in terms of who has to be covered. And our understanding is that as of now, they have to offer coverage to all health-care providers, and so I do not believe they could bypass coverage of anybody under this system.

Mr. JAROLIN. I will take your word for it.

Thank you very much, sir.

Mr. COHEN. Thank you.

Mr. JAROLIN. Thank you, Mr. Speaker.

The SPEAKER. The gentleman, Mr. Cohen, for the second time on the amendment.

Mr. COHEN. Thank you, Mr. Speaker.

Mr. Speaker, as I have tried to make clear in answer to various questions, the savings here is that there is less uncertainty about the risk under this amendment. Where you have very small categories, we have very high risk for the insurers. It is the law of large numbers. With a small number of people, anything could happen. With a large number of people, it is far more predictable. If one has to guess the predictions of the votes, for instance, of a small number of people in this House, that might be complicated, but guessing the votes of the House as a whole is less complicated often. The same thing is true with medical malpractice and any insurance rating scheme.

If there are questions about any analogies to the auto insurance system, this amendment allows deviations by geography. This is not at all analogous to the geographical rating schemes for insurance in terms of what the problems are. This is something that all by itself should lead to a reduction in insurance premiums for those who are paying at the very highest levels.

I would urge support of this amendment.

The SPEAKER. The gentleman, Mr. Belfanti.

Mr. BELFANTI. Thank you, Mr. Speaker.

A very quick interrogation for the maker of the amendment, if I might.

The SPEAKER. The gentleman will consent to interrogation. You may begin.

Mr. BELFANTI. Thank you very much.

Mr. Speaker, you said at the outset of your remarks that the experience in Wisconsin – was it? – led to almost an immediate reduction in insurance premiums for certain classes of physicians and then over the long haul meant even further reductions for those classes but across-the-board reductions for the entire community of physicians. Is that not correct?

Mr. COHEN. That is correct, Mr. Speaker.

Mr. BELFANTI. Mr. Speaker, and when did this law change in the State of Wisconsin, if you know that answer?

Mr. COHEN. In 1990.

Mr. BELFANTI. Thank you, Mr. Speaker.

Mr. Speaker, that ends my interrogation. I would like to make a brief comment.

The SPEAKER. The gentleman is in order and may proceed.

Mr. BELFANTI. Thank you, Mr. Speaker.

Like some of the other members on the floor, I voted today very consistently with Representative Chadwick, and while I had some reservations about whether or not to support the Lloyd amendment to place this on the postponed calendar so that we might have time to prepare amendments, I do know one thing. I do know that the doctors from Geisinger Medical Center, one of the largest medical centers in my district, have been inundating me and my office with calls, and by and large, those calls are coming from specialists; they are coming from surgeons; they are coming from the individuals whose premium rates are absolutely outrageous, and I sympathize with their plight.

I believe that Mr. Cohen's amendment goes right to the heart of their problem. It goes right to the heart of the main problem that we hear from the medical community, and that is that their insurance premiums are outrageous. That is what they want from us. I am fearful that since we were not able to deliberate the Chadwick amendment as a bill and were not able to amend it, that we may find ourselves back in the position that we find ourselves in now 2 years from now, because most of our physicians and surgeons are not going to see a dramatic decrease in their premiums.

The reason we are now talking about workers' compensation this year after we just reformed it 2 years ago is because the business community did not realize a marked reduction in their insurance premium costs. My fear is that the same thing will happen in this issue if we do not take immediate steps to require the insurance industry to provide relief to the people that are talking to us day in and day out about this problem.

I therefore have to depart from my good friend, Mr. Chadwick, on this amendment and stand firmly and squarely in back of the gentleman, Mr. Cohen, because I think this cuts to the heart of the problem. The specialists are the ones that are getting their clocks cleaned by the insurance industry's outrageous premiums, and we ought to do something that provides them immediate relief, and if that is what happened in Wisconsin, I am very hopeful that this, in addition to the Chadwick amendment, will cause premiums to be reduced at a much quicker pace than if we do not adopt the Cohen amendment. Thank you.

The SPEAKER. Does the gentleman, Mr. Colafella, seek recognition? The gentleman is recognized.

Mr. COLAFELLA. Thank you, Mr. Speaker.

Mr. Speaker, I rise to oppose this amendment. The reason why physicians who are high-risk physicians pay high rates is simply because they are high-risk physicians, and low-risk physicians such as the family doctor pay a lower premium because they are low-risk physicians. I mean, insurance works the same way with insurance premiums with doctors as it does with automobiles. If a person has a whole lot of accidents and drives a big car, that person will tend to pay more insurance than someone who has had no accidents and drives a lesser car.

For those reasons I ask you to oppose this amendment. Thank you very much.

The SPEAKER. The Chair thanks the gentleman.

On the question recurring,

Will the House agree to the amendment?

The following roll call was recorded:

YEAS–65

Bebko-Jones	Evans	Melio	Roberts
Belardi	Gannon	Michlovic	Robinson
Belfanti	Gruitza	Mihalich	Roebuck
Blaum	Haluska	Mundy	Rooney
Boscola	Hennessey	Myers	Shaner
Caltagirone	Horsey	O'Brien	Steelman
Cappabianca	Itkin	Olasz	Stetler
Carn	James	Oliver	Tangretti
Carone	Josephs	Pesci	Taylor, J.
Cohen, M.	Kaiser	Petrarca	Thomas
Cowell	Kenney	Petrone	Trello
Curry	Kirkland	Pistella	Trich
Daley	Kukovich	Preston	Van Horne
Dermody	Lawless	Ramos	Veon
DeWeese	Levdansky	Readshaw	Walko
Donatucci	Manderino	Rieger	Wogan
Durham			

NAYS–133

Adolph	Fairchild	Lloyd	Scrimenti
Allen	Fajt	Lucyk	Semmel
Argall	Fargo	Lynch	Serafini
Armstrong	Feese	Maitland	Sheehan
Baker	Fichter	Major	Smith, B.
Bard	Fleagle	Markosek	Smith, S. H.
Barley	Flick	Marsico	Snyder, D. W.
Battisto	Gamble	Masland	Staback
Birmelin	Geist	Mayernik	Stairs
Boyes	George	McCall	Steil
Brown	Gigliotti	McGeehan	Stern
Browne	Gladeck	McGill	Stish
Bunt	Godshall	Merry	Strittmatter
Butkovitz	Gordner	Micozzie	Sturla
Buxton	Gruppo	Miller	Surra
Cawley	Habay	Nailor	Taylor, E. Z.
Chadwick	Hanna	Nickol	Tigue
Civera	Harhart	Nyce	Travaglio
Clark	Hasay	Perzel	True
Clymer	Haste	Pettit	Tulli
Cohen, L. I.	Herman	Phillips	Vance
Colafella	Hershey	Pitts	Vitali
Colaizzo	Hess	Platts	Waugh
Conti	Hutchinson	Raymond	Wozniak
Cornell	Jadlowiec	Reber	Wright, D. R.
Corpora	Jarolin	Reinard	Wright, M. N.
Corrigan	Keller	Rohrer	Yewcic
Coy	King	Rubley	Youngblood
DeLuca	Krebs	Sainato	Zimmerman
Dempsey	LaGrotta	Santoni	Zug
Dent	Laughlin	Sather	
DiGirolamo	Lederer	Saylor	Ryan,
Druce	Leh	Schroder	Speaker
Egolf	Lescovitz	Schuler	

NOT VOTING–2

Rudy	Williams

EXCUSED–3

Bishop	Farmer	Washington

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

On the question recurring,
Will the House agree to the bill on third consideration as amended?

Mr. **COHEN** offered the following amendment No. **A2754**:

Amend Sec. 1 (Sec. 8602), page 3, line 12, (A2668), by inserting after "center."
A health care provider is not exempt from professional liability by virtue of an agency relationship with an employer under the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act.

On the question,
Will the House agree to the amendment?

The SPEAKER. The Chair recognizes the gentleman, Mr. Cohen, on amendment A2754.

Mr. COHEN. Mr. Speaker, currently under Pennsylvania law as interpreted by the Pennsylvania courts, a company doctor cannot be sued by a worker he treats. There is no reason why a company doctor should be held to a lower standard than anyone else. The whole thrust of workers' compensation reform is to give more power to company doctors, to require longer and longer periods of time for company doctors to be the treater of workers' problems, and therefore, the company doctors take on a greater and greater significance.

I think this will restore equity for workers seeking workers' compensation in the malpractice field, and I urge support of this amendment.

The SPEAKER. The gentleman, Mr. Chadwick.

Mr. CHADWICK. Thank you, Mr. Speaker.

Will the maker of the amendment stand for a brief interrogation?

The SPEAKER. The gentleman indicates he will. You may begin.

Mr. CHADWICK. Mr. Speaker, can the gentleman cite for me anyplace in the Workers' Compensation Act where an injured employee is currently prohibited from suing a physician?

Mr. COHEN. Mr. Speaker, my understanding is, it is the "fellow servant rule" in Pennsylvania common law. It is not in the Workers' Compensation Act or in the Chadwick amendment.

Mr. CHADWICK. Mr. Speaker, in any way, shape, or form, is the intent of this amendment to permit an injured worker to ultimately have a cause of action where he could come back against his employer under workers' compensation?

Mr. COHEN. No, Mr. Speaker.

Mr. CHADWICK. Under no circumstances?

Mr. COHEN. No; under no circumstance.

Mr. CHADWICK. Mr. Speaker, that ends my interrogation. May I speak on the amendment?

The SPEAKER. The gentleman is in order.

Mr. CHADWICK. Mr. Speaker, I have an honest disagreement with the gentleman, Mr. Cohen, over whether or not an injured worker has the right to sue for medical malpractice. I think it is clear under the law that he already does. This is a dangerous intrusion into the Workers' Compensation Act.

I have a hunch that sometime in the next month we are going to have an opportunity to visit that act, and that would be a better time to deal with this amendment. I urge the members to vote "no." Thank you.

The SPEAKER. The Chair thanks the gentleman.

On the question recurring,
Will the House agree to the amendment?

The following roll call was recorded:

YEAS–79

Bebko-Jones	Durham	Manderino	Roebuck
Belardi	Evans	McGeehan	Rooney
Belfanti	Gannon	Melio	Santoni
Blaum	George	Michlovic	Shaner
Boscola	Gigliotti	Mihalich	Steelman
Butkovitz	Gordner	Mundy	Stetler
Buxton	Gruitza	Myers	Surra
Caltagirone	Haluska	O'Brien	Tangretti

Cappabianca	Itkin	Olasz	Taylor, J.
Carn	James	Oliver	Thomas
Cawley	Jarolin	Pesci	Trello
Cohen, M.	Josephs	Petrarca	Trich
Colaizzo	Kaiser	Petrone	Van Horne
Corpora	Keller	Pistella	Veon
Curry	Kenney	Preston	Vitali
Daley	Kirkland	Ramos	Walko
DeLuca	Lawless	Readshaw	Williams
Dermody	Lederer	Reber	Wogan
DeWeese	Levdansky	Roberts	Youngblood
Donatucci	Lucyk	Robinson	

NAYS–119

Adolph	Fajt	Lynch	Scrimenti
Allen	Fargo	Maitland	Semmel
Argall	Feese	Major	Serafini
Armstrong	Fichter	Markosek	Sheehan
Baker	Fleagle	Marsico	Smith, B.
Bard	Flick	Masland	Smith, S. H.
Barley	Gamble	Mayernik	Snyder, D. W.
Battisto	Geist	McCall	Staback
Birmelin	Gladeck	McGill	Stairs
Boyes	Godshall	Merry	Steil
Brown	Gruppo	Micozzie	Stern
Browne	Habay	Miller	Stish
Bunt	Hanna	Nailor	Strittmatter
Carone	Harhart	Nickol	Sturla
Chadwick	Hasay	Nyce	Taylor, E. Z.
Civera	Haste	Perzel	Tigue
Clark	Hennessey	Pettit	Travaglio
Clymer	Herman	Phillips	True
Cohen, L. I.	Hershey	Pitts	Tulli
Colafella	Hess	Platts	Vance
Conti	Hutchinson	Raymond	Waugh
Cornell	Jadlowiec	Reinard	Wozniak
Corrigan	King	Rieger	Wright, D. R.
Cowell	Krebs	Rohrer	Wright, M. N.
Coy	Kukovich	Rubley	Yewcic
Dempsey	LaGrotta	Sainato	Zimmerman
Dent	Laughlin	Sather	Zug
DiGirolamo	Leh	Saylor	
Druce	Lescovitz	Schroder	Ryan,
Egolf	Lloyd	Schuler	Speaker
Fairchild			

NOT VOTING–2

Horsey	Rudy

EXCUSED–3

Bishop	Farmer	Washington

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

RULES SUSPENDED

The SPEAKER. The Chair recognizes the gentleman, Mr. Itkin.

Mr. ITKIN. Mr. Speaker, I would like to make a motion to suspend the rules to offer an agreed-to amendment, not to the medical malpractice amendment but to the original part of the bill.

This is an amendment which has been agreed to by the prime sponsor in the Senate. I believe it also has the agreement on the other side of the aisle.

On the question,

Will the House agree to the motion?

The SPEAKER. On the question of suspension of the rules, this is something debatable only by the two floor leaders.

Does the Republican floor leader yield to the gentleman, Mr. Chadwick? The Chair recognizes the gentleman, Mr. Chadwick.

Mr. CHADWICK. Thank you, Mr. Speaker.

We support the motion and support the amendment.

On the question recurring,

Will the House agree to the motion?

The following roll call was recorded:

YEAS–192

Adolph	Egolf	Lucyk	Saylor
Allen	Evans	Major	Schroder
Argall	Fairchild	Manderino	Schuler
Armstrong	Fajt	Markosek	Scrimenti
Baker	Fargo	Marsico	Semmel
Bard	Feese	Masland	Serafini
Barley	Fichter	Mayernik	Shaner
Battisto	Fleagle	McCall	Sheehan
Bebko-Jones	Flick	McGeehan	Smith, B.
Belardi	Gamble	McGill	Smith, S. H.
Belfanti	Gannon	Melio	Snyder, D. W.
Birmelin	Geist	Merry	Staback
Blaum	George	Michlovic	Stairs
Boscola	Gigliotti	Micozzie	Steelman
Boyes	Gladeck	Mihalich	Steil
Brown	Godshall	Miller	Stern
Browne	Gordner	Mundy	Stetler
Bunt	Gruitza	Myers	Stish
Butkovitz	Gruppo	Nailor	Strittmatter
Buxton	Habay	Nickol	Sturla
Caltagirone	Haluska	Nyce	Surra
Cappabianca	Hanna	O'Brien	Tangretti
Carn	Harhart	Olasz	Taylor, E. Z.
Cawley	Hasay	Oliver	Taylor, J.
Chadwick	Haste	Perzel	Thomas
Civera	Hennessey	Pesci	Travaglio
Clark	Herman	Petrarca	Trello
Clymer	Hershey	Petrone	Trich
Cohen, L. I.	Hess	Pettit	True
Cohen, M.	Hutchinson	Phillips	Tulli
Colafella	Itkin	Pistella	Vance
Colaizzo	Jadlowiec	Pitts	Van Horne
Conti	James	Preston	Veon
Cornell	Jarolin	Ramos	Vitali
Corpora	Josephs	Raymond	Walko
Corrigan	Kaiser	Readshaw	Waugh
Cowell	Keller	Reber	Williams

Coy	Kenney	Reinard	Wogan
Curry	King	Rieger	Wozniak
Daley	Kirkland	Roberts	Wright, D. R.
DeLuca	Kukovich	Robinson	Wright, M. N.
Dempsey	LaGrotta	Roebuck	Yewcic
Dent	Laughlin	Rohrer	Youngblood
Dermody	Lawless	Rooney	Zimmerman
DeWeese	Lederer	Rubley	Zug
DiGirolamo	Leh	Sainato	
Donatucci	Lescovitz	Santoni	Ryan,
Druce	Levdansky	Sather	Speaker
Durham	Lloyd		

NAYS–6

Carone	Lynch	Platts	Tigue
Krebs	Maitland		

NOT VOTING–2

Horsey	Rudy

EXCUSED–3

Bishop	Farmer	Washington

A majority of the members elected to the House having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

On the question recurring,
Will the House agree to the bill on third consideration as amended?

Mr. **ITKIN** offered the following amendment No. **A2693**:

Amend Sec. 1 (Sec. 9730), page 2, line 15, by inserting after "[shall]"
or a senior judge or senior district justice appointed by the president judge for the purposes of this section
Amend Sec. 1 (Sec. 9730), page 2, line 18, by inserting after "authority"
, senior judge or senior district justice
Amend Sec. 1 (Sec. 9730), page 2, line 20, by inserting after "authority"
, senior judge or senior district justice
Amend Sec. 1 (Sec. 9730), page 2, line 23, by inserting after "authority"
, senior judge or senior district justice
Amend Sec. 1 (Sec. 9730), page 2, line 26, by inserting after "authority"
, senior judge or senior district justice
Amend Sec. 1 (Sec. 9730), page 2, line 28, by inserting after "authority"
, senior judge or senior district justice
Amend Sec. 1 (Sec. 9730), page 3, line 2, by inserting after "authority"
, senior judge or senior district justice
Amend Sec. 1 (Sec. 9730), page 3, line 3, by inserting after "authority"
, senior judge or senior district justice
Amend Sec. 1 (Sec. 9730), page 3, line 7, by inserting after "authority"
, senior judge or senior district justice
Amend Sec. 1 (Sec. 9730), page 3, line 9, by inserting after "authority"
, senior judge or senior district justice
Amend Sec. 1 (Sec. 9730), page 3, line 11, by inserting after "authority"
, senior judge or senior district justice

On the question,
Will the House agree to the amendment?

The SPEAKER. The Chair recognizes the gentleman, Mr. Itkin, on the amendment.

Mr. ITKIN. Mr. Speaker, the original bill discussed the concern about having hearings, court hearings, relative to the payment of a defendant for court costs and fines and restitution, and if the defendant did not pay his fines, costs, or restitution, a hearing was to be held for the purpose of seeing whether the defendant had the capability of making such payments or whether installment payments or some other procedure ought to be provided.

The bill allows, instead of having a "shall" provision, allows the judicial authority to decide whether a hearing is required. In this particular case, this amendment allows the president judge to appoint a senior judge or a senior district judge to carry out these hearing functions and therefore reduce the work load on the courts.

This was suggested by the president judge in Allegheny County, and I submit it for the approval of the House.

On the question recurring,
Will the House agree to the amendment?

The following roll call was recorded:

YEAS–198

Adolph	Egolf	Lucyk	Sather
Allen	Evans	Lynch	Saylor
Argall	Fairchild	Maitland	Schroder
Armstrong	Fajt	Major	Schuler
Baker	Fargo	Manderino	Scrimenti
Bard	Feese	Markosek	Semmel
Barley	Fichter	Marsico	Serafini
Battisto	Fleagle	Masland	Shaner
Bebko-Jones	Flick	Mayernik	Sheehan
Belardi	Gamble	McCall	Smith, B.
Belfanti	Gannon	McGeehan	Smith, S. H.
Birmelin	Geist	McGill	Snyder, D. W.
Blaum	George	Melio	Staback
Boscola	Gigliotti	Merry	Stairs
Boyes	Gladeck	Michlovic	Steelman
Brown	Godshall	Micozzie	Steil
Browne	Gordner	Mihalich	Stern
Bunt	Gruitza	Miller	Stetler
Butkovitz	Gruppo	Mundy	Stish
Buxton	Habay	Myers	Strittmatter
Caltagirone	Haluska	Nailor	Sturla
Cappabianca	Hanna	Nickol	Surra
Carn	Harhart	Nyce	Tangretti
Carone	Hasay	O'Brien	Taylor, E. Z.
Cawley	Haste	Olasz	Taylor, J.
Chadwick	Hennessey	Oliver	Thomas
Civera	Herman	Perzel	Tigue

Clark	Hershey	Pesci	Travaglio
Clymer	Hess	Petrarca	Trello
Cohen, L. I.	Hutchinson	Petrone	Trich
Cohen, M.	Itkin	Pettit	True
Colafella	Jadlowiec	Phillips	Tulli
Colaizzo	James	Pistella	Vance
Conti	Jarolin	Pitts	Van Horne
Cornell	Josephs	Platts	Veon
Corpora	Kaiser	Preston	Vitali
Corrigan	Keller	Ramos	Walko
Cowell	Kenney	Raymond	Waugh
Coy	King	Readshaw	Williams
Curry	Kirkland	Reber	Wogan
Daley	Krebs	Reinard	Wozniak
DeLuca	Kukovich	Rieger	Wright, D. R.
Dempsey	LaGrotta	Roberts	Wright, M. N.
Dent	Laughlin	Robinson	Yewcic
Dermody	Lawless	Roebuck	Youngblood
DeWeese	Lederer	Rohrer	Zimmerman
DiGirolamo	Leh	Rooney	Zug
Donatucci	Lescovitz	Rubley	
Druce	Levdansky	Sainato	Ryan,
Durham	Lloyd	Santoni	Speaker

NAYS–0

NOT VOTING–2

Horsey	Rudy

EXCUSED–3

Bishop	Farmer	Washington

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

Bill as amended was agreed to

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?

Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

YEAS–150

Adolph	Fajt	Markosek	Scrimenti
Allen	Fargo	Marsico	Semmel
Argall	Feese	Masland	Serafini
Armstrong	Fichter	Mayernik	Shaner
Baker	Fleagle	McCall	Sheehan
Bard	Flick	McGill	Smith, B.
Barley	Gamble	Melio	Smith, S. H.
Battisto	Gannon	Merry	Snyder, D. W.
Belfanti	Geist	Micozzie	Stairs
Birmelin	George	Miller	Steelman
Boscola	Gigliotti	Nailor	Steil
Boyes	Gladeck	Nickol	Stern
Brown	Godshall	Nyce	Stetler
Browne	Gruppo	O'Brien	Stish
Bunt	Habay	Olasz	Strittmatter
Caltagirone	Haluska	Perzel	Sturla
Carone	Hanna	Petrone	Surra
Cawley	Harhart	Pettit	Tangretti
Chadwick	Hasay	Phillips	Taylor, E. Z.
Civera	Haste	Pistella	Taylor, J.
Clark	Herman	Pitts	Travaglio
Clymer	Hershey	Platts	Trello
Cohen, L. I.	Hess	Ramos	Trich
Colafella	Hutchinson	Raymond	True
Colaizzo	Jadlowiec	Readshaw	Tulli
Conti	Kenney	Reber	Vance
Cornell	King	Reinard	Vitali
Corrigan	Krebs	Robinson	Waugh
Cowell	LaGrotta	Rohrer	Wogan
Coy	Laughlin	Rooney	Wozniak
DeLuca	Lawless	Rubley	Wright, D. R.
Dempsey	Leh	Rudy	Wright, M. N.
Dent	Lescovitz	Sainato	Yewcic
DiGirolamo	Levdansky	Santoni	Zimmerman
Druce	Lloyd	Sather	Zug
Durham	Lynch	Saylor	
Egolf	Maitland	Schroder	Ryan,
Fairchild	Major	Schuler	Speaker

NAYS–49

Bebko-Jones	Donatucci	Kukovich	Preston
Belardi	Evans	Lederer	Rieger
Blaum	Gordner	Lucyk	Roberts
Butkovitz	Gruitza	Manderino	Roebuck
Buxton	Hennessey	McGeehan	Staback
Cappabianca	Itkin	Michlovic	Thomas
Carn	James	Mihalich	Tigue
Cohen, M.	Jarolin	Mundy	Van Horne
Corpora	Josephs	Myers	Veon
Curry	Kaiser	Oliver	Walko
Daley	Keller	Pesci	Williams
Dermody	Kirkland	Petrarca	Youngblood
DeWeese			

NOT VOTING–1

Horsey

EXCUSED–3

Bishop	Farmer	Washington

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk return the same to the Senate with the information that the House has passed the same with amendment in which the concurrence of the Senate is requested.

SUPPLEMENTAL CALENDAR A

RESOLUTIONS PURSUANT TO RULE 35

Mr. WALKO called up **HR 372, PN 3549,** entitled:

A Resolution proclaiming May 31, 1996, as "Sister City Day - Fellbach-Schmiden."

On the question,

Will the House adopt the resolution?

The following roll call was recorded:

YEAS–197

Adolph	Egolf	Lucyk	Sather
Allen	Evans	Lynch	Saylor
Argall	Fairchild	Maitland	Schroder
Armstrong	Fajt	Major	Schuler
Baker	Fargo	Manderino	Scrimenti
Bard	Feese	Markosek	Semmel
Barley	Fichter	Marsico	Serafini
Battisto	Fleagle	Masland	Shaner
Bebko-Jones	Flick	Mayernik	Sheehan
Belardi	Gamble	McCall	Smith, B.
Belfanti	Geist	McGill	Smith, S. H.
Birmelin	George	Melio	Snyder, D. W.
Blaum	Gigliotti	Merry	Staback
Boscola	Gladeck	Michlovic	Stairs
Boyes	Godshall	Micozzie	Steelman
Brown	Gordner	Mihalich	Steil
Browne	Gruitza	Miller	Stern
Bunt	Gruppo	Mundy	Stetler
Butkovitz	Habay	Myers	Stish
Buxton	Haluska	Nailor	Strittmatter
Caltagirone	Hanna	Nickol	Sturla
Cappabianca	Harhart	Nyce	Surra
Carn	Hasay	O'Brien	Tangretti
Carone	Haste	Olasz	Taylor, E. Z.
Cawley	Hennessey	Oliver	Taylor, J.
Chadwick	Herman	Perzel	Thomas
Civera	Hershey	Pesci	Tigue
Clark	Hess	Petrarca	Travaglio
Clymer	Horsey	Petrone	Trello
Cohen, L. I.	Hutchinson	Pettit	Trich
Cohen, M.	Itkin	Phillips	True
Colafella	Jadlowiec	Pistella	Tulli
Colaizzo	James	Pitts	Vance
Conti	Jarolin	Platts	Van Horne
Cornell	Josephs	Preston	Veon
Corpora	Kaiser	Ramos	Vitali
Corrigan	Keller	Raymond	Walko
Cowell	Kenney	Readshaw	Waugh
Coy	King	Reber	Williams
Curry	Kirkland	Reinard	Wogan
Daley	Krebs	Rieger	Wozniak
DeLuca	Kukovich	Roberts	Wright, M N.
Dempsey	LaGrotta	Robinson	Yewcic
Dent	Laughlin	Roebuck	Youngblood
Dermody	Lawless	Rohrer	Zimmerman
DeWeese	Lederer	Rooney	Zug
DiGirolamo	Leh	Rubley	
Donatucci	Lescovitz	Rudy	Ryan,
Druce	Levdansky	Sainato	Speaker
Durham	Lloyd	Santoni	

NAYS–0

NOT VOTING–3

Gannon	McGeehan	Wright, D. R.

EXCUSED–3

Bishop	Farmer	Washington

The majority having voted in the affirmative, the question was determined in the affirmative and the resolution was adopted.

* * *

Mr. WALKO called up **HR 373, PN 3550,** entitled:

A Resolution proclaiming May 30, 1996, as "Sister City Day - Esslingen."

On the question,
Will the House adopt the resolution?

The following roll call was recorded:

YEAS–199

Adolph	Egolf	Lloyd	Sainato
Allen	Evans	Lucyk	Santoni
Argall	Fairchild	Lynch	Sather
Armstrong	Fajt	Maitland	Saylor
Baker	Fargo	Major	Schroder
Bard	Feese	Manderino	Schuler
Barley	Fichter	Markosek	Scrimenti
Battisto	Fleagle	Marsico	Semmel
Bebko-Jones	Flick	Masland	Serafini
Belardi	Gamble	Mayernik	Shaner
Belfanti	Gannon	McCall	Sheehan
Birmelin	Geist	McGeehan	Smith, B.
Blaum	George	McGill	Smith, S. H.
Boscola	Gigliotti	Melio	Snyder, D. W.
Boyes	Gladeck	Merry	Staback
Brown	Godshall	Michlovic	Stairs
Browne	Gordner	Micozzie	Steelman
Bunt	Gruitza	Mihalich	Steil
Butkovitz	Gruppo	Miller	Stern
Buxton	Habay	Mundy	Stetler
Caltagirone	Haluska	Myers	Stish
Cappabianca	Hanna	Nailor	Strittmatter
Carn	Harhart	Nickol	Sturla
Carone	Hasay	Nyce	Surra
Cawley	Haste	O'Brien	Tangretti
Chadwick	Hennessey	Olasz	Taylor, E. Z.
Civera	Herman	Oliver	Taylor, J.
Clark	Hershey	Perzel	Thomas
Clymer	Hess	Pesci	Tigue
Cohen, L. I.	Horsey	Petrarca	Travaglio
Cohen, M.	Hutchinson	Petrone	Trello
Colafella	Itkin	Pettit	Trich
Colaizzo	Jadlowiec	Phillips	True
Conti	James	Pistella	Tulli
Cornell	Jarolin	Pitts	Vance
Corpora	Josephs	Platts	Van Horne
Corrigan	Kaiser	Preston	Veon
Cowell	Keller	Ramos	Vitali
Coy	Kenney	Raymond	Walko
Curry	King	Readshaw	Waugh
Daley	Kirkland	Reber	Williams
DeLuca	Krebs	Reinard	Wogan
Dempsey	Kukovich	Rieger	Wozniak
Dent	LaGrotta	Roberts	Wright, D. R.
Dermody	Laughlin	Robinson	Wright, M. N.
DeWeese	Lawless	Roebuck	Yewcic
DiGirolamo	Lederer	Rohrer	Youngblood
Donatucci	Leh	Rooney	Zimmerman
Druce	Lescovitz	Rubley	Zug
Durham	Levdansky	Rudy	

NAYS–0

NOT VOTING–1

Ryan,
Speaker

EXCUSED–3

Bishop Farmer Washington

The majority having voted in the affirmative, the question was determined in the affirmative and the resolution was adopted.

VOTE CORRECTION

The SPEAKER. The record should reflect that the Speaker neglected to vote on that resolution.

SUPPLEMENTAL CALENDAR A CONTINUED

RESOLUTIONS PURSUANT TO RULE 35

Mr. WALKO called up **HR 374, PN 3551,** entitled:

A Resolution proclaiming May 27, 1996, as "Sister City Day - Altheim."

On the question,
Will the House adopt the resolution?

The following roll call was recorded:

YEAS–200

Adolph	Evans	Lynch	Sather
Allen	Fairchild	Maitland	Saylor
Argall	Fajt	Major	Schroder
Armstrong	Fargo	Manderino	Schuler
Baker	Feese	Markosek	Scrimenti
Bard	Fichter	Marsico	Semmel
Barley	Fleagle	Masland	Serafini
Battisto	Flick	Mayernik	Shaner
Bebko-Jones	Gamble	McCall	Sheehan
Belardi	Gannon	McGeehan	Smith, B.
Belfanti	Geist	McGill	Smith, S. H.
Birmelin	George	Melio	Snyder, D. W.
Blaum	Gigliotti	Merry	Staback
Boscola	Gladeck	Michlovic	Stairs
Boyes	Godshall	Micozzie	Steelman
Brown	Gordner	Mihalich	Steil
Browne	Gruitza	Miller	Stern
Bunt	Gruppo	Mundy	Stetler
Butkovitz	Habay	Myers	Stish
Buxton	Haluska	Nailor	Strittmatter
Caltagirone	Hanna	Nickol	Sturla
Cappabianca	Harhart	Nyce	Surra
Carn	Hasay	O'Brien	Tangretti
Carone	Haste	Olasz	Taylor, E. Z.
Cawley	Hennessey	Oliver	Taylor, J.
Chadwick	Herman	Perzel	Thomas
Civera	Hershey	Pesci	Tigue
Clark	Hess	Petrarca	Travaglio
Clymer	Horsey	Petrone	Trello
Cohen, L. I.	Hutchinson	Pettit	Trich
Cohen, M.	Itkin	Phillips	True
Colafella	Jadlowiec	Pistella	Tulli
Colaizzo	James	Pitts	Vance
Conti	Jarolin	Platts	Van Horne
Cornell	Josephs	Preston	Veon
Corpora	Kaiser	Ramos	Vitali
Corrigan	Keller	Raymond	Walko
Cowell	Kenney	Readshaw	Waugh
Coy	King	Reber	Williams
Curry	Kirkland	Reinard	Wogan
Daley	Krebs	Rieger	Wozniak
DeLuca	Kukovich	Roberts	Wright, D. R.
Dempsey	LaGrotta	Robinson	Wright, M. N.
Dent	Laughlin	Roebuck	Yewcic
Dermody	Lawless	Rohrer	Youngblood
DeWeese	Lederer	Rooney	Zimmerman
DiGirolamo	Leh	Rubley	Zug
Donatucci	Lescovitz	Rudy	
Druce	Levdansky	Sainato	Ryan,
Durham	Lloyd	Santoni	Speaker
Egolf	Lucyk		

NAYS–0

NOT VOTING–0

EXCUSED–3

Bishop Farmer Washington

The majority having voted in the affirmative, the question was determined in the affirmative and the resolution was adopted.

* * *

Mr. WALKO called up **HR 375, PN 3552,** entitled:

A Resolution proclaiming May 26, 1996, as "Sister City Day - Kirchheim an der Weinstrasse."

On the question,
Will the House adopt the resolution?

The following roll call was recorded:

YEAS–199

Adolph	Evans	Lynch	Sather
Allen	Fairchild	Maitland	Saylor
Argall	Fajt	Major	Schroder
Armstrong	Fargo	Manderino	Schuler
Baker	Feese	Markosek	Scrimenti
Bard	Fichter	Marsico	Semmel
Barley	Fleagle	Masland	Serafini
Battisto	Flick	Mayernik	Shaner
Bebko-Jones	Gamble	McCall	Sheehan
Belardi	Gannon	McGeehan	Smith, B.
Belfanti	Geist	McGill	Smith, S. H.
Birmelin	George	Melio	Snyder, D. W.
Blaum	Gigliotti	Merry	Staback
Boscola	Gladeck	Michlovic	Stairs
Boyes	Godshall	Micozzie	Steelman
Brown	Gordner	Mihalich	Steil
Browne	Gruitza	Miller	Stern
Bunt	Gruppo	Mundy	Stetler
Butkovitz	Habay	Myers	Stish
Buxton	Haluska	Nailor	Strittmatter
Caltagirone	Hanna	Nickol	Sturla
Cappabianca	Harhart	Nyce	Surra

Carn	Hasay	O'Brien	Tangretti
Carone	Haste	Olasz	Taylor, E. Z.
Cawley	Hennessey	Oliver	Taylor, J.
Chadwick	Herman	Perzel	Thomas
Civera	Hershey	Pesci	Tigue
Clark	Hess	Petrarca	Travaglio
Clymer	Horsey	Petrone	Trello
Cohen, L. I.	Hutchinson	Pettit	Trich
Cohen, M.	Itkin	Phillips	True
Colafella	Jadlowiec	Pistella	Tulli
Colaizzo	James	Pitts	Vance
Conti	Jarolin	Platts	Van Horne
Cornell	Josephs	Preston	Veon
Corpora	Kaiser	Ramos	Vitali
Corrigan	Keller	Raymond	Walko
Cowell	Kenney	Readshaw	Waugh
Coy	King	Reber	Williams
Curry	Krebs	Reinard	Wogan
Daley	Kukovich	Rieger	Wozniak
DeLuca	LaGrotta	Roberts	Wright, D. R.
Dempsey	Laughlin	Robinson	Wright, M. N.
Dent	Lawless	Roebuck	Yewcic
Dermody	Lederer	Rohrer	Youngblood
DeWeese	Leh	Rooney	Zimmerman
DiGirolamo	Lescovitz	Rubley	Zug
Donatucci	Levdansky	Rudy	
Druce	Lloyd	Sainato	Ryan,
Durham	Lucyk	Santoni	Speaker
Egolf			

NAYS–0

NOT VOTING–1

Kirkland

EXCUSED–3

Bishop	Farmer	Washington

The majority having voted in the affirmative, the question was determined in the affirmative and the resolution was adopted.

* * *

Mr. WALKO called up **HR 376, PN 3553,** entitled:

A Resolution proclaiming May 24, 1996, as "Sister City Day - Mannheim-Feudenheim."

On the question,
Will the House adopt the resolution?

The following roll call was recorded:

YEAS–200

Adolph	Evans	Lynch	Sather
Allen	Fairchild	Maitland	Saylor
Argall	Fajt	Major	Schroder
Armstrong	Fargo	Manderino	Schuler
Baker	Feese	Markosek	Scrimenti
Bard	Fichter	Marsico	Semmel
Barley	Fleagle	Masland	Serafini
Battisto	Flick	Mayernik	Shaner
Bebko-Jones	Gamble	McCall	Sheehan
Belardi	Gannon	McGeehan	Smith, B.
Belfanti	Geist	McGill	Smith, S. H.
Birmelin	George	Melio	Snyder, D. W.
Blaum	Gigliotti	Merry	Staback
Boscola	Gladeck	Michlovic	Stairs
Boyes	Godshall	Micozzie	Steelman
Brown	Gordner	Mihalich	Steil
Browne	Gruitza	Miller	Stern
Bunt	Gruppo	Mundy	Stetler
Butkovitz	Habay	Myers	Stish
Buxton	Haluska	Nailor	Strittmatter
Caltagirone	Hanna	Nickol	Sturla
Cappabianca	Harhart	Nyce	Surra
Carn	Hasay	O'Brien	Tangretti
Carone	Haste	Olasz	Taylor, E. Z.
Cawley	Hennessey	Oliver	Taylor, J.
Chadwick	Herman	Perzel	Thomas
Civera	Hershey	Pesci	Tigue
Clark	Hess	Petrarca	Travaglio
Clymer	Horsey	Petrone	Trello
Cohen, L. I.	Hutchinson	Pettit	Trich
Cohen, M.	Itkin	Phillips	True
Colafella	Jadlowiec	Pistella	Tulli
Colaizzo	James	Pitts	Vance
Conti	Jarolin	Platts	Van Horne
Cornell	Josephs	Preston	Veon
Corpora	Kaiser	Ramos	Vitali
Corrigan	Keller	Raymond	Walko
Cowell	Kenney	Readshaw	Waugh
Coy	King	Reber	Williams
Curry	Kirkland	Reinard	Wogan
Daley	Krebs	Rieger	Wozniak
DeLuca	Kukovich	Roberts	Wright, D. R.
Dempsey	LaGrotta	Robinson	Wright, M. N.
Dent	Laughlin	Roebuck	Yewcic
Dermody	Lawless	Rohrer	Youngblood
DeWeese	Lederer	Rooney	Zimmerman
DiGirolamo	Leh	Rubley	Zug
Donatucci	Lescovitz	Rudy	
Druce	Levdansky	Sainato	Ryan,
Durham	Lloyd	Santoni	Speaker
Egolf	Lucyk		

NAYS–0

NOT VOTING–0

EXCUSED–3

Bishop	Farmer	Washington

The majority having voted in the affirmative, the question was determined in the affirmative and the resolution was adopted.

HB 2488 RECONSIDERED

The SPEAKER. The Chair recognizes the gentleman from Philadelphia County, Mr. Williams, who moves that the vote by which HB 2488, PN 3277, was passed on May 14 be reconsidered.

On the question,
Will the House agree to the motion?

The following roll call was recorded:

YEAS–198

Adolph	Evans	Lucyk	Santoni
Allen	Fairchild	Lynch	Sather
Argall	Fajt	Maitland	Saylor
Baker	Fargo	Major	Schroder
Bard	Feese	Manderino	Schuler
Barley	Fichter	Markosek	Scrimenti
Battisto	Fleagle	Marsico	Semmel
Bebko-Jones	Flick	Masland	Serafini
Belardi	Gamble	Mayernik	Shaner
Belfanti	Gannon	McCall	Sheehan
Birmelin	Geist	McGeehan	Smith, B.
Blaum	George	McGill	Smith, S. H.
Boscola	Gigliotti	Melio	Snyder, D. W.
Boyes	Gladeck	Merry	Staback
Brown	Godshall	Michlovic	Stairs
Browne	Gordner	Micozzie	Steelman
Bunt	Gruitza	Mihalich	Steil
Butkovitz	Gruppo	Miller	Stern
Buxton	Habay	Mundy	Stetler
Caltagirone	Haluska	Myers	Stish
Cappabianca	Hanna	Nailor	Strittmatter
Carn	Harhart	Nickol	Sturla
Carone	Hasay	Nyce	Surra
Cawley	Haste	O'Brien	Tangretti
Chadwick	Hennessey	Olasz	Taylor, E. Z.
Civera	Herman	Oliver	Taylor, J.
Clark	Hershey	Perzel	Thomas
Clymer	Hess	Pesci	Tigue
Cohen, L. I.	Horsey	Petrarca	Travaglio
Cohen, M.	Hutchinson	Petrone	Trello
Colafella	Itkin	Pettit	Trich
Colaizzo	Jadlowiec	Phillips	True
Conti	James	Pistella	Tulli
Cornell	Jarolin	Pitts	Vance
Corpora	Josephs	Platts	Van Horne
Corrigan	Kaiser	Preston	Veon
Cowell	Keller	Ramos	Vitali
Coy	Kenney	Raymond	Walko
Curry	King	Readshaw	Waugh
Daley	Kirkland	Reber	Wogan
DeLuca	Krebs	Reinard	Wozniak
Dempsey	Kukovich	Rieger	Wright, D. R.
Dent	LaGrotta	Roberts	Wright, M. N
Dermody	Laughlin	Robinson	Yewcic
DeWeese	Lawless	Roebuck	Youngblood
DiGirolamo	Lederer	Rohrer	Zimmerman
Donatucci	Leh	Rooney	Zug
Druce	Lescovitz	Rubley	
Durham	Levdansky	Rudy	Ryan,
Egolf	Lloyd	Sainato	Speaker

NAYS–1

Armstrong

NOT VOTING–1

Williams

EXCUSED–3

Bishop	Farmer	Washington

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

On the question recurring,

Shall the bill pass finally?

The SPEAKER. Mr. Williams, do you wish to speak on this bill? Mr. Williams.

Mr. WILLIAMS. Thank you, Mr. Speaker.

Mr. Speaker, I would like to just ask quickly the gentleman who is the author of the bill if he would stand for a brief period of interrogation.

The SPEAKER. Mr. DiGirolamo.

Mr. WILLIAMS. Mr. Speaker, since it is directed at Philadelphia County, there were some of us who were confused as to what the actual bill was, so we just need to understand what we are voting upon.

Mr. DiGIROLAMO. Thank you, Mr. Speaker.

Since 1982 the assessment for the District Attorneys Association for the first-class counties has been capped at $2,000 while the other counties, sizes two through eight, have paid according to a formula their assessment. What this bill does is simply remove the cap for the first-class counties and allows the first-class counties to be assessed at the same formula that the other counties are assessed at.

Mr. WILLIAMS. So there is no other county in the State of Pennsylvania that is currently capped?

Mr. DiGIROLAMO. That is correct.

Mr. WILLIAMS. Thank you, Mr. Speaker.

On the question recurring,

Shall the bill pass finally?

The SPEAKER. Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

YEAS–200

Adolph	Evans	Lynch	Sather
Allen	Fairchild	Maitland	Saylor
Argall	Fajt	Major	Schroder
Armstrong	Fargo	Manderino	Schuler
Baker	Feese	Markosek	Scrimenti
Bard	Fichter	Marsico	Semmel
Barley	Fleagle	Masland	Serafini
Battisto	Flick	Mayernik	Shaner
Bebko-Jones	Gamble	McCall	Sheehan
Belardi	Gannon	McGeehan	Smith, B.
Belfanti	Geist	McGill	Smith, S. H.
Birmelin	George	Melio	Snyder, D. W.
Blaum	Gigliotti	Merry	Staback
Boscola	Gladeck	Michlovic	Stairs
Boyes	Godshall	Micozzie	Steelman
Brown	Gordner	Mihalich	Steil
Browne	Gruitza	Miller	Stern
Bunt	Gruppo	Mundy	Stetler
Butkovitz	Habay	Myers	Stish
Buxton	Haluska	Nailor	Strittmatter
Caltagirone	Hanna	Nickol	Sturla
Cappabianca	Harhart	Nyce	Surra
Carn	Hasay	O'Brien	Tangretti
Carone	Haste	Olasz	Taylor, E. Z.
Cawley	Hennessey	Oliver	Taylor, J.
Chadwick	Herman	Perzel	Thomas
Civera	Hershey	Pesci	Tigue
Clark	Hess	Petrarca	Travaglio
Clymer	Horsey	Petrone	Trello
Cohen, L. I.	Hutchinson	Pettit	Trich
Cohen, M.	Itkin	Phillips	True

Colafella	Jadlowiec	Pistella	Tulli
Colaizzo	James	Pitts	Vance
Conti	Jarolin	Platts	Van Horne
Cornell	Josephs	Preston	Veon
Corpora	Kaiser	Ramos	Vitali
Corrigan	Keller	Raymond	Walko
Cowell	Kenney	Readshaw	Waugh
Coy	King	Reber	Williams
Curry	Kirkland	Reinard	Wogan
Daley	Krebs	Rieger	Wozniak
DeLuca	Kukovich	Roberts	Wright, D. R.
Dempsey	LaGrotta	Robinson	Wright, M. N.
Dent	Laughlin	Roebuck	Yewcic
Dermody	Lawless	Rohrer	Youngblood
DeWeese	Lederer	Rooney	Zimmerman
DiGirolamo	Leh	Rubley	Zug
Donatucci	Lescovitz	Rudy	
Druce	Levdansky	Sainato	Ryan,
Durham	Lloyd	Santoni	Speaker
Egolf	Lucyk		

NAYS–0

NOT VOTING–0

EXCUSED–3

Bishop	Farmer	Washington

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk present the same to the Senate for concurrence.

The SPEAKER. There will be no more roll-call votes.

VOTE CORRECTION

The SPEAKER. Mr. Corrigan desires recognition to correct the record.

Mr. CORRIGAN. Thank you, Mr. Speaker.

On SB 790 on the motion to recommit, I was recorded in the positive and would like to be recorded in the negative.

The SPEAKER. The remarks of the gentleman will be spread upon the record.

DEMOCRATIC CAUCUS

The SPEAKER. The gentleman, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Speaker.

Just a reminder for Democratic members, there will be a caucus tomorrow morning on the budget and other matters that we will be voting on tomorrow -- 10 o'clock tomorrow morning.

REPUBLICAN CAUCUS

The SPEAKER. Republicans, report to the caucus room at 9:30 or 10 o'clock, depending on whether or not you are hungry.

VOTE CORRECTIONS

The SPEAKER. The Chair recognizes the gentleman, Mr. Jarolin.

Mr. JAROLIN. Thank you, Mr. Speaker.

A correction of the record.

On SB 790, amendment 2668, the motion for germaneness, I would like to be recorded in the negative. Thank you.

The SPEAKER. The Chair thanks the gentleman. The remarks of the gentleman will be spread upon the record.

The gentleman, Mr. Coy.

Mr. COY. To correct the record, Mr. Speaker.

When SB 1441 was voted on last week, amendment 2502, I was not recorded, and I would like to be recorded in the negative.

The SPEAKER. The remarks of the gentleman will be spread upon the record.

BILLS AND RESOLUTIONS PASSED OVER

The SPEAKER. Without objection, all remaining bills and resolutions on today's calendar will be passed over. The Chair hears no objection.

ADJOURNMENT

The SPEAKER. Do the Republican or Democrat floor leaders have any further business?

Committee chairmen, any announcements? Members, any announcements? Any further corrections to the record?

The Chair recognizes the gentleman from Montgomery County, Mr. McGill.

Mr. McGILL. Mr. Speaker, I move that this House do now adjourn until Wednesday, May 15, 1996, at 11:05 a.m., e.d.t., unless sooner recalled by the Speaker.

On the question,

Will the House agree to the motion?

Motion was agreed to, and at 6:44 p.m., e.d.t., the House adjourned.