

COMMONWEALTH OF PENNSYLVANIA

LEGISLATIVE JOURNAL

TUESDAY, JANUARY 29, 2002

SESSION OF 2002

186TH OF THE GENERAL ASSEMBLY

No. 8

HOUSE OF REPRESENTATIVES

The House convened at 11 a.m., e.s.t.

THE SPEAKER PRO TEMPORE (BRETT FEESE) PRESIDING

PRAYER

REV. BARBARA C. YORKS, Chaplain of the House of Representatives and pastor of Paxton United Methodist Church, Harrisburg, Pennsylvania, offered the following prayer:

Joni Erickson Tada in "Glorious Intruder" shares, "God wants us to be His light in the world. The best lights we can be. With God as the power source, we're to shine in whatever capacity we can. It may be a bright radiance, a warm glow, a piercing reflection, or a steady beam. Different individuals with diverse personalities, strengths and weaknesses will display God's light with varying intensities. But it's genuine light all the same, and the darkened world can never have too much."

Let us pray:

Dear Lord, we have got a tough day ahead for us. We anticipate hours of hard work and difficult choices. Our hope is to make decisions that reflect the will of the people of Pennsylvania and will benefit those in our State.

We seek Your input and direction. We ask You for energy and alertness to deal with the issues at hand. Give us Your light to make wise decisions that we might make a positive impact in this community and beyond.

Hear our prayer. Amen.

PLEDGE OF ALLEGIANCE

(The Pledge of Allegiance was recited by members and visitors.)

JOURNAL APPROVAL POSTPONED

The SPEAKER pro tempore. Without objection, the approval of the Journal of Monday, January 28, 2002, will be postponed until printed. The Chair hears no objection.

HOUSE BILLS INTRODUCED AND REFERRED

No. 2300 By Representatives SCHRODER, ADOLPH, GODSHALL, BENNINGHOFF, ARMSTRONG, M. BAKER, BARRAR, BASTIAN, BIRMELIN, CLYMER, CORNELL,

CORRIGAN, CREIGHTON, FAIRCHILD, FLICK, HARHAI, HESS, LEH, LEWIS, MACKERETH, MAJOR, MCGILL, McILHINNEY, MICOZZIE, PICKETT, RAYMOND, ROBINSON, SATHER, SCHULER, SHANER, STEIL, STRITTMATTER, E. Z. TAYLOR, TURZAI, WATSON, WILT, M. WRIGHT, SAYLOR, SEMMEL, COLEMAN, HERSHEY and PHILLIPS

An Act amending the act of October 15, 1975 (P.L.390, No.111), known as the Health Care Services Malpractice Act, further providing for definitions, for reduction of awards and for statute of limitations; and providing for joint and several liability, for periodic payment of future damages, for contracts limiting noneconomic damages, for jurisdiction, for change of venue, for causation, for tax status of awards, for binding arbitration, for expert witness qualifications, for expert testimony constituting the practice of medicine, for frivolous litigation and for prejudgment interest.

Referred to Committee on JUDICIARY, January 29, 2002.

No. 2314 By Representative TURZAI

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for single recovery in tort actions by abolishing the collateral source rule and the right of subrogation.

Referred to Committee on JUDICIARY, January 29, 2002.

No. 2315 By Representative TURZAI

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, abolishing joint and several liability.

Referred to Committee on JUDICIARY, January 29, 2002.

No. 2316 By Representatives DERMODY, DeLUCA and WALKO

An Act amending the act of June 21, 1939 (P.L.626, No.294), referred to as the Second Class County Assessment Law, providing for a temporary moratorium on assessments.

Referred to Committee on URBAN AFFAIRS, January 29, 2002.

No. 2317 By Representatives CAPPELLI, ARMSTRONG, BARRAR, BELFANTI, BROWNE, CASORIO, COY, CREIGHTON, CRUZ, CURRY, DeLUCA, FAIRCHILD, FORCIER, GABIG, GEIST, GEORGE, GRUCELA, HERSHEY, HORSEY, KIRKLAND, LAUGHLIN, LEH, MAYERNIK, McILHATTAN, PETRARCA, PISTELLA, RAYMOND, READSHAW, SAINATO, SATHER, SHANER, E. Z. TAYLOR,

THOMAS, TURZAI, WALKO, WANSACZ, WILT, WOJNAROSKI, YOUNGBLOOD and WASHINGTON

An Act amending the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act, further providing for administrative powers.

Referred to Committee on COMMERCE AND ECONOMIC DEVELOPMENT, January 29, 2002.

HOUSE RESOLUTIONS INTRODUCED AND REFERRED

No. 399 By Representatives ROBERTS, LESCOVITZ, HANNA, M. WRIGHT, CREIGHTON, COY, JAMES, TURZAI, GRUCELA, MELIO, DeLUCA, SHANER, SURRA, G. WRIGHT, PETRARCA, TIGUE, YOUNGBLOOD, THOMAS, STABACK, SOLOBAY, SCHRODER and CORRIGAN

A Resolution urging the Governor to call for the convening of a special session of the General Assembly in order to address the impending medical malpractice insurance crisis.

Referred to Committee on RULES, January 29, 2002.

No. 403 By Representatives YEWIC, BASTIAN, BEBKO-JONES, BELFANTI, M. COHEN, CREIGHTON, GABIG, GEORGE, HARHAI, HERMAN, HORSEY, KIRKLAND, McGEEHAN, JAMES, LESCOVITZ, PISTELLA, ROBERTS, SHANER, STABACK, TIGUE, WOJNAROSKI, KELLER, MICHLOVIC, READSHAW, SATHER, SOLOBAY, THOMAS, TRICH and YOUNGBLOOD

A Resolution urging the Department of Health to conduct a study to determine whether the department should establish an additional Level III laboratory in western Pennsylvania for the testing of samples suspected of containing anthrax spores or other biological agents or develop a transportation system to safely transport samples from all areas of this Commonwealth to the existing Level III laboratory, whichever is more cost-effective or efficient.

Referred to Committee on RULES, January 29, 2002.

No. 404 By Representatives SATHER, STERN, S. H. SMITH, METCALFE, McILHINNEY, NAILOR, COLEMAN, McILHATTAN and HUTCHINSON

A Concurrent Resolution designating February 6, 2002, as "Ronald Reagan Day" in Pennsylvania.

Referred to Committee on RULES, January 29, 2002.

No. 405 By Representatives THOMAS, PRESTON, STEIL, D. EVANS, WASHINGTON, SURRA, GEORGE, BELARDI, JAMES, ROONEY, LESCOVITZ, READSHAW, FAIRCHILD, BEBKO-JONES, ROEBUCK, STURLA, BROWNE, PERZEL, ROBERTS, STABACK, YUDICHAK, GRUCELA, MELIO, CRUZ, JOSEPHS and YOUNGBLOOD

A Resolution directing the Consumer Affairs Committee to investigate the effects of the financial collapse of Enron Corporation on the economy of this Commonwealth, including its effects on the public pension funds as shareholders in Enron Corporation.

Referred to Committee on RULES, January 29, 2002.

SENATE MESSAGE

ADJOURNMENT RESOLUTION FOR CONCURRENCE

The clerk of the Senate, being introduced, presented the following extract from the Journal of the Senate, which was read as follows:

In the Senate
January 28, 2002

RESOLVED, (the House of Representatives concurring), That when the Senate adjourns this week, it reconvene on Monday, February 4, 2002, unless sooner recalled by the President Pro Tempore of the Senate; and be it further

RESOLVED, That when the House of Representatives adjourns this week, it reconvene on Monday, February 4, 2002, unless sooner recalled by the Speaker of the House of Representatives.

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

On the question,
Will the House concur in the resolution of the Senate?
Resolution was concurred in.
Ordered, That the clerk inform the Senate accordingly.

BILL REMOVED FROM TABLE

The SPEAKER pro tempore. The Chair recognizes the majority leader.

Mr. PERZEL. Mr. Speaker, I move that HB 934 be removed from the table.

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

BILL TABLED

The SPEAKER pro tempore. The Chair recognizes the majority leader.

Mr. PERZEL. Mr. Speaker, I move that HB 934 be laid on the table.

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

**BILL REPORTED FROM COMMITTEE,
CONSIDERED FIRST TIME, AND TABLED**

HB 591, PN 3197 (Amended) By Rep. FLICK

An Act amending the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment Compensation Law, further providing for ineligibility of incarcerated employees.

LABOR RELATIONS.

RULES COMMITTEE MEETING

The SPEAKER pro tempore. The Chair recognizes the majority leader, who calls for an immediate meeting of the Rules Committee at the majority leader's desk.

**RESOLUTIONS REPORTED
FROM COMMITTEE**

HR 379, PN 3085 By Rep. PERZEL

A Resolution amending House Rules 1 and 14.

RULES.

HR 386, PN 3095 By Rep. PERZEL

A Resolution directing the Legislative Budget and Finance Committee to study the elimination or significant reduction of property taxes as a source of funding for local school districts; to review the policies of states and jurisdictions of the United States which have eliminated property taxes as a source of funding for local school districts; to determine the consequences of such an elimination or reduction on local taxing bodies and on this Commonwealth; and to make recommendations on alternative financing methods for schools.

RULES.

HR 402, PN 3182 By Rep. PERZEL

A Resolution memorializing the President of the United States to federally activate National Guard troops to provide security at nuclear power plants.

RULES.

**BILL ON CONCURRENCE
REPORTED FROM COMMITTEE**

SB 607, PN 1680 (Amended) By Rep. PERZEL

An Act amending Title 25 (Elections) of the Pennsylvania Consolidated Statutes, codifying provisions relating to compensation of clerks of election and machine operators; codifying the Pennsylvania Voter Registration Act by providing for absentee ballots and for voter registration and by establishing a Statewide uniform registry of electors; imposing powers and duties on the Secretary of the Commonwealth and the Legislative Reference Bureau; and making repeals.

RULES.

LEAVES OF ABSENCE

The SPEAKER pro tempore. The Chair recognizes the majority whip, Mr. Smith, who requests a leave of absence for the gentleman from McKean County, Mr. JADLOWIEC, for the remainder of the week. Without objection, leave will be granted. The Chair hears no objection.

The Chair recognizes the Democratic whip, Mr. Veon, who requests a leave of absence for the day for the lady from Indiana County, Ms. STEELMAN. Without objection, the leave will be granted. The Chair hears no objection.

MASTER ROLL CALL

The SPEAKER pro tempore. The Chair is about to take today's master roll. The members will proceed to vote.

The following roll call was recorded:

PRESENT—198

Adolph	Evans, D.	Maitland	Saylor
Allen	Evans, J.	Major	Schroder
Argall	Fairchild	Manderino	Schuler
Armstrong	Feese	Mann	Scrimenti
Baker, J.	Fichter	Markosek	Semmel
Baker, M.	Fleagle	Marsico	Shaner
Bard	Flick	Mayernik	Smith, B.
Barley	Forcier	McCall	Smith, S. H.
Barrar	Frankel	McGeehan	Solobay
Bastian	Freeman	McGill	Staback
Bebko-Jones	Gabig	McIlhatten	Stairs
Belardi	Gannon	McIlhinney	Steil
Belfanti	Geist	McNaughton	Stern
Benninghoff	George	Melio	Stetler
Birmelin	Godshall	Metcalfe	Stevenson, R.
Bishop	Gordner	Michlovic	Stevenson, T.
Blaum	Grucela	Micozzie	Strittmatter
Boyes	Gruitza	Miller, R.	Sturla
Browne	Habay	Miller, S.	Surra
Bunt	Haluska	Mundy	Tangretti
Butkovitz	Hanna	Myers	Taylor, E. Z.
Buxton	Harhai	Nailor	Taylor, J.
Caltagirone	Harhart	Nickol	Thomas
Cappelli	Harper	O'Brien	Tigue
Casorio	Hasay	Oliver	Travaglio
Cawley	Hennessey	Pallone	Trello
Clark	Herman	Perzel	Trich
Clymer	Hershey	Petrarca	Tulli
Cohen, L. I.	Hess	Petrone	Turzai
Cohen, M.	Horsey	Phillips	Vance
Colafella	Hutchinson	Pickett	Veon
Coleman	James	Pippy	Vitali
Cornell	Josephs	Pistella	Walko
Corrigan	Kaiser	Preston	Wansacz
Costa	Keller	Raymond	Washington
Coy	Kenney	Readshaw	Waters
Creighton	Kirkland	Reinard	Watson
Cruz	Krebs	Rieger	Williams, J.
Curry	LaGrotta	Roberts	Wilt
Dailey	Laughlin	Robinson	Wojnaroski
Daley	Lawless	Roebuck	Wright, G.
Dally	Lederer	Rohrer	Wright, M.
DeLuca	Leh	Rooney	Yewcic
Dermody	Lescovitz	Ross	Youngblood
DeWeese	Levdansky	Rublely	Yudichak
DiGirolamo	Lewis	Ruffing	Zimmerman
Diven	Lucyk	Sainato	Zug
Donatucci	Lynch	Samuelson	

Eachus	Mackereth	Santoni	Ryan,
Egolf	Maher	Sather	Speaker

ADDITIONS—0

NOT VOTING—0

EXCUSED—3

Civera	Jadlowiec	Steelman
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LEAVES ADDED—2

Lawless	Ruffing
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LEAVES CANCELED—1

Steelman

GUESTS INTRODUCED

The SPEAKER pro tempore. The Chair is pleased to welcome today to the House, as guests of Representative Casorio, the following individuals from Penn Township, Westmoreland County: Frank DelBane, the district justice; Tony Pecora, a detective sergeant with the Penn Township Police Department; and Joe Lauricia, commissioner from Penn Township. Those gentlemen are seated in the balcony. Will they please rise.

The Chair is pleased to recognize today, as the guest of Representative Steven Cappelli from Lycoming County, Mr. Anthony DiSalvo. Mr. DiSalvo is a former director of plant engineering for Textron Lycoming Corporation, is an Eagle Scout and Distinguished Eagle. He is director with the Susquehanna Council of Boy Scouts of America. Please welcome Mr. Anthony DiSalvo to the hall of the House.

The Chair is pleased to welcome today, as guest pages of Representative Mark McNaughton from the 104th Legislative District, Brian Roy, Christina Roy, and Liana Roy. Will those guest pages please rise.

CALENDAR

RESOLUTIONS PURSUANT TO RULE 35

Mr. WILLIAMS called up HR 397, PN 3173, entitled:

A Resolution recognizing February 7, 2002, as "National AIDS Awareness Day" in Pennsylvania.

On the question,
Will the House adopt the resolution?

The following roll call was recorded:

YEAS—198

Adolph	Evans, D.	Maitland	Saylor
Allen	Evans, J.	Major	Schroder
Argall	Fairchild	Manderino	Schuler
Armstrong	Feese	Mann	Scrimenti
Baker, J.	Fichter	Markosek	Semmel
Baker, M.	Fleagle	Marsico	Shaner

Bard	Flick	Mayernik	Smith, B.
Barley	Forcier	McCall	Smith, S. H.
Barrar	Frankel	McGeehan	Solobay
Bastian	Freeman	McGill	Staback
Bebko-Jones	Gabig	McIlhattan	Stairs
Belardi	Gannon	McIlhinney	Steil
Belfanti	Geist	McNaughton	Stern
Benninghoff	George	Melio	Stetler
Birmelin	Godshall	Metcalfe	Stevenson, R.
Bishop	Gordner	Michlovic	Stevenson, T.
Blaum	Grucela	Micozzie	Strittmatter
Boyes	Gruitza	Miller, R.	Sturla
Browne	Habay	Miller, S.	Surra
Bunt	Haluska	Mundy	Tangretti
Butkovitz	Hanna	Myers	Taylor, E. Z.
Buxton	Harhai	Nailor	Taylor, J.
Caltagirone	Harhart	Nickol	Thomas
Cappelli	Harper	O'Brien	Tigue
Casorio	Hasay	Oliver	Travaglio
Cawley	Hennessey	Pallone	Trello
Clark	Herman	Perzel	Trich
Clymer	Hershey	Petrarca	Tulli
Cohen, L. I.	Hess	Petrone	Turzai
Cohen, M.	Horsey	Phillips	Vance
Colafella	Hutchinson	Pickett	Veon
Coleman	James	Pippy	Vitali
Cornell	Josephs	Pistella	Walko
Corrigan	Kaiser	Preston	Wansacz
Costa	Keller	Raymond	Washington
Coy	Kenney	Readshaw	Waters
Creighton	Kirkland	Reinard	Watson
Cruz	Krebs	Rieger	Williams, J.
Curry	LaGrotta	Roberts	Wilt
Dailey	Laughlin	Robinson	Wojnaroski
Daley	Lawless	Roebuck	Wright, G.
Dally	Lederer	Rohrer	Wright, M.
DeLuca	Leh	Rooney	Yewwic
Dermody	Lescovitz	Ross	Youngblood
DeWeese	Levdansky	Rublely	Yudichak
DiGirolamo	Lewis	Ruffing	Zimmerman
Diven	Lucyk	Sainato	Zug
Donatucci	Lynch	Samuelson	
Eachus	Mackereth	Santoni	Ryan,
Egolf	Maher	Sather	Speaker

NAYS—0

NOT VOTING—0

EXCUSED—3

Civera	Jadlowiec	Steelman
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The majority having voted in the affirmative, the question was determined in the affirmative and the resolution was adopted.

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Mr. STERN called up HR 398, PN 3174, entitled:

A Resolution declaring January 2002 as "School Director Recognition Month" in Pennsylvania.

On the question,
Will the House adopt the resolution?

The following roll call was recorded:

YEAS-198

Adolph	Evans, D.	Maitland	Saylor
Allen	Evans, J.	Major	Schroder
Argall	Fairchild	Manderino	Schuler
Armstrong	Feese	Mann	Scrimenti
Baker, J.	Fichter	Markosek	Semmel
Baker, M.	Fleagle	Marsico	Shaner
Bard	Flick	Mayernik	Smith, B.
Barley	Forcier	McCall	Smith, S. H.
Barrar	Frankel	McGeehan	Solobay
Bastian	Freeman	McGill	Staback
Bebko-Jones	Gabig	McIlhattan	Stairs
Belardi	Gannon	McIlhinney	Steil
Belfanti	Geist	McNaughton	Stern
Benninghoff	George	Melio	Stetler
Birmelin	Godshall	Metcalfe	Stevenson, R.
Bishop	Gordner	Michlovic	Stevenson, T.
Blaum	Grucela	Micozzie	Strittmatter
Boyes	Gruitza	Miller, R.	Sturla
Browne	Habay	Miller, S.	Surra
Bunt	Haluska	Mundy	Tangretti
Butkovitz	Hanna	Myers	Taylor, E. Z.
Buxton	Harhai	Nailor	Taylor, J.
Caltagirone	Harhart	Nickol	Thomas
Cappelli	Harper	O'Brien	Tigue
Casorio	Hasay	Oliver	Travaglio
Cawley	Hennessey	Pallone	Trello
Clark	Herman	Perzel	Trich
Clymer	Hershey	Petrarca	Tulli
Cohen, L. I.	Hess	Petrone	Turzai
Cohen, M.	Horsey	Phillips	Vance
Colafella	Hutchinson	Pickett	Veon
Coleman	James	Pippy	Vitali
Cornell	Josephs	Pistella	Walko
Corrigan	Kaiser	Preston	Wansacz
Costa	Keller	Raymond	Washington
Coy	Kenney	Readshaw	Waters
Creighton	Kirkland	Reinard	Watson
Cruz	Krebs	Rieger	Williams, J.
Curry	LaGrotta	Roberts	Wilt
Dailey	Laughlin	Robinson	Wojnaroski
Daley	Lawless	Roebuck	Wright, G.
Dally	Lederer	Rohrer	Wright, M.
DeLuca	Leh	Rooney	Yewcic
Dermody	Lescovitz	Ross	Youngblood
DeWeese	Levdansky	Rubley	Yudichak
DiGirolo	Lewis	Ruffing	Zimmerman
Diven	Lucyk	Sainato	Zug
Donatucci	Lynch	Samuelson	
Eachus	Mackereth	Santoni	Ryan,
Egolf	Maher	Sather	Speaker

NAYS-0

NOT VOTING-0

EXCUSED-3

Civera Jadlowiec Steelman

The majority having voted in the affirmative, the question was determined in the affirmative and the resolution was adopted.

GUEST INTRODUCED

The SPEAKER pro tempore. The Chair is pleased to welcome today, as the guest page of Representative Dennis O'Brien, Frank Zuccarini. Frank is a junior at Archbishop Ryan High School. Will Frank please rise.

SUPPLEMENTAL CALENDAR A

RULES SUSPENDED

The SPEAKER pro tempore. The Chair recognizes the gentleman, Mr. Gordner.

Mr. GORDNER. Mr. Speaker, I move that the rules of the House be suspended for the immediate consideration of HR 402.

On the question,

Will the House agree to the motion?

The following roll call was recorded:

YEAS-198

Adolph	Evans, D.	Maitland	Saylor
Allen	Evans, J.	Major	Schroder
Argall	Fairchild	Manderino	Schuler
Armstrong	Feese	Mann	Scrimenti
Baker, J.	Fichter	Markosek	Semmel
Baker, M.	Fleagle	Marsico	Shaner
Bard	Flick	Mayernik	Smith, B.
Barley	Forcier	McCall	Smith, S. H.
Barrar	Frankel	McGeehan	Solobay
Bastian	Freeman	McGill	Staback
Bebko-Jones	Gabig	McIlhattan	Stairs
Belardi	Gannon	McIlhinney	Steil
Belfanti	Geist	McNaughton	Stern
Benninghoff	George	Melio	Stetler
Birmelin	Godshall	Metcalfe	Stevenson, R.
Bishop	Gordner	Michlovic	Stevenson, T.
Blaum	Grucela	Micozzie	Strittmatter
Boyes	Gruitza	Miller, R.	Sturla
Browne	Habay	Miller, S.	Surra
Bunt	Haluska	Mundy	Tangretti
Butkovitz	Hanna	Myers	Taylor, E. Z.
Buxton	Harhai	Nailor	Taylor, J.
Caltagirone	Harhart	Nickol	Thomas
Cappelli	Harper	O'Brien	Tigue
Casorio	Hasay	Oliver	Travaglio
Cawley	Hennessey	Pallone	Trello
Clark	Herman	Perzel	Trich
Clymer	Hershey	Petrarca	Tulli
Cohen, L. I.	Hess	Petrone	Turzai
Cohen, M.	Horsey	Phillips	Vance
Colafella	Hutchinson	Pickett	Veon
Coleman	James	Pippy	Vitali
Cornell	Josephs	Pistella	Walko
Corrigan	Kaiser	Preston	Wansacz
Costa	Keller	Raymond	Washington
Coy	Kenney	Readshaw	Waters
Creighton	Kirkland	Reinard	Watson
Cruz	Krebs	Rieger	Williams, J.
Curry	LaGrotta	Roberts	Wilt
Dailey	Laughlin	Robinson	Wojnaroski
Daley	Lawless	Roebuck	Wright, G.
Dally	Lederer	Rohrer	Wright, M.
DeLuca	Leh	Rooney	Yewcic
Dermody	Lescovitz	Ross	Youngblood
DeWeese	Levdansky	Rubley	Yudichak
DiGirolo	Lewis	Ruffing	Zimmerman
Diven	Lucyk	Sainato	Zug
Donatucci	Lynch	Samuelson	
Eachus	Mackereth	Santoni	Ryan,
Egolf	Maher	Sather	Speaker

NAYS-0

NOT VOTING-0

EXCUSED—3

Civera Jadlowiec Steelman

A majority of the members required by the rules having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

RESOLUTION

Mr. GORDNER called up **HR 402, PN 3182**, entitled:

A Resolution memorializing the President of the United States to federally activate National Guard troops to provide security at nuclear power plants.

On the question,
Will the House adopt the resolution?

The following roll call was recorded:

YEAS—198

Adolph	Evans, D.	Maitland	Saylor
Allen	Evans, J.	Major	Schroder
Argall	Fairchild	Manderino	Schuler
Armstrong	Feese	Mann	Scrimenti
Baker, J.	Fichter	Markosek	Semmel
Baker, M.	Fleagle	Marsico	Shaner
Bard	Flick	Mayermik	Smith, B.
Barley	Forcier	McCall	Smith, S. H.
Barrar	Frankel	McGeehan	Solobay
Bastian	Freeman	McGill	Staback
Bebko-Jones	Gabig	McIlhattan	Stairs
Belardi	Gannon	McIlhinney	Steil
Belfanti	Geist	McNaughton	Stern
Benninghoff	George	Melio	Stetler
Birmelin	Godshall	Metcalfe	Stevenson, R.
Bishop	Gordner	Michlovic	Stevenson, T.
Blaum	Grucela	Micozzie	Strittmatter
Boyes	Gruitza	Miller, R.	Sturla
Browne	Habay	Miller, S.	Surra
Bunt	Haluska	Mundy	Tangretti
Butkovitz	Hanna	Myers	Taylor, E. Z.
Buxton	Harhai	Nailor	Taylor, J.
Caltagirone	Harhart	Nickol	Thomas
Cappelli	Harper	O'Brien	Tigue
Casorio	Hasay	Oliver	Travaglio
Cawley	Hennessey	Pallone	Trello
Clark	Herman	Perzel	Trich
Clymer	Hershey	Petrarca	Tulli
Cohen, L. I.	Hess	Petrone	Turzai
Cohen, M.	Horsey	Phillips	Vance
Colafella	Hutchinson	Pickett	Veon
Coleman	James	Pippy	Vitali
Cornell	Josephs	Pistella	Walko
Corrigan	Kaiser	Preston	Wansacz
Costa	Keller	Raymond	Washington
Coy	Kenney	Readshaw	Waters
Creighton	Kirkland	Reinard	Watson
Cruz	Krebs	Rieger	Williams, J.
Curry	LaGrotta	Roberts	Wilt
Dailey	Laughlin	Robinson	Wojnaroski
Daley	Lawless	Roebuck	Wright, G.
Dally	Lederer	Rohrer	Wright, M.
DeLuca	Leh	Rooney	Yewcic
Dermody	Lescovitz	Ross	Youngblood
DeWeese	Levdansky	Rubley	Yudichak
DiGirolamo	Lewis	Ruffing	Zimmerman

Diven	Lucyk	Sainato	Zug
Donatucci	Lynch	Samuelson	
Eachus	Mackereth	Santoni	Ryan,
Egolf	Maher	Sather	Speaker

NAYS—0

NOT VOTING—0

EXCUSED—3

Civera Jadlowiec Steelman

The majority having voted in the affirmative, the question was determined in the affirmative and the resolution was adopted.

GUEST INTRODUCED

The SPEAKER pro tempore. The Chair is pleased to welcome today, as the guest of Representative Gene DiGirolamo, Dr. Vikki Ghert. Dr. Ghert is the superintendent of Bensalem School District. Dr. Ghert is seated to the left of the Speaker. Would Dr. Ghert please rise. Welcome to the hall of the House.

ANNOUNCEMENT BY MR. FLICK

The SPEAKER pro tempore. The Chair recognizes the gentleman from Chester County, Mr. Flick, on unanimous consent. Mr. FLICK. Thank you, Mr. Speaker.

The SPEAKER pro tempore. Will the gentleman suspend, please.

The House will come to order. Members, please take your seats. Conferences in the aisles, please break up.

The gentleman, Mr. Flick.

Mr. FLICK. Thank you, Mr. Speaker.

This morning I am going to be introducing two pieces of legislation. One is a joint resolution calling for a constitutional amendment which would place the General Assembly in the position of being able to oversee implementation of rules and procedures. Historically, the courts and the legislature have shared rulemaking power in Pennsylvania, and it was not until the 1968 Constitutional Convention that rulemaking was placed exclusively in the hands of the Supreme Court. I will be introducing legislation today. It is HR 400, which has now over 75 members cosponsoring. As well, I will be introducing legislation which will be the implementing act should the constitutional amendment pass two consecutive terms.

So I will leave it up at the front desk. If other members have not had the opportunity to join in sponsoring this, you will have that chance now. Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman.

REMARKS SUBMITTED FOR THE RECORD

Mr. FLICK submitted the following remarks for the Legislative Journal:

This morning I am offering legislation, HB 2324, which will not only speak to the situation before us today – that of providing first-rate care to

patients in Pennsylvania while, at the same time, keeping first-rate doctors in Pennsylvania – but it also speaks to the dilemma this body and all of Pennsylvania’s citizens have faced for far too many years.

I am speaking of the conundrum of the Pennsylvania Supreme Court. The court rightfully boasts that it is the oldest Supreme Court in the nation. Unfortunately, with age does not automatically come wisdom. I take aim at the court not because I am jealous of the court’s power or prerogatives. As any American can tell you, we need three coequal branches for government to work. And the judiciary occupies a unique and important role in that triad for, as Justice John Marshall wrote in the landmark case of *Marbury v. Madison*, it is the role of the judicial department to say what the law is.

In 1996 the General Assembly enacted sweeping reforms to the medical malpractice litigation system. We made changes in the substantive law and also passed measures to cut down on frivolous lawsuits and to speed the process along so that savings would be realized by both doctors and patients. The court simply used its rulemaking authority to strike those provisions, greatly diminishing the law’s potency, leaving it a mere shadow of what it could have been.

Sadly, this is not an isolated incident; striking our work on medical malpractice litigation reform is only symbolic of what seems to be a habit on the court’s part.

The General Assembly has passed and the Governor has signed legislation on a host of topics: postconviction relief, landlord-tenant issues, saving child victims the additional trauma of testifying in front of their perpetrators, to name just a few, and all have been nullified by the court under the guise of rulemaking.

Indeed, the high-water mark for nullifying statutes because they conflicted with the rulemaking process was reached in 1978 when the court wrote its infamous letter to the Governor and the General Assembly stating that a statute was unconstitutional. This letter raised more than a few eyebrows as the court used a letter, instead of a case brought by litigants, to declare a statute unconstitutional.

Not surprisingly, the statute at issue applied to the justices themselves. We were simply asking that when they convened to write court rules, they not do so in secret. My legislative proposal will restore sorely needed balance to the rulemaking process. As in days past, this legislation will allow the will of the citizens to be heard once again on issues that matter to them most.

Historically, the courts and the legislature shared the rulemaking power in Pennsylvania. It was not until the 1968 Constitution was adopted that rulemaking was placed solely in the hands of the Supreme Court. Prior to 1968, the General Assembly not only gave the court the authority to write court rules, the legislature itself wrote rules of procedure. The Practice Act of 1915 is a testament to that fact. In 1937, the General Assembly gave the court the authority to write rules in civil cases.

Even though historical and legal precedent support the General Assembly’s writing procedural rules, my proposal is much more modest than that. Because I seek restoration of balance to the rulemaking process and not usurpation of court power, my legislation mirrors the Federal rulemaking provisions followed by Congress and the U.S. Supreme Court. Both Congress and the U.S. Supreme Court share rulemaking duties. While the U.S. Supreme Court writes the rules, they do not take effect until Congress approves them. Rules are submitted to Congress by May 1. They take effect, unless otherwise provided by statute, on December 1.

This system works well on the Federal level. It brings an unparalleled level of cooperation between Congress and the U.S. Supreme Court. I cannot remember a time when I read a newspaper article stating that an act of Congress had been voided because it conflicted with court rule.

We need such a system in Pennsylvania. If we are to continue to make sure patients receive the care they deserve and if we are to continue to enable doctors to do what they commit their lives to doing – that is, healing the sick and ministering to those in need – then we must allow the citizens a chance to change the rulemaking process in Pennsylvania. Through such change, this legislature will not only be able to address

these issues but tackle others as well. But most importantly, the voices of the hardworking men and women will be heard just as loudly as the voices of the justices of the Pennsylvania Supreme Court. The citizens of our beloved Commonwealth deserve no less.

I invite the members of this august body to join with me as I introduce this historic legislation which proposes a constitutional amendment to restore the balance our forefathers intended. I will leave the folder at the desk for additional sponsors to add their support.

Thank you.

BILL RECOMMENDED

The SPEAKER pro tempore. The Chair recognizes the majority leader.

Mr. PERZEL. Mr. Speaker, I move that SB 607 be recommitted to the Committee on Rules.

On the question,

Will the House agree to the motion?

Motion was agreed to.

REPUBLICAN CAUCUS

The SPEAKER pro tempore. The Chair recognizes the gentleman from Schuylkill County, Mr. Argall, for purposes of an announcement.

Mr. ARGALL. Thank you, Mr. Speaker.

At the declaration of the recess, House Republicans will caucus downstairs. It is my understanding that we can return to the floor by 2 o’clock.

The SPEAKER pro tempore. The Chair thanks the gentleman.

DEMOCRATIC CAUCUS

The SPEAKER pro tempore. The Chair recognizes the gentleman, Mr. Lescovitz, for purposes of an announcement.

Mr. LESCOVITZ. Thank you, Mr. Speaker.

The House Democrats will caucus as soon as we recess.

The SPEAKER pro tempore. The Chair thanks the gentleman.

RECESS

The SPEAKER pro tempore. Does the majority floor leader have any further business? Any further business from the Democrat floor leader?

Hearing none, this House will stand in recess until 2 p.m., unless sooner recalled by the Speaker.

RECESS EXTENDED

The time of recess was extended until 2:30 p.m.; further extended until 3 p.m.

AFTER RECESS

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

order.

**THE SPEAKER (MATTHEW J. RYAN)
PRESIDING**

LEAVE OF ABSENCE CANCELED

The SPEAKER. The Chair recognizes the Democratic whip, who requests that the lady, Ms. Steelman, be placed on the master roll call. Without objection, that will take place. The clerk will enter Ms. Steelman on the roll call.

RULES COMMITTEE MEETING

The SPEAKER. The Chair recognizes the majority leader, who calls for an immediate meeting of the Rules Committee.

**BILL ON CONCURRENCE
REPORTED FROM COMMITTEE**

SB 607, PN 1680

By Rep. PERZEL

An Act amending Title 25 (Elections) of the Pennsylvania Consolidated Statutes, codifying provisions relating to compensation of clerks of election and machine operators; codifying the Pennsylvania Voter Registration Act by providing for absentee ballots and for voter registration and by establishing a Statewide uniform registry of electors; imposing powers and duties on the Secretary of the Commonwealth and the Legislative Reference Bureau; and making repeals.

RULES.

SUPPLEMENTAL CALENDAR B

**BILL ON CONCURRENCE
IN SENATE AMENDMENTS
TO HOUSE AMENDMENTS
AS AMENDED**

The House proceeded to consideration of concurrence in Senate amendments to House amendments to the following **SB 607, PN 1680**, as further amended by the House Rules Committee:

An Act amending Title 25 (Elections) of the Pennsylvania Consolidated Statutes, codifying provisions relating to compensation of clerks of election and machine operators; codifying the Pennsylvania Voter Registration Act by providing for absentee ballots and for voter registration and by establishing a Statewide uniform registry of electors; imposing powers and duties on the Secretary of the Commonwealth and the Legislative Reference Bureau; and making repeals.

On the question,

Will the House concur in Senate amendments to House amendments as amended by the Rules Committee?

The SPEAKER. On that question, Mr. Clymer, do you desire recognition?

Mr. CLYMER. Yes.

The SPEAKER. The gentleman, Mr. Clymer, is recognized. The gentleman will yield for a moment.

Members, please take your seats. Members in their offices,

report to the floor. Conferences in the aisles, please.

Mr. Clymer.

Mr. CLYMER. Thank you, Mr. Speaker.

Mr. Speaker, SB 607, commonly referred to as SURE, Statewide Uniform Registry of Electors, is presently before the House.

This legislation will go a long way toward addressing a common problem that we have all been affected by – registration roll inaccuracies. These types of inaccuracies are not simply minor recordkeeping problems that have no impact outside of the county registration office, but rather they can have a very serious impact on the voter’s ability to cast his or her vote. Also, such errors can open the door to fraud. Such problems particularly came to light during the 2000 Presidential election.

This legislation sprang from recommendations of the joint select committee to examine election issues and the work of the Act 61 advisory board composed of county commissioners, county election directors, and members of the General Assembly. Many national organizations and task forces have also recommended the creation of a central voter registration database as a key election reform. Among the tools made available to counties and the State to combat fraud would be the SURE system’s ability to flag duplicates and produce an audit trail for each applicant. In addition, PENNDOT, which we know makes thousands of voter registration changes per year, would be connected electronically with the SURE system.

Full funding has been provided in this year’s budget. This will go toward the implementation, education, maintenance, and the upgrading of the SURE system.

Mr. Speaker, I ask the members for an affirmative vote.

BILL PASSED OVER TEMPORARILY

The SPEAKER. Without objection, the consideration of SB 607 will go over. The bill does not appear on your computer screen due to the fact that there was an amendment of Ms. Josephs’ placed in the bill in the Rules Committee. So we are waiting until it is placed on the screen and a new fiscal note is obtained.

FILMING PERMISSION

The SPEAKER. The members should be advised that permission is being given to Greg Coy of Comcast News Philadelphia to videotape with audio HB 1802 for a period of 10 minutes.

SUPPLEMENTAL CALENDAR A CONTINUED

RESOLUTIONS

Mr. PERZEL called up **HR 379, PN 3085**, entitled:

A Resolution amending House Rules 1 and 14.

On the question,

Will the House adopt the resolution?

Mr. **PERZEL** offered the following amendment No. **A0022**:

Amend Title, page 1, line 1, by striking out “RULES 1 AND” and

inserting

Rule

Amend First Resolve Clause, page 1, lines 2 through 16; page 2, lines 1 through 4, by striking out all of said lines on said pages

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

The following roll call was recorded:

YEAS—199

Adolph	Evans, J.	Major	Schroder
Allen	Fairchild	Manderino	Schuler
Argall	Feese	Mann	Scrimenti
Armstrong	Fichter	Markosek	Semmel
Baker, J.	Fleagle	Marsico	Shaner
Baker, M.	Flick	Mayernik	Smith, B.
Bard	Forcier	McCall	Smith, S. H.
Barley	Frankel	McGeehan	Solobay
Barrar	Freeman	McGill	Staback
Bastian	Gabig	McIlhattan	Stairs
Bebko-Jones	Gannon	McIlhinney	Steelman
Belardi	Geist	McNaughton	Steil
Belfanti	George	Melio	Stern
Benninghoff	Godshall	Metcalfe	Stetler
Birmelin	Gordner	Michlovic	Stevenson, R.
Bishop	Grucela	Micozzie	Stevenson, T.
Blaum	Gruitza	Miller, R.	Strittmatter
Boyes	Habay	Miller, S.	Sturla
Browne	Haluska	Mundy	Surra
Bunt	Hanna	Myers	Tangretti
Butkovitz	Harhai	Nailor	Taylor, E. Z.
Buxton	Harhart	Nickol	Taylor, J.
Caltagirone	Harper	O'Brien	Thomas
Cappelli	Hasay	Oliver	Tigue
Casorio	Hennessey	Pallone	Travaglio
Cawley	Herman	Perzel	Trello
Clark	Hershey	Petrarca	Trich
Clymer	Hess	Petrone	Tulli
Cohen, L. I.	Horsey	Phillips	Turzai
Cohen, M.	Hutchinson	Pickett	Vance
Colafella	James	Pippy	Veon
Coleman	Josephs	Pistella	Vitali
Cornell	Kaiser	Preston	Walko
Corrigan	Keller	Raymond	Wansacz
Costa	Kenney	Readshaw	Washington
Coy	Kirkland	Reinard	Waters
Creighton	Krebs	Rieger	Watson
Cruz	LaGrotta	Roberts	Williams, J.
Curry	Laughlin	Robinson	Wilt
Dailey	Lawless	Roebuck	Wojnaroski
Daley	Lederer	Rohrer	Wright, G.
Dally	Leh	Rooney	Wright, M.
DeLuca	Lescovitz	Ross	Yewcic
Dermody	Levdansky	Rubley	Youngblood
DeWeese	Lewis	Ruffing	Yudichak
DiGiroloamo	Lucyk	Sainato	Zimmerman
Diven	Lynch	Samuelson	Zug
Donatucci	Mackereth	Santoni	
Eachus	Maher	Sather	Ryan,
Egolf	Maitland	Saylor	Speaker
Evans, D.			

NAYS—0

NOT VOTING—0

EXCUSED—2

Civera Jadlowiec

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 adopt the resolution as amended?

Mr. **PERZEL** offered the following amendment No. **A0055**:

Amend Third Resolve Clause, page 3, line 16, by striking out “after December 31, 2001,” and inserting
beginning 30 days after the adoption of this resolution

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

The following roll call was recorded:

YEAS—199

Adolph	Evans, J.	Major	Schroder
Allen	Fairchild	Manderino	Schuler
Argall	Feese	Mann	Scrimenti
Armstrong	Fichter	Markosek	Semmel
Baker, J.	Fleagle	Marsico	Shaner
Baker, M.	Flick	Mayernik	Smith, B.
Bard	Forcier	McCall	Smith, S. H.
Barley	Frankel	McGeehan	Solobay
Barrar	Freeman	McGill	Staback
Bastian	Gabig	McIlhattan	Stairs
Bebko-Jones	Gannon	McIlhinney	Steelman
Belardi	Geist	McNaughton	Steil
Belfanti	George	Melio	Stern
Benninghoff	Godshall	Metcalfe	Stetler
Birmelin	Gordner	Michlovic	Stevenson, R.
Bishop	Grucela	Micozzie	Stevenson, T.
Blaum	Gruitza	Miller, R.	Strittmatter
Boyes	Habay	Miller, S.	Sturla
Browne	Haluska	Mundy	Surra
Bunt	Hanna	Myers	Tangretti
Butkovitz	Harhai	Nailor	Taylor, E. Z.
Buxton	Harhart	Nickol	Taylor, J.
Caltagirone	Harper	O'Brien	Thomas
Cappelli	Hasay	Oliver	Tigue
Casorio	Hennessey	Pallone	Travaglio
Cawley	Herman	Perzel	Trello
Clark	Hershey	Petrarca	Trich
Clymer	Hess	Petrone	Tulli
Cohen, L. I.	Horsey	Phillips	Turzai
Cohen, M.	Hutchinson	Pickett	Vance
Colafella	James	Pippy	Veon
Coleman	Josephs	Pistella	Vitali
Cornell	Kaiser	Preston	Walko
Corrigan	Keller	Raymond	Wansacz
Costa	Kenney	Readshaw	Washington
Coy	Kirkland	Reinard	Waters
Creighton	Krebs	Rieger	Watson
Cruz	LaGrotta	Roberts	Williams, J.
Curry	Laughlin	Robinson	Wilt
Dailey	Lawless	Roebuck	Wojnaroski
Daley	Lederer	Rohrer	Wright, G.
Dally	Leh	Rooney	Wright, M.
DeLuca	Lescovitz	Ross	Yewcic
Dermody	Levdansky	Rubley	Youngblood
DeWeese	Lewis	Ruffing	Yudichak
DiGiroloamo	Lucyk	Sainato	Zimmerman
Diven	Lynch	Samuelson	Zug
Donatucci	Mackereth	Santoni	
Eachus	Maher	Sather	Ryan,

Egolf Evans, D.	Maitland	Saylor	Speaker
NAYS—0			
NOT VOTING—0			
EXCUSED—2			
Civera	Jadlowiec		

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 adopt the resolution as amended?

The SPEAKER. The Chair recognizes the gentleman from Delaware County, Mr. Vitali. Mr. Vitali, do you have an amendment?

Mr. VITALI. Yes, Mr. Speaker. I have three filed to this resolution.

The SPEAKER. Is there any particular order you wish them taken up in?

Mr. VITALI. 4949 seems the most innocuous.

The SPEAKER. The clerk will read the innocuous amendment.

On the question recurring,
Will the House adopt the resolution as amended?

Mr. VITALI offered the following amendment No. **A4949**:

Amend Title, page 1, line 1, by striking out “AND 14” and inserting
, 14 and 24

Amend Resolution, page 3, by inserting between lines 13 and 14
RESOLVED, That House Rule 24 be amended to read:

RULE 24

Third Consideration and Final Passage Bills

Bills on third consideration and final passage shall be considered in their calendar order.

A bill on third consideration may be amended.

After a bill is agreed to on third consideration, prior to voting, the title or a brief analysis of the bill shall be read; and the Speaker shall then state the question as follows:

“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 provision of the Constitution, the yeas and nays will now be taken.”

When more than one bill shall be considered at the same time, prior to voting, the title or a brief analysis of the bill shall be read; and the Speaker shall then state the question as follows:

“These bills have been considered on three different days and agreed to and are now on final passage.”

“The question is, shall the bills on the uncontested calendar pass finally?”

“Agreeable to the provision of the Constitution, the yeas and nays will now be taken.”

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

The SPEAKER. On the question of the adoption of the amendment, those in favor will— Apparently it is not completely

innocuous.

Mr. VITALI. I said more innocuous. That is kind of a relative term.

The SPEAKER. The Chair recognizes the majority whip, Mr. Smith.

Mr. VITALI. Mr. Speaker, before he is recognized, may I simply just explain the amendment?

The SPEAKER. The gentleman is in order.

Mr. VITALI. Thank you, Mr. Speaker.

What this does, 4949 does, is simply amend our House rules so that prior to a bill being considered, a title or brief analysis be read. It is analogous to what the rules require with our amendments, and the purpose of the rule is to prevent blind voting, which is not of primary importance on the normal session day, but there are days, especially at the end of the session, where members are put in a position where a number goes on the board, and it is very difficult to hook up what bill that we have caucused on corresponds with that number. It simply just slows the process down just a second or two, just a second or two to help us cast an informed vote.

I understand the Speaker’s perspective; we have debated this issue before, but back here in the peanut gallery there are times when a vote has gone up on the board and the lights are going on and you hear members simply saying, “What’s that? What’s that? What are we voting on?” and so forth and so on. So even if we were to get from the sponsor of the bill or whomever simply a statement, “This is a land transfer bill” or “This bill deals with medical malpractice” or whatever it might be, but just that one sentence so we can understand what it is, just that extra second, I think it simply would help members. I really do not see a downside to this. I do not really see a downside to that one sentence that needs to be read prior to a bill being voted on.

I have been, frankly, for a couple of terms trying to get this. We have gone through an extensive period of study of the House rules and we made many recommendations, and we had a 6-month study and incurred expenses, and this is just the minimum of the minimum. We have essentially changed nothing, but this simply is the minimum of the minimum. It is not designed to change the power structure; it is not going to change anything that is going to ultimately happen. It is just to allow us back here to make sure we know what we are voting on, so I would ask for an affirmative vote.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the majority leader, Mr. Perzel, on the question of the Vitali amendment.

Mr. PERZEL. Mr. Speaker, just for the members, Mr. Speaker, we do want to mention the fact that this is on the calendar—

The SPEAKER. The gentleman will yield, please.

Please. The majority leader has the floor.

Mr. PERZEL. The crux of the amendment, Mr. Speaker, is prior to voting, the title or a brief analysis of the bill shall be read. This is on the calendar; it is on the computer; we just discussed it in caucus. We allowed both sides of the aisle to go to caucus and explain what each one of the amendments is and what they are doing with each amendment. But for the sake of trying to make it clearer to all the members on the floor, Mr. Speaker, I would ask the members for a “yes” vote on this amendment.

The SPEAKER. Those in favor of Mr. Vitali’s innocuous amendment will vote “aye”; opposed, “no.”

On the question recurring,

Will the House agree to the amendment?

The following roll call was recorded:

YEAS—199

Adolph	Evans, J.	Major	Schroder
Allen	Fairchild	Manderino	Schuler
Argall	Feese	Mann	Scrimenti
Armstrong	Fichter	Markosek	Semmel
Baker, J.	Fleagle	Marsico	Shaner
Baker, M.	Flick	Mayernik	Smith, B.
Bard	Forcier	McCall	Smith, S. H.
Barley	Frankel	McGeehan	Solobay
Barrar	Freeman	McGill	Staback
Bastian	Gabig	McIlhattan	Stairs
Bebko-Jones	Gannon	McIlhinney	Steelman
Belardi	Geist	McNaughton	Steil
Belfanti	George	Melio	Stern
Benninghoff	Godshall	Metcalfe	Stetler
Birmelin	Gordner	Michlovic	Stevenson, R.
Bishop	Grucela	Micozzie	Stevenson, T.
Blaum	Gruitza	Miller, R.	Strittmatter
Boyes	Habay	Miller, S.	Sturla
Browne	Haluska	Mundy	Surra
Bunt	Hanna	Myers	Tangretti
Butkovitz	Harhai	Nailor	Taylor, E. Z.
Buxton	Harhart	Nickol	Taylor, J.
Caltagirone	Harper	O'Brien	Thomas
Cappelli	Hasay	Oliver	Tigue
Casorio	Hennessey	Pallone	Travaglio
Cawley	Herman	Perzel	Trello
Clark	Hershey	Petrarca	Trich
Clymer	Hess	Petrone	Tulli
Cohen, L. I.	Horsley	Phillips	Turzai
Cohen, M.	Hutchinson	Pickett	Vance
Colafella	James	Pippy	Veon
Coleman	Josephs	Pistella	Vitali
Cornell	Kaiser	Preston	Walko
Corrigan	Keller	Raymond	Wansacz
Costa	Kenney	Readshaw	Washington
Coy	Kirkland	Reinard	Waters
Creighton	Krebs	Rieger	Watson
Cruz	LaGrotta	Roberts	Williams, J.
Curry	Laughlin	Robinson	Wilt
Dailey	Lawless	Roebuck	Wojnaroski
Daley	Lederer	Rohrer	Wright, G.
Dally	Leh	Rooney	Wright, M.
DeLuca	Lescovitz	Ross	Yewcic
Dermody	Levdansky	Rubley	Youngblood
DeWeese	Lewis	Ruffing	Yudichak
DiGirolamo	Lucyk	Sainato	Zimmerman
Diven	Lynch	Samuelson	Zug
Donatucci	Mackereth	Santoni	
Eachus	Maher	Sather	Ryan,
Egolf	Maitland	Saylor	Speaker
Evans, D.			

NAYS—0

NOT VOTING—0

EXCUSED—2

Civera	Jadlowiec
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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 adopt the resolution as amended?

The SPEAKER. It is the understanding of the Chair the gentleman's other two amendments are withdrawn.

On the question recurring,
Will the House adopt the resolution as amended?

The following roll call was recorded:

YEAS—199

Adolph	Evans, J.	Major	Schroder
Allen	Fairchild	Manderino	Schuler
Argall	Feese	Mann	Scrimenti
Armstrong	Fichter	Markosek	Semmel
Baker, J.	Fleagle	Marsico	Shaner
Baker, M.	Flick	Mayernik	Smith, B.
Bard	Forcier	McCall	Smith, S. H.
Barley	Frankel	McGeehan	Solobay
Barrar	Freeman	McGill	Staback
Bastian	Gabig	McIlhattan	Stairs
Bebko-Jones	Gannon	McIlhinney	Steelman
Belardi	Geist	McNaughton	Steil
Belfanti	George	Melio	Stern
Benninghoff	Godshall	Metcalfe	Stetler
Birmelin	Gordner	Michlovic	Stevenson, R.
Bishop	Grucela	Micozzie	Stevenson, T.
Blaum	Gruitza	Miller, R.	Strittmatter
Boyes	Habay	Miller, S.	Sturla
Browne	Haluska	Mundy	Surra
Bunt	Hanna	Myers	Tangretti
Butkovitz	Harhai	Nailor	Taylor, E. Z.
Buxton	Harhart	Nickol	Taylor, J.
Caltagirone	Harper	O'Brien	Thomas
Cappelli	Hasay	Oliver	Tigue
Casorio	Hennessey	Pallone	Travaglio
Cawley	Herman	Perzel	Trello
Clark	Hershey	Petrarca	Trich
Clymer	Hess	Petrone	Tulli
Cohen, L. I.	Horsley	Phillips	Turzai
Cohen, M.	Hutchinson	Pickett	Vance
Colafella	James	Pippy	Veon
Coleman	Josephs	Pistella	Vitali
Cornell	Kaiser	Preston	Walko
Corrigan	Keller	Raymond	Wansacz
Costa	Kenney	Readshaw	Washington
Coy	Kirkland	Reinard	Waters
Creighton	Krebs	Rieger	Watson
Cruz	LaGrotta	Roberts	Williams, J.
Curry	Laughlin	Robinson	Wilt
Dailey	Lawless	Roebuck	Wojnaroski
Daley	Lederer	Rohrer	Wright, G.
Dally	Leh	Rooney	Wright, M.
DeLuca	Lescovitz	Ross	Yewcic
Dermody	Levdansky	Rubley	Youngblood
DeWeese	Lewis	Ruffing	Yudichak
DiGirolamo	Lucyk	Sainato	Zimmerman
Diven	Lynch	Samuelson	Zug
Donatucci	Mackereth	Santoni	
Eachus	Maher	Sather	Ryan,
Egolf	Maitland	Saylor	Speaker
Evans, D.			

NAYS—0

NOT VOTING—0

EXCUSED—2

Civera

Jadlowiec

The majority having voted in the affirmative, the question was determined in the affirmative and the resolution as amended was adopted.

* * *

Mr. T. STEVENSON called up **HR 386, PN 3095**, entitled:

A Resolution directing the Legislative Budget and Finance Committee to study the elimination or significant reduction of property taxes as a source of funding for local school districts; to review the policies of states and jurisdictions of the United States which have eliminated property taxes as a source of funding for local school districts; to determine the consequences of such an elimination or reduction on local taxing bodies and on this Commonwealth; and to make recommendations on alternative financing methods for schools.

On the question,
Will the House adopt the resolution?

The SPEAKER. On the question of the adoption of the resolution, the Chair recognizes the gentleman from Allegheny County, Mr. DeLuca. The gentleman will yield.

Please. The conferences on the floor, break up. The gentleman, Mr. DeLuca, has been recognized. Sergeants at Arms, keep the areas by the rail and in back of the rail clear. Pages—

Mr. DeLuca.

Mr. DeLUCA. Thank you, Mr. Speaker.

Mr. Speaker, I rise to support this resolution, and I commend the prime sponsor for introducing it. But let me say, over the years we have had so many studies pertaining to property tax reduction, to do something for our elderly, our homeowners, our school districts. I would hope when this report comes back in June that it is not just another report that we stick away someplace, we send out our news releases, and all of a sudden we will be talking about this another 10 years. So I hope that this resolution, when it comes back, that we do something with it to alleviate the burden of the property owners in the Commonwealth of Pennsylvania.

Thank you, Mr. Speaker.

The SPEAKER. The Chair recognizes the gentleman from Allegheny County, Mr. Trello.

Mr. TRELLO. Thank you, Mr. Speaker.

I, too, want to commend the member, the prime sponsor of this amendment. You know, back in the late seventies and eighties, many of our senior citizens retired and many of them were World War II veterans. At that time you could buy a decent home for about \$35,000 or \$40,000. Of course, through reassessment their property value has risen and risen, but their income has always dropped. They cannot afford to stay in their homes anymore.

And the previous speaker was right that we had a lot of resolutions studying this factor, but I would like to let this General Assembly know that if you are really serious about property taxes, you can call my office and get on the bill that I am introducing that will reduce the property taxes by 50 percent and 100 percent for senior citizens. We are beyond the time for study;

it is a time for action. I have a bill that will do it right now and not prolong this with another study.

Although I commend the man and I am going to vote for this resolution, but studies are enough. We have had enough of those studies, and I think it is time for action, and I have the bill to do it. If anybody wants to get on the bill to cosponsor the bill, just call my office at 3-3780 and put your seat number, and we will get down to business right here today and now.

Thank you.

The SPEAKER. The Chair recognizes the gentleman from Allegheny County, Mr. Costa. Mr. Preston, do you desire recognition? Good.

Mr. Costa.

Mr. COSTA. Thank you, Mr. Speaker.

Mr. Speaker, it is painfully obvious to the homeowners in Allegheny County that that property tax system is flawed. It is just not working. Our constituents are screaming at us, and they are asking us to do something, anything to help them out. I am not sure what the right solution is, but I think it is definitely time that we try and find something out, and that is why I am supporting HR 386, with the hope that the Budget and Finance Committee will come up with the right mix for all of our taxpayers.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman, Mr. Costa.

Mr. Blaum.

Mr. BLAUM. Thank you, Mr. Speaker.

Mr. Speaker, if there is one subject that does not need more studying, it is how to lower property taxes in Pennsylvania, but I will support this resolution because it gives the job to the Legislative Budget and Finance Committee. Hopefully they will be objective, and hopefully they will go back to 1989 when a solution to the problem was put before the General Assembly and it passed. A solution was put before the people of Pennsylvania, and politics ruled the day, and it was defeated. The fact is, Mr. Speaker, it is not rocket science. All we need do is what Bob Casey recommended in 1989: we need to amend the Pennsylvania Constitution to allow us to tax residential property differently than we do commercial and industrial. In 1989 that difference was not to exceed 30 percent, meaning we could reduce property taxes on residential properties by 30 percent without reducing those on commercial or industrial properties, and to give our local governments a menu of options with which to fill that gap which was created by the reduction in school property taxes.

Mr. Speaker, for whatever reason, that recipe of '89, which is the only recipe that has a chance of working, has not been put forward. It will be my hope that as the Legislative Budget and Finance Committee studies this problem and recommends to all of us in a public report, it will be my hope and I intend to ask them to consider the pieces of legislation which we dutifully considered in 1989, Mr. Speaker. We can enact those bills. We can reduce property taxes for the people of Pennsylvania and make a huge difference in the heavy burden that property taxes put on our senior citizens.

So I will ask for an affirmative vote, Mr. Speaker, and hope that the Legislative Budget and Finance Committee does what this General Assembly has not been willing to do nor has any Governor been willing to do since Governor Casey in 1989. Thank you,
Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman and recognizes the gentleman from Elk County, Mr. Surra. The

gentleman will yield for a moment.

Please. Members in the aisles, take your seats. The gentleman, Mr. Surra, is entitled to be heard.

Mr. Surra.

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

I rise to support HR 386, which is another study of how we should go about lowering property taxes in Pennsylvania. Personally, I think we know what we need to do, but if you want to study it some more, let us study it some more. It is been studied; it has been talked about. They were talking about property tax reform when I was still in diapers, Mr. Speaker.

HR 42 right now has legislative hearings held across this State. It is going to come up with recommendations, I believe in May. It is going to tell us what we need to do with lowering property taxes. So let us study it again about how we are going to lower property taxes.

You know, back not too many years ago the voters in this State voted to change the Constitution enacting the homestead exemption, and they said that they wanted to have property tax reform, and I think it was in 1998 we had a debate on this House floor in which we passed Act 50, which if I remember the discussion, Governor Ridge's program, that that was the end-all to do all to lower property taxes, and here we are in 2002, it still is not working.

So let us study it again, Mr. Speaker, and I am going to vote for this. But we all know what we need to do, and I hope someday that we get done studying it and we go about the business of lowering the people's property taxes.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The gentleman, Mr. Pallone, on the question.

Mr. PALLONE. Thank you, Mr. Speaker.

Mr. Speaker, I rise in support of this HR 386. My constituency in Allegheny County suffers from an erred assessment program, and they are suffering from extreme property tax debilitation.

We have already seen in my short tenure of just over a year HR 42, which created a special committee on tax reform. We are now visiting HR 386, and there have been a myriad of bills introduced dealing with property tax reduction and reform. I am hopeful that this chamber takes this issue very seriously and looks at the May report that will come out of HR 42 and will seriously consider what comes out of 386 here today so that we can help those citizens in Allegheny County and all of the other counties throughout the Commonwealth.

Thank you, Mr. Speaker.

The SPEAKER. The gentleman, Mr. Colafella.

Mr. COLAFELLA. Thank you, Mr. Speaker.

Mr. Speaker, I commend Representative Stevenson for introducing this resolution, because this is one more indication that we recognize in this House that property tax reduction is very, very important to our constituents. Representative Micozzie introduced HR 42, and it is an excellent resolution which also says that we have got to study this whole idea. Let us move away from funding our schools by property taxes. Hopefully this resolution will continue the momentum that we see in the House, that there is nothing more important that we need to do in this House than reduce or eliminate property taxes to fund our schools.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Butler, Mr. Metcalfe.

Mr. METCALFE. Thank you, Mr. Speaker.

Mr. Speaker, I agree with some of the previous speakers that said that yet another study is not what we need to solve the property tax problem in Pennsylvania, although if this is what some of the members need to convince them that there is a real way to solve this problem, then let us go ahead and vote "yes" today and affirm this and put the study in place and do it.

I currently have a bill this session, HB 418, that would eliminate property tax, and I see here in this resolution that the main emphasis seems to be on school property tax, although later in the resolution it does talk about reliance on property tax by municipalities and such, so that would encompass all the property tax. I believe that many people across the Commonwealth – in my district, 83 percent in my most recent survey – would like us to deal with the property tax problem in a real way and put forth a real solution, which rests in HB 418. That is a bill that we have in the Finance Committee now; we could move it ahead, and with this study—

The SPEAKER. Mr. Metcalfe—

Mr. METCALFE. —and the results of this study, hopefully—

The SPEAKER. The gentleman will yield.

Mr. METCALFE. Yes, sir.

The SPEAKER. The gentleman will yield.

Other bills that are not before the House are not relevant to this debate. I would ask you to keep your remarks on this target.

PARLIAMENTARY INQUIRY

Mr. DeWEESE. Mr. Speaker?

The SPEAKER. Mr. DeWeese.

Mr. DeWEESE. A point of parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. DeWEESE. With all due respect I would, and I am not going to appeal the ruling of the Chair, but I would like to make an observation that the gentleman's concern about other bills may impinge upon some of our desire to support this resolution or not support this resolution, and I just wanted that on the record. Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

Mr. Metcalfe.

Mr. METCALFE. Thank you, Mr. Speaker, and I appreciate your ruling, and other bills being referenced was why I was referencing the bill that I introduced, but I will keep it to the resolution.

I know many people across this Commonwealth would like to see the right to truly own their property free and clear restored, to see the right to pursue the American dream restored, to see the never-ending lease that is now on our property through property taxation by the government done away with so that we can restore the right to truly own our property. So I support this resolution to gain additional information, for members who need that, to move us ahead with moving legislation, some of which has already been introduced, that can actually solve our problem here in Pennsylvania.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

Mr. Micozzie.

Mr. MICOZZIE. Thank you, Mr. Speaker.

I support any bill or resolution that brings up the subject of property taxes.

Could I have some quiet, Mr. Speaker?

The SPEAKER. Conferences to the right of the Chair, staff conferences, please discontinue your conversations.

Mr. MICOZZIE. Thank you, Mr. Speaker.

Under HR 42 there have already been 10 hearings throughout the State; there are another 5 or 6 hearings already scheduled.

One thing about property tax or relief on property taxes, we should always remember that just reducing the property taxes by throwing more money at education is not the answer. We should provide more money, but we should make sure that we in the General Assembly provide an opportunity that every person, every child, in Pennsylvania has a good education. I think that the resolution is okay, but I have circulated my pending bill; I wish everybody would get on the bill so we can proceed.

Thank you, Mr. Speaker, before you declare me out of order.

The SPEAKER. The gentleman, Mr. Horsey.

Mr. HORSEY. Thank you, Mr. Speaker.

Mr. Speaker, I rise to support HR 386. I do in fact support property tax reform, but I just want to remind this legislature, whether it was 10, 20, 30, 40 years ago, because there are some members who were there when we originally did this, that it was members in this chamber that decided to pit senior citizens and property taxes versus the funding of schools. I am not in favor of tax reform for the sake of tax reform. I am in favor of tax reform that will not take money away from schools, because schools rely on property taxes. So if someone in this chamber can come up with a solution of tax reform that does not hurt the funding of schools, I am in favor of it. But again, I am not in favor of tax reform for the sake of tax reform, but I am in favor of HR 386, which calls for a study and perhaps will come up with a plan that will not offend students and take money away from education, because education needs every dollar it can get.

Thank you, Mr. Speaker.

The SPEAKER. The Chair recognizes the gentleman, Mr. Kaiser, Allegheny County.

Mr. KAISER. Thank you, Mr. Speaker.

I rise in support of HR 386, and I just want to say you could not get a better committee to look at this issue than the Legislative Budget and Finance Committee.

The past several weeks in Allegheny County have been torture for the homeowners there. Our assessments have gone out, and many people feel very strongly that they have been unfairly treated. Just an example, I had a homeowner in Whitehall Borough file an appeal last year; he had a hearing, the hearing was about a month ago; and then 3 weeks after the hearing his assessment went up \$17,000. It is very clear that you cannot create a system where you fund the school district, your local municipality, on property taxes.

I support this. Unfortunately, I could not make the press conference earlier today, but I know when this report comes in, all homeowners across the State will be helped.

Thank you, Mr. Speaker.

The SPEAKER. The gentleman, Mr. Markosek.

Mr. MARKOSEK. Thank you, Mr. Speaker.

Mr. Speaker, since I have been here in my 20 years in the legislature, property tax reform has been on the docket. It has been something that we have attempted, and it certainly goes way back before even that. I cannot recall having the issue percolate to the surface quite as much as it has this recent term in the legislature. I think some of that is due to the fact that some of our counties, including Allegheny, have had a situation, a horrific situation, with reassessments and assessments. It has brought the issue to the

surface. However, I would warn my colleagues here, and I am certainly going to support this, but one of the things that I find is true about property tax reform and one of the reasons that we have not been able to accomplish it in these many years is because when we ask folks, are they for property tax reform, the answer is almost unanimously "yes." However, when we ask them the followup question, what would they like in its place, people start running and hiding, and I am afraid that that is probably going to be the case with some of our colleagues here.

So those of us who support this today have to remember that it is going to require a more difficult vote not necessarily to get rid of property taxes but it is going to require a much more courageous vote to put up either the income taxes or the sales taxes or some other form of taxation to replace the property tax. That is the tough part about solving property taxes in Pennsylvania. The idea of getting rid of them is easy. The idea of what you use to replace them with is the tough part and why we have not been able to accomplish that in these 50 or 60 years that we have been dealing with this issue.

So I would ask my colleagues here today, when they make this vote, not to just make it as a PR ploy to run back home and tell their constituents that, gee, I did some little thing to solve your property tax dilemma, but rather that, yes, I have the courage to not only get rid of property taxes but to put up a vote for some other form of taxes that will be necessary to actually solve this problem.

Thank you, Mr. Speaker.

The SPEAKER. The gentleman, Mr. Dermody.

Mr. DERMODY. Thank you, Mr. Speaker.

Mr. Speaker, a portion of this resolution states that several States, including Michigan, have eliminated property taxes to pay for schools. Well, this House has voted twice over the last 6 years to eliminate property taxes to pay for schools and to a date certain. Those were my amendments that were offered, and nothing happened to those bills after they went to the Senate.

We all know the truth is that if we do not create the crisis, if we do not eliminate property taxes to a date certain and then force us to come up with a fair plan to fund schools, nothing will happen. This House has already voted that way, and we should do it again.

Now, I am going to vote for this study, as is most everybody else in this House, but we know what the answer will be – that the funding system is unfair, that our children are being cheated, that our senior citizens are being cheated – and then nothing will happen.

I suggest that we once again adopt the amendment to eliminate property taxes to pay for school to a date certain, force a crisis in this State, so we finally address the real issues about fairness and funding for our education system and fairness to all our citizens on their property taxes.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Fayette, Mr. Roberts. Mr. ROBERTS. Thank you, Mr. Speaker.

I rise in support of HR 386, and I do so because I personally came here about 10 years ago as a tax reform advocate, and each year since then, I have introduced legislation calling for property tax reform and also for assessment reform.

Now, I was at a press conference this morning when we kicked off this legislation, and I was pleased to see a number of people there at the press conference, but I noticed they were mostly

people from Allegheny County, and I guess that is because Allegheny County just underwent a reassessment and they are feeling the pains of what happens with these assessments and reassessments.

And I am here to tell you that even under the best circumstances when we have a reassessment, all of our appraisers will tell you that a 15-percent deviation is an acceptable standard, and so I am saying to you, if we have a 15-percent deviation in assessments, that tells me that there is an unfairness there if we are looking at the amounts of money that people have to pay. Keep in mind that assessments are controlled by the counties. The county assessment office does the assessments. Their primary concern in most cases is the budget for that particular county, and so if you have a county where you are going to get a little bit of bias or favoritism towards the assessment office in order to protect your budget and you are going to gain \$100 or \$200 in an assessment that may not be totally accurate, guess what, Mr. Speaker? That assessment is going to cost your constituent \$800, \$900, \$1,000, maybe \$1,500 in school taxes, and I stand here before you and tell you that that is unfair; I do not care how you look at it.

The only answer to our problem with property taxes is to eliminate property taxes, and as was just said a few minutes ago, this House has in fact passed legislation on three occasions in the last 5 years calling for the elimination of property taxes. We sent that legislation to the Senate and it died. Now, this morning at the press conference we had Senator Orié there with the same resolution that we are talking about here today. So I would call upon the Senate to look at the legislation we have already sent them, and I would tell them to take a look at the legislation we have before us right now, and let us not fool around with studies, because what is this study going to do? It is going to tell us what we already know.

I support this legislation, and I hope that it does something worthwhile, and I hope we get something out of it, but I am afraid that what is going to happen is, it is going to be another study that is going to go nowhere and we are going to be back to square one. We have good legislation right now that calls for the elimination of property taxes, and that is what I stand for, that is what I am here for, and that is what I hope we achieve.

But I do support this legislation, and I would ask for everyone to cast a “yes” vote. Thank you.

The SPEAKER. The Chair thanks the gentleman.

The gentleman, Mr. Pippy.

Mr. PIPPY. Thank you, Mr. Speaker.

I originally did not intend to speak, but I thought, after hearing many of these comments, that I had to.

And I want to thank all those members who were at the press conference with us this morning – the Democrats, Republicans; the House and Senate – and for those that were not, I am sorry we could not see you, but we did get to hear your interest this afternoon.

One of the issues with the property taxes, everyone understands how inherently unfair the system is. It is based on the agrarian society, where wealth was equated to the value of the property you owned. Well, that is no longer the case. The big problem, however, is, how do you replace the system? We all know that the system is broke and needs to be fixed, but there never seems to be enough political courage to determine exactly what should be done to replace the system. So when my colleague, Mr. Stevenson, said, why do we not do a nonpolitical – and we try to do that as much as possible – but try to get a study done by individuals who are not

elected officials with their bias but have them come and say, these are the options; this is where we can go.

Beware of the person who is naked but offers you his shirt off his back, because that is what many of our colleagues at times will do, is they will say, we are going to lower your taxes; if you follow my plan, it is good for senior citizens, it is good for everyone. But what we need to do to get past the politics of property tax is we need to tell people, guess what? There will be winners, and there will be losers. There will be winners, and there will be losers, but let us be honest; let us have a system that is easy to implement, a system that is fair. That is what people are upset about when they talk about property tax. They are upset about the inherent unfairness of the system.

So I am very excited that my colleague and the members of the House and the Senate are both looking to do the same thing, which is, when this study is done, the time has come – I have been here 5 1/2 years; many of you have been here a lot longer – the time has come for us to say, this is what is going to happen. There will be winners; there will be losers. Let us take the politics out of it, and let us see what the people of Pennsylvania want and deserve, which is a system that they can understand, a system that does not have a 15-percent variance, based on the individual, in the best-case scenario. They want a system that is easy to collect, a system that is fair, a system that is based on an individual’s ability to pay. The property tax system is not that system, and that is why we need to change it, and I commend my colleagues on both the Democrat and the Republican side for being cosponsors of this bill, and I do support this resolution.

Thank you, Mr. Speaker.

The SPEAKER. The Chair is advised of two more speakers. Out of courtesy, the gentleman, Mr. DeWeese, will be recognized at this time; then the prime sponsor, Mr. Stevenson.

Mr. DeWeese. The gentleman will yield for a moment.

Members, please take your seats. The conference in the vicinity of the Democratic floor leader, please break up.

Mr. DeWeese.

Mr. DeWEESE. Thank you, Mr. Speaker.

There is a wonderful line from “King Lear” that every man is twice a child. When Representative Surra indicated that he had been waiting for property tax reform since he was in swaddling clothes and diapers, one of his colleagues, Mr. Eachus, said, he will be waiting in swaddling clothes and diapers on the other end of his life and there still will not be any property tax reform in this State. King Lear’s admonition was piquantly appropriate to this afternoon’s dialectic.

Having said that, Mr. Speaker, even if I am the only one, I am going to vote in the negative to the gentleman’s proposition, HR 386. Notwithstanding the fact that it does have ostensible merit, I am impelled to vote in the negative because it is yet one more study. I think we have studied this issue ad infinitum, ad nauseam, and quite frankly, I am not willing to acquiesce with an affirmative vote to yet one more study.

I think the Ridge-Schweiker administration in the last 7 1/2 years, as it has trundled out almost \$5 billion in corporate tax relief, could have rethought the property tax dilemma in this State – the property tax dilemma that the young man from Williamsport used as the fulcrum for his advance to this Assembly, that the young man from Monroe used as the nexus for his advance to this Assembly, that the Republican Party in this State has given great credence to over the years. They have used property tax as a cause celebre. It has been at the banner in front of their troops year

in and year out, and yet, when the battle cry is called, they want yet another study.

So again, notwithstanding the fact that this study does have some ostensible literary or intellectual merit, in the roly-poly world of politics, we know it is all a bunch of baloney. I would like to slip into the idioms of the drill field and say it is something else other than baloney, but I will arrest my impetuosity. I will not arrest my inclination, however, to vote in the negative on yet one more study. Thank you.

The SPEAKER. Mr. Stevenson.

Mr. T. STEVENSON. Thank you, Mr. Speaker.

This study does have merit. I want to thank the members for their kind comments on the resolution, and I encourage my fellow colleagues to vote for this resolution, and I look forward to the ensuing debate on the outcome of this study, so we can finally have true local property tax reform. Thank you.

On the question recurring,
Will the House adopt the resolution?

The following roll call was recorded:

YEAS—195

Adolph	Fairchild	Major	Schroder
Allen	Feese	Manderino	Schuler
Argall	Fichter	Mann	Scrimenti
Armstrong	Fleagle	Markosek	Semmel
Baker, J.	Flick	Marsico	Shaner
Baker, M.	Forcier	Mayernik	Smith, B.
Bard	Frankel	McCall	Smith, S. H.
Barley	Freeman	McGeehan	Solobay
Barrar	Gabig	McGill	Staback
Bastian	Gannon	McIlhattan	Stairs
Bebko-Jones	Geist	McIlhinney	Steelman
Belardi	George	McNaughton	Steil
Belfanti	Godshall	Melio	Stern
Benninghoff	Gordner	Metcalfe	Stetler
Birmelin	Grucela	Michlovic	Stevenson, R.
Bishop	Gruitza	Micozzie	Stevenson, T.
Blaum	Habay	Miller, R.	Strittmatter
Boyes	Haluska	Miller, S.	Sturla
Browne	Hanna	Myers	Surra
Bunt	Harhai	Nailor	Tangretti
Butkovitz	Harhart	Nickol	Taylor, E. Z.
Buxton	Harper	O'Brien	Taylor, J.
Caltagirone	Hasay	Oliver	Thomas
Cappelli	Hennessey	Pallone	Tigue
Casorio	Herman	Perzel	Travaglio
Cawley	Hershey	Petrarca	Trello
Clark	Hess	Petrone	Trich
Clymer	Horsey	Phillips	Tulli
Cohen, L. I.	Hutchinson	Pickett	Turzai
Cohen, M.	James	Pippy	Vance
Colafella	Josephs	Pistella	Vitali
Coleman	Kaiser	Preston	Walko
Cornell	Keller	Raymond	Wansacz
Corrigan	Kenney	Readshaw	Washington
Costa	Kirkland	Reinard	Waters
Coy	Krebs	Rieger	Watson
Creighton	LaGrotta	Roberts	Williams, J.
Cruz	Laughlin	Robinson	Wilt
Curry	Lawless	Roebuck	Wojnaroski
Dailey	Lederer	Rohrer	Wright, G.
Daley	Leh	Rooney	Wright, M.
Dally	Lescovitz	Ross	Yewcic
DeLuca	Levdansky	Rubley	Youngblood
Dermody	Lewis	Ruffing	Yudichak
DiGiroloamo	Lucyk	Sainato	Zimmerman
Donatucci	Lynch	Samuelson	Zug

Eachus	Mackereth	Santoni	
Egolf	Maher	Sather	Ryan,
Evans, D.	Maitland	Saylor	Speaker
Evans, J.			

NAYS—4

DeWeese	Diven	Mundy	Veon
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NOT VOTING—0

EXCUSED—2

Civera	Jadlowiec
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The majority having voted in the affirmative, the question was determined in the affirmative and the resolution was adopted.

SUPPLEMENTAL CALENDAR B CONTINUED

CONSIDERATION OF SB 607 CONTINUED

The SPEAKER. The gentleman, Mr. Freeman, do you have amendments to offer to this? It will be necessary for you to suspend the rules. Mr. Freeman.

Mr. FREEMAN. Thank you, Mr. Speaker.

Mr. Speaker, I do not have amendments with me at the moment. They were ordered. However, we did not have a printer's number in which to work off of until, I believe, right now.

In lieu of my amendments being ready, Mr. Speaker, could I possibly interrogate, I guess, the gentleman, Mr. Clymer, regarding provisions of the current language?

The SPEAKER. And if you are satisfied, you are going to withdraw the amendment? Is that my understanding?

Mr. FREEMAN. I will keep my options open, if I may, Mr. Speaker, but I appreciate that—

The SPEAKER. Without objection, we will try this out.

Mr. Clymer, will you consent to interrogation?

Mr. CLYMER. Yes. Mr. Speaker, could I have a moment with you, just a brief moment?

The SPEAKER. Mr. Freeman, why do you not come up, and we will all have a moment together.

Mr. FREEMAN. Shall we make that a Kodak moment? I think we can get one of the photographers from the House to— I will be right up there, Mr. Speaker.

The SPEAKER. The House will be temporarily at ease.

(Conference held at Speaker's podium.)

The SPEAKER. The House will come to order.

LEAVE OF ABSENCE

The SPEAKER. The Chair returns to leaves of absence and recognizes the gentleman, Mr. Veon, who requests a leave of absence for the balance of today's session for the gentleman from Montgomery County, Mr. LAWLESS. Without objection, the leave will be granted. The Chair hears no objection.

CONSIDERATION OF SB 607 CONTINUED

MOTION TO SUSPEND RULES

The SPEAKER. The Chair recognizes at this time the gentleman, Mr. Freeman, who moves that the rules of the House be suspended to permit him to offer an amendment. Mr. Freeman.

Mr. FREEMAN. Thank you, Mr. Speaker.

Mr. Speaker, I would like to move to suspend the rules so that I may offer an amendment. The amendment I would be offering would take out a section of the language currently in the bill that is before us. This language as it reads now exempts the Department of State from having to go through the IRRC review process, the Independent Regulatory Review Commission process, on review of its regulations for the first year that the SURE program is being put into place. It is my feeling that that undermines our ability as an oversight body, as the legislative oversight body of this Commonwealth, in terms of what kind of elements go into the regulations by the Department of State for the SURE system.

By offering this amendment, we take that language out. We will ensure with my amendment that the IRRC process will be used; that there will be review by the IRRC commission on regulations emanating from the Department of State on the SURE system; and that we, through our appropriate committees, will have oversight and a chance to vote on those regulations.

It is in the interest of this chamber, from an oversight standpoint, to have a say on those regulations, so I would urge a “yes” vote on suspension of the rules.

The SPEAKER. The Chair thanks the gentleman.

On the question,

Will the House agree to the motion?

The SPEAKER. The gentleman, Mr. Perzel, yields to Mr. Clymer. Mr. Clymer, on the question. The question before the House is suspension of the rules.

Mr. CLYMER. Thank you, Mr. Speaker.

Mr. Speaker, I oppose the suspension of the rules at this time. It is imperative that we move the bill forward. The many assets and provisions that are in SB 607 need our attention as soon as possible, and I can pledge as a member of the State Government Committee that the regulations that were referred to by the speaker, that those regulations would be made available to the members of the House.

I ask for a “no” vote.

The SPEAKER. On the question of suspension of the rules, Mr. Freeman, for the second time.

Mr. FREEMAN. Thank you, Mr. Speaker.

Just as a point of clarification.

Even if the regulations that come down from the Department of State are available to us as members, by allowing this provision of the legislation to stand, to say that there is not an IRRC review process for the first year that the Department of State seeks to implement the SURE system, we will have no say as a legislative body as to whether we approve or disapprove of those regulations. This is handing the Department of State a blank check on instituting a system which will affect the entire electoral process here in the Commonwealth of Pennsylvania.

We should not shirk our responsibility as an oversight body. We should make sure that the IRRC process, which this legislative

chamber has supported time and time again, is allowed to be used, that we review that process.

The only way we can guarantee—

The SPEAKER. The question before the House is suspension of the rules.

Mr. FREEMAN. Thank you, Mr. Speaker.

The only way we can guarantee our review is by suspending the rules and allowing me to insert the amendment which will allow the IRRC process to take place.

I urge the members to suspend the rules. Thank you.

The SPEAKER. Mr. Clymer, the question before the House is suspension of the rules. You are recognized.

Mr. CLYMER. Thank you, Mr. Speaker.

Mr. Speaker, I reiterate what I had just mentioned before. For those reasons I would ask the members at this time to vote “no” on suspension of the rules.

On the question recurring,

Will the House agree to the motion?

The following roll call was recorded:

YEAS—99

Bebko-Jones	Frankel	McCall	Solobay
Belardi	Freeman	McGeehan	Staback
Belfanti	George	Melio	Steelman
Bishop	Grucela	Metcalfe	Stetler
Blaum	Gruitza	Michlovic	Sturla
Butkovitz	Haluska	Mundy	Surra
Buxton	Hanna	Myers	Tangretti
Caltagirone	Harhai	Oliver	Thomas
Casorio	Horsey	Pallone	Tigue
Cawley	James	Petrarca	Travaglio
Cohen, M.	Josephs	Petrone	Trello
Colafella	Kaiser	Pistella	Trich
Corrigan	Keller	Preston	Veon
Costa	Kirkland	Readshaw	Vitali
Coy	Krebs	Rieger	Walko
Cruz	LaGrotta	Roberts	Wansacz
Curry	Laughlin	Robinson	Washington
Daley	Lederer	Roebuck	Waters
DeLuca	Lescovitz	Rooney	Williams, J.
Dermody	Levdansky	Ruffing	Wojnaroski
DeWeese	Lucyk	Sainato	Wright, G.
Diven	Manderino	Samuelson	Yewcic
Donatucci	Mann	Santoni	Youngblood
Eachus	Markosek	Scrimenti	Yudichak
Evans, D.	Mayernik	Shaner	

NAYS—99

Adolph	Evans, J.	Mackereth	Saylor
Allen	Fairchild	Maher	Schroder
Argall	Feese	Maitland	Schuler
Armstrong	Fichter	Major	Semmel
Baker, J.	Fleagle	Marsico	Smith, B.
Baker, M.	Flick	McGill	Smith, S. H.
Bard	Forcier	McIlhattan	Stairs
Barley	Gabig	McIlhinney	Steil
Barrar	Gannon	McNaughton	Stern
Bastian	Geist	Micozzie	Stevenson, R.
Benninghoff	Godshall	Miller, R.	Stevenson, T.
Birmelin	Gordner	Miller, S.	Strittmatter
Boyes	Habay	Nailor	Taylor, E. Z.
Browne	Harhart	Nickol	Taylor, J.
Bunt	Harper	O'Brien	Tulli
Capelli	Hasay	Perzel	Turzai

Clark	Hennessey	Phillips	Vance
Clymer	Herman	Pickett	Watson
Cohen, L. I.	Hershey	Pippy	Wilt
Coleman	Hess	Raymond	Wright, M.
Cornell	Hutchinson	Reinard	Zimmerman
Creighton	Kenney	Rohrer	Zug
Dailey	Leh	Ross	
Dally	Lewis	Rubley	Ryan,
DiGirolamo	Lynch	Sather	Speaker
Egolf			

NOT VOTING—0

EXCUSED—3

Civera Jadlowiec Lawless

Less than a majority of the members required by the rules 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 concur in Senate amendments to House amendments as amended by the Rules Committee?

The SPEAKER. On that question, Mr. Vitali, on concurrence.

Mr. VITALI. Thank you, Mr. Speaker.

Mr. Speaker, I applaud the goals of this bill. I took the time, though, to contact the Delaware County Voter Registration Bureau – and I am hoping other Delaware County Representatives would pay attention – and I spoke with the executive director, who opposes this approach, and I think one of the reasons – and I think this is true of some other large counties, too, so it may behoove members of Montgomery and Chester and other counties maybe to check with their colleagues to see what the position is of their own voter registration bureau – and I think the problem is that since the advent of motor-voter, many counties have made significant investments in their own computerized system, and those investments, to some degree, may be wasted with this one integrated system. Features that counties' own systems have provided are not guaranteed to be provided by this integrated system.

I think a second concern I have with this is the process by which the bill came to a head. I would have liked as a member of the State Government Committee to have had the chance to vote on this bill, and although near the end of this a workshop was in fact held, the State Government Committee never considered this bill, never voted on it, never had the opportunity to vote on amendments.

MOTION TO RECOMMIT

Mr. VITALI. I think this is a very major overhaul. It does cause some concerns, and in order to address those concerns, so that we make sure that our counties are not wasting tax dollars and do have the best systems available to them, at this point, Mr. Speaker, I am going to move that this bill be recommitted to the House State Government Committee.

The SPEAKER. The gentleman, Mr. Vitali, moves that SB 607, PN 1680, on concurrence in Senate amendments to House

amendments as amended be recommitted to the Committee on State Government.

On the question,

Will the House agree to the motion?

The SPEAKER. On the question of recommitment, Mr. Clymer. Mr. CLYMER. Thank you, Mr. Speaker.

Mr. Speaker, this bill is important to Pennsylvania, to our efforts for a Statewide Uniform Registry of Electors system, and we need to deal with this legislation today, and I would oppose the motion on reconsideration and ask members to vote “no.”

The SPEAKER. Ms. Josephs, on the question of recommitment.

Ms. JOSEPHS. Thank you, Mr. Speaker.

As many of you know, I am the Democratic chair of the State Government Committee, and I am in favor of recommitting to our committee, and this is the reason: I have to thank my Republican counterpart for having a workshop on this bill, and there was some discussion about it, but the bill was not before us. At the time that we talked about this bill, we had no power to amend it. At the time that we talked about this bill, it was in Rules. It is time for the State Government Committee, including my honorable counterpart, the Representative from Bucks County, to have a chance to really work this out.

All of us are in favor of a central registry. All of us want a system that will serve us well. It ought to go to the State Government Committee so we can work on this. I urge a “yes” vote. Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the lady.

The Chair recognizes the gentleman, Mr. Freeman. The gentleman waives off.

Mr. Vitali. Waives off.

Mr. Clymer.

Mr. CLYMER. Thank you, Mr. Speaker.

Mr. Speaker, just let me reiterate that the joint select committee took time to examine these election issues, and we had the work of the Act 61 advisory board, comprised of county commissioners, county election directors, and legislators. There were other hearings held. Several weeks ago, Mr. Speaker, I had sent a letter to members on both sides of the aisle acknowledging that this bill, SB 607, had come to us on concurrence from the Senate, and if they had any questions, to please call my staff or their own staff about any issues, because I advised them that the bill would probably be voted on. Many members, to their credit, on both sides of the aisle, took the time to call my staff and the Department of State to have some of their questions answered.

As members from the other side had correctly stated, we did hold a workshop to, again, give everyone an opportunity to look at the bill, and we not only had members on both sides of the aisle at that workshop but we had interested personnel as well, people from outside the legislature who came. The League of Women Voters was there; the ACLU (American Civil Liberties Union) was there; Common Cause. A group of others who wanted to have an input came to that particular workshop. It was a very productive workshop, and out of that workshop, we did try to solve some of the problems that were presented by members from the other side, and we did end up with an amendment trying to address some of those issues, and that amendment was put into the bill in Rules.

I share that information with you, and to further tell you that personnel from the Department of State has also spoken with

members of different counties who were concerned about the bill, who had unanswered questions, and over the holiday recess, I know they were out visiting certain counties, again, trying to answer those questions and give them assurance, especially on the issue of funding, that the dollars were there and that the State would be held accountable, as we just mentioned, for the maintenance, the upgrading, the implementation of the SURE elector system.

Again, those are my thoughts, and so, Mr. Speaker, I oppose the motion to recommit.

The SPEAKER. On the question of recommittal, not a full debate on concurrence, Ms. Josephs.

Ms. JOSEPHS. Thank you, Mr. Speaker, and thank you for your admonition.

The previous speaker, the gentleman from Bucks, talked about the Act 61 task force, which, indeed, did meet, as authorized by us, in order to discuss this very difficult issue. As I mentioned before, the task force, along with everybody else, including myself and all the Democratic Caucus, is in favor of a central registry, but the task force, the Act 61 task force, would not support this bill and did not ask for this kind of bill. Of the nine counties that were represented, four voted against this kind of a single registry that we are discussing, one which they felt was going to cost their counties money. Four of them voted for it, and one of them was absent. Now, I do not consider this a big mandate. If I was elected by

four people and four were against me and nobody was there, I do not think I would be serving here. Act 61 task force recommendations basically were ignored, which is why we want this bill back in committee, so we can take up some of the things that they are interested in.

This is your election, Mr. Speaker; this is your petitions getting challenged or you trying to challenge somebody else. Let us not roll over and play dead. We have got to get elected every 2 years. I mean, I do not have to remind you of that.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the lady.

On the question recurring,

Will the House agree to the motion?

The following roll call was recorded:

YEAS—79

Bebko-Jones	Grucela	Michlovic	Stetler
Belardi	Gruitza	Mundy	Sturla
Belfanti	Haluska	Myers	Surra
Blaum	Hanna	Pallone	Tangretti
Caltagirone	Harhai	Petrarca	Thomas
Casorio	Horsey	Petrone	Travaglio
Cohen, M.	James	Pistella	Trello
Colafella	Josephs	Preston	Trich
Corrigan	Kirkland	Roberts	Veon
Costa	LaGrotta	Robinson	Vitali
Coy	Laughlin	Roebuck	Walko
Curry	Lescovitz	Rooney	Wansacz
Daley	Levdansky	Sainato	Washington
DeLuca	Lucyk	Samuelson	Waters
Dermody	Manderino	Santoni	Williams, J.
DeWeese	Mann	Scrimenti	Wojnaroski
Eachus	Markosek	Shaner	Wright, G.
Evans, D.	Mayernik	Solobay	Yeweic
Frankel	McCall	Staback	Yudichak
Freeman	Melio	Steelman	

NAYS—119

Adolph	Donatucci	Lewis	Rubley
Allen	Egolf	Lynch	Ruffing
Argall	Evans, J.	Mackereth	Sather
Armstrong	Fairchild	Maher	Saylor
Baker, J.	Feese	Maitland	Schroder
Baker, M.	Fichter	Major	Schuler
Bard	Fleagle	Marsico	Semmel
Barley	Flick	McGeehan	Smith, B.
Barrar	Forcier	McGill	Smith, S. H.
Bastian	Gabig	McIlhattan	Stairs
Benninghoff	Gannon	McIlhinney	Steil
Birmelin	Geist	McNaughton	Stern
Bishop	George	Metcalfe	Stevenson, R.
Boyes	Godshall	Micozzie	Stevenson, T.
Browne	Gordner	Miller, R.	Strittmatter
Bunt	Habay	Miller, S.	Taylor, E. Z.
Butkovitz	Harhart	Nailor	Taylor, J.
Buxton	Harper	Nickol	Tigue
Cappelli	Hasay	O'Brien	Tulli
Cawley	Hennessey	Oliver	Turzai
Clark	Herman	Perzel	Vance
Clymer	Hershey	Phillips	Watson
Cohen, L. I.	Hess	Pickett	Wilt
Coleman	Hutchinson	Pippy	Wright, M.
Cornell	Kaiser	Raymond	Youngblood
Creighton	Keller	Readshaw	Zimmerman
Cruz	Kenney	Reinard	Zug
Dailey	Krebs	Rieger	
Dally	Lederer	Rohrer	Ryan,
DiGirolamo	Leh	Ross	Speaker
Diven			

NOT VOTING—0

EXCUSED—3

Civera	Jadlowiec	Lawless
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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 concur in Senate amendments to House amendments as amended by the Rules Committee?

The SPEAKER. On that question, Ms. Josephs, are you seeking recognition on the final question of concurrence?

Ms. JOSEPHS. Yes, I am, sir.

The SPEAKER. The lady is recognized. Would she yield for a moment, please.

Ms. JOSEPHS. Certainly.

The SPEAKER. Please. We have a long night. So conferences, please.

Ms. Josephs.

Ms. JOSEPHS. Thank you, Mr. Speaker.

May I interrogate the majority chair of the State Government Committee? I think he is the most appropriate person, since this is a Senate bill.

The SPEAKER. The gentleman, Mr. Clymer, will stand for interrogation. You may proceed.

Ms. JOSEPHS. Mr. Speaker, my concern about this bill – and it

is a technical bill, so I hope the speaker will indulge me in a little bit of background – my concern about this bill is, while we want a central registry, those counties that have improved their own system at taxpayer expense ought to be able to use this central registry without incurring more expense to themselves, and what I fear is that the Department of State, not being under our purview since we defeated the gentleman’s attempt to suspend the rules, will put together a system where a number of counties, including Chester, Montgomery, Berks, Westmoreland, Allegheny, and Philadelphia, will find that taxpayer money they expended to upgrade their system will be thrown away; that the upgraded software and hardware will be rendered obsolete. So I want to interrogate the gentleman about who is going to cover the costs of such forced obsolescence.

So, Mr. Speaker, I would like you to point out to me, if you would, what section in the bill, what section of SB 607 as we see it, guarantees that counties that have upgraded their systems will be able to perform every function with a central registry in place that they now can perform without the central registry, and I would appreciate a specific site, guarantee, in the bill.

The SPEAKER. Will the lady yield for a moment.

Ms. Boyle, would you come to the desk.

(Conference held at Speaker’s podium.)

The SPEAKER. Mr. Clymer.

Mr. CLYMER. Thank you, Mr. Speaker.

Mr. Speaker, let me say that as the gentledady from Philadelphia mentioned, counties that did have some questions, earlier I had mentioned that the Department of State had been meeting with election board personnel from various counties, and many of those counties mentioned are now satisfied that indeed the State will pay for the SURE system.

And on page 26 of SB 607, beginning at line 26, it says, “SURE system costs. The cost of establishment, implementation and maintenance of the SURE system technology and its emergency recovery system shall be borne by the Commonwealth.” And then there is a list on the other pages, starting at pages 23, 24, and ending on page 25, of the various services that the SURE system will provide for each of the respective counties.

The SPEAKER. Ms. Josephs.

Ms. JOSEPHS. May I ask the gentleman, Mr. Speaker, what printer’s number we are talking about here?

Mr. CLYMER. It is PN 1680; PN 1680.

Ms. JOSEPHS. Mr. Speaker, can you tell me what the term “SURE system technology” means?

Mr. CLYMER. Mr. Speaker, it is hardware and software.

Ms. JOSEPHS. If the county has a program now which satisfies some of its need but it is not part of the SURE system and the State does not want to supply the county with that function, can the county add that function and be assured that the State will cover the cost of that?

Mr. CLYMER. Mr. Speaker, I become now repetitious in that I have just identified the place in the bill where the State said it would cover for the establishment, implementation, maintenance, and the updating of the SURE system for each of the counties. If there is a particular area that the gentledady from Philadelphia is looking at that she has a question in her mind that may not be covered by the SURE system, then I believe she needs to identify that.

If I also may add, one of the purposes of the amendment that we added today was really the outgrowth of a recommendation from the Democrat minority over there, asking us for some assistance, and that is what we tried to do, to reaffirm and reestablish in their own minds that the SURE system is going to do these many procedures.

Ms. JOSEPHS. Mr. Speaker, let me try and be more specific.

Chester, Philadelphia, and Northampton Counties, for instance, can call up on their screens the entire paper application as filled out by the voter and signed by the voter, a digitalized signature. Now, Mr. Speaker, if it turns out that your petition is being challenged or you are trying to challenge somebody else’s petition and you are in Northampton, Philadelphia, or Chester County, your voter registration, your election office, can produce for you copies of the digitalized signatures, both on the voter registration and on the petition that you are challenging or which you are defending. Now, if the SURE system comes in and renders all of those functions obsolete, seeing the full face of the document and being able to transmit digitalized signatures, and the county wants to restore that function, where in this legislation do we have a guarantee that this restoration will be paid for by the State?

Mr. CLYMER. Mr. Speaker, the system will produce the digitized signatures that the gentledady has made reference to.

The other indication is that in meetings that I understand have taken place, there is assurance by the Department of State that they will certainly do their very best to try to meet whatever those problems are. I say they will try to do their very best to meet those concerns by each county. That was the purpose early on of these meetings taking place, so that they could try to get together, work out the problems, and see where they could have the flexibility.

I just tell you that there are goodwill efforts on every part of the Department of State and the General Assembly in working with the personnel from boards of elections of the 67 counties to give them this kind of assurance regarding cost.

THE SPEAKER PRO TEMPORE (PATRICIA H. VANCE) PRESIDING

Ms. JOSEPHS. Thank you, Madam Speaker.

I am finished with my interrogation. I thank the gentleman for his patience.

May I make a statement?

The SPEAKER pro tempore. You may proceed.

Ms. JOSEPHS. Thank you, Madam Speaker.

I think all of us heard and all of us can read later that there is no guarantee in this bill for the kind of hypothetical that I just suggested; that the gentleman from Bucks, who is a fine gentleman, has said that well-meaning people in the State Department will try and do their best in order to help

counties cover the taxpayer money which has been wasted because the system has been forced on us.

Madam Speaker, could I ask for some order?

The SPEAKER pro tempore. The lady is correct. Could we please have quiet in the hall. Would members please take their seats.

Ms. JOSEPHS. And I have no doubt – thank you, Madam Speaker – I have no doubt that the people who made these representations to county commissioners and election directors are good-hearted and all of that, but it is not in law, and as much as they think they are going to be in the office into perpetuity, they

are not going to be, and down the road, there will be other people in office, and it is not in law. And if we are going to cover functions that many, many counties – Chester, Delaware, Northumberland, Northampton, Philadelphia, Allegheny, Delaware – if we are going to really reimburse them for taxpayer money that they have thrown in the street and stepped on because they have been forced to do that, then it ought to be in law.

That is what we do here, Madam Speaker: we make law. Why do we make law? We make law because it goes into the future and it is permanent. Right? We are not here to say, well, somebody's best intention is fine. Hey, I think people who do terrible crimes ought to be in jail. Why put that in law? I mean, that is what I think. That is what we all think. Why have a law?

I think this is a bill which will cause us a lot of embarrassment if we vote for it, because it is going to cost taxpayers hundreds of thousands of dollars that they have invested, and I suggest very strongly a “no” on concurrence.

I would not vote for something like this. I would not put myself in a position of saying to a county election director, hey, they said they would try and do their best, but it is not in law, and I voted for it anyway.

Thank you, Madam Speaker.

The SPEAKER pro tempore. The Chair thanks the lady and recognizes the gentleman from Northampton, Mr. Freeman.

Mr. FREEMAN. Thank you, Madam Speaker.

Madam Speaker, like a number of the previous speakers, I, too, support the concept of a central voter registry. I think the idea of some sort of SURE system is a positive step in the right direction, and I think it is needed in light of the problems we have seen in the aftermath of motor-voter in terms of confusion over who is registered where. However, I firmly believe that this bill is wanting in a number of very important safeguards, which we as members of this legislative body should be very concerned about.

To begin with, this language, this very critical and important language affecting our Election Code, is coming to us not through a very thoughtful committee process, and I do commend the gentleman, Mr. Clymer, for holding workshops. He has been very helpful to the members to try and educate them as to the particulars of the issue that is at stake here. But there is no member of the State Government Committee who had the opportunity to amend this language in the State Government Committee. It came by way of an add-on amendment from the Senate, so in a sense, it has circumvented the committee process. That deliberative process is critical, particularly for a piece of legislation as complicated and as far reaching as this SURE system.

There are many concerns in addition to that that we should be mindful of. First is the one that I referenced earlier in the debate. There is language in this bill which does not allow the regulations

that normally would go through the Independent Regulatory Review Commission process to do so within the first year of those regulations. We are giving the Department of State a pass; we are giving them a pass on IRRC regulations in that first year – in essence, abdicating our responsibility as an oversight body on how regulations are implemented in this Commonwealth. Those first-year regulations are among the most crucial for a central registry system such as this. It will establish that system. It will put in place all that will govern that system, because there is so much in this bill which is left to the department's discretion. That alone is a good reason not to concur in the Senate amendments to SB 607.

But in addition to that, we do not have the kind of firm guarantees that the lady, Ms. Josephs, referred to as regards cost and as regards existing computer systems in the county. It is not clear from this language that is before us that all of the costs will be borne by the Commonwealth. It is a very real possibility that the costs that will be entailed in implementing the SURE system will be unfunded mandates to our counties that will be reflected in higher tax rates, real estate tax rates, by the counties to cover that cost.

It is also not clear whether the equipment that has already been purchased by some far-seeing counties, such as my own home county of Northampton, to begin to do a better job of recording appropriate registered voters and being able to tap into a statewide registry, whether that equipment will be allowed to be used. They may have to go out and once again expend tremendous amounts of money to implement the system being talked about in this legislation – again, to a tremendous cost to the taxpayers.

As I mentioned, the SURE system, the central registry concept, is a good one, but there is much wanting in this legislation. There is a lot of blank-check power being given to the Department of State that should not be given for something as important as this.

I would remind the members that a “no” vote is not a vote to kill this issue. A “no” vote is a way to put this bill into a conference committee, where it belongs, so that the issues that I have raised and that other members have raised can be properly addressed, and as such, I urge the members of this chamber to do the prudent thing and to vote “no” on concurrence, send this to a conference committee. Let us iron out the problems that clearly exist with this particular language.

Thank you, Madam Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Luzerne, Mr. Eachus.

Mr. EACHUS. Thank you, Madam Speaker.

I rise, as my colleague from Northampton County, to say that I support the centralized electoral system, but I am a member that represents a district that also has Act 50— Madam Speaker, could I get some order in the chamber, please?

The SPEAKER pro tempore. The gentleman does deserve to be heard. It is going to be a long night. We really want to move forward with this. Could we have some order, please.

Mr. EACHUS. Thank you, Madam Speaker.

As I was saying, I am a member that represents a school district that has adopted Act 50, and as a provision of Act 50, there was technical assistance money within the implementation of that plan for our county tax assessment office in order to buy the technology necessary to implement Act 50 and an additional staff person. Well, I can tell you, 3 years after implementation, that my county tax assessor's office has incurred substantial, tens of thousands of dollars in additional expense tracking the data necessary to not only implement the homestead exemption in my school district but also to update the technology necessary to keep this system going.

While I also hear the chairman of the State Government Committee say that the Commonwealth is going to make a substantial commitment to the costs incurred by county tax assessors' offices, I am reluctant to hand down another legislative unfunded mandate on my county tax assessor's office without assurances that there will be long-term money flowing to our counties in order to support this system.

If I may, Madam Speaker, I would like to have just a moment of brief interrogation for the chairman of the State Government Committee.

The SPEAKER pro tempore. Does the chairman agree to interrogation? The gentleman agrees. You may proceed.

Mr. EACHUS. Thank you, Madam Speaker.

Madam Speaker, I have a question about the money associated within this legislation to support counties. Can you tell us within SB 607 whether or not there has been any money directly appropriated for the support of technology and assistance to county tax assessors' offices, Madam Speaker?

Will there be money appropriated to support the dollars in the voter services offices?

Mr. CLYMER. Yes. Madam Speaker, for the software and for the hardware, there has been appropriated \$8.5 million. I think that would cover the expenses mentioned by the former speaker.

Mr. EACHUS. That is \$5 million, Madam Speaker?

Mr. CLYMER. \$8.5 million was appropriated.

Mr. EACHUS. And what section of the bill would I find that in, Madam Speaker?

Mr. CLYMER. That was in the budget.

Mr. EACHUS. That is in the budget?

Mr. CLYMER. Yes.

Mr. EACHUS. So can you also tell me just quickly how many voter services offices we have? Does each county have one?

Mr. CLYMER. Yes.

Mr. EACHUS. So we have got 67 counties and \$8 million, correct?

Mr. CLYMER. \$8.5 million.

Mr. EACHUS. Okay.

Thank you for the interrogation, Madam Speaker.

I still am very concerned about the long-term cost to our voter services offices after we finish the completion of this bill, and I am very sensitive to the fact that my county commissioners in Luzerne County have told us loud and clear in our delegation not to pass down unfunded mandates, so while I hear what the gentleman is saying, I am deeply concerned about the impact of this. Let us send this, as Mr. Freeman says, to the conference committee and allow these issues of oversight to be hashed out.

This is not a "no" vote to kill the legislation today; it is a "no" vote to make sure that our concerns and those of our county voter services offices are met.

Thank you, Madam Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Philadelphia, Mr. Cohen.

Mr. COHEN. Thank you, Madam Speaker.

Madam Speaker, I wonder if the gentleman from Bucks would consent to interrogation.

The SPEAKER pro tempore. The gentleman agrees. You may proceed.

Mr. COHEN. Thank you.

Madam Speaker, I am kind of a low-tech kind of guy, and I have focused on the low-tech part of this amendment. Registrars, there has been no public discussion about the need for registrars. Will the gentleman explain why this bill creates new registrars in every county?

Mr. CLYMER. Could you clarify the question? Registrars in every county?

Mr. COHEN. That is correct, Madam Speaker. From pages 16 to 20, dealing with Philadelphia, and pages 20 through 22, dealing with counties of the second through eighth classes, there are six pages of language dealing with registrars. There has been no public discussion about why we need registrars in view of the fact that we already have all sorts of systems of mail registration and

distribution of forms. Why do people have to go to a specific place to register when they can simply fill out a form and put it in the mailbox?

Mr. CLYMER. Madam Speaker, this legislation codifies the Voting Registration Act into Title 25, and these registration acts are currently there. It does not add any new ones.

Mr. COHEN. There is nothing new in this at all?

Mr. CLYMER. Not under the registrars.

There is one change. A registrar may be a qualified elector or a registrar.

Mr. COHEN. So this language tracks existing language?

Mr. CLYMER. Yes, it does, except for that one change.

Mr. COHEN. And the difference in minority representation, whereas representation of the minority party is granted in Philadelphia but not in the other counties of Pennsylvania, that is in existing law as well?

Mr. CLYMER. Could we have a moment to speak with the gentleman?

The SPEAKER pro tempore. We will be at ease for just a moment.

(Conference held.)

Mr. CLYMER. Madam Speaker, the gentleman has asked information that is going to take us a minute or two to secure. We can secure that information for him, and we ask that the sidebar continue for a few more minutes.

The SPEAKER pro tempore. While the sidebar continues, we are going to go to the next speaker. We will come back to you then, sir.

The Chair recognizes the gentleman from Northampton, Mr. Samuelson.

Mr. SAMUELSON. Thank you, Madam Speaker.

I, too, support the concept of a statewide voter registration system. In fact, last week, like many members of this House, I met with the League of Women Voters in my community to talk about three issues: Growing Greener, the statewide voter registration system, and changes that they would like to see to the rules of the House to make sure that we consider bills on one topic instead of having amendments come to the floor of the House at the last minute. I consider it very ironic that the statewide voter registration system, instead of going through the committee process, comes to this floor of this House through an amendment. It is a Title 25 bill that this House voted on late last year. The subject of that bill was clerks of elections, machine operators, whether or not they could have split shifts at the polling place to help in the recruitment of individuals for those vital positions. The language we have today is the statewide voter registration system not through our State Government Committee but through a bill 113 pages long.

Now, we started this debate at 3 o'clock. That debate had to be suspended because the language of that 113-page bill was not available to the members of this House of Representatives. The debate resumed just after 4 o'clock today, because the language of this 113-page bill is now available, and that is one of the challenges each of us faces.

One question arose from some of my colleagues here, is there a fiscal note? If you look on the computer, there is a fiscal note from last year when the bill, the subject of the bill was split shifts for clerks of election and machine operators. When we asked the question, yes, there is a fiscal note to the current version of this

bill. That fiscal note is not available on the computers for the members of this House to see, but, yes, if you ask for a copy, there is a fiscal note and it is available, if you ask for a copy down front.

With that challenge, I would like to ask a couple of questions about this bill and ask the chairman of the State Government Committee if he would stand for a brief interrogation.

The SPEAKER pro tempore. The gentleman agrees. You may proceed.

Mr. SAMUELSON. In the language of this bill, is there any requirement that the Governor of this Commonwealth, when going out for a computer contract for a statewide voter registration system, does this bill speak to any requirement of whether or not the Governor would be required to follow public bidding procedures?

Mr. CLYMER. The answer is yes.

Mr. SAMUELSON. That language is included in the bill?

Mr. CLYMER. Yes.

Mr. SAMUELSON. And just so you could direct the members to look at that language, what section of the bill?

Mr. CLYMER. We are looking.

On PN 1680, line 24 on page 107.

Mr. SAMUELSON. You say line 44 on 107? My version goes up to line—

Mr. CLYMER. Line 24; line 24.

Mr. SAMUELSON. 24.

Mr. CLYMER. Yes.

Mr. SAMUELSON. Okay.

We are considering this legislation today. Has the Department of State issued an RFP (request for proposal) on this subject at this point?

Mr. CLYMER. No.

Mr. SAMUELSON. During the testimony – and I would like to join my colleagues in commending Chairman Clymer and Chairman Josephs for hearings that were held, albeit hearings before the language of this bill was available – I understand that a lot of testimony was received, and one of the questions that was put to a number of computer experts, computer companies, was whether or not a statewide system could integrate the county systems that already exist, and I wanted to ask what the results were of that public hearing when that question was posed to the computer experts and the potential computer companies. My understanding is that during those hearings, as many as 10 out of the 13 individuals that appeared said that there could be technology—

Mr. CLYMER. That there could be technology integration into the system.

Mr. SAMUELSON. When was the decision made— My understanding is the language of this bill that is before us today does not allow for the existing county systems to be integrated, and instead, we would have one statewide system proposed without integrating the county systems. When was the decision made to offer this language that does not allow county systems to be integrated?

Mr. CLYMER. Madam Speaker, just because 10 of the 13 vendors came in and said that they could do it does not mean that we have to accept their program. We have the SURE program, which is before us. We have talked to some degree about what that would mean with the hardware and the software and the fact that we would continue to do the functions of the county. That decision solely rests with us here in the General Assembly and not with the

vendors.

Mr. SAMUELSON. Thank you, Madam Speaker.

I appreciate the chairman's willingness to answer our questions here on the floor of the House. I would have preferred that we had the committee go into much more detail on this 113-page bill and get some of these questions answered, including the previous comments of Representatives who are wondering if there is any additional cost being passed on to the counties.

I thank the gentleman for his answers, and I thank Madam Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman.

PARLIAMENTARY INQUIRY

The SPEAKER pro tempore. The Chair recognizes the lady from Philadelphia, Ms. Josephs, for the second time.

Ms. JOSEPHS. Madam Speaker, before I speak, I would like to make a parliamentary inquiry.

It has come to my attention that finally one of my amendments came up, and if I make my second speech, the one that asks for a suspension of the rules, is that the end of my ability to debate on concurrence?

The SPEAKER pro tempore. If you want to make that motion, you must do it now.

Ms. JOSEPHS. Right.

And then should I be able to suspend the rules, then I would argue my amendment; it would pass; it would fail. If I am not able to suspend the rules, then would I have an opportunity to speak again on concurrence?

The SPEAKER pro tempore. That is correct.

Ms. JOSEPHS. Okay. Thank you. I appreciate that.

I would like to follow the procedure we have been following. I would like to briefly explain what the amendment I have is, give its number—

The SPEAKER pro tempore. I think you need to make the motion first.

MOTION TO SUSPEND RULES

Ms. JOSEPHS. I move that we suspend the rules in order to consider amendment No. 0289.

The SPEAKER pro tempore. The lady from Philadelphia moves that the rules of the House be suspended in order to consider amendment 0289.

On the question,

Will the House agree to the motion?

Ms. JOSEPHS. All right. Let me tell you in three or four sentences what this amendment will do. It says, if the SURE system cannot be designed to offer all of the features and functions which, as of the effective date of this section, a county has already in its computer system and uses to perform its legal responsibilities, then the county may use its own data processing facilities and database for registration, recordkeeping, and other functions that it might utilize. In other words, if the State Department says, we are only offering you system A, B, and C, your county already does D, E, and F, you can continue to do D, E, and F.

The SPEAKER pro tempore. The Chair thanks the lady.

On the question of suspension, the Chair recognizes the

gentleman from Bucks County, Mr. Clymer.

Mr. CLYMER. Thank you, Madam Speaker.

Madam Speaker, for the reasons that I articulated earlier this afternoon and for brevity's sake, I oppose suspension of the rules.

On the question recurring,

Will the House agree to the motion?

The following roll call was recorded:

YEAS—87

Bebko-Jones	Frankel	Melio	Stetler
Belardi	Freeman	Michlovic	Sturla
Belfanti	George	Mundy	Surra
Bishop	Grucela	Myers	Tangretti
Blaum	Gruitza	O'Brien	Taylor, J.
Buxton	Haluska	Pallone	Thomas
Caltagirone	Hanna	Petrarca	Tigue
Casorio	Harhai	Petrone	Travaglio
Cawley	James	Pistella	Trello
Cohen, M.	Josephs	Preston	Trich
Colafella	Kenney	Readshaw	Veon
Corrigan	Kirkland	Rieger	Vitali
Costa	LaGrotta	Roberts	Walko
Coy	Laughlin	Robinson	Wansacz
Curry	Lescovitz	Sainato	Washington
Daley	Levdansky	Samuelson	Waters
DeLuca	Lucyk	Santoni	Williams, J.
Dermody	Manderino	Scrimenti	Wojnaroski
DeWeese	Mann	Shaner	Wright, G.
Diven	Markosek	Solobay	Yewcic
Eachus	Mayermik	Staback	Yudichak
Evans, D.	McCall	Steelman	

NAYS—108

Adolph	Egolf	Lewis	Ross
Allen	Evans, J.	Lynch	Rubley
Argall	Fairchild	Mackereth	Sather
Armstrong	Feese	Maher	Saylor
Baker, J.	Fichter	Maitland	Schuler
Baker, M.	Fleagle	Major	Semmel
Bard	Flick	Marsico	Smith, B.
Barley	Forcier	McGeehan	Smith, S. H.
Barrar	Gabig	McGill	Stairs
Bastian	Gannon	McIlhattan	Steil
Benninghoff	Geist	McIlhinney	Stern
Birmelin	Godshall	McNaughton	Stevenson, R.
Boyes	Gordner	Metcalfe	Stevenson, T.
Browne	Habay	Micozzie	Strittmatter
Bunt	Harhart	Miller, R.	Taylor, E. Z.
Butkovitz	Harper	Miller, S.	Tulli
Cappelli	Hasay	Nailor	Turzai
Clark	Hennessey	Nickol	Vance
Clymer	Herman	Oliver	Watson
Cohen, L. I.	Hershey	Perzel	Wilt
Coleman	Hess	Phillips	Wright, M.
Cornell	Horsey	Pickett	Youngblood
Creighton	Hutchinson	Pippy	Zimmerman
Cruz	Kaiser	Raymond	Zug
Dailey	Keller	Reinard	
Dally	Krebs	Rohrer	
DiGirolamo	Lederer	Rooney	Ryan,
Donatucci	Leh		Speaker

NOT VOTING—3

Roebuck	Ruffing	Schroder
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EXCUSED—3

Civera	Jadlowiec	Lawless
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Less than a majority of the members required by the rules 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 concur in Senate amendments to House amendments as amended by the Rules Committee?

The SPEAKER pro tempore. For what purpose does the gentleman, Mr. Gruitza, rise?

Mr. GRUITZA. Thank you, Madam Speaker.

I have a brief question for Mr. Clymer on the bill.

The SPEAKER pro tempore. I believe that Ms. Josephs is recognized. We will be happy to recognize you when she is finished.

The lady from Philadelphia may proceed.

Ms. JOSEPHS. If it is acceptable to the Speaker, I would allow my colleague to speak first.

The SPEAKER pro tempore. The Chair then recognizes the gentleman from Mercer, Mr. Gruitza.

Mr. GRUITZA. Thank you, Madam Speaker.

A very brief question. Consistent with the discussion that has been taking place here—

The SPEAKER pro tempore. Are you interrogating the gentleman, Mr. Clymer?

Mr. GRUITZA. Yes. I am going to interrogate the gentleman, Mr. Clymer. Thank you.

The SPEAKER pro tempore. The gentleman does agree. You can proceed.

Mr. GRUITZA. We, the delegation from Mercer County, Representative Wilt and Representative Stevenson, met as well last week with the League of Women Voters, and this discussion was very prominent.

In Mercer County, Madam Speaker, our county has already undertaken to make wholesale changes in our voting systems. We have gotten rid of the old machines; they became expensive to maintain. And I guess what my question here is, under this legislation or under what is envisioned as this evolves, will our county stand to receive some reimbursement for their efforts to improve the system in Mercer County or will they be left behind in this because they have taken the initiative prior to the passage of this legislation? I know our commissioners are very concerned with this as are the county taxpayers.

Mr. CLYMER. Madam Speaker, the gentleman has raised an important concern. However, the legislation that we are looking at this afternoon deals with voter registration, not with voting machines, and our staff would be glad to talk to him about his particular concern and interests, but that is the issue before us today.

Mr. GRUITZA. Thank you, Madam Speaker.

The SPEAKER pro tempore. The Chair now recognizes the lady from Philadelphia, Ms. Josephs.

Ms. JOSEPHS. Thank you, Madam Speaker.

Before I start, I really would ask for a little bit of order. I know it is hard to learn anything from people on the floor, but I have learned stuff, much valuable information in debate on the floor from people who are eloquent. I do not pretend to be eloquent, but

I will try to be clear and brief if people will cease their conversations.

The SPEAKER pro tempore. The Chair thanks the lady.

Would members please take your seats so the lady can be heard so we can move this process along.

Thank you.

Ms. JOSEPHS. Thank you, Madam Speaker.

I have to say first that, to reiterate, I am for— I do not know anybody who is not for a central registry. The debate here is, what configuration will that central registry take? The bill that we are being asked to vote on on concurrence will establish a rigid, single, integrated system that will not allow counties who have upgraded at taxpayer expense their software and, in many cases, their hardware.

What this means, if you are in one of those counties, and 60 percent of our voters are represented by these counties because these are the larger counties that have a lot of names, a lot of changes to deal with, if you are one of the people that represents 60 percent of our voters where upgrades have happened, then what you are saying to your county is, all the taxpayer money you have spent is wasted. Your computer system is going to be in the garbage; your software system is going to be in the garbage, and you are going to have to start over from square one in order to integrate into the statewide system that we all want.

It was mentioned before but it is worth mentioning again that when there was a meeting of some 13 vendors, computer people, they were asked, can you design a system which has options so that those counties – Chester, Delaware, Northumberland, Montgomery, Allegheny, and so on – can you design a system that will allow these counties to keep the upgrades and keep the functions that they had before the system came in? Ten, nine, ten, eleven, I do not remember exactly how many of those vendors said, sure, no problem; we do that all the time; that is what computers are for. And indeed, the amendment which I have offered, would have offered, and the bill which I have introduced not only takes that simple fact into account but it requires that the counties accept an interface that will be designed and approved by the State Department. And when vendors were asked, is this a problem, they said, no problem; we have done that before in other States, in other localities; that is what computers are for. The State Department will approve an interface. Counties will have one or two options. Counties that have their own system will upload daily. They will not have to throw their computer software and hardware into the garbage, and the system will do exactly what you want it to do, which is to eliminate duplications, be vigilant for fraud, and all the things that we want it to do.

I cannot really, really understand what the objection is to such a simple and easily understandable proposition. Why cannot we design a system that accommodates everyone? Why cannot we do that? The vendors say we can do it. The counties that have taken initiatives believe we can do it. The Act 61 task force, which was mentioned before, almost a majority of the counties that were represented say we can do it. The Eastern Association of Election Personnel says we can do that. Thirty out of 36 of the counties in the eastern part of the State say we can do that. Allegheny and Westmoreland say there is no problem with having a system that would accommodate our needs and the counties that are smaller, their needs. And for the life of me I cannot understand why the majority party, which I always thought was the fiscal conservative party, wants the counties to throw their machines and their software in the garbage.

Somebody said this is an unfunded mandate. This is worse than an unfunded mandate. I do not even know what to call it. This is not a system where we are saying to a county you must do X, Y, and Z. We are saying to the county, you already did X, Y, and Z and the heck with you. You have got to throw it out. You have got to go back to your taxpayers, who, as we know from a debate on a previous bill, are groaning under the local tax burden, and say, we have thrown all these computers, millions of dollars of software and hardware, in the garbage, and so if you do not like it, too bad.

To the best of my knowledge indeed, there is no other State in the country that has a system that is one-size-fits-all, that is rigid, that is uncompromising, and is extraordinarily wasteful of the taxpayer money.

And as I showed you through interrogation that the majority chairman was kind enough to answer, there is no guarantee in this bill that when counties want to put their own functions back into order, that they will not have to pay for it again, because they will not be able to get their system out of the garbage. They are going to have to start all over again. There is no guarantee in this bill that the State will pay for that function.

I ask anybody who is concerned about his or her own election, I ask anybody who is concerned about wasting the taxpayer money, I ask anybody who understands that we have computers because they are flexible, I ask anybody who applies common sense to join me and vote “no” on concurrence.

Thank you, Madam Speaker.

The SPEAKER pro tempore. The Chair thanks the lady and recognizes the gentleman from Bucks County, Mr. Clymer, for the second time.

Mr. CLYMER. Thank you, Madam Speaker.

The Presidential election of 2000 made us all aware of the importance of providing a voting registration system that would assure us of integrity, honesty, and accuracy. SB 607 is a first step toward that objective, and I urge a “yes” vote by all members. Thank you.

On the question recurring,

Will the House concur in Senate amendments to House amendments as amended by the Rules Committee?

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

The following roll call was recorded:

YEAS—131

Adolph	Evans, J.	Mackereth	Ross
Allen	Fairchild	Maher	Rubley
Argall	Feese	Maitland	Sainato
Armstrong	Fichter	Major	Santoni
Baker, J.	Fleagle	Markosek	Sather
Baker, M.	Flick	Marsico	Saylor
Bard	Forcier	Mayernik	Schroder
Barley	Frankel	McGeehan	Schuler
Barrar	Gabig	McGill	Semmel
Bastian	Gannon	McIlhatten	Smith, B.
Benninghoff	Geist	McIlhinney	Smith, S. H.
Birmelin	Godshall	McNaughton	Stairs
Boyes	Gordner	Melio	Steil
Browne	Habay	Metcalfe	Stern
Bunt	Hanna	Micozzie	Stevenson, R.
Butkovitz	Harhart	Miller, R.	Stevenson, T.
Buxton	Harper	Miller, S.	Strittmatter
Caltagirone	Hennessey	Myers	Taylor, E. Z.
Cappelli	Herman	Nailor	Taylor, J.

Casorio	Hershey	Nickol	Travaglio
Clark	Hess	O'Brien	Tulli
Clymer	Horshey	Oliver	Turzai
Cohen, L. I.	Hutchinson	Perzel	Vance
Coleman	Kaiser	Petrone	Washington
Cornell	Keller	Phillips	Watson
Costa	Kenney	Pickett	Wilt
Creighton	Krebs	Pippy	Wright, M.
Dailey	LaGrotta	Pistella	Youngblood
Dally	Lederer	Preston	Zimmerman
DeLuca	Leh	Raymond	Zug
Dermody	Lewis	Readshaw	
DiGirolo	Lucyk	Reinard	Ryan,
Donatucci	Lynch	Rohrer	Speaker
Egolf			

NAYS-65

Bebko-Jones	Freeman	Mundy	Surra
Belardi	George	Pallone	Tangretti
Belfanti	Grucela	Petrarca	Thomas
Bishop	Gruitza	Rieger	Tigue
Blaum	Haluska	Roberts	Trello
Cawley	Harhai	Robinson	Trich
Cohen, M.	Hasay	Roebuck	Veon
Colafella	Josephs	Rooney	Vitali
Corrigan	Kirkland	Samuelson	Walko
Coy	Laughlin	Scrimenti	Wansacz
Cruz	Lescovitz	Shaner	Waters
Curry	Levdansky	Solobay	Williams, J.
Daley	Manderino	Staback	Wojnaroski
DeWeese	Mann	Steelman	Wright, G.
Diven	McCall	Stetler	Yeweic
Eachus	Michlovic	Sturla	Yudichak
Evans, D.			

NOT VOTING-2

James	Ruffing
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EXCUSED-3

Civera	Jadlowiec	Lawless
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The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the amendments to House amendments as amended by the Rules Committee were concurred in.

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

GUEST INTRODUCED

The SPEAKER pro tempore. The Chair is pleased to welcome to the hall of the House Nate Potter, who is serving as a guest page of Representative Stan Saylor. He is a student at the Christian School of York and a participant in the Future Leaders of York program. Would he please rise.

CALENDAR CONTINUED

BILL ON THIRD CONSIDERATION

The House proceeded to third consideration of **HB 1802, PN 2788**, entitled:

An Act amending the act of October 15, 1975 (P.L.390, No.111), known as the Health Care Services Malpractice Act, further providing for the payment of the unfunded liabilities of the Medical Professional Liability Catastrophe Loss Fund; repealing provisions related to the Medical Professional Liability Insurance Catastrophe Loss Fund Advisory Board; and creating the Pennsylvania Medical Professional Liability Catastrophe Loss Authority and providing for its governance and powers.

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

Mr. **SCHRODER** offered the following amendment No. **A0240**:

Amend Title, page 1, lines 1 through 14, by striking out all of said lines and inserting

Amending the act of October 15, 1975 (P.L.390, No.111), entitled "An act relating to medical and health related malpractice insurance, prescribing the powers and duties of the Insurance Department; providing for a joint underwriting plan; the Arbitration Panels for Health Care, compulsory screening of claims; collateral sources requirement; limitation on contingent fee compensation; establishing a Catastrophe Loss Fund; and prescribing penalties," further providing for definitions and for statute of limitations; establishing the Medical Professional Liability Catastrophe Loss Fund Authority and the Medical Professional Liability Catastrophe Loss Fund; providing for jurisdiction, for change of venue, for contracts for limitation of noneconomic damages, for joint and several liability, for expert witness qualifications, for liability for misrepresentation to seek informed consent, for loss of pleasures of life, for pretrial disposition of frivolous medical professional liability claims, for collateral sources, for periodic payment of future damages, for permissible argument as to damages at trial, for mandatory reporting, for investigations, for reporting to licensure boards and for duty to notify licensing board about certain arrests; further providing for hearings; providing for confidentiality of certain records; further providing for review by State licensing boards; providing for continuing medical education, for board-imposed civil penalties and for mandatory referral for claims history; adding provisions relating to patient safety; establishing the Patient Safety Authority; and providing for preservation and accuracy of medical records and for the powers and duties of the authority and the Department of Health.

Amend Bill, page 1, line 17; pages 2 through 74, lines 1 through 30; page 75, lines 1 through 3, by striking out all of said lines on said pages and inserting

Section 1. The title of the act of October 15, 1975 (P.L.390, No.111), known as the Health Care Services Malpractice Act, is amended to read:

AN ACT

Relating to medical and health related malpractice insurance, prescribing the powers and duties of the Insurance Department; providing for a joint underwriting plan; the Arbitration Panels for Health Care, compulsory screening of claims; collateral sources requirement; limitation on contingent fee compensation; establishing [a] Medical Professional Liability Catastrophe Loss Authority Fund; establishing the Medical Professional Liability Catastrophe Loss Authority; adding provisions relating to patient safety; establishing the Patient Safety Authority and Patient Safety Trust Fund; and providing for the powers and duties of the Department of Health; and prescribing penalties.

Section 2. Sections 103 and 605 of the act, amended November 26, 1996 (P.L.776, No.135), are amended to read:

Section 103. Definitions.—As used in this act:

"Birth center" means an entity licensed under the act of July 19, 1979 (P.L.130, No.48), known as the "Health Care Facilities Act," as a birth center.

“Claimant” means a patient and includes a patient’s immediate family, guardian, personal representative or estate.

“Claims made” means [a policy of] medical professional liability insurance that [would limit or restrict the liability of the insurer under the policy to only] insures those claims made or reported during the [currency of the policy period and would exclude] period which is insured and excludes coverage for [claims] a claim reported subsequent to the [termination even when such claims resulted from occurrences during the currency of the policy] period even if the claim resulted from an occurrence during the period which was insured.

“Claims period” means the period from September 1 to the following August 31.

“Commissioner” means the Insurance Commissioner of this Commonwealth.

“Department” means the Insurance Department of the Commonwealth.

[“Director” means the Director of the Medical Professional Liability Catastrophe Loss Fund.]

“Fund” means the Medical Professional Liability Catastrophe Loss Fund [created in Article VII] established in section 702-A.

“Fund coverage limits” means the coverage provided by the [Medical Professional Liability Catastrophe Loss Fund under section 701(a)] fund under section 702-A.

“Government” means 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.

“Guardian” means a fiduciary who has the care and management of the estate or person of a minor or an incapacitated person.

“Health care business or practice” means the number of patients to whom health care services are rendered by a health care provider within an annual period.

“Health care provider” means a primary health center or a person, including a corporation, university or other educational institution, [facility, institution or other entity] licensed or approved by the Commonwealth to provide health care or professional medical services as a physician, a certified nurse midwife, a podiatrist, hospital, nursing home, birth center, and except as to section [701(a)] 701-A, an officer, employee or agent of any of them acting in the course and scope of employment.

“Hospital” means an entity licensed under the act of July 19, 1979 (P.L.130, No.48), known as the “Health Care Facilities Act,” as a hospital.

“Immediate family” means a parent, spouse or child or an adult sibling residing in the same household.

“Informed consent” means for the purposes of this act and of any proceedings arising under the provisions of this act, the consent of a patient to the performance of a procedure in accordance with section 811-A.

“Interest” means interest at the rate prescribed in section 806 of the act of April 9, 1929 (P.L.343, No.176), known as “The Fiscal Code.”

“Licensure Board” means 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.

“Medical professional liability insurance” means the same as professional liability insurance.

“Nonresident health care provider” means a health care provider that conducts 20% or less of its health care business or practice within this Commonwealth.

“Nursing home” means an entity licensed under the act of July 19, 1979 (P.L.130, No.48), known as the “Health Care Facilities Act,” as a nursing home.

“Patient” means a natural person who receives or should have

received health care from a health care provider.

“Personal representative” means an executor or administrator of a patient’s estate.

“Prevailing primary premium” means the schedule of occurrence rates approved by the [Insurance Commissioner] commissioner for the Joint Underwriting Association.

“Primary health center” means 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.

“Payable claims” means a claim which arises from an occurrence which occurs on or before December 31, 2002, or a claim reported to the Insurance Department on or before December 31, 2008.

“Professional liability insurance” means 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.

“Resident health care provider” means a health care provider that conducts more than 20% of its health care business or practice within this Commonwealth.

Section 605. Statute of Limitations.—(a) All claims for recovery pursuant to this act must be commenced within the existing applicable statutes of limitation. A filing pursuant to section 401 shall toll the running of the limitations contained in this section.

(b) If a [In the event that any] claim is made against a health care provider [subject to the provisions of Article VII] required to participate in the fund more than four years after the breach of contract or tort occurred [which] and the claim is filed within the applicable statute of limitations, [such] the claim shall be defended [and paid by the fund if the fund has] by the department if the department received a written request for indemnity and defense within 180 days of the date on which notice of the claim is given to the health care provider or his insurer. Where multiple treatments or consultations took place less than four years before the date on which the health care provider or his insurer received notice of the claim, the claim shall be deemed, for purposes of this section, to have occurred less than four years prior to the date of notice and shall be defended by the insurer [pursuant to section 702(d). If such claim is made after four years because of the willful concealment by the health care provider or his insurer, the fund shall have the right of full indemnity including defense costs from such health care provider or his insurer. A filing pursuant to section 401 shall toll the running of the limitations contained herein.] in accordance with Article VII.

(c) If a health care provider is found liable for a claim defended by the department in accordance with subsection (b), the claim shall be paid by the fund up to the limit of liability of the fund. The limit of liability of

the fund for a claim defended by the department under subsection (b) shall be \$1,000,000 for each occurrence.

(d) If a claim is defended by the department under subsection (b) or paid under subsection (c), and the claim is made after four years because of the willful concealment by the health care provider or his insurer, the fund shall have the right of full indemnity including the department’s defense costs from the health care provider or his insurer.

(e) Notwithstanding subsections (b), (c) and (d), all professional liability insurance policies providing coverage in accordance with Article VII which are issued on or after January 1, 2003, shall provide a defense of and insurance coverage for claims asserted against a health care provider required to participate in the fund more than four years after a breach of contract or tort occurs if the breach of contract or tort occurs after December 31, 2002.

Section 3. Article VII of the act is repealed.

Section 4. The act is amended by adding an article to read:

ARTICLE VII-A

MEDICAL PROFESSIONAL LIABILITY INSURANCE

Section 701-A. Medical professional liability insurance.

(a) A health care provider providing health care services in this

Commonwealth shall:

(1) purchase medical professional liability insurance from an insurer which is licensed or approved by the department; or

(2) provide self-insurance.

(b) A health care provider required by subsection (a) to purchase medical professional liability insurance or provide self-insurance shall submit proof of insurance or self-insurance to the department within 60 days of the policy being issued.

(c) If a health care provider fails to submit the proof of insurance or self-insurance required by subsection (b), the department shall, after providing the health care provider with notice, notify the health care provider's licensing authority. A health care provider's license shall be suspended or revoked by its licensure board or agency if the health care provider fails to comply with any of the provisions of this act.

(d) A health care provider shall insure or self-insure medical professional liability in accordance with the following:

(1) For policies issued or renewed in calendar year 2002, the basic insurance coverage shall be:

(i) \$500,000 per occurrence or claim and \$1,500,000 per annual aggregate for a health care provider that is not a hospital, conducts more than 50% of its health care business or practice within this Commonwealth and participates in the fund.

(ii) \$500,000 per occurrence or claim and \$1,500,000 per annual aggregate for a health care provider that is not a hospital and conducts 50% or less of its health care business or practice within this Commonwealth.

(iii) \$500,000 per occurrence or claim and \$2,500,000 per annual aggregate for a health care provider which is a hospital located in this Commonwealth and participates in the fund.

(2) For policies issued or renewed in the calendar year 2003 and thereafter, the basic insurance coverage shall be:

(i) \$500,000 per occurrence or claim and \$1,500,000 per annual aggregate for a resident health care provider that is not a hospital located in this Commonwealth.

(ii) \$1,000,000 per occurrence or claim and \$3,000,000 per annual aggregate for a nonresident health care provider.

(iii) \$500,000 per occurrence or claim and \$2,500,000 per annual aggregate for a resident health care provider which is a hospital located in this Commonwealth.

(3) By July 1, 2005, the commissioner shall study the availability of medical professional liability insurance in this Commonwealth to determine if the basic insurance coverage requirement should be increased. If the commissioner determines that additional basic insurance coverage capacity exists at an affordable cost, the commissioner shall place notice thereof in the Pennsylvania Bulletin

and require the basic insurance coverage for policies issued or renewed in calendar year 2006 and each year thereafter to be:

(i) \$750,000 per occurrence or claim and \$2,050,000 per annual aggregate for a resident health care provider that is not a hospital located in this Commonwealth.

(ii) \$1,000,000 per occurrence or claim and \$3,000,000 per annual aggregate for a nonresident health care provider.

(iii) \$750,000 per occurrence or claim and \$3,650,000 per annual aggregate for a resident health care provider which is a hospital located in this Commonwealth.

If the commissioner determines that additional basic insurance coverage may not be purchased at an affordable cost, the commissioner shall conduct additional studies every two years until the commissioner determines that additional basic insurance coverage may be purchased at an affordable cost, at which time the commissioner shall increase the required basic insurance coverage in accordance with this paragraph.

(4) Two years following the notice in the Pennsylvania Bulletin required by paragraph (3), the commissioner shall study the availability of medical professional liability insurance in this Commonwealth to determine if the basic insurance coverage

requirement should be increased. If the commissioner determines that additional basic insurance coverage capacity exists at an affordable cost, the commissioner shall place notice thereof in the Pennsylvania Bulletin and require the basic insurance coverage for policies issued or renewed in the next succeeding calendar year to be:

(i) \$1,000,000 per occurrence or claim and \$3,000,000 per annual aggregate for a resident health care provider that is not a hospital located in this Commonwealth.

(ii) \$1,000,000 per occurrence or claim and \$3,000,000 per annual aggregate for a nonresident health care provider.

(iii) \$1,000,000 per occurrence or claim and \$4,500,000 per annual aggregate for a resident health care provider which is a hospital located in this Commonwealth.

If the commissioner determines that additional basic insurance coverage may not be purchased at an affordable cost, the commissioner shall conduct additional studies every two years until the commissioner determines that additional basic insurance coverage may be purchased at an affordable cost, at which time the commissioner shall increase the required basic insurance coverage in accordance with this paragraph.

(e) A resident health care provider shall participate in the fund.

(f) (1) If a health care provider self-insures its medical professional liability, the health care provider shall submit its self-insurance plan, such additional information as the department may require and the examination fee to the department for approval.

(2) The department shall approve the plan if it determines that the plan constitutes protection equivalent to the insurance required of a health care provider under subsection (d).

(g) (1) An insurer providing medical professional liability insurance shall not be liable for payment of a claim against a health care provider for any loss or damages awarded in a medical professional liability action in excess of the basic insurance coverage required by subsection (d) unless the health care provider's medical professional liability policy or self-insurance plan provides for a higher annual aggregate limit.

(2) If a claim exceeds the limits of a basic coverage insurer or a self-insurance plan, the fund shall be responsible for payment of the claim up to the fund liability limits.

(h) (1) No insurer providing excess medical professional liability insurance to a health care provider required to participate in the fund shall be liable for payment of a claim against a health care provider for a loss or damages in a medical professional liability action, except the losses and damages in excess of the fund coverage limits.

(2) No carrier providing excess medical professional liability insurance for a health care provider required to participate in the fund shall be liable for any loss resulting from the insolvency or dissolution of the fund.

(i) A governmental entity 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 an obligation as a self-insurer and including the payment of all assessments under this act.

(j) The following health care providers shall be exempt from this act:

(1) A physician who exclusively practices the specialty of forensic pathology.

(2) A health care provider who is a member of the Pennsylvania military forces while in the performance of that member's assigned duty in the Pennsylvania military forces under orders.

(3) A retired licensed health care provider who provides care only to that provider or to that provider's immediate family members.

Section 702-A. Medical Professional Liability Catastrophe Loss Fund.

(a) There is hereby established within the State Treasury a special fund to be known as the Medical Professional Liability Catastrophe Loss Fund. The fund shall be a continuation of the fund established under former Article VII. Moneys in the fund shall be used to pay claims against health care providers required to participate in the fund for losses or damages awarded in medical professional liability actions in excess of

the basic insurance coverage required by section 701-A(d) and for the administration of the fund.

(b) The limit of liability of the fund for each health care provider required to participate under section 701-A(e) shall be as follows:

(1) For calendar year 2002, the limit of liability of the fund shall be \$700,000 for each occurrence and \$2,100,000 per annual aggregate.

(2) For calendar years 2003 and each year thereafter, the limit of liability of the fund shall be \$500,000 for each claim and \$1,500,000 per annual aggregate.

(3) If the basic insurance coverage requirement is increased in accordance with section 701-A(d)(3) and, notwithstanding paragraph (2), for each calendar year following the increase in the basic insurance coverage requirement, the limit of liability of the fund shall be \$250,000 for each claim and \$950,000 per annual aggregate.

(4) If the basic insurance coverage requirement is increased in accordance with section 701-A(d)(4) and, notwithstanding paragraphs (2) and (3), for each calendar year following the increase in the basic insurance coverage requirement, the fund shall not be liable for each claim.

(c) (1) For calendar years 1997 through 2002, the fund shall be funded by a surcharge on the basic insurance coverage of each health care provider required to participate in the fund. Surcharges shall be levied on or after January 1 of each year.

(2) The surcharge shall be based on the prevailing primary premium for each health care provider for maintenance of medical professional liability insurance and shall be the appropriate percentage thereof, necessary to:

(i) produce an amount sufficient to reimburse the fund for the payment of final claims and expenses incurred during the preceding claims period; and

(ii) provide an amount necessary to maintain an additional 15% of the final claims and expenses incurred during the preceding claims period.

(3) The surcharge shall be determined by the fund and filed with the department. The department shall review the surcharge within 30 days of the filing.

(4) After review, the commissioner shall approve the surcharge unless it is inadequate or excessive. If the surcharge is disapproved, the fund shall make an adjustment to the next surcharge calculation to reflect the appropriate increase or decrease.

(5) Upon receipt of the commissioner's approval of the surcharge, the fund shall communicate the surcharge to all basic insurance coverage carriers and self-insured providers to be levied.

(6) Any appeal of the surcharge must be filed with the commissioner.

(d) (1) For calendar year 2003 and each year thereafter, the fund shall be funded by an assessment on each health care provider required to participate in the fund. Assessments shall be levied by the department on or after January 1 of each year. The assessment shall be based on the prevailing primary premium for each health care provider for maintenance of medical professional liability insurance and shall be the appropriate percentage thereof, necessary to produce an amount sufficient to do all of the following:

(i) Reimburse the fund for the payment of payable claims which became final.

(ii) Pay expenses of the fund incurred during the preceding claims period.

(iii) Pay principal and interest on obligations, if any, issued by the authority.

(iv) Provide a reserve that shall be 10% of the payable claims that became final, expenses and principal and interest payment on authority obligations incurred during the preceding claims period.

(2) The department shall notify all basic insurance coverage carriers and self-insured providers of the assessment by November 1 for the succeeding calendar year.

(3) Any appeal of the assessment shall be filed with the department.

(e) The Joint Underwriting Association shall file updated rates for all health care providers with the commissioner by May 1 of each year. The department shall review and may adjust the prevailing primary premium in line with any applicable changes which have been approved by the commissioner.

(f) The department may adjust the applicable prevailing primary premium in accordance with the following:

(1) The applicable prevailing primary premium of a health care provider which is not a hospital may be adjusted through an increase in the individual health care provider's prevailing primary premium not to exceed 20%. Any adjustment shall be based upon the frequency of claims paid by the fund on behalf of the individual health care provider during the past five most recent claims periods and shall be in accordance with the following:

(i) If a single claim has been paid during the past five most recent claims periods by the fund, a 10% increase shall be charged.

(ii) If two or more claims have been paid during the past five most recent claims periods by the fund, a 20% increase shall be charged.

(2) The applicable prevailing primary premium of a health care provider not engaged in direct clinical practice on a full-time basis may be adjusted through a decrease in the individual health care provider's prevailing primary premium not to exceed 10%. Any adjustment shall be based upon the lower risk associated with the less-than-full-time direct clinical practice.

(3) The applicable prevailing primary premium of a hospital may be adjusted through an increase or decrease in the individual hospital's prevailing primary premium not to exceed 20%. Any adjustment shall be based upon the frequency and severity of claims paid by the fund on behalf of other hospitals of similar class, size, risk and kind within the same defined region during the past five most recent claims periods.

(g) A health care provider that has an approved self-insurance plan shall be surcharged or assessed an amount equal to the surcharge or assessment imposed on a health care provider of like class, size, risk and kind as determined by the department.

(h) If a health care provider changes the term of its medical professional liability coverage, the surcharge or assessment shall be calculated on an annual base and shall reflect the surcharge or assessment percentages in effect for the period over which the policies are in effect.

(i) Payable claims shall be computed on August 31 for claims which became final between that date and September 1 of the preceding year. Payable claims shall be paid on or before December 31 following the August 31 by which they became final.

(j) Upon satisfaction of all payable claims against and all liabilities of the fund, the fund shall terminate. Any balance remaining in the fund upon such termination shall be returned by the department to the health care providers who participated in the fund in proportion to their assessments in the preceding calendar year.

(k) The surcharges and assessments on health care providers and any income realized by investment or reinvestment shall constitute the sole and exclusive sources of funding for the fund. A claim against or a liability of the fund shall not be deemed to constitute a debt or liability of the Commonwealth or a charge against the General Fund.

(l) (1) A primary carrier as defined in the act of May 17, 1921 (P.L. 682, No. 284), known as The Insurance Company Law of 1921, which fails to settle a claim by acting in bad faith may be held liable for the consequences of its actions by its insured, by the fund, or a party who lawfully succeeds to the rights of its insured.

(2) The fund may be held liable for the consequences of its actions if it fails to settle a claim by acting in bad faith, by its insured, or a party who lawfully succeeds to the rights of its insured, but only if the following conditions are met:

(i) The primary carrier has tendered its limits of coverage for the insured to the fund.

(ii) A judge presiding over trial or pretrial proceedings has certified to the fund the court's recommendation that the case be settled for a specific sum within or equal to the applicable limits of coverage.

(iii) The fund refuses to accept the presiding judge's recommendation and subsequently there is a verdict in excess of the limits of coverage provided by the fund.

(iv) It is subsequently determined by a finder of fact that the fund's refusal to accept the court's recommendation constituted a breach of its obligation to act reasonably in protecting the interest of the insured health care provider.

(m) A health care provider who waives the right to consent to a settlement in a policy for medical professional liability insurance shall be entitled to a 5% reduction in premium for the policy and a corresponding 5% reduction in the fund surcharge.

Section 703-A. Administration of fund.

(a) The fund shall be administered by the department. The assets of the fund are transferred to the department. The department shall contract with an entity or entities for the administration of claims against the fund in accordance with 62 Pa.C.S. (relating to procurement) and, to the fullest extent practicable, the department shall contract with entities that:

(1) Are not writing or underwriting medical professional liability insurance for health care providers performing medical services in this Commonwealth.

(2) Have demonstrable knowledge of and experience in the handling and adjusting of medical professional liability or other catastrophic claims in this Commonwealth or other jurisdictions.

(3) Have developed, instituted and utilized best practice standards for the handling and adjusting of medical professional liability or other catastrophic claims.

(4) Have demonstrable knowledge of and experience with the health care providers of this Commonwealth, the medical professional liability marketplace and the judicial systems of this Commonwealth.

(5) Have demonstrable knowledge and experience with the compensation needs of persons harmed by the medical professional liability of health care providers, as well as the need to ensure affordable and available medical professional liability insurance for the health care providers of this Commonwealth.

(b) The department may purchase, on behalf of and in the name of the fund, as much insurance or reinsurance as is necessary to preserve the fund or retire the liabilities of the fund.

(c) The department may request the authority to borrow such money as is necessary in order to pay the liabilities of the fund until sufficient revenues are realized by the fund. If the department requests the authority to borrow money, the department shall annually assess health care providers and pay to the authority an amount sufficient to pay principal and interest on the obligations issued by the authority.

(d) An obligation or debt issued under this act shall not be deemed an obligation or debt of the Commonwealth, nor shall the Commonwealth be liable to pay principal and interest on the obligation or to offset any loss of principal and interest earnings on investments made by the department or recommended by the department pursuant to this act.

Section 704-A. Medical Professional Liability Catastrophe Loss Fund Authority.

(a) There is hereby established a body corporate and politic to be known as the Medical Professional Liability Catastrophe Loss Fund Authority. The powers and duties of the authority shall be vested in and exercised by a board of directors. The board of the authority shall consist of three members to be appointed by the Governor. The Governor shall additionally appoint one member as chairperson. Members of the board shall serve for terms of four years. No appointed member shall be eligible to serve more than two full consecutive terms. A majority of the members of the board shall constitute a quorum. Notwithstanding any other provision of law, action may be taken by the board at a meeting upon a

vote of the majority of its members present in person or through the use of amplified telephonic equipment if authorized by the bylaws of the board. The board shall meet at the call of the chairperson or as may be provided in the bylaws of the board. Meetings of the board may be held anywhere within this Commonwealth.

(b) The authority shall have the following powers and duties:

(1) Adopt bylaws necessary to carry out the provisions of this act.

(2) Employ staff as necessary to implement this act.

(3) Make, execute and deliver contracts and other instruments.

(4) Borrow, at the request of the department, moneys in the name of the fund, to be deposited in the fund.

(5) Make payments on obligations of the authority from assessments levied and collected by the department.

(6) Within two years of the effective date of this article, arrange for the separate retirement of the liabilities associated with the podiatrists.

Such arrangements shall be on terms and conditions proportionate to the individual liability of such class of health care provider. Such arrangements may result in assessments for podiatrists different than provided for under section 702-A(d)(1). Upon satisfaction of the arrangements, podiatrists shall not be required to contribute to or be entitled to participate in the authority set forth in this article. In cases where the class rejects such an arrangement, the authority shall present to the provider class new term arrangements at least once in every two-year period.

(c) Notwithstanding any other provision of law, the authority shall not pledge the credit or taxing powers of the Commonwealth. An obligation or debt issued under this act shall not be deemed an obligation or debt of the Commonwealth, nor shall the Commonwealth be liable to pay principal and interest on the obligation or to offset any loss of principal and interest earnings on investments made by the authority or recommended by the authority pursuant to this act.

Section 705-A. Medical professional liability claims.

(a) A basic coverage insurer or self-insured health care provider shall promptly notify the department in writing of any medical professional liability claim.

(b) If a basic coverage insurer or self-insured health care provider fails to notify the department as required under subsection (a) and the department has been prejudiced by the failure of notice, the insurer or provider shall be solely responsible for the payment of the entire award or verdict that results from the medical professional liability claim.

(c) A basic coverage insurer or self-insured health care provider shall provide a defense to a medical professional liability claim, including a defense of any potential liability of the fund, except as provided for in section 605. The department may join in the defense and be represented by counsel.

(d) (1) The department may defend, litigate, settle or compromise any medical professional liability claim payable by the fund. A health care provider's basic coverage insurer shall have the right to approve any settlement entered into by the department on behalf of its insured health care provider. If the basic coverage insurer does not disapprove a settlement prior to execution by the department, it shall be deemed approved by the basic coverage insurer.

(2) In the event that more than one health care provider is party to a settlement, the health care provider's basic coverage insurer shall have the right to approve only the portion of the settlement which is contributed on behalf of its insured health care provider.

(e) In the event that a basic coverage insurer or self-insured health care provider enters into a settlement with a claimant to the full extent of its liability as provided in this article, 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) The department may adjust claims.

(g) Upon the request of a party to a medical professional liability claim within the fund coverage limits, the department may provide for a

mediator in instances where multiple carriers disagree on the disposition or settlement of a case. Upon the consent of all parties, the mediation shall be binding. Proceedings conducted and information provided in accordance with this section shall be confidential and shall not be considered public information subject to disclosure under the act of June 21, 1957 (P.L. 390, No. 212), referred to as the Right-to-Know Law and 65 Pa.C.S. Ch. 7 (relating to open meetings).

(h) Delay damages and postjudgment interest applicable to the fund's liability on a medical professional liability claim shall be paid by the fund and shall not be charged against the insured's annual aggregate limits. The basic coverage insurer or self-insurer health care provider shall be responsible for its proportionate share of delay damages and postjudgment interest applicable to the fund's liability on a medical professional liability claim shall be paid by the fund and shall not be charged against the insured's annual aggregate limits. The basic coverage insurer or self-insurer health care provider shall be responsible for its proportionate share of delay damages and postjudgment interest.

(i) Information provided to the department or maintained by the department regarding a claim shall be confidential, notwithstanding the Right-to-Know Law and 65 Pa.C.S. Ch. 7.

Section 5. The act is amended by adding sections to read:

Section 802-A. Definitions.—As used in this act:

“Medical professional liability action” means any proceeding in which a medical professional liability claim is asserted, including, but not limited to, an action in a court of law or an arbitration proceeding.

“Medical professional liability claim” means any claim brought by or on behalf of an individual seeking damages for loss sustained by the individual as a result of an injury or wrong to the individual or another individual arising from a health care provider's provision of or failure to provide health care, including, but not limited to, medical treatment, diagnosis, or consultation, regardless of the theory of liability. The potential theories of liability include, but are not limited to, negligence, lack of informed consent, breach of contract, misrepresentation or fraud. The term also includes a claim seeking to hold a third party liable for the conduct of a health care provider, including, but not limited to, a claim asserting vicarious liability or corporate negligence.

Section 803-A. Jurisdiction.—(a) Except as provided in subsection (b), a medical professional liability claim shall be brought only in a county in which the alleged acts or omissions giving rise to the claim predominately occurred and may be subject to reassignment under section 804-A(c).

(b) Except as provided in subsection (c), in an action in which the plaintiff has established proper jurisdiction in a court for a medical professional liability claim against a defendant under subsection (a), the court also has jurisdiction for all claims against defendants who are alleged to be jointly liable with the defendant for whom jurisdiction has been established.

(c) If all of the professional liability claims for which a court has jurisdiction under subsection (a) are dismissed or withdrawn prior to the commencement of the trial, the court shall transfer the action to a court that has jurisdiction against the remaining defendants under subsection (a) or (b).

(d) In the case of a claim asserting vicarious liability, only the acts and omissions supporting the underlying claim shall be considered for purposes of establishing jurisdiction under subsection (a). In the case of a claim asserting corporate liability or a similar theory of liability in which the defendant is allegedly liable for failure to exercise reasonable care in the selection or supervision of a health care provider who allegedly provided deficient health care, only the allegedly deficient health care of the health care provider shall be considered for purposes of establishing jurisdiction under subsection (a).

Section 804-A. Change of Venue.—(a) Upon the petition of a party defendant, a court that has jurisdiction for an action asserting a medical professional liability claim against any defendant under section 803-A shall transfer the action to the court of any other county where the claim could originally have been brought under section 803-A if the standards

in subsection (b) are satisfied.

(b) The court shall grant a request for a change in venue under subsection (a) if the allegedly deficient medical care of all the defendants considered together predominately occurred in the new county or the court otherwise determines that a change in venue is appropriate. A defendant shall not be required to establish that the plaintiff's choice of forum is oppressive or vexatious to obtain a change in venue.

(c) (1) In any county where the jury venire pool exceeds 20% of individuals employed by the health care industry, such case at the request of any party shall be transferred to another county in accordance with a rotation system developed in accordance with paragraph (2).

(2) The Administrative Office of the Pennsylvania Courts shall develop a list of counties with jury venire pools which exceed the percentages set forth in paragraph (1) every five years or in such other frequency less than said period as may be decided at the discretion of the Administrative Office of the Pennsylvania Courts. A random selection system shall be developed by the courts for transferring cases to a county whose court of common pleas is ordinarily no more than 50 miles from the court of common pleas of the transferring county unless unusual circumstances exist.

(3) As used in this subsection, “health care industry” means hospitals, physicians, health care insurance providers and pharmaceutical companies.

Section 805-A. Statute of Limitations.—(a) Except as provided in subsection (b) or (c), an action asserting a medical professional liability 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) 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) If the injured individual is a minor under 14 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 14th birthday, whichever is earlier.

(d) 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) No cause of action barred prior to the effective date of this section shall be revived by reason of the enactment of this section.

Section 814-A. Contracts for Limitation of Noneconomic Damages.—

(a) An agreement limiting noneconomic damages that may be awarded in a medical professional liability action is consistent with the public policy of this Commonwealth, shall be valid and legally enforceable, and shall not be deemed to be unconscionable or otherwise improper.

(b) A health care provider shall be permitted to condition initial or continued acceptance of an individual as a patient on the individual, or an authorized legal representative of the individual, consenting to a limitation on noneconomic damages of not less than \$250,000 that may be awarded in a medical professional liability action, and no health care insurer or other person that contracts or arranges for the provision of medical services shall prohibit a health care provider from imposing such a condition.

(c) An agreement that limits noneconomic damages in a medical professional liability action involving medical services rendered to a minor shall not be subject to disaffirmance if the agreement is signed by the minor's parent, legal guardian or other legal representative. An agreement that limits noneconomic damages in a medical professional liability action involving medical services rendered to an individual who is incompetent shall not be subject to disaffirmance provided that the agreement is signed by the individual while competent or a legal representative for the individual.

(d) An agreement that limits noneconomic damages in a medical professional liability action shall be binding on the estate of the individual

who signed the agreement, or on whose behalf a legal representative signed the agreement, and on any other individual whose claim is derivative of the signer individual's claim.

(e) A limitation on noneconomic damages in an agreement permitted by subsection (a) shall be deemed to apply to the total noneconomic damages awarded in the action, regardless of whether all of the defendants are parties to such an agreement, unless the agreement provides otherwise.

(f) An agreement permitted by subsection (a) may extend the benefit of the limitation on noneconomic damages to any health care provider or other person reasonably identified by name or category, including, but not limited to, employees and agents of a health care provider, a person held vicariously liable for the conduct of a health care provider and the medical staff of a health care provider.

(g) In the event that a health care provider is required by law to provide medical care to an individual or provides emergency medical care to an individual, noneconomic damages in a medical professional liability action arising out of that care shall be limited to \$250,000. For the purposes of the statutory limitation on noneconomic damages imposed in this subsection, the limitation also shall apply to care provided after the legal obligation or emergency ceases, provided that the individual, or a known legal representative for the individual, is advised in writing of the limitation on noneconomic damages within a reasonable time.

(h) Consideration shall not be required for an agreement permitted by subsection (a), provided that the agreement provides that the signer agrees to be legally bound.

Section 815-A. Nonbinding Mediation.—(a) An agreement providing for nonbinding mediation of a medical professional liability claim is consistent with the public policy of the Commonwealth and is valid and enforceable. An agreement which mandates nonbinding mediation of a medical professional liability claim shall not be deemed to be unconscionable or otherwise improper.

(b) A health care provider may condition initial or continued acceptance of an individual as a patient on the patient or an authorized legal representative of the patient consenting to nonbinding mediation of a medical professional liability claim; and no health care insurer shall prohibit a health care provider from imposing such a condition.

(c) An agreement that provides for nonbinding mediation of a medical professional liability claim may include terms defining the conduct of the proceedings.

(d) An agreement which mandates nonbinding mediation of a medical professional liability claim involving medical services rendered to a minor shall not be subject to disaffirmance if the agreement is signed by the minor's parent, legal guardian or legal representative. An agreement which mandates nonbinding mediation of a medical professional liability claim involving medical services rendered to a

patient who is incompetent shall not be subject to disaffirmance if the agreement is signed by a legal representative for the patient.

(e) An agreement which mandates nonbinding mediation of a medical professional liability claim shall be binding on the estate of the patient and on any other individual whose claim is derivative of the patient's claim.

(f) A person, corporation or entity not a signatory to an agreement to participate in nonbinding mediation of a medical professional liability claim may join in the mediation at the request of any party with all the rights and obligations of the original party. No signatory may refuse to mediate because of the participation of an additional party. In order to be treated as a party, an additional participant must sign a written statement to participate in the mediation proceedings and the agreement or must sign the agreement.

(g) The employees of a health care provider shall be deemed to be parties to every agreement providing for nonbinding mediation of a medical professional liability claim which is signed by their employer.

Section 816-A. Joint and Several Liability.—(a) Where recovery is allowed in a medical professional liability action against more than one defendant, each defendant shall be liable for that proportion of the

total dollar amount awarded as damages in the ratio of the amount of his causal negligence to the amount of causal negligence attributed to all defendants against whom recovery is allowed.

(b) The liability of each defendant for damages shall be several only and shall not be joint. Each defendant shall be liable only for the amount of damages allocated to that defendant in direct proportion to that defendant's percentage of fault, and a separate judgment shall be rendered against the defendant for that amount. To determine the amount of judgment to be entered against each defendant, the court, with regard to each defendant, shall multiply the total amount of damages recoverable by the plaintiff by the percentage of each defendant's fault, and that amount shall be the maximum recoverable against that defendant.

(c) In assessing percentages of fault, the trier of fact shall consider the fault of all persons who contributed to the death or injury to person or property, regardless of whether the person was or could have been named as a party to the action, except that negligence or fault of a nonparty may be considered only if the plaintiff entered into a settlement agreement with the nonparty or if the defending party gives notice as prescribed by general rule that a nonparty was wholly or partially at fault. The notice shall include the nonparty's name and last known address or the best identification of the nonparty which is possible under the circumstances, together with a brief statement of the basis for believing the nonparty to be at fault.

(d) Nothing in this section shall be construed to eliminate or diminish any defenses or immunities under existing law, except as expressly noted in this section. Assessments of percentages of fault for nonparties are used only as a vehicle for accurately determining the fault of named parties. Where fault is assessed against nonparties, the findings of fault shall not subject any nonparty to liability in the action or any other action or be introduced as evidence of liability in any action.

(e) Joint liability shall be imposed on all who consciously and deliberately pursue a common plan or design to commit a tortious act or actively take part in it. Any person held jointly liable under this section shall have a right of contribution from that person's fellow defendants acting in concert. A defendant shall be held responsible only for the portion of fault assessed to those with whom the defendant acted in concert under this section.

(f) The burden of alleging and proving fault shall be upon the person who seeks to establish the fault.

(g) Nothing in this section shall be construed to create a cause of action. Nothing in this section shall be construed, in any way, to alter the immunity of any person.

Section 817-A. Liability for Misrepresentation to Seek Informed Consent.—A health care provider may be held liable for failure to seek a patient's informed consent if the provider makes a knowing, willful and affirmative misrepresentation to the patient as to the physician's

professional credentials, training, or experience with the procedure at issue.

Section 818-A. Loss of Pleasures of Life.—In any survival action based upon a medical professional liability action in which the claimant's estate cannot or elects not to claim special damages and the defendant health care provider is found liable for causing the death of the claimant, the estate may recover damages for the decedent's loss of the pleasures of life.

Section 828-A. Expert Witness Qualifications.—(a) An expert witness in a medical professional liability action against a physician must possess sufficient education, training, knowledge, and experience to provide credible, competent testimony, and meet the qualifications set forth in subsection (b), (c), (d), (e) or (f), as applicable.

(b) An expert witness testifying on a medical matter, including the standard of care, risks and alternatives, causation and nature and extent of injury, must be:

(1) a physician with an unrestricted license to practice in any state or the District of Columbia; and

(2) engaged in active clinical practice or teaching and experienced in the medical care at issue.

(c) An expert witness testifying as to a physician's standard of care must be:

(1) substantially familiar with the applicable standard of care for the specific care at issue as of the time of the alleged malpractice;

(2) in the same specialty as the defendant physician or a specialty which has a substantially similar standard of care for the specific care at issue; and

(3) if the defendant physician is certified by an approved board, certified by the same or a similar approved board.

(d) In a case in which it is alleged that a health care provider engaged in the process of diagnosis or treatment for a condition which was not within the health care provider's specialty or competence, a specialist found by the court to be trained in treatment or diagnosis for such condition shall be considered competent to render an expert opinion.

(e) An expert witness shall not be precluded from offering testimony as to the standard of care under subsection (c) if the court makes a specific finding that the proposed expert possesses sufficient training, experience and knowledge as a result of practice or teaching in the specialty of the defendant or practice or teaching in a related field of medicine so as to equip the witness to provide expert testimony as to the prevailing professional standard of care in a given field of medicine. Such training, experience or knowledge must be as a result of active involvement in the practice or full-time teaching of medicine within the five-year period before the incident giving rise to the claim.

(f) An expert witness not offering an opinion as to the standard of care who otherwise is competent to testify about medical or scientific issues by virtue of education, training or experience, is not precluded from testifying because of an absence of board certification or the lack of a medical license within the United States.

Section 829-A. Pretrial Disposition of Frivolous Medical Professional Liability Claims.—(a) (1) Except as set forth in paragraph (2), if a medical professional liability claim is subject to pretrial disposition, the prevailing party shall have a cause of action against the adverse party.

(2) If the prevailing party is awarded, in the underlying action, damages substantially similar to the damages under subsection (b), the cause of action under this section is extinguished. A copy of the damage order in the underlying action is required to apply this paragraph.

(b) (1) The damages for a cause of action under subsection (a) consist of reasonable attorney fees and costs of pretrial disposition.

(2) If the trier of fact determines that the adverse party acted with the intent to harass the prevailing party or to delay adjudication of the case, damages under paragraph (1) shall be tripled.

(c) Discovery in an action under this section shall be limited to a determination of damages under subsection (b).

(d) An action under this section must be filed within one year of the final determination of the pretrial disposition.

(e) As used in this act:

"Adverse party" means any of the following:

(1) A plaintiff whose complaint is dismissed because of preliminary objections.

(2) A defendant whose preliminary objections are overruled.

(3) A plaintiff against whom summary judgment is entered.

(4) A defendant whose motion for summary judgment is denied.

The term includes an attorney who acts without knowledge or consent of the attorney's client.

"Pretrial disposition" means any of the following:

(1) Dismissal of complaint because of preliminary objections.

(2) Overruling of preliminary objections.

(3) Entry of summary judgment.

(4) Denial of summary judgment.

"Prevailing party" means any of the following:

(1) A defendant whose preliminary objections are sustained.

(2) A plaintiff who withstands preliminary objections.

(3) A defendant whose motion for summary judgment is granted.

(4) A plaintiff who withstands a motion for summary judgment.

"Reasonable attorney fees" means attorney fees at a reasonable

hourly rate for hours actually and reasonably spent which are:

(1) actually paid; or

(2) billed for based upon time sheets submitted to the court.

"Underlying action" means an action for medical malpractice which is subject to preliminary disposition.

Section 833-A. Collateral Sources.—(a) Except as set forth in subsection (d), a claimant in a medical professional liability action is precluded from recovering damages for past medical expenses or past lost earnings to the extent that the loss is covered by a private or public benefit or gratuity that claimant has received prior to trial.

(b) The claimant has the option to introduce into evidence the amount of medical expenses incurred, but the jury shall be instructed not to award damages for such expenses except to the extent that the claimant remains legally responsible for such payment.

(c) Except as set forth in subsection (d), there shall be no right of subrogation or reimbursement from a claimant's tort recovery with respect to a public or private benefit covered in subsection (a).

(d) The collateral source reduction set forth in subsection (a) shall not apply to the following:

(1) Life insurance, pension or profit-sharing plans or other deferred compensation plans, including agreements pertaining to the purchase of a business.

(2) Social Security benefits.

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

Section 834-A. Periodic Payment of Future Damages.—(a) (1) At the option of any party to an action asserting a medical professional liability claim, future damages for economic loss shall be awarded in:

(i) periodic payments as provided in this subsection, except as provided in subsection (b); or

(ii) a lump sum payment reduced to present value by using a discount rate of 3%.

(2) The trier of fact shall issue separate findings for each claimant specifying the amount of:

(i) any past damages for:

(A) Medical expenses in a lump sum.

(B) Loss of work earnings in a lump sum.

(C) Other economic losses in a lump sum.

(D) Noneconomic losses in a lump sum.

(ii) any future damages for:

(A) Medical expenses by year.

(B) Loss of work earnings by year.

(C) Other economic losses by year.

(D) Noneconomic losses in a lump sum.

(3) The trier of fact may vary the amount of periodic payments for medical and other recoverable expenses from year to year to account for different annual expenditure requirements. For example, the trier of fact may provide for initial purchase and replacements of medically necessary equipment in the years that expenditures will be required.

(4) The trier of fact may incorporate into any future medical expense award adjustments to account for reasonably anticipated inflation and medical care innovations, such as new technology, drugs, and techniques, that will decrease medical costs, or make a separate finding on the applicable annual percentage change.

(i) The commissioner shall annually establish, by January 1 of each year, a future medical expense adjustment factor that takes into account reasonably anticipated medical expense inflation as well as medical care innovations that will decrease medical costs.

(ii) The commissioner may rely on such evidence as the commissioner reasonably deems appropriate, provided that:

(A) The commissioner shall not rely on any price index unless the commissioner uses a rolling average of the price index or its substantial equivalent over at least the most recent ten-year period for which data is available.

(B) The commissioner shall not rely exclusively on any inflation price index without consideration of reasonably anticipated medical care

innovations that will decrease medical costs.

(iii) The trier of fact shall use the future medical expense adjustment factor established by the commissioner and currently in effect, unless a party establishes by clear and convincing evidence that different adjustments are more appropriate.

(5) The trier of fact may incorporate into any future earnings loss award adjustments to account for wage inflation and productivity growth, or make a separate finding on the applicable annual percentage change.

(i) The Secretary of Labor and Industry shall annually establish, by January 1 of each year, future earnings loss adjustment factors that take into account wage inflation and productivity changes. The secretary shall establish separate factors for different jobs, occupations and professions as reasonably appropriate.

(ii) The secretary may rely on such evidence as the secretary reasonably deems appropriate, provided that the secretary shall not rely on wage change data unless the commissioner uses a rolling average over at least the most recent ten-year period for which data is available.

(iii) The trier of fact shall use the applicable future earnings loss adjustment factor established by the Secretary and currently in effect, unless a party establishes by clear and convincing evidence that different adjustments are more appropriate.

(6) The trier of fact may determine that future damages for medical losses will continue for the duration of the claimant's life and make a lifetime medical expense award if such a finding is supported by the evidence. In such a case, the trier of fact shall determine the amount of medical expenses that the claimant will incur annually while living, but shall not be required to determine the life expectancy of the claimant.

(7) The trier of fact may award damages for loss of work earnings for the duration of the claimant's pre-injury work-life expectancy or until the claimant reaches 65 years of age, whichever occurs earlier, if such a finding is supported by the evidence. In such a case, the trier of fact shall specify the claimant's pre-injury work-life expectancy.

(8) The trier of fact shall adjust work-loss damages to account for the inapplicability of Federal, State and local taxes and Social Security withholding to personal injury awards.

(9) Future damages for medical expenses and other economic loss must be paid in the years that the trier of fact finds they will accrue. Unless the court orders or approves a different schedule for payment, the annual amounts due must be paid in 12 equal monthly installments, rounded to the nearest dollar. Each installment is due and payable on the first day of the month in which it accrues.

(10) Interest does not accrue on a periodic payment before payment is due. If the payment is not made on or before the due date, interest accrues as of that date.

(11) Liability to a claimant for periodic payments not yet due for medical expenses terminates upon the claimant's death.

(12) Liability to a claimant for loss of earnings shall not terminate at the claimant's death; provided however, that this section shall not be construed as extending a loss of work earnings award beyond the time frame permitted under paragraph (7).

(13) Each party liable for all or a portion of the judgment shall provide funding for the awarded periodic payments, separately or jointly with one or more others, by means of an annuity contract or other qualified funding plan which is approved by the court. The commissioner shall publish a list of insurers designated by the commissioner as qualified to participate in the funding of periodic-payment judgments.

(14) In the event that a claimant defaults on a required periodic payment due to the insolvency of an insurer participating in a qualified funding plan, the claimant shall be entitled to receive the payment from:

(i) the Medical Professional Liability Catastrophe Loss Fund; or
(ii) if the fund has ceased operations, the Property and Casualty Insurance Guaranty Association.

The commissioner shall promulgate regulations for the implementation of this section.

(15) The court which enters judgment shall retain jurisdiction to enforce the judgment and to resolve related disputes.

(b) Future damages shall not be awarded in periodic payments if the claimant objects and stipulates that the claim for future damages for economic loss, without reduction to present value, does not exceed \$100,000. In such a case, future damages shall be reduced to present worth using a discount rate of 4% with no adjustments for inflation or productivity growth.

(c) In the event that the claimant receives a collateral source payment for an economic loss for which the claimant receives a periodic payment under subsection (a) or a lump-sum payment under subsection (b), the claimant shall refund that portion of the periodic payment or lump-sum payment that is offset by the collateral source payment. For purposes of this section, a collateral source payment is a payment or other compensation that would be subject to a collateral source reduction under section 602 if the payment or other compensation was made for a past economic loss.

(d) At the request of the defendant, the claimant shall maintain a collateral source benefit in effect or obtain a collateral source benefit. In such a case, the defendant shall be required to compensate the claimant for the reasonable costs incurred by the claimant to the extent that the costs are not covered by a collateral source. Such costs shall be reimbursed in the years that the costs accrue in 12 equal monthly payments payable on the first day of each month, unless the court requires a different schedule.

Section 835-A. Permissible Argument as to Damages at Trial.—(a) Except as provided in subsection (b), in a medical professional liability action tried before a judge, jury or other tribunal, an attorney during closing argument:

(1) May specifically argue in lump sums or by mathematical formulae the amount the attorney deems to be an appropriate award for all past and future economic or noneconomic damages or both economic and noneconomic damages claimed to be recoverable.

(2) May, on behalf of a defendant, argue to the judge, jury or other tribunal that an award of zero damages is appropriate, even if there is a finding of liability against the defendant.

(b) (1) No party may argue a specific sum as provided in subsection (a) unless the party first discloses to the court and opposing counsel that the party intends to argue the specific damages listed in subsection (a) prior to the presentation of closing arguments.

(2) Nothing in this subsection shall be construed to prevent a defendant from arguing in any case that the facts and evidence support a finding of no liability.

(3) Notwithstanding paragraph (1), arguments as to appropriate amount of economic damages may be made without notice to opposing counsel if evidence supporting economic damages has been introduced at trial.

(c) Whenever, in a medical professional liability action tried before a jury, specific lump sums or mathematical formulae are argued during closing arguments as provided for in subsection (a), the trial court shall instruct the jury that the sums or mathematical formulae argued are not evidence but only arguments and that the determination of the amount of appropriate damages to be awarded, if any, is solely for the jury's determination.

Section 6. Section 841-A(d) of the act, added November 26, 1996 (P.L.776, No.135), is amended to read:

Section 841-A. Mandatory Reporting.—* * *

(d) Each licensure board shall submit a report not later than March 1 of each year to the chairman and the minority chairman of the Consumer Protection and Professional Licensure Committee of the Senate and to the chairman and minority chairman of the Professional Licensure Committee of the House of Representatives. The report shall include, but not be limited to[, the number of reports received under subsection (a), the status of the investigations of those reports, any disciplinary action which has been taken and the length of time from the receipt of each report to final licensure board action.];

(1) The number of complaint files against board licensees that were opened in the preceding five calendar years.

(2) The number of complaint files against board licensees that were

closed in the preceding five calendar years.

(3) The number of disciplinary sanctions imposed upon board licensees in the preceding five calendar years.

(4) The number of revocations, automatic suspensions, immediate temporary suspensions and suspensions imposed, voluntary surrenders accepted, license applications denied and license reinstatements denied in the preceding five calendar years.

(5) The range of lengths of suspensions, other than automatic suspensions and immediate temporary suspensions, imposed during the preceding five calendar years.

Section 7. Section 901 of the act is amended to read:

Section 901. Investigations.—(a) 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.

(b) Any Commonwealth agency that obtains information indicating that a board-regulated practitioner employed by the Commonwealth agency or with whom the Commonwealth agency contracts as an independent contractor was involved in an event, occurrence or situation that compromised patient safety and resulted in unintended injury requiring the delivery of additional health care services to a patient shall make or cause to be made a report to the appropriate board listed in subsection (a) within 60 days of obtaining the information. Any person or Commonwealth agency who makes a report pursuant to this section in good faith and without malice shall be immune from any civil or criminal liability arising from the report.

Section 8. The act is amended by adding sections to read:

Section 901.1. Reporting to State Licensing Boards.—A physician, a certified nurse midwife or a podiatrist shall report to the State Board of Medicine, the State Board of Osteopathic Medicine or the State Board of Podiatry, as appropriate, within 60 days of the occurrence of any of the following:

(1) A complaint in a civil action based on medical malpractice is filed against the individual.

(2) Disciplinary action is taken against the individual by a health care licensing authority of another jurisdiction.

(3) The individual is sentenced for an offense graded above a summary offense. This paragraph includes sentencing in another jurisdiction for an offense which, if committed in this Commonwealth would be graded above a summary offense.

(4) The individual is arrested for, or charged in an indictment or information with:

(i) a felony; or

(ii) an offense under the act of April 14, 1972 (P.L.233, No.64), known as “The Controlled Substance, Drug, Device and Cosmetic Act.”

(5) A health care facility or hospital, as a result of a peer review proceeding, terminates or curtails the individual’s employment, association or professional privileges.

Section 901.2. Duty to Notify Licensing Board about Certain Arrests.—A board-registered practitioner who is licensed by a licensure board shall notify the licensing board in writing within 60 days of an arrest for a felony or for an offense under the act of April 14, 1972 (P.L.233, No.64), known as “The Controlled Substance, Drug, Device and Cosmetic Act.”

Section 9. Section 902 of the act is amended to read:

Section 902. Hearings.—(a) The State Board of [Medical Education and Licensure] Medicine, the State Board of Osteopathic [Examiners] Medicine 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 July 20, 1974 (P.L.551, No.190), known as the “Medical Practice Act of 1974,” and the act of March 19, 1909 (P.L.46, No.29), entitled, as amended, “An act to regulate the practice of

osteopathy and surgery in the State of Pennsylvania; to provide for the establishment of a State Board of Osteopathic Examiners; to define the powers and duties of said Board of Osteopathic Examiners; to provide for the examining and licensing of osteopathic physicians and surgeons in this State; and to provide penalties for the violation of this act.”

(b) The State Board of [Medical Education and Licensure] Medicine or the State Board of Osteopathic [Examiners] Medicine 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) Such hearing examiners shall have the power to conduct hearings in accordance with the regulations of the State Board of [Medical Education and Licensure] Medicine or the State Board of Osteopathic [Examiners] Medicine, 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.

(d) A complaint against a licensed practitioner must be filed with the appropriate board within ten years of the board’s receipt of notice of the events underlying the complaint.

(e) Laches shall not bar a hearing under this section.

Section 10. The act is amended by adding a section to read:

Section 902.1. Confidentiality of Records of State Board of Medicine or State Board of Osteopathic Medicine.—(a) This section shall apply only to reports, communications, records, papers and other objects in the custody of the State Board of Medicine or State Board of Osteopathic Medicine and to persons employed by or acting in their official capacity on behalf of or for the State Board of Medicine or State Board of Osteopathic Medicine.

(b) All reports, communications, records, papers and other objects disclosing the institution, progress or result of an investigation undertaken by the State Board of Medicine or State Board of Osteopathic Medicine or concerning a complaint filed with the State Board of Medicine or State Board of Osteopathic Medicine shall be confidential and privileged, shall not be subject to subpoena or discovery and shall not be introduced into evidence in any judicial or administrative proceeding. No person who has investigated or has access to or custody of a report, communication, record, paper or other object which is confidential and privileged under this subsection shall be required to testify in any judicial or administrative proceeding without the written consent of the State Board of Medicine or State Board of Osteopathic Medicine. This section shall not preclude or limit introduction of the contents of an investigative file or related witness testimony in a hearing or proceeding held before the State Board of Medicine or State Board of Osteopathic Medicine.

(c) All reports, communications, records, papers and other objects disclosing a person’s admission, participation, progress or completion of any impaired professional program approved by the State Board of Medicine or State Board of Osteopathic Medicine shall be confidential and privileged, shall not be subject to subpoena or discovery and shall not be introduced into evidence in any judicial or administrative proceeding. No person who has prepared or who has access to or custody of a report, communication, record, paper or other object which is confidential and privileged under this subsection shall be permitted or required to testify in any judicial or administrative proceeding. This section shall not preclude or limit the availability or introduction of impaired professional program records or related witness testimony in a proceeding before the State Board of Medicine or State Board of Osteopathic Medicine for alleged violations of an impaired professional program agreement.

(d) Except as provided in subsections (b) and (c), this section shall not prevent disclosure of any report, communication, record, paper or other object pertaining to the status of a license, permit or certificate issued or prepared by the State Board of Medicine or State Board of Osteopathic Medicine or relating to a public disciplinary proceeding or hearing.

Section 11. Section 905 of the act is amended to read:

Section 905. Review by State Licensing Boards.—(a) If application

for review is made to the State Board of [Medical Education and Licensure] Medicine, the State Board of Osteopathic [Examiners] Medicine 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] Medicine, the State Board of Osteopathic [Examiners] Medicine or the State Board of Podiatry [Examiners] shall review the evidence, and if deemed advisable by the board, hear argument and additional evidence. If the appropriate board determines that a licensee has practiced negligently, the board may impose disciplinary or corrective measures.

(b) As soon as practicable, the State Board of [Medical Education and Licensure] Medicine, the State Board of Osteopathic [Examiners] Medicine 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.

Section 12. The act is amended by adding sections to read:

Section 908. Continuing Medical Education.—(a) In accordance with section 901, the State Board of Medicine shall adopt, promulgate and enforce rules and regulations establishing a program of continuing medical education and shall establish the number of required hours. In so doing, the board may, among other things, do the following:

(1) Review and use guidelines and pronouncements regarding professional continuing education of recognized educational and professional organizations.

(2) Prescribe educational course content, organization and duration.

(3) Take into account the accessibility of continuing education course sites.

(4) Waive the requirement in the following instances:

(i) When the requirement creates individual hardship, if the board finds that good cause is shown and that public safety and welfare are not jeopardized by the waiver.

(ii) When the licensee is retired from active practice.

(b) Except as provided in subsection (a)(4), each person licensed to practice medicine and surgery without restriction must fulfill continuing medical education requirements during the two-year period immediately preceding a biennial date for reregistering with the board.

Section 909. Mandatory Referral for Claims History.—(a) If a health care provider shall have three or more judgments entered against it or be party to a settlement involving contribution by the fund within any two-year period, the provider shall be referred to the professional licensure board for investigation.

Section 13. The act is amended by adding an article to read:

ARTICLE IX-A
PATIENT SAFETY

Section 901-A. Scope.

This article relates to patient safety.

Section 902-A. Definitions.

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

“Ambulatory surgical facility.” An entity defined as an ambulatory surgical facility under the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act.

“Authority.” The Patient Safety Authority established in section 903-A.

“Birth center.” An entity defined as a birth center under the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act.

“Department.” The Department of Health of the Commonwealth.

“Fund.” The Patient Safety Trust Fund established in section 905-A.

“Health care worker.” An employee, independent contractor, licensee or other individual authorized to provide services in a medical facility.

“Hospital.” An entity defined as a hospital under the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act.

“Incident.” An undesirable or unintended event, occurrence or situation involving the clinical care of a patient in a medical facility which could have injured the patient but did not either cause an injury or

require the delivery of additional health care services to the patient. The term does not include a serious event.

“Licensee.” An individual who is all of the following:

(1) Licensed or certified by the Department of State to provide professional services in this Commonwealth.

(2) Employed by or authorized to provide professional services in a medical facility.

“Medical facility.” An ambulatory surgical facility, birth center or hospital.

“Patient safety officer.” An individual designated by a medical facility under section 909-A.

“Serious event.” An event, occurrence or situation in a medical facility that compromises patient safety and results in an undesirable injury requiring the delivery of additional health care services to a patient. The term does not include an incident.

Section 903-A. Establishment of authority.

(a) Establishment.—There is hereby established a body corporate and politic to be known as the Patient Safety Authority. The powers and duties of the authority shall be vested in and exercised by a board of directors.

(b) Composition.—The board of the authority shall consist of 11 members, composed and appointed in accordance with the following:

(1) The Physician General.

(2) Four residents of this Commonwealth, one of whom shall be appointed by the President pro tempore of the Senate, one of whom shall be appointed by the Minority Leader of the Senate, one of whom shall be appointed by the Speaker of the House of Representatives and one of whom shall be appointed by the Minority Leader of the House of Representatives, who shall serve terms coterminous with their respective appointing authorities.

(3) A health care worker residing in this Commonwealth who is a physician and is appointed by the Governor, who shall serve an initial term of three years.

(4) A health care worker residing in this Commonwealth who is licensed by the Department of State as a nurse and is appointed by the Governor, who shall serve an initial term of three years.

(5) A health care worker residing in this Commonwealth who is licensed by the Department of State as a pharmacist and is appointed by the Governor, who shall serve an initial term of two years.

(6) A health care worker residing in this Commonwealth who is employed by a hospital and is appointed by the Governor, who shall serve an initial term of two years.

(7) Two residents of this Commonwealth who are not health care workers and are appointed by the Governor, who shall serve a term of four years.

(c) Terms.—With the exception of paragraphs (1) and (2), members of the board shall serve for terms of four years after the initial terms designated in subsection (b). No appointed member shall be eligible to serve more than two full consecutive terms.

(d) Quorum.—A majority of the members of the board shall constitute a quorum. Notwithstanding any other provision of law, action may be taken by the board at a meeting upon a vote of the majority of its members present in person or through the use of amplified telephonic equipment if authorized by the bylaws of the board. The board shall meet at the call of the chairperson or as may be provided in the bylaws of the board. The board shall meet at least quarterly. Meetings of the board may be held anywhere within this Commonwealth. The Physician General shall be the chairperson.

Section 904-A. Powers and duties.

(a) General rule.—The authority shall do all of the following:

(1) Adopt bylaws necessary to carry out the provisions of this act.

(2) Employ staff as necessary to implement this act.

(3) Make, execute and deliver contracts and other instruments.

(4) Apply for, solicit, receive, establish priorities for, allocate, disburse, contract for, administer and spend funds in the fund and other funds that are made available to the authority from any source

consistent with the purposes of this act.

(5) Contract with an experienced for-profit or nonprofit entity or entities, other than a health care provider, to do all of the following:

(i) Collect, analyze and evaluate data regarding reports of serious events and incidents, including the identification of a pattern in frequency or severity at certain medical facilities or in certain regions of this Commonwealth.

(ii) Transmit to the authority recommendations for changes in health care practices and procedures, which may be instituted for the purpose of reducing the number and severity of serious events and incidents.

(iii) Directly advise reporting medical facilities of immediate changes that can be instituted to reduce serious events and incidents.

(6) Receive and evaluate recommendations made by the entity or entities contracted with in accordance with paragraph (5) and report those recommendations to the department, which shall have no more than 30 days to review the recommendations.

(7) After consultation and approval by the department, issue recommendations to medical facilities on a facility-specific and Statewide basis regarding changes, trends and improvements in health care practices and procedures for the purpose of reducing the number and severity of serious events and incidents. Such recommendations shall be issued to medical facilities and the department on a continuing basis and shall be published and posted on the department's and the authority's publicly accessible World Wide Web sites.

(8) Meet at least quarterly with the department for purposes of implementing this article.

(b) Anonymous reports to the authority.—A health care worker who has complied with section 908-A(a) may file an anonymous report regarding a serious event with the authority. The authority shall receive and investigate the report after notice to the affected medical facility. The authority shall conduct its own review, unless the medical facility has already commenced an investigation of the serious event. The medical facility shall provide the authority with the results of its investigation no later than 30 days after receiving notice pursuant to this subsection. If the authority is dissatisfied with the adequacy of the investigation conducted by the medical facility, the authority shall perform its own review of the serious event and may cite a medical facility and any involved licensee for failure to report pursuant to section 913-A(c) and (d).

(c) Annual report to General Assembly.—

(1) The authority shall report no later than May 1, 2003, and annually thereafter to the department and the General Assembly on the authority's activities in the preceding year. The report shall include, but not be limited to:

(i) A schedule of the year's meetings.

(ii) A list of contracts entered into pursuant to this section, including the amounts awarded to each contractor.

(iii) A summary of the fund receipts and expenditures, including a financial statement and balance sheet.

(iv) The number of serious events and incidents reported by medical facilities on a geographical basis.

(v) The information derived from the data collected including any recognized trends concerning patient safety.

(vi) Recommendations for statutory or regulatory changes which may help improve patient safety in the Commonwealth.

(2) The annual report shall also be distributed to the Secretary of Health, the Chair and Minority Chair of the Public Health and Welfare Committee of the Senate and the Chair and Minority Chair of the Health and Human Services Committee of the House of Representatives.

(3) The annual report shall be made available for public inspection and shall be posted on the Department's publicly accessible World Wide Web site.

Section 905-A. Patient Safety Trust Fund.

(a) Establishment.—There is hereby established a separate account in the State Treasury to be known as the Patient Safety Trust Fund. The fund shall be administered by the authority. All interest earned from the investment or deposit of moneys accumulated in the fund shall be deposited in the fund for the same use.

(b) Funds.—All moneys deposited into the fund shall be held in trust and shall not be considered general revenue of the Commonwealth but shall be used only to effectuate the purposes of this article as determined by the authority.

(c) 2002 assessment.—Prior to the first day of June 2002, each medical facility shall pay the department a surcharge on its licensing fee as necessary to provide sufficient revenues to operate the authority. The assessment shall not exceed a total of \$5,000,000. The department shall transfer the total surcharge amount to the fund.

(d) Base amount.—For each succeeding calendar year, the department shall determine and assess each medical facility its proportionate share of the authority's budget. The amount shall be capped at \$5,000,000 in 2002 and increased according to the consumer price index in each succeeding year.

(e) Expenditures.—Moneys in the fund may be expended by the authority to implement this article.

(f) Dissolution.—In the event that the fund is discontinued or the authority is dissolved by operation of law, any balance remaining in the fund, after deducting administrative costs of liquidation, shall be returned to the medical facilities in proportion to their financial contributions to the fund in the preceding calendar year.

(g) Failure to pay assessment.—If after 30 days' notice a medical facility fails to pay an assessment levied by the department under this article, the department may assess an administrative penalty of \$1,000 per day until the assessment is paid.

Section 906-A. Department responsibilities.

(a) General rule.—The department shall do all of the following:

(1) Review and approve patient safety plans in accordance with section 907-A.

(2) Receive reports of serious events under sections 904-A and 913-A.

(3) Investigate serious events.

(4) In conjunction with the authority, analyze and evaluate existing health care procedures and approve recommendations issued by the authority pursuant to section 904-A(a)(6) and (7).

(5) Meet at least quarterly with the authority to receive its recommendations to improve patient safety.

(b) Department consideration.—The recommendations made to medical facilities pursuant to subsection (a)(4) may be considered by the department for licensure purposes under the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act, but shall not be considered mandatory unless adopted by the department as regulations pursuant to the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

Section 907-A. Patient safety plans.

(a) Development.—A medical facility shall develop and implement an internal patient safety plan for the purpose of improving the health and safety of patients. The plan shall be developed in consultation with the licensees providing health care services in the medical facility.

(b) Requirements.—A patient safety plan shall:

(1) Designate a patient safety officer as set forth in section 909-A.

(2) Establish a patient safety committee as set forth in section 910-A.

(3) Establish a system for health care workers of a medical facility to report serious events and incidents which shall be accessible 24 hours a day, seven days a week.

(4) Prohibit any retaliatory action against a health care worker for reporting a serious event or incident in accordance with the act of December 12, 1986 (P.L.1559, No.169), known as the Whistleblower Law.

(c) Approval.—Within 90 days of the effective date of this section, and commensurate with its licensing application or renewal thereafter, a medical facility shall submit its patient safety plan to the department for approval consistent with the requirements of this section. Unless the department approves or rejects the plan within 60 days of receipt, the plan shall be deemed approved.

(d) Employee notification.—Upon approval of the patient safety plan, a medical facility shall notify all health care workers of the medical facility of the patient safety plan. Compliance with the patient safety plan shall be required as a condition of employment or credentialing at the medical facility.

Section 908-A. Health care workers.

(a) Reporting.—A health care worker who reasonably believes that a serious event or incident has occurred shall report the incident or serious event according to the patient safety plan of the medical facility, unless the health care worker knows that a report has already been made. The report shall be made immediately or as soon thereafter as reasonably practicable, but in no event later than 24 hours after the occurrence of a serious event or incident.

(b) Duty to notify patient.—A licensee responsible for the patient during the occurrence of a serious event in a medical facility shall provide written notification to the affected patient and, with the consent of the patient, to an available family member, of the serious event within seven days of occurrence. For unemancipated patients who are under 18 years of age, the parent or guardian shall be notified in accordance with this subsection.

(c) Liability.—A health care worker who reports the occurrence of a serious event or incident in accordance with subsection (a) or (b) shall not be subject to any retaliatory action for reporting the serious event or incident, as set forth in the act of December 12, 1986 (P.L.1559, No.169), known as the Whistleblower Law.

(d) Limitation.—Nothing in this section shall limit a medical facility's ability to take appropriate disciplinary action against a health care worker for failure to meet defined performance expectations or to take corrective action against a licensee for unprofessional conduct, including making false reports or failing to report serious events under this article.

Section 909-A. Patient safety officer.

A patient safety officer of a medical facility shall do all of the following:

(1) Serve on the patient safety committee.

(2) Ensure the investigation of all reports of serious events and incidents.

(3) Take such action as is immediately necessary to ensure patient safety as a result of the investigation.

(4) Report to the patient safety committee regarding any action taken to promote patient safety as a result of investigations commenced pursuant to this section.

Section 910-A. Patient safety committee.

(a) Composition.—

(1) A hospital's patient safety committee shall be composed of the medical facility's patient safety officer, and at least three health care workers of the medical facility and two residents of the community served by the medical facility who are not agents, employees or contractors of the medical facility. No more than one member of the patient safety committee shall be a member of the medical facility's board of trustees. The committee shall include members of the medical facility's medical and nursing staff.

(2) An ambulatory surgical facility's or birth center's patient safety committee shall be composed of the medical facility's patient safety officer, and at least two health care workers of the medical facility and one resident of the community served by the ambulatory surgical facility or birth center who is not an agent, employee or contractor of the ambulatory surgical facility or birth center. No more than one member of the patient safety committee shall be a member of the medical facility's board of governance. The committee shall include members of the medical facility's medical and nursing staff.

(c) Responsibilities.—A patient safety committee of a medical facility shall do all of the following:

(1) Meet at least monthly.

(2) Receive reports from the patient safety officer.

(3) Evaluate investigations and actions of the patient safety officer on all reports.

(4) Review and evaluate the quality of services provided by the medical facility. A review shall include discussions of reports made under section 908-A and analyses of health care procedures and practices.

(5) Make recommendations to improve the quality of services provided by the medical facility, including recommendations to eliminate future serious events and incidents.

(6) Report to the administrative officer and governing body of the medical facility on a quarterly basis the number of serious events and incidents and the actions taken by the medical facility to address the patient safety issues involved and its recommendations to improve the quality of services provided by the medical facility.

Section 911-A. Peer review.

(a) All reports, data, logs, information, documents, findings, compilations, summaries, testimony and other records generated, acquired or obtained by a patient, safety officer, administrative officer, governing body of a medical facility, patient safety authority, patient safety committee or the department in accordance with this article shall be records within the meaning of section 4 of the act of July 20, 1974 (P.L.564, No.193), known as the Peer Review Protection Act, and shall be afforded the statutory protections granted records of a review organization under the Peer Review Protection Act.

(b) All information collected under subsection (a) shall not be considered original source documents as defined in the Peer Review Protection Act.

(c) All information collected under subsection (a) shall not be subject to requests under the act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law.

Section 912-A. Patient safety discount.

A medical facility may make application to the Insurance Department for certification of any program that is recommended by the authority that results in the reduction of serious events. The Insurance Department, in consultation with the Department of Health, shall develop the criteria for such certification. Upon receipt of the certification by the Insurance Department, a medical facility shall receive a discount in the rate or rates applicable for mandated basic insurance coverage required by law, with the level of such discount determined by the Insurance Department.

Section 913-A. Medical facility reports and notifications.

(a) Serious event reports.—A medical facility shall report the occurrence of a serious event to the department in accordance with the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act. A medical facility shall report the occurrence of a serious event to the authority within 24 hours of the medical facility's confirmation of the occurrence of the serious event. The report to the authority shall be in the form and manner prescribed by the authority in consultation with the department and shall not include the name of any patient or any other identifiable individual information.

(b) Incident reports.—A medical facility shall report the occurrence of an incident to the authority in a form and manner prescribed by the authority and shall not include the name of any patient or any other identifiable individual information.

(c) Notifications to licensure boards.—If a medical facility discovers that a licensee providing health care services in the medical facility during a serious event failed to report the event in accordance with section 908-A(a) or (b), the medical facility shall notify the licensee's licensing board of the failure to report.

(d) Failure to report or notify.—A medical facility which fails to report a serious event or to notify a licensure board in accordance with this act may be subject to a civil penalty by the department of \$1,000 per day.

Section 914-A. Preservation and accuracy of medical records.

(a) Entries in patient charts concerning care rendered shall be made contemporaneously. Except as otherwise provided for in this section, it shall be unlawful to make additions or deletions to a patient's chart.

(b) It shall not be unlawful for a health care provider to:

(1) Correct information on a patient's chart, where information has been entered erroneously, or where it is necessary to clarify entries made thereon, provided that such corrections or additions shall be clearly identified as subsequent entries by a date and time.

(2) To add information to a patient's chart where it was not available at the time the record was first created, provided that:

(i) Such additions shall be clearly dated and timed as subsequent entries.

(ii) A health care provider may add supplemental information within a reasonable time.

(c) It shall be unlawful for a health care provider to destroy or discard diagnostic slides, specimens, surgical hardware or X-rays without the written consent of the patient, provided that records may be destroyed by order of court or after seven years has passed from their creation.

(d) In any civil action in which the plaintiff proves by a preponderance of the evidence that there has been alteration or destruction of medical records, the trial court, in its discretion, may instruct the jury to consider whether such alteration or destruction occurred in an attempt to eliminate evidence that a health care provider breached the standard of care with respect to that patient.

(e) Alteration or destruction of medical records, for the purpose of eliminating information that would give rise to civil liability on the part of a health care provider, shall constitute a ground for suspension by the State Board of Medicine. A health care provider who is aware of alteration or destruction in violation of this section shall report any party suspected of such conduct to the State Board of Medicine.

Section 14. The act is amended by adding a section to read:

Section 1005.1. Board-imposed Civil Penalty.—In addition to any other civil remedy or criminal penalty provided for in this act, the act of December 20, 1985 (P.L.457, No.112), known as the "Medical Practice Act of 1985," or the act of October 5, 1978 (P.L.1109, No.261), known as the "Osteopathic Medical Practice Act," the State Board of Medicine and the State Board of Osteopathic Medicine, by a vote of the majority of the maximum number of the authorized membership of each board as provided by law, or by a vote of the majority of the duly qualified and confirmed membership or a minimum of five members, whichever is greater, may levy a civil penalty of up to \$10,000 on any current licensee who violates any provision of the "Medical Practice Act of 1985" or the "Osteopathic Medical Practice Act" or on any person who practices medicine or osteopathic medicine without being properly licensed to do so under the "Medical Practice Act of 1985" or the "Osteopathic Medical Practice Act." The boards shall levy this penalty only after affording the accused party the opportunity for a hearing, as provided in 2 Pa.C.S. (relating to administrative law and procedure).

Section 15. A person who is an employee of the Medical Professional Liability Catastrophe Loss Fund on the effective date of this section shall be given priority consideration for employment to fill vacancies with executive agencies under the Governor's jurisdiction.

Section 16. The amendment of sections 103 and 605 and the addition of Article VII-A of the act shall apply to any claim that meets all of the following:

(1) The claim is asserted against a health care provider for a breach of contract or tort.

(2) The breach of contract or tort upon which the claim is asserted occurred before or after the effective date of this section.

(3) The claim is filed after the effective date of this section.

Section 17. The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

Section 18. (a) Except as provided in subsection (b), this act shall apply to all pending actions initiated on or after the effective date of this

section and in which a verdict has not been rendered on the effective date of this section.

(b) The amendment of section 902 of the act shall apply to causes of action against licensed practitioners which arise on or after the effective date of this act.

Section 19. This act shall take effect in 60 days.

On the question,

Will the House agree to the amendment?

THE SPEAKER (MATTHEW J. RYAN) PRESIDING

The SPEAKER. The question before the House is, will the House adopt the amendment offered by the gentleman from Chester, Mr. Schroder.

On that question, Mr. Schroder.

Mr. SCHRODER. Thank you, Mr. Speaker.

Mr. Speaker, amendment A240 is a comprehensive medical malpractice reform amendment. It has several components to it. It reforms the CAT Fund (Medical Professional Liability Catastrophe Loss Fund), it reforms medical liability tort reform, and it also provides for additional licensing protections and patient safety measures.

Mr. Speaker, with the permission of the Speaker, I am going to address the latter three proposals, but the chairman of the Insurance Committee, Representative Micozzie, is going to address the CAT Fund proposals.

So at this time, if I could continue to have my turn once he is done, I will yield to Representative Micozzie.

The SPEAKER. The gentleman, Mr. Micozzie. Will the gentleman yield for a moment.

The House is taking up at this time the question of medical malpractice. Members, this is a very complicated bill and set of amendments that will be offered throughout the rest of the evening. I really would respectfully request that the conferences on the floor be held to a minimum.

I am going to ask the Sergeants at Arms to feel free to come to this side of the rail and break up any conversations that are from the half back. I know staff people are going to be engaged in this, and I would ask those that are engaged in it to have discussions quietly. Those who are not, I would ask that they would be seated.

Mr. Micozzie.

Mr. MICOZZIE. Thank you, Mr. Speaker.

Mr. Speaker, the Insurance Committee has been working on the CAT Fund ever since I became the majority chairman. I guess it was 1996-97. Since that time this is the third bill that was introduced, and throughout those years we had at least 10 public hearings; we had many informational meetings where we put together all the stakeholders and the interest groups into one room to debate, discuss, and deliberate on the problems within the CAT Fund. During those years it has been a bipartisan effort. First it started with Representative Colafella, who then became the Education chairman, and then also Representative DeLuca.

I cannot hear myself think. So anyway, what happened is that through those efforts, during those public hearings and whatever, we, the Insurance Committee, readily found out that it is a three-legged problem. When I began, it was privatizing the CAT Fund, and we soon found out after many meetings that privatizing the CAT Fund was not the answer. After HB 1802

passed the committee back in I guess September or October, what happened, there were ensuing meetings with the administration and all the stakeholders again, and we came up with another amendment, which is the amendment that is being provided today.

The CAT Fund portion of the amendment seeks to continue to provide CAT Fund coverage to participating providers until such time that the commercial market has improved, that there is a reduction in the level of unfunded liability, improvement in the efficiencies of claims handling within the CAT Fund layer of coverage, and to provide for an eventual phaseout of the CAT Fund in a practical, efficient manner that does not jeopardize the availability of malpractice insurance in the Commonwealth.

Specifically, the CAT Fund portion of the amendment would, beginning January 1, 2003, reduce the mandatory minimum liability coverage for resident and nonresident health-care providers from \$1.2 million to \$1 million per occurrence. Resident health-care providers, as defined by the amendment, are those conducting more than 20 percent of their health-care business in Pennsylvania and shall be required to participate in the fund. Under the current law, only providers conducting more than 50 percent of their practice in the State are required to participate in the fund.

This proposal would eliminate the fund's liability for section 605 claims on any malpractice occurrences taking place after December 31, 2002. Section 605 malpractice claims are those claims which are not filed within 4 years of their occurrence. This change will result in the CAT Fund shifting to coverage on what they call a claims-made basis from January 1, 2003, going forward. Under the current law, on any 605 claim the fund becomes the primary payer of the claim up to \$1 million.

The proposal also eliminates the fund's liability on the 605 claims for malpractice occurrences taking place before January 1, 2003, if the claim is not filed before December 31, 2008. As you can see, what it is is a gradual, gradual going in to privatize the CAT Fund. This change will require providers to purchase what they call tail coverage from the commercial market beginning in 2008 to cover past potential liability which the fund will no longer provide.

The amendment would transfer the administration of the fund to the Insurance Department upon the effective date of this act. The department will contract with a third-party administrator to manage the claims of the fund. The current office of the director of the CAT Fund will be eliminated.

From January 1, 2003, until the fund is fully funded, providers will continue to be charged an annual assessment to pay for the claims, the administrative expenses, and the unfunded liability of the fund. The proposal sets up a special fund under the Department of Treasury into which the revenue will be deposited and from which claims and expenses of the fund will be paid. This assessment charge to providers will be imposed in the same manner as the surcharge is imposed under the current law.

In lieu of a true experience-rating mechanism for nonhospital providers, this proposal will implement an experience surcharge on providers who have had claims paid at the CAT Fund layer. For providers with one CAT Fund claim in the last 5 years, there will be a 10-percent experience surcharge that would be applied to their assessment. For providers having two or more CAT Fund claims in the last 5 years, there will be a 20-percent experience surcharge to be imposed. Hospitals will continue to be assessed on an experience-rated basis as provided in current law.

To establish a workable, flexible phaseout plan for the CAT Fund, this proposal requires the Insurance Commissioner to conduct a capacity study of the commercial malpractice insurance market by July 1, 2005, to determine if the malpractice insurance is available at an affordable cost. If the market meets this test, the Commissioner will increase the primary layer of coverage to \$750,000 while reducing the CAT Fund layer to \$250,000. If the market has not improved, the limits will remain the same and the Commissioner will be required to conduct a capacity study every 2 years until the limits can be increased.

Two years after the initial increase of primary limits to \$750,000, the Commissioner will conduct another capacity study of the market. If the study shows a healthy market, the Commissioner will increase the primary limits to \$1 million and the CAT Fund's layer of coverage will be eliminated, thus eliminating the CAT Fund.

Because of their limited CAT Fund liability, the amendment provides a carve-out provision for podiatrists to eliminate their participation in the fund and allow them to make private arrangements for separate retirement of the money they owe to the CAT Fund for their specific liability.

Exceptions: In addition to the exception from the requirement to participate in the CAT Fund which is now provided to military physicians and forensic pathologists, this proposal will also provide an exemption to retired physicians who maintain their license for the sole purpose of providing medical care to their families.

The amendment would subject the CAT Fund to the bad-faith penalties in the handling of claims at the CAT Fund layer under certain conditions.

The proposal also establishes a three-person authority to be appointed by the Governor to borrow money at the request of the Insurance Department to cover any financial shortfall of the fund. The proposal clearly stipulates that the borrowing of the authority shall place no financial liability on the Commonwealth for repayment of any money.

Finally, the amendment would require commercial malpractice insurers to provide a 5-percent premium discount if providers waive their consent-to-settle rights in their policy.

In closing, I wish to thank the members of the Insurance Committee on both sides of the aisle and the persons I had mentioned before – Representative Colafella, Representative DeLuca, my staff, Bob Archibald, and Rick Speese – for the efforts of the last 5 or 6 years.

I ask you to support this part of the amendment.

The SPEAKER. The Chair thanks the gentleman.

Mr. Schroder.

Mr. SCHRODER Thank you, Mr. Speaker.

The SPEAKER. Will the gentleman yield for a moment.

The gentleman, Mr. Coy, correctly pointed out to me something that I knew at the time, that is that there is no provision in our rules for doing what we did, with the yielding, without charging you, but I indicated to Mr. Coy that I did not intend to charge Mr. Schroder for the introduction of Mr. Micozzie, but the rules do not provide for that, and I just wanted to let it be known that way.

Mr. SCHRODER. Thank you for clarifying that, Mr. Speaker, and I will certainly keep that in mind in the future.

Mr. Speaker, as I said, there are a couple of other provisions to what we feel is a very comprehensive bill to deal with the medical malpractice ills that plague this State.

With regards to the tort reform proposals for medical malpractice, we propose to reform jurisdiction by saying that a liability claim can only be brought in the county in which the alleged acts or omissions giving rise to the claim predominantly occurred. We adjust the statute of limitations, which says that a claim must be commenced within 2 years of the date the injured person knew or should have known of the injury, which is the current law, or within 4 years from the date of breach of duty or other event causing the injury, whichever is earlier.

Mr. Speaker, there is also a provision in here for the contractual limitation of noneconomic damages. It will allow a health-care provider to enter into contracts to limit the damages that they would be liable for with a patient to an amount not less than \$250,000, cannot limit it less than \$250,000.

We also provide for nonbinding mediation. The provider may condition treatment of patient on consent of nonbinding mediation.

We change joint and several liability to a comparative fault system so that the defendant is only liable for the percentage of fault assigned by the jury.

We also provide qualifications for expert witnesses. We have a pretrial disposition of frivolous medical liability claims, which is similar to Federal rule 11. This is not what we did in December, SB 406, that was a bit controversial. This is a different way of dealing with frivolous suits, and it is similar to the provisions already found in the Federal court system.

With regards to changes in the collateral source rule, the claimant in the medical professional liability action would be precluded from recovering damages for past medical expenses or past lost earnings to the extent that that loss is covered by private or public benefit that the claimant has received prior to trial.

We also provide, Mr. Speaker, for the periodic payment of future damages; that is future damages for economic loss can be provided in periodic payments. That will not affect the payment of past or present damages, which would still be paid in a lump sum to the plaintiff.

A couple other innovations, Mr. Speaker. We allow the arguing of damages at trial, something that is not currently allowed in our court system here in Pennsylvania. The attorney in the closing argument may argue the amount believed to be an appropriate award for all past and future economic or noneconomic damages. Conversely, the defense attorney may argue that an award of zero damages is appropriate on behalf of the defendant.

There is a new cause of action for the loss of life's pleasures, Mr. Speaker. If the health-care provider is found liable for causing death of the claimant, the estate may recover damages for decedent's loss of life's pleasures. There is also a provision for misrepresentation in seeking informed consent to prevent that from happening.

That is an overview of the tort reform measures. Now I would like to go to the licensing measures.

There is a mandatory reporting requirement to the General Assembly that the medical licensure boards shall submit reports to the Professional Licensure Committee on the number of complaints filed against licensees and number of revocations, suspensions, voluntary surrenders accepted, license applications, and in general, a laundry list.

There is also a requirement of reporting to the State licensing board. Providers must report to the licensing board medical malpractice complaints filed, disciplinary actions taken by health-care licensing authorities of another jurisdiction; in other words, actions taken by another State. If the individual is

sentenced for an offense graded above a summary, that must be reported, or if they are arrested or charged with a felony or offense under the Controlled Substance, Drug, Device and Cosmetic Act – in other words, a drug offense – that must be reported, and there is a duty to notify the licensing board within 60 days of the felony or the drug offense.

If the appropriate board determines, Mr. Speaker, that a licensee has practiced negligently, that board may impose disciplinary or corrective measures. Now, how is that different from what happens today? Currently the board is required to show the board gross negligence or a series of negligent acts. This allows for one negligent act for the board to take action.

Another very important factor here, another very important innovation, is that any health-care provider having three judgments or settlements within 2 years involving contributions from the CAT Fund – in other words, it goes up into the CAT Fund layer of liability – they shall be referred to the professional licensure board for investigation, and also the licensing boards can now assess civil penalties of up to \$10,000. That is up from the current \$1,000 level they now have.

Mr. Speaker, I also mentioned something that is vitally important in this bill, and that is patient safety. Now we will require that if a mistake happens, the patient must be informed. If the provider does not comply with this, it is unprofessional conduct under the licensing statute. We will establish an authority to examine incidents and serious events, both of which are defined in the statute, to learn how to correct the situations that arise. It is estimated that incidents happen 20 to 600 times more often than serious events, incidents being those incidents that happen that could have caused damage to a patient; serious events under the amendment being those occurrences that happen that actually do cause damage to a patient that requires additional and further medical care.

As I mentioned, there is a Patient Safety Authority created with 11 members, and it is set forth in the amendment how those members are appointed. Suffice it to say right now that there are four members appointed from the Senate and the House, two from each body.

The authority also has the power and duty to enter into contracts with entities to collect and analyze data regarding reports of serious events or incidents, identifying patterns of frequency or severity at certain medical facilities. They can recommend changes in health-care practices and procedures to reduce serious events and incidents, and they can advise reporting medical facilities of changes to reduce serious events and incidents. Health-care workers may file anonymous reports on serious events with the authority, and the authority shall investigate, review, report, and conduct a review of those reports.

There is also a provision for patient safety plans. Medical facilities must develop patient safety plans. They must designate a patient safety officer, establish a patient safety committee, provide a system for workers to report serious events and incidents 24 hours a day, 7 days a week, and retaliatory action against health-care workers is strictly prohibited, and health-care workers must report serious events or incidents occurring to the patient safety plan of the medical committee. Also, as I had mentioned before, written notification will be provided to the patient of any serious event. The medical facilities must report serious events to the authority, if the licensee does not – report to the licensing board, that is – and failure to report or notify carries a \$1,000-a-day fine on the medical facility.

Finally, in the patient safety area, we have provisions dealing with patient charts. Entries in patient charts must be made contemporaneously, and you cannot make additions or deletions except for corrections, and there are specific criteria and protocols by which that must be done. And licensing boards can now assess civil penalties of up to \$10,000, which is up from the \$1,000 that they could previously.

Mr. Speaker, this amendment was drafted with one goal in mind: that is to ensure the citizens of Pennsylvania will have access to quality health care that they deserve. More than 12 million people rely on our health-care system. Whether it is a touch of the flu, back pain, a heart condition, or a traumatic injury, we rely on our doctors and hospitals to get us back to the path of good health.

But, Mr. Speaker, today our health system is under attack. Doctors are retiring early or leaving the State because they either cannot get medical malpractice insurance or they cannot afford it. Consider these statistics, Mr. Speaker: In 2000 Pennsylvania's total medical liability insurance claim payout was second only to the State of New York. The National Practitioners Data Bank says the median medical malpractice payment made for Pennsylvania physicians was second in the nation behind only Washington, DC. The Pennsylvania Insurance Commissioner reports that in 2000 direct losses incurred in the primary layer – that is the non-CAT Fund layer – were \$357 million compared to premiums of only \$326 million. And the problem is particularly severe in Philadelphia. From 1994 to 2001 the median medical malpractice verdict in Philadelphia was \$972,909, about twice the median verdict of Allegheny County and more than twice the median verdict statewide. In Philadelphia County half of the medical malpractice verdicts were for \$1 million or more while only 35 percent were so in Allegheny County and 26 percent statewide hit the million-dollar mark.

Jury Verdict Research also reports that as recently as 1998, malpractice awards paid in Philadelphia were greater than the total awards paid in the entire State of California, a State that enacted substantial malpractice tort reform in the mid-1970s. The median verdict for Pennsylvania medical malpractice cases between 1994 and 1999 was \$650,000 while the median verdict in California for the same period was \$350,000. In 2001 malpractice premiums for one specialty, neurosurgeons, in Pennsylvania's highest rated territory were \$111,296. In California's highest rated territory, the premiums were just half that at \$58,000.

Clearly, Mr. Speaker, Pennsylvania's health-care system is under attack. It is under attack by the very legal system meant to police it, and if we fail to act, patient care in Pennsylvania will definitely suffer.

Now, I am sure that many of you have gotten letters similar to the ones that I hold here in my hand. A gentleman in need of reconstructive surgery on his ear after having skin cancer removed could not even get the surgery scheduled because his doctor could not obtain malpractice insurance. A family is forced to find a new health-care provider after their doctor and friend of more than 20 years was forced to close her practice due to high malpractice insurance costs. An established orthopedic doctor, loved and respected by his patients, may be forced to give up his practice, and an obstetrician has to stop delivering babies due to the high malpractice insurance costs. Mr. Speaker, during a 6-month period late last year, a dozen otolaryngologists, internists, and other specialists in the West Chester area in Chester County either retired early or moved their practices outside of southeastern

Pennsylvania due to high malpractice insurance costs.

Mr. Speaker, our health-care system hangs in the balance. If we do not act now, we will only further jeopardize our health-care system and the 12 million Pennsylvanians that count on it to be there for them, the system that serves your kids, your parents, your spouses, yourselves. We simply cannot afford to lose one more doctor to retirement or to practice in another State, Mr. Speaker.

Every citizen deserves the right to seek recourse in the event of malpractice. The reforms we propose today do not in any way prevent people from exercising their rights in the court system, but without these reforms, the malpractice system that is supposed to be policing our health-care system will actually end up putting it out of business.

You know, Mr. Speaker, this past Friday, as I was heading out to a meeting, I got caught in a very large traffic jam on the Route 30 bypass outside of Downingtown. Unknown to me at the time, there was a three-car collision about a half mile up ahead. Well, as the traffic started to break and we started to move, coming down the westbound lane of that bypass came two or three ambulances, and I knew right away, Mr. Speaker, where those ambulances were going, because the Brandywine Hospital and Trauma Center is only about a mile and a half, 2 miles down the road. Mr. Speaker, as I sat there as that accident was clearing up that morning, I said to myself, thank God, thank God we averted the closing of our trauma centers on January 1 thanks to the stopgap action that was taken by Governor Schweiker. But, Mr. Speaker, we know that that action taken by Governor Schweiker was just that, a stopgap measure. He is waiting for us to send him some real reform. The people of Pennsylvania, the 12 million citizens who depend on our health-care system, are watching tonight to see that we send over some real reform.

Finally, Mr. Speaker, you know, 6 years ago my son was born. It was one of the happiest days of my life that soon turned into a near tragedy, as I think some people who have been a member of this House will remember from back then. I just remember how I marveled at the medical care and the attention and the technology that my baby received that really helped him, helped restore him to health, helped get to the bottom of what happened to him and what was wrong with him shortly after birth.

Mr. Speaker, we have a great health-care system in this Commonwealth, and I do not want to see that kind of care denied to any baby, any individual, or any adult for that matter. Mr. Speaker, that is why I feel so passionately about what we need to do here tonight.

Mr. Speaker, there are no quick fixes and no easy solutions. There are some difficult issues in this bill; I acknowledge that. Mr. Speaker, we need to keep in mind the viability of the health-care system for the 12 million Pennsylvanians who rely upon it, and I ask us to please pass this amendment.

Thank you.

THE SPEAKER. The lady, Mrs. Cohen. The lady from Montgomery, Mrs. Cohen.

For the information of the members, there are five additional members who are listed and I know of two others.

Mrs. Cohen.

Mrs. COHEN. Thank you, Mr. Speaker.

Will the maker of the amendment stand for interrogation? Thank you.

Mr. Speaker, I have some questions concerning this amendment. I would like first to deal with noneconomic damages. Article III, section 18, of the Pennsylvania Constitution states in

dealing again with the noneconomic damages, and I quote, "...but in no other cases shall the General Assembly limit the amount to be recovered for injuries resulting in death, or for injuries to persons or property...."

How, Mr. Speaker, can we justify limiting noneconomic damages when it seems to me that the Constitution is very, very clear on this matter?

Mr. SCHRODER. Thank you for that question, Mr. Speaker.

Mr. Speaker, my reading of the Constitution is that it prohibits the General Assembly from limiting noneconomic damages. Mr. Speaker, the truth be known, I would have probably rather have gone the route of seeing what other States did in picking out a reasonable number to put a cap on noneconomic damages, but the Constitution does not allow that, as the Representative correctly recited.

What this does, however, is this allows the doctor and the patient to enter into those agreements. It is not the General Assembly that is mandating a limitation on noneconomic damages here. Mr. Speaker, I do not believe the Constitution speaks to what private parties can do in this situation, you know, entering into their own agreements and contracts. Therefore, I believe that this survives constitutional scrutiny under Article III, section 18.

Mrs. COHEN. I respectfully, Mr. Speaker, disagree, and I will address that when I address the substance of the amendment, but when you talk about an agreement, Mr. Speaker, does not the provision in your amendment dealing with these noneconomic damages in terms of an agreement, how can such a provision be valid since the patient receives absolutely no consideration for agreeing to protect the nonsignators? In other words, for a contract to be valid, both parties have to derive some benefit, and obviously there has to be consideration on both sides. What happens if someone is injured by a nonparty who does not provide medical treatment, but, for example, a product, drugs being administered, or in fact suppose the patient is not the signator but because he is unable to become a signator if he is rushed to the hospital and not in a condition to sign and it is a friend or a relative or something that has to sign? So how can that be, because then there are nonparties that are signators. There is no consideration to this, and therefore, how can the agreement be valid?

Mr. SCHRODER. Well, Mr. Speaker, I believe that the consideration is the eventual delivery of the medical services to the patient in return for the agreement not to, you know, sue above a certain amount, whatever that amount is that they agree to. Certainly things such as product liability actions, if there was, you know, some sort of equipment malfunction or drug reaction, I do not believe would be covered under this since we are only amending Act 111 here dealing specifically with medical malpractice actions. So I do believe that some of those examples that you brought up, particularly products liability action or other actions outside the medical malpractice cause of action, would in fact not be limited.

Mrs. COHEN. But, Mr. Speaker, if indeed the physician knowingly or even unknowingly administers these products, then obviously, Mr. Speaker, there is a tie-in between the product, the nonsignator to the agreement, and the act of the physician who is a signator to the agreement. So how can we deal with something else, product liabilities or whatever, when indeed it is all tied in to the physician who is actually the signator and the actor in this particular case? It does not make sense. Are not we then denying the patient his proper rights, and in turn, since the legislature is in

fact prescribing this agreement, the legislature then has to deal with the constitutional prohibitions because we are mandating that an agreement be signed. We are restricting it; we are holding nonsignators, and if you want to tie in product liabilities, you are still dealing with the actors in the case – the physician.

Mr. SCHRODER. My response to that would be, if an action is brought outside the medical malpractice realm, it is not a cause of action for medical malpractice. It certainly would not be subject to the agreement to limit damages. So if the action was some other cause of action, whether it is product liability or some other type of negligence that is not medical malpractice and not subject to Act 111, then like I said, Mr. Speaker, I do not believe that the limitation would apply in that case.

Mrs. COHEN. With all due respect, Mr. Speaker, would you not say that if an action, if a medical malpractice suit is instituted under medical malpractice indeed, that, for example, if a doctor knowingly uses a product that is defective, then it has to be brought under the medical malpractice issue and not limited to a product liability issue.

Mr. SCHRODER. First of all, I go back to the fact that you can bring separate causes of action for those various other injuries or damages that might have been caused outside the realm of products liability, but I would also point out that within that section, under section (e), it states that "A limitation on noneconomic damages in an agreement permitted by subsection (a) shall be deemed to apply to the total noneconomic damages awarded in the action, regardless of whether all of the defendants are parties to such an agreement, unless the agreement provides otherwise." So there can be provisions in that agreement, I believe, that would take care of the situations that you are concerned about.

Mrs. COHEN. Again, Mr. Speaker, I must respectfully disagree, because what you are doing is you are further limiting a patient's right to sue for medical malpractice. You are asking a patient to sue under something else, products liability or something else. Additionally, Mr. Speaker, you are not dealing with the issue of a patient who did not sign the agreement. If he were rushed to the hospital unconscious or in no condition or a child whose parents are binding him, and the parents may be ill informed, and now you have restricted the child, when he reaches maturity, from collecting what he is actually entitled to. So there is no consideration. You have got a minor whose parents are neglectful and may sign just anything that a doctor puts in front of them, therefore limiting the minor's rights, and again, you are further restricting a patient from a medical malpractice claim because, Mr. Speaker, what you are doing is you are saying sue under something else, and why should a patient have to do that?

Mr. SCHRODER. Mr. Speaker, the only thing I can say about that part is that certainly the parents have an affirmative duty to provide for the welfare of their kids. Parents sign on behalf of their minors under age 18 all the time for medical procedures, for anything else. I do not see how this is any different than anything else that a parent or legal guardian would be required to sign for.

Mrs. COHEN. Well, Mr. Speaker, thank you, but let us get back to the basics, which are, what happens if a patient cannot sign an agreement? Does that mean, number one, that we are instructing physicians not to care for them because they cannot sign the agreement; and number two, if they have not signed the agreement, do they then get out of the limitation? Are they not covered by the cap?

Mr. SCHRODER. Mr. Speaker, certainly hypothetically, I am not going to argue that a situation like that could arise. You know,

virtually all the medical professionals that I know out there, I really do not believe that if a patient is incapacitated or in such a condition that they cannot sign as you have described, I do not believe, based on my faith in the job that the doctors do and what our medical professionals do, I do not believe it will be an issue, because I believe you will have precious few. Any physician worth his or her salt that has a dedication to the profession, they will take that risk; they will take that risk of getting hit with an unlimited suit that does not have an agreement to limit damages. So while I understand your point that you are making there, I believe in the real world in the practice of medicine out there, if you talk to physicians, they are not going to let anyone suffer. They are the first ones to go in and render assistance no matter what risks they take, and I think that will be that way under those examples.

Mrs. COHEN. Mr. Speaker, on that I absolutely must agree with you. But what happens, first of all, does that mean that every time we go to a doctor or get a treatment from a physician, does that mean we always have to take our attorneys with us?

Mr. SCHRODER. If a patient was so inclined, I believe that they could take their attorney with them. I think that certainly would be an overreaction. There is nothing that says that the doctor and the patient cannot negotiate to have a limit higher than \$250,000. I think, you know, a lot of talk I have heard today is that everyone is assuming that every noneconomic damage agreement will be limited to \$250,000. I do not think that is necessarily the case, and I think that patients in the normal course, in the normal setting of things, will be able to discuss those options with their physicians.

Mrs. COHEN. Okay. Again, I will deal with that issue, but I am concerned, Mr. Speaker, that if someone refuses or does not understand and signs something, these agreements will be drawn up by attorneys for physicians, and I think it then becomes not a level playing field and it becomes a terrible burden on patients whenever they go to a physician for help. And again, our medical community, they are heroes; you are correct. I cannot disagree on that point, but people will now be afraid to go to see a doctor unless they take their lawyer with them, because the lawyers are going to write the agreements for the doctors, and my concern is the doctor says sign it, and we all know when we have gone to the hospital, when we have gone for surgery or anything else, and when you check into a hospital, the clerk there says, just sign this and sign this wherever the X is; do not bother reading it. And that worries me, because it is not a level playing field, and I think that we are jeopardizing patients on that particular aspect, Mr. Speaker.

But I would like to go on and ask you some questions about periodic payments of future damages. Obviously, and I want to know if we have statistics or any actuarial data on the cost of providing these structured payments over time, because obviously some entity has to manage and administer these payment schedules. Nobody is going to do it for free. Who is going to pay for this administration of these payouts? What is the cost of them? Does that again add to our insurance premiums? Is this factored in? Where is the money going to come from?

Mr. SCHRODER. Mr. Speaker, I do not have, you know, quite frankly, I do not have cost estimates on that, and if a party decides to go that way, they will have to bear some of the costs in that, and then there is nothing to say that that could not be built in to the periodic payment annuity or anything anyway, you know, to make up for the costs that would be lost to the party receiving the periodic payments.

Mrs. COHEN. So, Mr. Speaker, you would agree that there is a

cost involved in administering these structured payments.

Mr. SCHRODER. You have suggested that there is a cost; I am telling you I do not have information on that.

Mrs. COHEN. Well, I think before we make an intelligent vote or any vote, we ought to get some actuarial data to find out exactly what the costs of providing these structured payouts over time would be, and if you are suggesting that they are to be absorbed by the victim, then obviously these costs are \$250,000 less whatever substantial costs there may be in administering these structured payouts. I am wondering, Mr. Speaker, because there are costs — we admit there will be costs; we do not know what they are — will these increase our insurance premiums?

Mr. SCHRODER. First of all, Mr. Speaker, this is very similar to structured settlements that we have in the legal system today and have had for years. Structured settlements have been used to, you know, at least on the same concept, structured settlements have been used for years. So I do not think we are really introducing anything radical in here that has not been used to compensate plaintiffs in actions all the time, and there are some very good sound public policy reasons for structured settlements just as there are some very good public policy reasons on both sides of the issue here on the periodic payment of future damages. Certainly it will prevent someone from, you know, losing that money or squandering all that money if they have a lump-sum payment for their future damages. This will ensure that there is a steady stream coming as their medical bills come due in the future, and for that reason I think it is a sound approach and one that we should be looking at.

Mrs. COHEN. Mr. Speaker, with all due respect, let me ask you for the third time: Will this increase our insurance premiums?

Mr. SCHRODER. I think I only heard you ask that once before, and I realize that was the tail to that question; I was responding to something else. I do not know of any way that it would increase our insurance premiums.

Mrs. COHEN. Thank you, Mr. Speaker.

One last topic that I would like to discuss.

Mr. SCHRODER. I will give you one more.

Mrs. COHEN. Thank you. I appreciate that.

You mentioned your child. I think all 203 of us in this body, one of our major objectives is to protect our children, and they certainly cannot protect themselves and we have to be, if you will, the guardians over them, and they deserve our hearts and the full protection under the law, but I am concerned about the statute of limitations. I think that what this proposal does is take away the rights of some of our children. Why are we suddenly saying that minors who were injured by medical errors are entitled to less protection than minors who were injured in car accidents or in plane crashes or by defective products? The whole purpose of the minors' tolling statute is to make sure that the minor has at least 2 years after attaining the age of majority to act for himself or herself. Are we not taking that right away from the minor?

Mr. SCHRODER. Well, the reason we are adjusting the statute of limitations just as the reason we are looking at these other reforms is, for instance, you mentioned automobile insurance. Well, we reformed automobile insurance, frankly, before I ever came to this General Assembly. We took the tough steps, we made the tough decisions, to open up the marketplace because we had a very tough automobile insurance market a number of years ago. Act 6, as I believe it is called, has been a success, and we have not had to revisit that or touch that since really. All we are trying to do

here is to accomplish the same thing for medical malpractice so that our kids, our families, our loved ones can continue to benefit from one of the most excellent health-care systems in the country.

Mrs. COHEN. Mr. Speaker, but perhaps I am just not following your answer. Why are we denying our youth, our minors, the same protection that they are afforded in a plane crash and an automobile accident? This substantially limits their rights.

Mr. SCHRODER. There are some differences between the types of accidents that you are talking about, where you certainly know of the injury right away in a plane crash and automobile accident. It is not always that way with medical malpractice, and what we need to do is provide some stability and some predictability to the system if we are ever going to get the malpractice insurers who have left to come back into the marketplace here and to, you know, level this situation off. So I think there is a difference between the types of examples that you just gave and medical malpractice.

Mrs. COHEN. Excuse me, Mr. Speaker. I hope that I did not hear you say that the system takes priority and preference over our children and our children's welfare.

Mr. SCHRODER. Would you repeat that?

Mrs. COHEN. I said that I hope I did not hear you say, Mr. Speaker, that the system will take priority and precedence over the welfare of our precious children.

Mr. SCHRODER. And I would hope that you would not suggest that I said that, Mr. Speaker, because in fact that is not what I said.

Mrs. COHEN. Would you clarify then, please.

Mr. SCHRODER. However, as I have said a number of times now, when we talk about the system, we are talking about our doctors and our hospitals. We are talking about people. We are talking about people that administer care to all of us in this Commonwealth, and yes, that system, for lack of a better word – I know it sounds a little antiseptic – but that system is very important, and our kids benefit from that system as much if not more than anyone else, and it is important that that system is there for them and it is not torn asunder by some of the things that are happening today.

Mrs. COHEN. Thank you, Mr. Speaker.

Mr. Speaker, it is a woman's prerogative to change her mind. I really do just have one more area and one question.

Mr. SCHRODER. All right.

Mrs. COHEN. Thank you, Mr. Speaker.

This is very comprehensive, this amendment, but there is one aspect of the package that has been left out and not dealt with, and that is insurance. Why have we not dealt with insurance companies' reimbursements, HMOs, the entire world of insurance? Why have we left out this very vital package – responsibilities of insurance companies to provide adequately? We have seen some of our companies go belly up. That has increased premiums, obviously. It has enabled other companies to come in, and the physicians are at the company's mercy. Their reimbursements are inadequate. Why in the world have we not included all aspects of insurance in this comprehensive package?

Mr. SCHRODER. Mr. Speaker, I think you make a point. I agree that the pressures affecting the medical community are multifaceted, but I have never been one that says just because we cannot fix all the problems does not mean that we should not fix any of the problems. This right here is the most pressing problem that we have, because I truly believe it has risen to the crisis level. That is not to say that there are not other problems out there, and I

certainly acknowledge that. I do hope, Mr. Speaker, that we start taking some concrete steps to addressing inequities in the insurance marketplace that cause certain health insurers to be dominant and to be able to control the marketplace and dictate reimbursements and things like that. We need to open up the markets, particularly in southeast Pennsylvania, as I am sure you are aware. I agree with you on that. I guess where we differ and what I would just say is I think we all know that we cannot change everything at once. What I have seen being here in this General Assembly, sometimes we measure change in inches and feet, you know, as opposed to yards and miles. But I do agree that that is a problem that we should be looking at, and I truly do hope that we get to that point in the very near future.

Mrs. COHEN. Thank you, Mr. Speaker.

I have no further questions, but, Mr. Speaker, or Madam Speaker, I would like to speak on the amendment, please.

THE SPEAKER PRO TEMPORE (PATRICIA H. VANCE) PRESIDING

The SPEAKER pro tempore. You may proceed.

Mrs. COHEN. Thank you, Madam Speaker.

Madam Speaker, I am one of the cosponsors of the bill, of HB 1802, because I strongly believe that the CAT Fund in its present state is a menace to all of us and we have to abolish it, revise it, help our folks, all of our citizens.

I also must agree with the prime sponsor of the bill as well as the maker of the amendment. We are in a crisis situation. It is particularly extreme in southeast Pennsylvania, but it has now leached out and has bled throughout the entire Commonwealth, all over the Commonwealth.

In southeast Pennsylvania, particularly in the Philadelphia area, we have the finest medical schools in the world. We have the finest medical system and health-care delivery in the world, and it is in crisis; it is in jeopardy. We train doctors; they come to Pennsylvania; they come to the Philadelphia region for training, and they leave. Our doctors are leaving in droves. Our patients are suffering.

Today I was meeting with a medical student who said she is being taught but she is not being taught by the finest physicians any longer because they have left. Our patients, I have gotten letters from so many constituents. Some of my constituents have said, I am 3 months pregnant, 6 months pregnant; I need a C-section, but my obstetrician is leaving; who is going to deliver my baby?

We are in a crisis situation; therefore, I will vote for this amendment and I will vote for the bill, but I have to tell you there is only one reason that I am going to vote for this, and that is because we have to do something, and I am concerned that if we do not send this bill to the Senate, we have been advised that the Senate will not act unless we in the House act first, and therefore, we must do something. But I have to say, this is a bad, bad amendment. It is bad for the medical community, it is bad for the lawyers, it is very, very unfair to patients and especially to minors, and it is not good for the hospitals. It simply is not comprehensive enough, and what it covers is not adequate and indeed harmful.

I am very concerned about our children. I totally disagree about the constitutional issue. We are putting caps. Make no mistake about it, Madam Speaker; we do not get around the constitutional issue by saying, well, it is the patient and the doctor that make an agreement. We are providing the mechanism for that agreement,

and therefore, we are violating the Constitution.

There is no question that something must be done about venue, and that is in this package, but my concern is the severability aspect of it. I do believe that our dealing with venue, and we have to – somebody has got to deal with venue; there is no question about that – but by us putting the venue issue in this legislation and not making it severable, I am concerned that the Supreme Court will overrule and make the entire package unconstitutional, and again we are back to peg one, again our patients suffer, and our doctors are not treated fairly.

We do not have enough information about structured settlements. If the costs of administering these structured settlements come out of the payments to the victims, again our victims have been cheated. But the major concern is this statute of limitations. We are cheating our children, and it simply is wrong. Once again, last week we dealt with protecting our children. We have got to protect our children again now.

We have to continue to work on this package. It is not fair to anybody that we want to help. But again, I feel personally, as a Representative, boxed in, because I know if we turn down this amendment and we turn down the bill, we have not done what we are mandated to do, and that is deal with a terrible crisis in this Commonwealth. So I do believe we have got to do something, send it to the Senate, and maybe the Senate in their wisdom, their ultimate wisdom perhaps, will remedy some of the weaknesses and errors in this package and send something back to the House that will be not only more palatable to us but help our doctors, help our victims, help our hospitals, help our children.

Thank you, Madam Speaker.

The SPEAKER pro tempore. The Chair thanks the lady and recognizes the gentleman from Delaware County, Mr. Adolph.

Mr. ADOLPH. Thank you, Madam Speaker.

I would like to interrogate the maker of the amendment.

The SPEAKER pro tempore. The gentleman agrees. You may proceed.

Mr. ADOLPH. Madam Speaker, there are many of us in the General Assembly that are nonattorneys, and when you are dealing with judicial laws and regulations that have an awful lot of importance with the residents and patients of our Commonwealth, I think it is important that the correct information is set out there. Could you please explain to me what joint and several liability means?

Mr. SCHRODER. Joint and several liability? If you have more than one defendant in an action and the jury determines that defendant A is 1 percent liable and defendant B is 99 percent liable, the plaintiff could collect 100 percent of the judgment from defendant A even though he or she is only 1 percent liable. Okay? The comparative fault system that we change this to only makes the defendants responsible for the percentage of liability assigned by the jury.

Mr. ADOLPH. Now, how does that, as far as medical malpractice is concerned, can you give me a scenario of how this works in medical malpractice?

Mr. SCHRODER. Well, certainly if a plaintiff was scouting around for a deep-pocket party to bring into the suit, they might bring one in who does not have much connection to the suit or not much of any liability specifically in the hopes that they can get, you know, all the money paid from the defendant, from a party that might only, you know, have a fraction of the actual negligence.

Mr. ADOLPH. Okay. Are hospitals normally a victim of this?

Mr. SCHRODER. Yes, I believe they are, Madam Speaker.

Mr. ADOLPH. Regarding venue, I have received an awful lot of e-mail, letters, phone calls, from physicians, hospital administrators, back in the southeast that this venue or jurisdiction issue has to be addressed. Are we dealing strictly with medical malpractice when we are talking about venue and jurisdiction?

Mr. SCHRODER. The changes in here would deal strictly with medical malpractice, Madam Speaker. Certainly what has been happening in your part of the State and mine – Delaware, Chester, Montgomery, Bucks Counties, and maybe some of the other ones, Berks and everyone nearby – is that the doctors have been performing surgery at a hospital in, say, Delaware County, the plaintiff is from Delaware County, yet they are being hauled into a hostile Philadelphia court system, a system that is hostile to doctors and defendants generally, all because the health-care system that the hospital is now a part of might be based in Philadelphia. Madam Speaker, I think it was one of the unintended consequences of the consolidation of health care over the past, you know, 5 years, 10 years or so in our part of the State that you now have your Jeffersons and University of Penns buying up all the practices and hospitals out our way. That has subjected them, because of those business contacts, to the court system of Philadelphia. Madam Speaker, what we propose to do is to change the rules of jurisdiction, and that is a very important distinction, because jurisdiction is statutory, and that is at the control of the General Assembly to control that. So that now you can only bring the suit where the injury and the occurrences that led to the injury took place or substantially took place.

Mr. ADOLPH. Thank you.

The previous speaker was addressing suing for noneconomic damages. Could you please give me a definition of a noneconomic damage?

Mr. SCHRODER. Generally that would be pain and suffering, Madam Speaker.

Mr. ADOLPH. Pain and suffering. Okay.

Would this legislation curtail or take away from a patient any wage loss, future wage loss?

Mr. SCHRODER. Absolutely not.

Mr. ADOLPH. Current medical expenses? Future medical expenses?

Mr. SCHRODER. Likewise, it does not.

Mr. ADOLPH. Any type of economic expense that that injured party would suffer, would this amendment take away anything of that nature?

Mr. SCHRODER. It would not, to the extent that the collateral source changes kick in and they have already been reimbursed for that, though. That is the only change.

Mr. ADOLPH. So what we are talking about here is a contractual agreement between a doctor and a patient of noneconomic damages, a minimum of \$250,000.

Mr. SCHRODER. That is correct.

Mr. ADOLPH. Okay. Thank you.

Can a patient bring a lawsuit against a doctor or a hospital under this amendment?

Mr. SCHRODER. Absolutely. There is nothing in this amendment, and I know what has been said out there the past few days and I know what has been the hysteria that has been attempted to be drummed up to lead people to believe that they

would no longer have a right to sue, no longer have a right to redress or a right to justice in the court system, and, Madam Speaker, that is just patently untrue.

Mr. ADOLPH. Okay. Are we limiting in this amendment the ability of— Are we limiting attorney fees anywhere in this amendment?

Mr. SCHRODER. Madam Speaker, this does not touch attorney contingency fees, because, Madam Speaker, I think it is interesting to note, since you brought that up, that, too, is contractual. Okay? There has been so much discussion about the contractual limitation of damages that we are not looking at what happens on the other side of the medical malpractice equation. When the client walks into the attorney's office and the attorney says, I will take your case but only on the condition that you sign this contingency fee agreement and you give me 25, 30, 40, 45 percent, whatever they agree to before they take the case, and that also acts as a limitation on the money that they actually collect. But, no, Madam Speaker, we are not touching that, because I believe that that is a legitimate contract and agreement between two parties.

Mr. ADOLPH. Do other States have similar language regarding medical malpractice?

Mr. SCHRODER. Madam Speaker, I do not know about similar language but certainly similar concepts.

Madam Speaker, we might be breaking new ground here in Pennsylvania; that is true, but this is certainly not new ground when you look at all of the medical malpractice tort reform that has occurred in other States throughout this country. There is limitation of damages; I do not have the exact number, but many States have them.

PARLIAMENTARY INQUIRY

Mr. EACHUS. Madam Speaker, point of parliamentary inquiry. The SPEAKER pro tempore. For what reason does the gentleman, Mr. Eachus, rise?

Mr. EACHUS. Now, I realize that Mr. Adolph has asked a series of questions and Mr. Schroder has given a series of answers, but, Madam Speaker, I know that our caucus was fully briefed on the intricacies of this legislation. I am hopeful that the rules will be adhered to regarding members asking questions of people in the deliberations that they know the answers to.

The SPEAKER pro tempore. The Chair thanks the gentleman for his input.

Mr. Adolph, you may proceed.

Mr. ADOLPH. If I understand the previous speaker, he is requesting that anyone, any member in this House, who happens to know an answer to a question that he or she asks, he is asking us not to ask those questions. Is that correct?

The SPEAKER pro tempore. I think you need to just continue with your questioning of the sponsor of the amendment.

Mr. ADOLPH. Thank you.

On the amendment, Madam Speaker, the reason why we are here is because of the health-care crisis that we have here in the Commonwealth. When we were here in December, I requested from our leader and requested from the Speaker that we come back a week or two early to address this situation. What we got out of that from our leaders was an agreement to address this issue as soon as we came back in January. I applaud our leadership for keeping a promise on this issue.

Today we had at least 600 surgeons, physicians, medical professionals, arrive here in Harrisburg, not for the first time.

I know some doctors have been here two or three times. These doctors do not want to be in Harrisburg, Madam Speaker; they would rather be in the hospitals, they would rather be in their offices, caring for our relatives and our constituents. But the system that we have here in Pennsylvania is causing our best and brightest physicians to leave Pennsylvania.

When you talk to these physicians, to these surgeons, what is the difference, what is the difference here in Pennsylvania as compared to the other States, our surrounding States? Madam Speaker, I can get to the State of Delaware and the State of New Jersey faster than I can come up here to Harrisburg. My surgeons, my orthopedic surgeons, OB-GYNs, they are going to the State of Delaware; they are moving to the State of New Jersey. Why? Because their premiums – premiums – are percentages of what they are paying here, and let me give you an example, because I would like to have this in the record. Orthopedic surgeons in the Philadelphia area average \$106,000 a year, \$106,000 a year; in the State of Delaware, \$13,500. That is 13 percent of what they pay just 15 minutes away. In New Jersey, \$32,400 – 30 percent of what they pay just to take a trip across a bridge. In the State of Maryland, \$19,500. Why would a surgeon stay in Pennsylvania when they cannot afford these types of rates? What is causing these rates? You ask the doctors, you ask the hospitals, they will tell you our current tort laws. We need tort reform.

It is not easy to stand here and make changes such as this – I commend Representative Schroder for his leadership in this – but we are not taking away patients' rights. We are taking care of our

children, we are taking care of their mothers, to make sure that our doctors are going to be there for them.

I can tell you that this hits home, because in the month of December a neighborhood hospital, Mercy Haverford, been in existence for over 40 years, closed its doors – closed its doors. This past summer a relative of mine had a stroke. In the ambulance they were told three hospitals, three trauma centers, were in divert. It took them the fourth trauma center to take that patient. This is real, real crisis.

I rise to support this amendment. I understand it is going to go to the State Senate. I urge the State Senate to keep this language regarding these tort reform laws intact. I must add, regarding the patient safety, I would like to see stronger language when it comes to patient safety. If we have bad doctors, we need to take a look at them; we need to take a look at their licenses. If they are the ones committing malpractice, they should not be practicing in our Commonwealth, and I urge our State Senate to take a look at that and pass us tougher patient safety regulations back on concurrence.

Thank you, Madam Speaker, and thank you, Representative Schroder.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Allegheny County, Mr. DeLuca.

Mr. DeLUCA. Thank you, Madam Speaker.

Would the gentleman stand for a brief interrogation, please?

The SPEAKER pro tempore. The gentleman agrees. You may proceed.

Mr. DeLUCA. Madam Speaker, I just want to clarify something. I want to know and I want it stated on the record once again, in 1975 we created the CAT Fund because we had a crisis, and now we are in another crisis, and this will be the first time that

I understand that the CAT Fund will be able to borrow money to float bonds, and if this money is borrowed, if this money is borrowed and we run up a debt, it is my understanding, and I just want to make sure, that the taxpayers are under no obligation to take care of this debt if we happen to get a debt?

Mr. SCHRODER. Madam Speaker, there are two separate places in this amendment that absolve and state that the Commonwealth has no financial obligation on that money, on that bond money that is borrowed.

Mr. DeLUCA. I know there are two places, Madam Speaker, but—

Mr. SCHRODER. So I would say yes.

Mr. DeLUCA. Okay.

Mr. SCHRODER. Based on that, I would say yes to your inquiry, Madam Speaker.

Mr. DeLUCA. But what I am trying to get at is the fact, and I want it on the record, the fact if we 5 years from now face a crisis that our physicians say that they cannot afford to pay any more, because we are going to have to surcharge them, that we are not going to say the taxpayers are going to be liable for this debt service that we are going to create over the years. I just want to make sure that the taxpayers of this Commonwealth are protected, and I know there are two places in there, but I just want to make sure.

Mr. SCHRODER. Yeah; my answer stands—

Mr. DeLUCA. Stands on that?

Mr. SCHRODER. —as before, Madam Speaker.

Mr. DeLUCA. All right. Thank you.

Now, another question, Madam Speaker. On page 23 we have in there, I guess it is under line 39 here, where we say that we have 60 days if there is an offense to be reported by the physician. Am I correct, 60 days?

Mr. SCHRODER. Madam Speaker, could you please give me that page number and line again?

Mr. DeLUCA. Page 23.

Mr. SCHRODER. Page 23.

Mr. DeLUCA. Yeah; lines 39 to 52. I think it states, Madam Speaker, that the individual practitioner has 60 days to report that if he commits an offense under the Controlled Substance, Drug, Device and Cosmetic Act.

Mr. SCHRODER. The part I am looking at, Madam Speaker, and we will see if we are on the same page here, says “A physician, a certified nurse midwife or a podiatrist shall report to the State Board of Medicine, the State Board of Osteopathic Medicine or the State Board of Podiatry, as appropriate, within 60 days of the occurrence of any of the following....” Is that the part you are looking at, Madam Speaker?

Mr. DeLUCA. Right. Well, I am going down below that. Yeah; it is the same part.

Mr. SCHRODER. Okay.

Mr. DeLUCA. But I am wondering why we have 60 days. Why should that not be reported right away because of the fact we have somebody who is charged with a crime, an offense under Act 64 of 1972, the Drug and Cosmetic Act, who is permitted to practice for 60 more days. Why is that not turned in right away?

Mr. SCHRODER. Madam Speaker, I am told that that is a lot sooner than it is now—

Mr. DeLUCA. I understand—

Mr. SCHRODER. —that it can be up to, from what I

understand, about 2 years. So I think it makes a substantial improvement in the reporting requirement.

Mr. DeLUCA. Would you, in other words, this is something that maybe the Senate should be looking at to strengthen it a little bit more?

Mr. SCHRODER. Madam Speaker, I think it is reasonable to question that. I would be open to urging the Senate to take a look at that. I just want to say I do not know that that would be set in stone in my mind.

Mr. DeLUCA. I think that should be tightened up a little bit, Madam Speaker.

Let me also— Well, I am done with my interrogation, but let me—

The SPEAKER pro tempore. You may proceed.

Mr. DeLUCA. Can I make a statement, Madam Speaker?

First of all, I want to thank the maker of the amendment for putting my amendment into the bill, the patient safety bill, that myself and Representative Micozzie have been working over 2 1/2 years on this legislation. I think we have had hearings throughout this Commonwealth; we have taken testimony; we have found out how valuable doing away with the CAT Fund, reforming the CAT Fund, and also how important patient safety is to the constituents out there. So even though I withdrew my amendment, Madam Speaker, I thank the maker of the amendment for including my amendment in there since we have been working on it for a couple of years.

Secondly, Madam Speaker, I have been hearing a lot about we need to worry about the patients and we are facing a crisis. Well, let me say to you that we are facing a crisis and it needs to be addressed, but addressing this right now is only part of the problem. California, Madam Speaker, did address this problem, put caps into place, had tort reform, and 80 percent of their physician practices are in trouble – 80 percent – mainly because of the fact of the reimbursement process.

Now, I heard about the fact that, well, we cannot address everything. This amendment yesterday came out about maybe 4 or 5 o'clock, and I am sure it is a multitude of things in here. I think we should have looked at addressing the reimbursement process while we were addressing this system here. It only makes sense, we should not be piecemealing it if 4 years or 3 years down the line we are going to have a problem. So I just hope that the Senate takes a look at that, and hopefully, maybe they can add some of the reimbursement that our physicians are having problems with that is going to help them stay in business. I do not think right now that this is going to reduce our rates next year. Maybe down the line it might open it up for competition, but I think we should start the process, and that is why I am voting for this amendment, because of the fact we need to move the process. We are in a crisis situation, and I am sure if we communicate some of our concerns with the Senate over there, we will be able to make HB 1802 a better bill, and I hope they would send 1802 back here on concurrence with patient safety, the CAT Fund that myself and Representative Micozzie have been working so hard on. So I hope they do not send another vehicle over here and they send 1802 since it is over 2 1/2 years we have been having hearings on it, and his legislation and my legislation are in 1802.

Thank you, Madam Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Luzerne County, Mr. Blaum.

Mr. BLAUM. Thank you, Madam Speaker.

At the top of today's debate, Speaker Ryan admonished all

members of the House to try and limit sidebar conversations because of the complexity of this issue of malpractice in Pennsylvania, and complex it is, so complex, in fact, that the leadership of the Pennsylvania Senate has been studying this issue for a very long time with a very thoughtful consideration of all aspects of this situation and this problem in Pennsylvania. Those deliberations continue, and I think all of us hope that they produce a workable piece of legislation which might be able to become law here in Pennsylvania.

I had hoped, Madam Speaker, that the same would be true here in the House, but that is not what we have before us today. What we have before us today is a hodgepodge of proposals, a kind of anything goes, throw it at the wall, let us see what sticks, and I think we all know that after the vote tonight, this is the last that we will see of HB 1802. But it is before us, and it is important for the people of Pennsylvania to realize what is before us.

We are not talking about medicine; we are talking about what happens if someone is horribly injured by an avoidable medical error. That is a tragedy none of us wants to happen. Certainly none of us here wants that to happen to anyone we know; certainly no doctor wants to make that happen to any patient, but it does, and when it does, what do we do about it, and that is what this legislation here before us today considers.

In the Senate they are having a great deal of difficulty wrestling with the intricacies and the complexities of medical malpractice and how to reduce the obscene premiums placed on our finest physicians, but that is not what happened here in the House; we got here rather quickly, but in the Senate they are coming face to face with the real difficulty of the situation. We need to balance, Madam Speaker, the access to quality health care versus protecting the people of Pennsylvania if, God forbid, something goes wrong. This bill does not do that. You can hear it in the tone of the debate. You can hear it in the weak answers to Representative Cohen's interrogation. Just the tone makes it sound like these Pennsylvanians— And I have stood at this microphone; you have heard me talk about Jonathan Walski, a 3-year-old kid who received general anesthesia in the dentist's chair. There are no economic damages for that. This bill, if and when it pertains to the character who now is out west somewhere, if it did pertain, there are no economic damages involved in that, and that family would be limited to \$250,000. It is tough to sit here and listen to that wonderful family talked about in the tones as if they were undeserving.

Madam Speaker, we talked about or heard earlier about all the stakeholders were in a room, and that is a Harrisburg euphemism for the special interests, but the people of Pennsylvania needed to be in that room. I hope that someone is speaking for them in the Pennsylvania Senate. What we have here today is a tug of war between two very powerful professional associations in Pennsylvania, but we need to talk for the people.

Madam Speaker, as you read through this amendment, almost in every section you see the possibilities for 10 or 12 ideas which it would not take a lot of imagination on behalf of any Pennsylvania attorney to bring additional, more and more litigation. That is all through this amendment. I doubt that this amendment will curtail litigation. I think, from what I read, it will only increase it.

The people of Pennsylvania were not the only ones left out of the amendment. The insurance industry was also left out. Madam Speaker, nowhere in this bill, nowhere in this bill does it call for a reduction in the premiums of any doctor practicing in the Commonwealth of Pennsylvania. That is wrong. If the provisions

of this bill are so good that they should reduce the premiums of our physicians throughout this Commonwealth, then let us say so. We did in workers' compensation. We did in auto insurance. We should when it comes to medical malpractice premiums.

Madam Speaker, we need to reduce the premiums that our good doctors pay for medical malpractice insurance. At the same time, Madam Speaker, we need to know, we need to know who the bad doctors are. I have met with numerous physicians, as I know all of you have, as I know all of you have over the last several months. I told them that there has to be several pieces to this. There have to be changes in our judicial system. There has to be a rollback in your premiums. There has to be more physician discipline. Do you know, they absolutely stand up and agree with that. The good doctors in our hospitals want to reveal, want it known, who the bad ones are. We have often heard the statistic that 2 percent of our physicians are responsible for 40 percent of the payouts, yet this amendment keeps that secret. We need to let the sun shine on that, Madam Speaker. We need to reveal to the people of Pennsylvania who in their communities they might not want to go to. I can only hope that the proposal coming over to us from the Senate makes that crystal clear.

The lady, Mrs. Cohen, also interrogated on this idea of statute of limitations. The statute of limitations in this amendment is wrong. They are bad. They leave people in Pennsylvania vulnerable. Do we really want to pass a law that says that somebody 2 years from the moment when they should have known — we wrestle with those terms “should have known” in our Judiciary Committee all the time — that some kid or some parent should have known that 2 years ago this happened and this problem was created? Do we really want to keep that family, that young person, from being made whole because tonight we pass some obscure number having to do with statute of limitations? I do not think so.

Finally, Madam Speaker, brandnew to all of us is a contract, is a contract that patients now have to sign if they go to a doctor. This language was revealed to us at 6:30 this morning, so the only physicians I could run this by were the ones I talked to today. There was not one who was for it. I said, do you really, I said, do you really want me to vote for something that says when a person comes into your office, you have to sign this, you have to sign this, which means you are not going to sue me for anything more than \$250,000 for noneconomic damages, or it actually says that you will not be treated? Not one of them wants that; not one of them.

When the people of Pennsylvania find out that your solution to high medical malpractice insurance premiums is not to reveal and to tell them who the 2 percent of the doctors are, but instead, that when they go to see their doctor, they have to sign a document which waives their rights in case they are injured, not necessarily by that maybe family physician they went to, could be the specialist that the family physician refers them to — do you know that that document carries through, all the way through the course of care? — when the people of Pennsylvania find out that is your answer, they are going to be furious.

Madam Speaker, I am the proud son of an outstanding surgeon in Pennsylvania. I am the proud brother of an outstanding thoracic surgeon in Pennsylvania. They are not for this, Madam Speaker. They want lower medical malpractice insurance premiums, but I wish you could have seen the look on my brother's face this morning when I told him, well, there is going to be a contract that you have to ask your patients to sign that they cannot sue you. It was insulting to him. That is not what he wants to do.

When the lady, Mrs. Cohen, said, well, should the patient bring their lawyer with them when they go to see the doctor, that is what this comes down to.

This is not the answer to medical malpractice premiums being too high. We should have a rollback in this bill. We should make changes and adjustments to our legal system. We should do it in a thoughtful way.

I congratulate Senator Jubelirer and Senator Brightbill for the tact and the approach that they have taken and hopefully produce for this body, too, a piece of legislation which lowers premiums for malpractice in Pennsylvania and protects our good doctors. I hope they produce a piece of legislation that lets us know who the 2 percent are that are responsible for 40 percent of the payout in Pennsylvania instead of this piece of legislation before us that covers that up. I hope they produce a piece of legislation that if we find out 3 years later that a child is in need of serious financial help because of an error from one of the 2 percent, that they do not preclude that family and that kid from getting the necessary resources to protect themselves and make them whole for the rest of their life.

The only consolation here tonight, Madam Speaker, is that we have seen the last of 1802, it will not be coming back to us, and that now our only hope is what is produced by the leadership in the Pennsylvania Senate.

Madam Speaker, I will be voting “no” on this. I urge everyone to vote “no.” I do not think the people of Pennsylvania want you to require them to sign a contract when they go see their doctor. I do not think the people of Pennsylvania expect you to vote for that. The gentleman, the sponsor of the bill, in response to Representative Cohen’s interrogation, said, maybe we are breaking new ground in Pennsylvania. I have never heard of this before.

Your senior citizens, your mothers and fathers who take their kids to the doctors, are going to be outraged if this ever became Pennsylvania law. That is reason enough to vote “no,” that and the fact that there is no rollback in the premiums for our doctors; that is wrong.

I ask for a negative vote.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the lady from Bucks County, Mrs. Watson.

Mrs. WATSON. Thank you, Madam Speaker.

Will the maker of the amendment stand for brief interrogation, please?

The SPEAKER pro tempore. The gentleman agrees. You may proceed.

Mrs. WATSON. Madam Speaker, first of all, I am on the original HB 1802 as a cosponsor, because even though I have been here just a year, I came knowing what a serious problem this was, particularly for not only just my constituents but all of the folks in the southeast, I suppose. We felt the problem first.

I recognize and applaud the work that has been done. I do have some reservations – I think you have heard others give reservations – and recognize, as I have been taught now, that nothing is quite final, and indeed, there will be things that will be done when it goes to the Senate that may answer some of the reservations that I have.

But, Madam Speaker, to the maker of the amendment, I want to ask questions particularly about the patient safety initiative piece.

It is my understanding – and I would like correction if my understanding is incorrect – but it is my understanding that there will be this authority whose job it will be, whether they assign it to a third party, but to collate and evaluate data that gives reports of

serious events and incidents, and then it also talks about that it would be their responsibility, if I am correct, to advise the medical facility of changes that they need to institute to reduce these incidents and the serious events. Is that correct?

Mr. SCHRODER. That is correct.

Mrs. WATSON. Also, then I thought I read that the authority would make recommendations to our Department of Health and to the medical facilities jointly, and I understood that the recommendations that that authority would make based on the events and the serious medical problems that have occurred, that those recommendations would be published and posted on a World Wide Web site?

Mr. SCHRODER. After they are approved, after those recommendations are approved by the Department of Health, it is my understanding they will be posted after 30 days.

Mrs. WATSON. Okay. And I guess I was getting to the point, I have grave concerns. I would like certainly the patient safety portion of this to be enhanced, because I have constituents who have met with me who have lost children, and without going into detail, but in that case, the one unusual doctor – but this is considered a world-renowned doctor in a world-renowned children’s facility – is still practicing, and the second family was not aware of what had happened with the first family’s tragedy with a 4-year-old. I have met with both sets of parents. That frightens me. I want answers that that cannot happen as a parent myself, and most people here are. We want assurances that in that sense parents and children are protected and also for the other doctors who perhaps unknowingly would recommend this what they perceive to be a topnotch physician, not knowing this has occurred.

Would incidents like that, having been adjudicated, having been said that this occurred and indeed to the hospital where this had happened and they have taken corrective action, would that have been there so that as a parent, if I am investigating a surgeon, I would be able to find that?

Mr. SCHRODER. Madam Speaker, that would not be published under this amendment. However, if I could just back up to your earlier comments, I do tend to agree with you that there are other things with regards to patient safety, some of the things that you have just mentioned, that should be looked at and that I hope that we can look at and work on with the Senate before this is all said and done, before something goes to the Governor.

Madam Speaker, I would just say this on patient safety: We can always talk about how much farther we can or should go. This is a lot more than what we certainly have right now in Pennsylvania. We could argue that we could go farther on the tort side of this, too, but trying to strike a balance. But I believe that your comments that you point out are instructive, and I would certainly be pleased to see those additional changes that you recommend.

Mrs. WATSON. Thank you, and I would certainly concur with the maker of the amendment and again agree, and I must say I agree with the comment, Madam Speaker, that the maker made, and that is the fact that we have further to go but we have gone this far, and having only been here a year and knowing from before, we were not going anywhere, I guess would be the easiest way to say it.

I also felt that— Madam Speaker, if I might speak on the amendment?

The SPEAKER pro tempore. You may proceed.

Mrs. WATSON. Thank you, ma’am.

And that is simply that representing the folks I do and having

spent a great deal of time with the doctors in my area, specifically where I live, I do not have an immediate hospital in my township, but yet in my district, the folks that I represent go to actually four different hospitals: Warminster Hospital, Abington Hospital, Doylestown Hospital, and Grandview Hospital. Now, those who are listening might say then, well, they are very lucky they have choices to make, and yes, we do. In the southeast there are choices, and indeed, we have the additional ability that for something very major and if we have time, we can go to a major Philadelphia hospital. Of the ones I cited, Abington is the only large teaching hospital, and it does have a trauma center.

Let me focus for a moment on a very small hospital, and that is Warminster Hospital, 200-bed community hospital but very busy – very busy emergency room and very busy because it sits right in the middle of a very populated area. Already Warminster Hospital has lost four orthopedic surgeons, and two more now are listed as nonoperative, again, because their premiums were so great. They shared a neurosurgeon with another hospital. That neurosurgeon has relocated out of State, again, because of the high premiums, and they cannot find a neurosurgeon, as cannot the hospital they share it with, to come and attract someone to come to Pennsylvania.

Abington Hospital I have been in touch with, and I must say at this point, I need to mention that I am the benefactor of fine care from a hospital and from a doctor. A number of years ago I had thyroid cancer, and if it was not for the, first of all, really fine doctor who spotted what the real problem was and then a surgeon, I would not have had the opportunity to serve here. My husband is also a cancer survivor, and again, if it was not for good testing and fine doctors paying attention and then surgery, he would not be here. Interestingly enough, we both had our surgeries at Abington Hospital. The surgeon my husband had retired – fine surgeon, head of surgery – retired a little bit early because he just could not deal with it anymore and had an opportunity and was of the age where he might not have to work as hard. He saved my husband's life, and he saved the lives of many others, and I have grave concern about him not being able to be replaced. Abington has lost two orthopedic surgeons, one neurosurgeon, and three more are currently negotiating to leave.

A fine surgeon that I know, a gentleman who with a partner owns something called the Spine Center, there are 12 doctors in that practice, and really, people come from all over to go to Abington Hospital for their services. Those 12 doctors last year paid \$615,000 for malpractice insurance, yet they have never settled a case and they have never lost a case. They have a very fine record. We need to be doing something. I think we have a good start in doing something about them.

Doylestown Hospital is another one where my folks attend, and it is a large community hospital. I should add parenthetically, it is the only hospital that is run exclusively by women, the Women's Village Improvement. They have enjoyed a very fine reputation and always done very well. They are struggling financially for the first time in their history, and they are struggling because for the hospital, their insurance for the hospital went up to \$4.8 million a year – in other words, an additional \$7,700 a day increased operating costs. That \$4.8 million is just about the total that they pay for pharmaceuticals for the entire year. They cannot keep going on at those rates, and they certainly cannot pass that along to the consumer.

They also have lost a general and vascular surgeon. They lost an internist. They have another neurosurgeon who has moved to

North Carolina, and they cannot attract anyone. They mentioned to me, too, that they always had the benefit of young residents coming on board and wanting to come to Doylestown. Abington says the same thing, because they are well known in the southeast. They cannot get any residents for orthopedics or neurosurgery. No one wants to stay in Pennsylvania. They are already moving on, recognizing where they go is where they will end up setting up practice.

So I understand that we need to do something, and while I have strong reservations which I have voiced about some portions of the amendment, at the same time, I know that it is important to vote "yes" to move it along and to keep saying those strong objections and things that I want to be different; to see to it that in the final version, we help our doctors and we help all of the people of Pennsylvania, that they have care and that they are protected when they have their care, and that is what I will work for.

Thank you, Madam Speaker, for the opportunity.

The SPEAKER pro tempore. The Chair thanks the lady and recognizes the lady from Philadelphia, Ms. Manderino.

Ms. MANDERINO. Thank you, Madam Speaker.

Madam Speaker, I find myself in a quandary, as I am sure many members do, recognizing that we have a very serious problem in Pennsylvania and not knowing whether the right vote tonight is a "yes" to move the process forward or a "no" to protest some of the, I think, both unconstitutional and very troubling aspects of the amendment that is before us.

So while I still try to listen to the debate and decide, I at least wanted to put on the record some concerns that I have with the action that the House will be taking tonight in the hopes that as the Senate deliberations continue, that these concerns will be given serious consideration and attention.

We have had a number of members talk about the contract between doctors and patients that this bill provides an opportunity for, and many people talked about it in terms of a requirement, and I am sure that the maker of the amendment will remind us that the language in the bill is permissive, but here is what I think will happen in reality. In reality, if I as a doctor expect insurance coverage, this will become a requirement, and if I do not get a contract like this signed by a patient and, God forbid, an avoidable error or a negligent act occurred, I will be left naked, uncovered. There will be a provision in my malpractice insurance that will say that if I did not take advantage of this provision, because this is the provision that my malpractice premiums were written on, then I will be left bare and liable solely for myself and not under my insurance policy for that occurrence, and I think that would be a very bad result for both the patients and the doctors of Pennsylvania, and I think that needs to be fixed.

On the issue of elimination of joint and several liability, that is also a very serious concern the way it is drafted. Every doctor that came to see me told me that they want injured patients where there was maloccurrence, malfeasance, involved, not a bad result but a malpractice incident, to be made whole. Nobody made the argument that a patient should not be made whole. But under this provision, it is very foreseeable that many injured patients will not be made whole.

An example was given about the incidents where somebody is 99 percent liable, somebody else is 1 percent liable, and the entity who is 1 percent liable with the deep pockets will end up paying for 100 percent of the occurrence. Many of us know that that is not

the common scenario. A much more common scenario is a 50-50, a 60-40, a 70-30, or some division of responsibility much closer to that fact but where it is clear that all of those being held responsible had an active role in the negligent act.

What happens when you have a provision like what is in this amendment? And I guess the simplest way to look at it is remember back to your practical days of when you were being raised or were parents raising your own kids. Johnny and Billy are playing ball in the vacant lot next door to Mrs. Smith's house. She has told them repeatedly, "Don't play ball there, because you're going to break one of my windows." Johnny pitches the ball to Billy. Billy hits the ball through Mrs. Smith's window; she has a broken window. Is the person who hit the ball 100 percent responsible? Is the person who pitched the ball 100 percent responsible? Are each of them 50 percent responsible or some other breakdown of that? Well, what I know is that if 100 percent of the cost of repairing Mrs. Smith's window is not paid, Mrs. Smith has a broken window; she cannot get her window fixed. If the total of the responsible parties do not come up with

100 percent of the cost of fixing that window, Mrs. Smith has a broken window.

Well, if the responsible parties who have been deemed to be liable for negligence, among themselves, do not come up with the money to make that plaintiff whole, that plaintiff is not made whole, and everyone has told us that that is one of the goals that they want, so I think that we have to look at that seriously.

Other States have addressed the issue of joint and several in ways that we could consider. Others have put some provision in there that said, if your percentage of negligence deemed is below some certain percentage – 5 percent, 10 percent, 20 percent; there are different numbers in different State laws – that it is low enough that your comparable negligence is such that you are not a major responsible party, then your liability for the whole is reduced. That is an option that is not considered in here and that should be considered in order to make the plaintiff whole.

Make no mistake about it – what we are doing on the collateral source issue may be a cost savings for malpractice insurance but it is a cost shifting. Right now what happens is that a plaintiff may be awarded 100 percent of the recovery of what their medical costs were and then the health insurer who paid out under the health policy comes in and takes what they paid out so that they are made whole and the health insurer's policy is not paying for the negligence and the malfeasance that happened in the malpractice action. In this scenario, if we pass into law what we are dealing with tonight, that will not happen.

I had many patient letters, as I am sure you did, where people wrote to me, "And while you're at it, do something about the costs of prescription drugs; do something about the costs of my health insurance." And we are going to exacerbate the health insurance problem if we do not find a better way to deal with the collateral source issue.

A troubling part of the patient safety practice dealing with the physician discipline, to me, is the confidentiality, broad-based confidentiality provisions put in this bill. I do agree that there needs to be some confidentiality during the investigatory stages, but I do not agree that that confidentiality ought to extend to the end result. The only way we are going to get to disciplining and weeding out that 1 or 2 percent that are causing such big problems is if we are serious about discipline of errant physicians and disclosure of physician records. That needs to be strengthened in a

final bill.

And finally, on the issue of insurance reform, it is practically nonexistent in this bill. Nothing in this bill addresses the issues of what are fair underwriting criteria, yet over and over again, the doctors who came to me talked about, they did not use the term "underwriting criteria" but they talked about their premiums increasing exponentially because when they were an intern at a hospital, they were 1 of 10 people named in a case that has yet to be settled. These are issues that I believe can be addressed in an insurance reform package that deals with the issues of fair underwriting criteria.

Finally, when we did workers' comp reform, when we did auto reform, in exchange for some of the limitations that we put on patients' rights, we required premium reductions. Any bill that we do on medical malpractice ought to require the premium reductions in exchange for the certainty that we are putting into the bill, the certainty in the marketplace, the rollback of patients' rights, the limiting of what you can recover, and those are all things that I hope the final bill that we will see in the next few weeks will take into serious consideration and address appropriately, because what everyone has asked for is fairness in the system, and this bill, I think, is weighed a little bit too unfairly on the issues both for doctors in terms of not giving them the kind of premium relief and putting them at odds with their patients on the signing of a contract and they are going to be at odds between their patient and their insurance company and also in terms of limiting rights of recovery of patients without gaining some real benefits to help our physicians, hospitals, and health-care providers.

Thank you, Madam Speaker.

THE SPEAKER (MATTHEW J. RYAN) PRESIDING

The SPEAKER. The Chair thanks the lady.

PARLIAMENTARY INQUIRY

REQUEST TO DIVIDE AMENDMENT

The SPEAKER. It is the understanding of the Chair that the lady, Ms. Harper, has a point of parliamentary inquiry.

Ms. HARPER. That is correct, Mr. Speaker.

Mr. Speaker, I sense in the body tonight a consensus that we need to do something to help our doctors. At the same time, most of the discussion this evening has focused on section 814-A, which is called "Contracts for Limitation of Noneconomic Damages."

My parliamentary inquiry is whether, under rule 63, this is a question which can be divided so that the body could vote on deleting or keeping in section 814-A, which starts on page 14, line 47, and continues to page 15, line 44. My question, Mr. Speaker, is whether that can be divided, so I would be making a motion to divide that question from the rest of the Schroder amendment.

The SPEAKER. Initially, before ruling, let me thank the lady for giving me a heads-up on this question. You were kind enough to come up and say that this question was going to arise.

I have had an opportunity to consult with the Parliamentarian, and on that question, I would say that the paragraphs that you are referring to, 814-A – capital "A," and then under that, you have the series of alphabetical paragraphs – is not divisible for two reasons.

First, in your division, you would not be dividing out, by nature of your division, the phrase that is found on the first page, line 15, where reference is made to the contracts of economic value. The second factor, which is really the controlling factor and the one I told you about when you were up here, is that that portion of the amendment that you wish to strike is not preceded by the page numbers and the section numbers, so that should it be stricken, it could not stand on its own, which is part of the rule. And for those reasons, I regret to advise you that my ruling would be that it is not divisible.

Ms. HARPER. Just so I understand your ruling, Mr. Speaker, what you are saying is that we need to vote on the Schroder amendment in one piece and make a decision and that we are unable to affect 814-A by dividing it out.

The SPEAKER. That is accurate.

Ms. HARPER. Thank you very much, Mr. Speaker.

The SPEAKER. The Chair thanks the lady.

The Chair recognizes the lady from Montgomery County, Ms. Bard.

Incidentally, let me once again thank you for your courtesy.

Ms. Bard.

Ms. BARD. Thank you very much, Mr. Speaker.

This legislation, Mr. Speaker, is critical to the health-care system which supports and treats so many of the Pennsylvanians who are our constituents. There was a doctor in my office today who mentioned the fact that this has gone beyond crisis; this has become disaster.

Now, there are many who have said that the statistics show that doctors are not leaving Pennsylvania. I have statistics from Abington Hospital, Abington Memorial Hospital in Montgomery County, which I represent, which show that twice as many physicians left in the year 2000 as in 1999. That incremental increase is almost totally explained by physicians who have left due to malpractice premium problems.

I spoke with one of those physicians, an obstetrician-gynecologist. She told me her story: "When I finished residency...our decision to move to Pennsylvania was based on our desire to raise our family there...."

"However, after 4 years, it became hard to imagine a medical career in Pennsylvania. Everything going on in the medical climate just made it untenable. I always imagined trying to combine work and family, and with what's going on in Pennsylvania, you have to work like a dog just to survive. The biggest problems are the combination of the low reimbursements and the ever-escalating malpractice insurance premiums...."

"I know what it was like when I left and I just can't imagine how people can survive knowing that malpractice rates have gone up several times since I left. I do not imagine that reimbursements have increased appreciably. They actually decreased while I was there...."

"...I admit that I was terrified I was uprooting my family with the illusion that the grass would be greener elsewhere. But it isn't like Pennsylvania everywhere. My situation has improved with this move...."

Mr. Speaker, the statistics do show that there are many, many doctors leaving Pennsylvania, and we do have many doctors who can attest to that fact from their personal experience.

Another question that we often hear is whether the hospitals, and specifically the trauma centers, are crying wolf and that there really is no danger that they will close. Again, Abington Hospital, which has the only trauma center in Montgomery County, provides

testimony. The CEO (chief executive officer) of Abington Hospital says, and I quote: I "...had to cut my holiday vacation short in order to continue to seek professional liability insurance on behalf of our neurosurgeons, orthopedic surgeons and plastic surgeons...."

"Abington Memorial Hospital came three days short of not having coverage of these subspecialists in the trauma center. This was not manufactured on the hospital's part.

"The potential staffing issues with the lack of insurance coverage was real. If there had been no intervention by the hospital and the Insurance Commissioner and had the physicians not been willing to accept, at the last minute, onerous rates for one more year, the trauma center would have closed and the emergency room would have remained open. Those are the facts.

"I am aware that the other suburban trauma centers had even more difficulty and it was only until the day before New Year's that their coverage was ascertained."

Those are the words of the CEO of Abington Hospital.

On New Year's evening, there was a very serious accident that required trauma center care for three young people, and I quote from Jon Morris, M.D., at Abington Hospital: "It is difficult to predict what would have happened to these young individuals, had the Trauma Center at Abington Memorial Hospital been closed. Options would have included ground transportation to the Trauma Centers at Einstein or Temple or perhaps, air transportation to the Hospital of the University of Pennsylvania. In any event, a timely and successful management for these three survivors was a fortunate outcome from a serious...accident."

Mr. Speaker, this legislation will help all Pennsylvanians. Without action, we may lose more of our doctors and threaten to an even greater extent the quality and the availability of health care in Pennsylvania.

We began this process in 1996 with Act 135, which was subsequently ruled out of order and unconstitutional by the Supreme Court. We continue this process now. It has been many long years, and we have lost many doctors, and it is time now for us to take action.

I urge passage of this amendment.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the lady.

The Chair recognizes the gentleman from Philadelphia County, Mr. Thomas. If the gentleman would yield for a moment.

There are at least 15 more members asking to be heard, so I would respectfully ask that those who are speaking not repeat. We can take judicial notice or legislative notice of some of these remarks. Mr. Thomas, that, of course, does not apply to you.

Mr. THOMAS. Thank you, Mr. Speaker.

I appreciate your consideration.

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

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

Mr. THOMAS. Thank you, Mr. Speaker.

Mr. Speaker, let me at least set the record straight and let you know that I support medical malpractice reform. I think something has to be done. But this section 814 is real troubling, and let me start out by asking a question.

You had indicated that the Schroder amendment is really designed to get a handle on the problem and really designed to provide our practitioners in Pennsylvania with some protection, and so my first question is, why does the liability cap extend to

staff people, agents of the doctor, physicians' assistants, assistants, and all of these and other medical staff? As you know, the liability cap, the language in the bill says that not only once you sign the consent are you limited to that cap but also the physician's assistant, medical staff, and other people are also covered by that cap. And so my first question is, why extend coverage to the second and third people?

Mr. SCHRODER. Mr. Speaker, I believe the cap would be a cap in words only if it did not cover all of the individuals and situations that you mentioned who could be part and parcel of the medical malpractice claim.

Mr. THOMAS. But, Mr. Speaker, if a medical staff person or a physician assistant acts beyond the scope of that physician's supervision, should not he or she face the full wrath of their consequences?

Mr. SCHRODER. I would not necessarily disagree with that, but I would think that would be more of a licensing matter if they go beyond the scope of what they are allowed to do under the law and under the licensing provisions.

Mr. THOMAS. But, Mr. Speaker, as you know, your amendment specifically outlines the parameters of the agreement once an agreement is entered into, and it specifically states that this agreement reaches to, covers, medical staff, physician assistant, and it even extends to those who might be vicariously liable for negligence or for injury to a person, and so I am real concerned about the expansive scope of that coverage.

I mean, I think that, just like in your case, Mr. Speaker, if you have a staff person who goes out to carry out a responsibility that you have given them and they go out and go beyond the scope of that responsibility or what has been delegated to them and their actions lead to injury to someone else, I am sure that you do not want them provided with the same protection that you have been provided with. Correct?

Mr. SCHRODER. My response to that, Mr. Speaker, is that that entire provision, section (f) on page 15 that you refer to, is a "may" provision; it is not a "shall" provision. So in other words, the agreement may extend the benefit of limitation on noneconomic damages to those parties that you just mentioned.

Mr. THOMAS. But there is nothing in here to discourage anything other than providing that full-blown coverage. But let us move on, Mr. Speaker.

Why does your amendment provide for an agreement that would extend beyond the cessation of an emergency? It is an implied presumption that negligence cannot and will not occur beyond emergency treatment, and so my question is, you know, why does the agreement extend beyond the cessation of an emergency?

Mr. SCHRODER. It would certainly make sense to extend that in those situations where the person himself or herself is unconscious or cannot make decisions on their own. I believe that that is why that is drafted like that.

Mr. THOMAS. Thank you, Mr. Speaker.

But you see my point. Within that language there is this implied presumption that the cap or the agreement will live beyond emergency treatment. In other words, if I go into the hospital through the emergency room and I receive immediate care and I sign this agreement, if after treating the emergency you happen to leave your scalpel inside of me, then the agreement will bar me from seeking recovery beyond the \$250,000, because for all practical purposes, you have treated me for the emergency and this is something that occurred while I was in the hospital but beyond

the period of the emergency. That is implied in the language, and that is something that I think the Senate needs to address if we are not prepared to address it this evening.

My third concern, Mr. Speaker, is, what was the rationale for limiting the 4-year statute of limitations to those who are 14 years and under? What was the public policy rationale for capping, recovery capping, using 4 years as opposed to 6 years as opposed to 10 years?

Mr. SCHRODER. Well, right now, of course, there is a 2-year statute of limitations with a discovery rule, and the problem with that is, it is very difficult for any malpractice insurer to come up with accurate rates based upon any predictability, any stability or certainty, and part of our whole effort here is to provide the

stability and the predictability that malpractice carriers will need and have told us that they will need to come back into the State of Pennsylvania and to help reduce this crisis.

Mr. THOMAS. I understand that, Mr. Speaker, but again, I ask, why 4 years? Why not 2 years? Why not 6 years? I am just curious as to whether or not there was some data that you had access to that maybe we need to be aware of or whether there was some public policy consideration that went into providing for 4 years as opposed to some other fixed period which would have also provided the predictability that you seek.

Mr. SCHRODER. Well, I would just say that 4 years will certainly take us up to the minor's 18th birthday, at the point where they reach majority age. I do not think we wanted to cut off anything prior to that.

Mr. THOMAS. So the public policy consideration is that 14 years of age, if you add 4 to 14, then they will be 18 and they will have reached some age of majority.

But the language in the bill says 14 years or under. So what about the child who is injured at 11? Four years will not afford them the opportunity to reach the age of majority. That seems to be problematic, Mr. Speaker, and that is why I asked the question, what was the rationale for 4 as opposed to some other fixed term?

Mr. SCHRODER. Again, I can only say, Mr. Speaker, that the rationale was to try to establish a reasonable number that will, you know, provide predictability and stability in predicting these claims so the proper underwriting can occur and that the current system has really no way of predicting, you know, when or if or how long into the future a lot of these cases will be brought about with regards to minors. So it was an area that we felt we needed to provide some stability and predictability in, and 4 years, I am not saying there is a magic number to it, but it seemed like a reasonable resolution to that issue.

Mr. THOMAS. But, Mr. Speaker, you do see my problem, because if the child is 9 or 10 years old at the time of injury, the 4 years does not— I mean, the 4 years frustrates your intent with presuming that 4 years will allow the child to reach the age of majority or reach the age of 18, so you do see the problem with the language providing 14 years and under. If it had just said 14, then it would fit within your thinking or within the intent for this language, but because it says 14 years and under, it makes it problematic. So you do see the concern there.

Mr. SCHRODER. Let us also remember that the language says, "...the action must be commenced within four years after the minor's parent or guardian knew, or should have known by using reasonable diligence,..." so that does allow, you know, for certainly a delay for the time that the injury manifests itself to the parents, so I do not believe it is a strict 4 years. There are still

discovery-type provisions in there that are applicable.

Mr. THOMAS. Yeah, but there is no reference point which links this language to other provisions within the amendment.

Let me go to my next area of concern, Mr. Speaker, because I really want to point out to you and to the members of the House, both sides of the House, that there are sections of this amendment which are extremely troubling, and it is my hope that before the House and Senate sign off on a final bill or a final legislative prescription which effectively does something about the problem that we face, that we do not— You know, sometimes in our eagerness to solve a problem, we could end up creating more problems than the ones we have solved.

Here is my last concern: On this whole issue of noneconomic damages, have you looked at any data as to the classes of people who would raise serious issues around noneconomic damages?

Mr. SCHRODER. I am not sure I understand your question. Could you repeat it or rephrase that, please?

Mr. THOMAS. Mr. Speaker, we all know that if one of us becomes a victim of medical malpractice, we have a defined line of income; we are salaried; we have a whole bunch of other things that we can claim. But what about your grandmother who is 87 years old, who is living on a fixed check every month, or what about our good friend, Representative Kenney, who just had his first child? Their ultimate relief is tied to noneconomic damages, because they have no visible, identifiable, definitive economic past that they can look to. They do not have a salary; they do not have a check coming in. They are not working. They have not accumulated assets and some other benefits. So their ultimate relief is going to be tied up into noneconomic damages, pain and suffering.

So to that end, my question is, did you give any consideration to the vulnerability or to the application of this section of the amendment on the two most vulnerable populations in our community – those at the dawn of life and those at the twilight of life? Did you give any consideration to how this provision will impact those two vulnerable groups in our community?

Mr. SCHRODER. A couple responses, Mr. Speaker. I appreciate your indulgence.

Certainly, we have a new provision in here dealing with loss of life's pleasures, which I would believe would apply to, you know, the younger person or the older person who died as a result of this, plus let us also remember that there are other actions outside the medical malpractice arena, such as wrongful death actions and that sort of thing, that possibly could be brought that would not be subject to these limitations.

Mr. THOMAS. So, Mr. Speaker, you are saying that you did give some consideration to those two groups, because those two groups are the two groups of our community that will be impacted adversely as a result of this provision of your amendment, because they do not have— I mean, my newborn is not developed; the bones are very tender. Negligence, a negligent medical act, is going to require more care than if it was you and I. Similarly, my grandmother, who might be 87, her body is frail, and the reason I raised that is because Pennsylvania and the State of Florida have the largest elderly populations than anyplace else in the country, and I would suspect that by the time we do the census again, Pennsylvania will outpace Florida with the elderly. In fact, some of our colleagues will be a part of that population at that time. And so, you know, for the elderly, there is a certain amount of frailty there, and the care arising out of a negligent medical act

is going to require much greater attention than if it was you and I, and to cap their relief to \$250,000 could in effect be sending them to the grave.

So I wanted to point that out, and I believe that you have exercised the best of faith in trying to fashion something to move the agenda forward, but it was important that I point out those four critical areas: the vulnerability of the populations that would be seeking noneconomic relief and the need for them to have access to a window greater than \$250,000.

And last but not least, Mr. Speaker, I ask that by the time this gets ready for a final vote— And tonight, we know, will not be the time that it will receive a final vote, because it has to go to the Senate, and more than likely, it will end up at a conference committee. I am thankful that there is an effort to move the process forward, and that was one of the reasons that I signed on as a cosponsor of 1802, but there are sections of this amendment which frustrate my good intentions when I signed on to HB 1802. So at the end of the day, let us clear up this problem of extending a doctor's shield to his or her assistant, staff person, agent, or somebody who might be vicariously liable. Secondly, let us clear up extending this agreement to the estate of the injured party. That is something that needs to be cleared up. Let us clear up extending the agreement beyond the treatment of the emergency. Let us clear up the vulnerability, the vulnerable position that we are putting our babies and our elderly in.

And, Mr. Speaker, I think that if we clear up those things, we could have something that really moves this forward, and if we really want to have a happy day in the Commonwealth of Pennsylvania on this issue, let us include a provision that does in fact reduce premiums, because no matter where the doctors come from, they have all said that it is not only the excessive cost of premiums but it is the runaway cost, that there appears to be no limit as to the amount that they will be required to pay in order to practice in the Commonwealth of Pennsylvania. So to that end, let us include in this amendment or in the final bill a provision that does in fact bring down the premium.

And last but not least, we have imposed on the insurance industry conditions that we do not know whether the insurance industry will accept. We have kind of said that we do all of this and we hope that at the end of the day the insurance industry will be nice in its rates, and I think that the problem is too critical to assume that if I do A, you might do B.

Mr. Speaker, we have an opportunity to stand up in a real big way in 2002. Let us not hurry up to get something done. Let us take our time and do something that is truly going to make a difference not in the lives of just the doctors but also in the lives of the patients and the people of Pennsylvania.

It is ironic that I said to the two guards outside the hall of the House, I said to the guards, I said, please arrest any doctors who have come to the House of Representatives and do not have any patients. The doctors have made a good case, but we have not talked to the patients, we have not talked to the people who will either be enhanced or adversely affected by what we do with the doctors, and so we have an opportunity to really become a light of hope, a light of inspiration, and a light for the future if we do the right thing. Let us seize the opportunity and do the right thing.

Thank you, Mr. Speaker.

The SPEAKER. The Chair recognizes the lady from Cumberland County, Mrs. Vance.

Mrs. VANCE. Thank you, Mr. Speaker.

I promise I will be very brief.

No one questions the serious health-care problems that we have in the Commonwealth of Pennsylvania, but no one group has all the answers and no group is blameless in some of the problems that we see in this Commonwealth.

This bill contains three separate parts – tort reform, patient safety, CAT Fund. I would prefer to address them singly, but I understand that they are all in the amendment so we must deal with all of them.

Much, much more needs to be done in the area of patient safety, and we really need to toughen our licensure laws so that the few

bad health-care practitioners who repeatedly make mistakes are not able to maintain their license.

The one word that I have not heard nearly enough tonight is patients and their safety. As legislators, our first responsibility is to the patient and to no one else. Overall, there is more good in this bill than bad, but I view this only as a beginning. We need to do a lot more to toughen our licensure laws and to center our work on patient safety.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the lady.

The Chair recognizes the gentleman, Mr. Wansacz.

Mr. WANSACZ. Thank you, Mr. Speaker.

I, too, want to help the doctors. I have a serious dilemma in my district. I would love to lower the rates of the medical malpractice insurance for my doctors, but the bottom line, this amendment does not do this. This amendment does nothing to make sure that insurance rates are lowered. This amendment could jeopardize the patient-doctor relationship.

Mr. Speaker, this amendment does nothing to hold bad doctors accountable for medical errors. Mr. Speaker, I, likewise, am going to follow your suggestion – and I would just like to add that Representative Blaum did an excellent job in explaining this – and I will keep it short, and I would urge a “no” vote on this amendment.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Huntingdon, Mr. Sather.

Mr. SATHER. Thank you, Mr. Speaker.

I will be brief also, I can assure you.

I doubt, when I return to my legislative district in Huntingdon or northern Blair, I am going to find the doctors and the hospitals and, for that matter, the attorneys who are going to be totally satisfied with what we are about and what we accomplish here this evening.

However, as one of the previous speakers just mentioned, I am more concerned at this time with providing good-quality health care and making available good-quality health care to the people of Pennsylvania, and I think the key there in my area is availability. I say that because I want to give you just a couple of for instances that not all of these problems that we have in the Commonwealth of Pennsylvania are in the southeast. Tyrone Hospital, which is in my district, about a 54-bed, acute-care facility, was one of the first who received renewal notices in December from the aftereffects of the demise of PHICO Insurance. Their premium went from \$247,000 a year for a 54-bed facility to \$821,000 a year. That is a significant increase for a community hospital, and only one claim that I was advised was settled in the last 25 years on any claim or one claim that was settled for \$125,000.

So when you question the sincerity of all of us these past,

I think, at least 6 years, I want to give a rounding salute and applause to Chairman Micozzie and all who served on this fine effort to bring us to this closure today, for his perseverance in making sure that we had this opportunity. It has been a long, long 6 years, and we are not finished yet.

Thank you very much. I will be supporting it in a positive way. The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Northampton, Mr. Dally.

Mr. DALLY. Thank you, Mr. Speaker.

I, too, will be brief.

I rise to express some of the same concerns that already have been expressed by members of this body in terms of several items that are in this amendment. One pertained to noneconomic damages, another pertained to statute of limitations, and a third pertained to joint and several liability.

I think it is an important issue that we are tackling here this evening, and I commend the maker of the amendment and those that have worked very hard on this issue because it is an issue that Pennsylvanians want us to deal with here in this House, and rather than castigate those that have stepped forward with a plan to solve this problem, I commend them for doing that, but by the same token, there are several items in this amendment that I am concerned with.

I am voting “yes” on this amendment for the reason that I know this is part of the process, and it will go from here to the Senate where there will be additional changes to the bill, and I think it is very important that we strike a very delicate balance between the rights of injured people and the interests of the medical community in resolving the medical malpractice crisis that we currently face.

So once again, I will be voting “yes” but with reservations on those items of the amendment which I mentioned. Thank you, Mr. Speaker.

The SPEAKER. The gentleman from Montgomery, Mr. Godshall.

Mr. GODSHALL. Thank you, Mr. Speaker.

Tonight I think, and using a couple words that I heard earlier, we are talking about the people of Pennsylvania. I do not know how we could do more than be talking about the people of Pennsylvania with this amendment. The people of Pennsylvania are used to quality medicine from some of the best teaching hospitals in the world. They are talking about the availability of medicine as they know it. We are talking about the people of Pennsylvania tonight.

Some special interests over the years have eroded the quality of medicine and the availability of medicine in this State. It is time we get back to the people of Pennsylvania and give them what they are used to.

Down in the southeast, down in the southeast in this last year alone we have lost 55 orthopedic surgeons; 25 more nonspecific specialists were also lost at the same time. In Montgomery County alone where I live, we have lost 16 OB-GYNs in the last year, and the reason we have lost these OB-GYNs this year, nine of which were women, by the way, women doctors, this is the reason: they stopped delivering babies; stopped delivering babies; moved to North Carolina; stopped delivering babies; stopped delivering babies; discontinued private practice; moved to South Carolina; moved to North Carolina; moved to Georgia. There must be some reason that some of these people are doing this. There must be some reason why our experienced and excellent physicians are

leaving this State.

I talked to the University of Pennsylvania. I asked the people at the University of Pennsylvania, how many of your residents, how many of your graduating resident orthopedics are planning to practice in Pennsylvania? They did a survey on that issue. There was zero – not one, not two, but zero. I talked to two other teaching hospitals down in Philadelphia. I asked them what percentage of their graduating orthopedic residents were going to stay in Pennsylvania. The answer was zero to 10 percent.

I think tonight we are talking about the people of Pennsylvania. We are trying to give them back something that they had and something that they are used to. In my own hospital, which is Grandview, we have no neurosurgeons. Just this past week a person hurt in a real serious accident coming into North Grandview Hospital had to be transported to the trauma unit down at Abington at great discomfort and also great risk. We have no more neurosurgeons at Grandview Hospital.

Right up the road from Grandview Hospital is Quakertown Hospital. Last week they had an OB-GYN, a serious case, coming into the hospital. At Quakertown they have a problem also at their hospital. They had six last year, OB-GYNs, on staff. Today they have none. This is what is happening out in the real world, and everything I think that we are doing here tonight, we are doing for the people of Pennsylvania.

I can remember back in the late eighties and early nineties when I was part of auto insurance reform. Myself, Tom Michlovic, who is sitting in the back of the room, and Tom Murphy worked on a bill. We worked day in and day out. We were waiting on the Senate, and we finally took the issue to task. We came up with a bill doing exactly what we are doing here tonight. The same arguments, some of the same arguments that I hear tonight I heard back in 1989, the exact same arguments.

We put a bill together. It worked for the citizens of Pennsylvania. We had no insurance available. If you were canceled by your insurance if you had an accident, you had no car insurance at any cost. You could not buy it. Harleysville Insurance at one time issued 100,000 nonrenewal notices. Today we have an insurance market in Pennsylvania. It is a competitive market. This is what we are trying to do with this bill here tonight. We are making quality medicine and availability of medicine and we are giving it back to the people of Pennsylvania.

Thank you, and I hope you support this bill.

The SPEAKER. The Chair recognizes the Democratic whip, Mr. Veon.

Mr. VEON. Mr. Speaker, could you suspend for one moment or pass me up for one speaker while I confer with our Judiciary chairman?

The SPEAKER. The gentleman, Mr. Gannon, from Delaware.

Mr. GANNON. Thank you, Mr. Speaker.

Mr. Speaker, would the maker of the amendment stand for interrogation?

The SPEAKER. The gentleman indicates he will. You may proceed.

Mr. GANNON. Thank you, Mr. Speaker.

Mr. Speaker, do you have any reason to believe the Pennsylvania Insurance Department would lie to us?

Mr. SCHRODER. Mr. Speaker, I sense that is a loaded question. So I would ask that you just come right out and tell us what your point is.

Mr. GANNON. Well, Mr. Speaker, I have here the annual statistical – I am going to take that as a no, they would not lie to us

– the annual statistical report of the Insurance Department of the Commonwealth of Pennsylvania. I believe we agree that the Department of Insurance would not lie to us, and within this report, which is sent to every member of the General Assembly, are the loss ratios for the insurance companies that do business in Pennsylvania, both domestic and foreign. Now, you know, I just do not want to be too obvious about this; I do not want to be condescending, but do you know what a loss ratio is, Mr. Speaker?

Mr. SCHRODER. I think it would be beneficial to explain that to the entire membership.

Mr. GANNON. Thank you.

A loss ratio is the difference between the amount of premium that a company earns and the amount that it pays out in losses; it is a percentage.

In 1998, from the period July of 1998 to June 30 of 1999 – and I will use three companies, because these are the three dominant companies in Pennsylvania that write medical malpractice insurance – one company is called Medical Protective. It is an old, old malpractice insurance company located in Indiana. It has been around for years. They had total assets in Pennsylvania of \$1,319,505,000; they had a surplus of \$356,000,075. Their surplus had increased 4 percent that year. In Pennsylvania they had written premiums of \$16,381,000. Their loss ratio for that time period was 69 percent. Well, we will round it up to 70 percent. Now, would it be fair to say that a company with a loss ratio of 70 percent is not in crisis? Is that a fair statement?

Mr. SCHRODER. You are asking me that question? I do not know that I could evaluate standing here tonight whether a particular company was in crisis or not.

Mr. GANNON. Well, if I may just take a step back and preface my comment. I believe that the reason that we are debating this amendment at quarter after 8 at night, the reason that you are advocating the passage of this amendment, the reason this amendment includes all of the issues that you have discussed here is, I believe you said earlier, that Pennsylvania has a medical malpractice crisis. Is that a fair statement or am I missing something?

Mr. SCHRODER. No. I believe that is a fair and accurate description of the state of medical malpractice insurance in Pennsylvania.

Mr. GANNON. Okay. So you cannot tell whether or not a company that is making approximately about 30 percent on its premium is— You do not know whether or not that is indicative of a malpractice crisis.

Mr. SCHRODER. Well, I do know this: I know that when companies are either, you know, going out of business or just deciding not to write in Pennsylvania anymore and when the Commissioner, Diane Koken, reports that they paid out more than they took in in premium in the year 2000, I think it points in that direction.

Mr. GANNON. Well, I have the report for the year 2000, and we will go into that in a moment, but this is 1998-99.

Pennsylvania Medical Society Liability Insurance Company, they had a loss ratio of 83 percent, and interestingly enough, they paid out a dividend of \$2,285,000. A company paying a dividend I do not believe— Would it be fair to say that a company paying a dividend is not indicative of a company that is about to go out of business? Is that a fair statement?

PARLIAMENTARY INQUIRY

Mr. SCHRODER. Mr. Speaker, I would just raise a point of parliamentary inquiry here.

If the gentleman knows the answers to his own questions that he is asking, is that a proper form of inquiry?

The SPEAKER. The Parliamentarian and I were discussing that as you raised the question.

Mr. SCHRODER. It was a timely question, I guess.

The SPEAKER. Pardon me?

Mr. SCHRODER. I am sorry, Mr. Speaker.

The SPEAKER. No. The purpose for interrogation, of course, is to solicit answers that you do not know. It appears that the gentleman is arguing his case rather than seeking information. I would ask him to seek information rather than arguing his case. If it is a rhetorical question, it is really not proper in interrogation.

Mr. GANNON. If I may make an offer of proof here, Mr. Speaker, what I am obviously attempting to determine here, and I do not know the answer to this, is how we are defining this medical malpractice crisis. We have three reports here from the Department of Insurance on the losses that are being paid out by Pennsylvania's three medical insurance companies that write medical malpractice—

The SPEAKER. The gentleman will continue, but I am cautioning you, please seek information.

Mr. GANNON. Thank you.

The next one is PHICO Insurance Company, and as I believe many of us know, PHICO is in a great deal of financial difficulty right now. Yet in 1998 would it be fair to say that this company, at least from its reports to the Pennsylvania Insurance Department, on a loss ratio of 26.6 percent and premiums of \$270,000, was not in a crisis?

Mr. SCHRODER. Is that a question or have you answered your own question, Mr. Speaker?

Mr. GANNON. I am asking you a question. Do you agree whether or not that is a fair statement? That is a question. I do not know whether or not you could say you disagree or—

Mr. SCHRODER. Would you repeat the question?

Mr. GANNON. Would you agree or disagree that a company with a 26-percent loss ratio and paying dividends of \$270,000 is not in financial crisis?

Mr. SCHRODER. You know, Mr. Speaker, I do not stand here as an accountant, as an insurance actuary, or anything, you know, like that with expertise, but I do know a crisis when I see it, Mr. Speaker, and I think all the members in this room know a crisis when they see it, and if you do not know there is a crisis here—

The SPEAKER. Mr. Schroder.

Mr. SCHRODER. I will just leave it at that.

The SPEAKER. I think we have a pair of trial lawyers arguing.

Mr. GANNON. He cannot preempt me.

The SPEAKER. This is the nice, new Tom Gannon. Now, please, do not ruin this.

Now, both of you are skilled trial lawyers. Do not bring shame on us, us lawyers. Come on, both of you know how to handle this. Get to it.

Mr. SCHRODER. Let us try again.

Mr. GANNON. I am going to fast-forward, Mr. Speaker, because I think the gentleman knows the point I am coming to and I believe the members of this body know the point, at least on this

one issue, and that is how much insurance companies are taking in in premium and how much they are paying out in losses. I believe, and I am framing this in the form of a question to Mr. Schroder to find out whether or not he agrees with this, that a company that is paying out less than what it takes in is not in crisis.

Mr. SCHRODER. What I have not heard are what the figures and these loss ratios are of 2000 and 2001. I believe you are talking about, you know, the late nineties – '97, '98, '99, something like that. So what relevance that has to today, I am not exactly sure.

I do know that the information I have from the Insurance Commissioner indicates in 2000 – and I do not have the figures for 2001; maybe you do or maybe someone else does – but as I stated earlier in my remarks, that the insurance companies paid out more than they took in, and that is going to put a hurting on any business.

Mr. GANNON. Well, I only can rely on the reports that they submitted to the Department of Insurance, which the Department of Insurance then transmitted to every member of this General Assembly in its official annual statistical report. I do not have any other information from the Insurance Commissioner other than this report, but I can fast-forward and ask you in the form of a question that if the Pennsylvania Medical Society Liability Insurance Company had a loss ratio of 84.38 percent in the year 2000 to 2001 and PHICO Insurance Company had reported a loss ratio of 43.52 percent, and we all know that PHICO has had financial difficulties, and Medical Protective Company has a loss ratio of 30.71 percent, and if you look at those numbers over those 3 years, they go down. Now, based upon reports from the Insurance Department that the loss ratios of these medical liability insurance companies have been declining, would it be fair to say that these companies are not in a crisis?

Mr. SCHRODER. Well, let us keep in mind also that companies have to have and maintain substantial reserves, and regardless of these figures that you are quoting, when companies decide that Pennsylvania just is not a place that they can do business anymore, I mean, if it was a good situation and good condition for them to do business here, they would do business here because they could make money. Now, that is just common sense. I think any person with any, you know, basic knowledge of a business would understand that, but when the situation gets so dire, they start moving out of the State and they stop writing in Pennsylvania.

So while I appreciate your efforts at a lot of facts and figures here and throwing a lot of these things out at us, I think just a commonsense look at the situation might tell us otherwise.

Mr. GANNON. Now, Mr. Speaker, here is a report. This is from another government agency. It is the Pennsylvania Department of State Bureau of Occupational Affairs and licensing. This is the department that issues all the licenses to our professionals. In 1995, Mr. Speaker, and this will be framed in the form of a question, there were 43,045 doctors in Pennsylvania, licenses issued by the Pennsylvania Bureau of Occupational Affairs and licensing. In 1996 that number went down to 41,988; in 1997 that number went up to 45,141; in 1998 that number went up to 46,678; in 1999 it went down to 45,578; in the year 2000 it went up to 46,975; and for the entire State of Pennsylvania in 2001, the number was 45,932. Based upon those numbers, these are the official numbers from the Pennsylvania Department of State's bureau of professional licensure, would that indicate that physicians are fleeing Pennsylvania?

Mr. SCHRODER. Well, Mr. Speaker, first of all, I do not believe that just looking at the strict number of licenses is always indicative of the actual number of physicians that are currently actively practicing. I believe there are and can be differences in those numbers, and also you are talking about entire State figures. That does not account for perhaps regional variations, where certainly in the southeast I do believe that physicians are fleeing the State. I believe that because, you know, they have told me so. They have given me specific and concrete examples of physicians who have done so, and, you know, there are people out there who think they know better, you know, why physicians are fleeing this State than the physicians themselves do, and I have just never understood that. I think we have to take the word of the people who are in the trenches themselves. They are the ones in the best position to know that.

Mr. GANNON. Well, the Pennsylvania Bureau of Professional and Occupational Affairs does break down the number of licenses by county and by region.

Once again in the form of a question, in Bucks County between the year 1998 and 2000, actually in the year 2000 there was an increase in the number of physicians in Bucks County, according to the Bureau of Professional and Occupational Affairs, which is our official Pennsylvania department for licensing physicians. In the year 2000 the number of physicians in Chester County increased slightly. In the year 2000 the number of physicians in Delaware County increased slightly, and in Montgomery County in 1998 there were 5,300-some physicians in Montgomery County, and in 1999 there were 5,100 physicians in Montgomery County, and in the year 2000 the number went up to 5,400. I will not go into Philadelphia, but they are consistent of an increase in the year 2000. Now, the question is, based on these official numbers from the Bureau of Occupational Affairs, which is charged with keeping these records, is that indicative of a flight of doctors at least from those counties?

Mr. SCHRODER. Well, Mr. Speaker, I do not know, and the reason I do not know is just because a physician leaves the State does not mean that they drop their license. It is absolutely possible if not probable that those who have left the State still maintain an active Pennsylvania license. However, I would also say that the figures you are citing are the year 2000. This problem really took a turn for the worse in the year 2001 and now into 2002. So I am not sure that those figures, once again, are indicative of the real problem out there.

Mr. GANNON. Thank you, Mr. Speaker.

Mr. SCHRODER. I would also point out that licenses are good for a period of 2 years. So there could be a lag time, certainly, when that departure would show up.

Mr. GANNON. Your amendment proposal deals with an issue called collateral source, and if I may for a moment, I think that deals with the fact that an injured victim of medical negligence would have his or her medical expenses paid by his or her own insurance, private insurance, health insurance, that is – may get it from a public source, too; Social Security or Medicare or whatever – and that private insurance may be paid for by the injured victim or it may be paid for by that employer who pays the premiums for that health insurance and the victim is paid the premiums for that health insurance. As I understand your amendment, and you can correct me if I am wrong, does this proposal to eliminate this collateral source issue, where the defendant has to reimburse the victim for their medical expenses even if they are reimbursed – and under your proposal I believe they no longer would be

required to pay those medical expenses that were paid for by other insurance – does that proposal shift those medical expenses, which could be substantial, on to the insurance company of the injured victim?

Mr. SCHRODER. First of all, that is past medical expenses and past loss earnings, but the answer would be yes. Because of the

fact that we also, I do not think you mentioned, eliminate the subrogation, the answer would be yes.

However, you know, we have been told by representatives of the insurance industry that by and large they are willing to give up that right of subrogation because of issues that arise with that – problems of collection and expenses that are inherent in that system. So the insurers that we have talked to and I believe the Insurance Federation and others have decided that they are willing to give up that right.

The SPEAKER. Will the gentleman yield.

Please, we have been doing very well with attention. Let us continue that. There are a number of members very, very interested in this debate.

The gentleman may proceed.

Mr. GANNON. Now, as I read this amendment and I understand this – you can correct me that it is wrong – but the defendant doctor or hospital – let us say doctor for purposes of this debate – the defendant doctor can require the injured victim to purchase, to pay for health insurance to pay for future medical expenses. Is that a fair statement?

Mr. SCHRODER. Mr. Speaker, we are checking on that, but I believe the answer is yes, but the defendant would be the one to pay for that. We are trying to get that clarified right now. Would you give us a moment?

Mr. GANNON. That was my next question, and I will wait.

Mr. SCHRODER. Okay.

Mr. Speaker, I believe the answer to your question is located on page 22, under section (d) at the top of the amendment, where “At the request of the defendant, the claimant shall maintain a collateral source benefit in effect or obtain a collateral source benefit. In such a case, the defendant shall be required to compensate the claimant for the reasonable costs incurred...,” and it goes on from there.

Mr. GANNON. Mr. Speaker, I am having some difficulty. I remember reading this language, and as I read this language, it says, “In such a case, the defendant shall be required to compensate the claimant for the reasonable costs incurred by the claimant...,” and I am going to just run over this, that “...are not covered by a collateral source.” As I understand it, the collateral source is the health insurer that is paying the insurance, the medical cost. I am talking about the premium cost that would be incurred by the injured party to pay for that insurance, to obtain the benefit from the collateral source. I do not believe the collateral source is going to pay the premiums for its own benefit.

As I read this, and you can correct me if I am wrong, it is that the claimant shall maintain insurance and the defendant shall be required to reimburse the claimant for any benefit that is not covered by the insurance. I am talking about the cost of the premium for that health-care insurance. Who is going to pay that and what would be the public policy to require the injured person to pay for that insurance?

Mr. SCHRODER. Well, I do not believe the injured person does in this, Mr. Speaker, because it says, “...the defendant shall be required to compensate the claimant for the reasonable costs

incurred by the claimant....” and so I believe that that puts it on the defendant.

Mr. GANNON. Thank you, Mr. Speaker.

Mr. Speaker, the amendment talks about a contract, and there are essentially, as I understand the amendment, there are two contracts here: one is a contract to limit the value on noneconomic damages and the other is a contract for mandatory mediation; that may be one contract or two separate contracts, but in the bill it is two separate contracts. What consideration does the physician give to the patient prior to any procedure in return for inducing the patient to sign a contract like this, giving up this right to, if you will, substantial noneconomic damages to a limit and requiring the patient to go into some kind of nonbinding mediation?

Mr. SCHRODER. Well, just as you as an attorney, Mr. Speaker, would enter into a contract of a contingency fee agreement, whereby you would agree to take a certain portion of the awards, you know, the settlement, whatever the case might be, before you take the case. On the other side, what is happening here is that the physician will agree to provide the medical services to that individual once they agree upon whatever figure they agree upon for limitation of noneconomic damages.

Mr. GANNON. Well, when I get into a contingency fee agreement with my client, you are correct, I agree to provide a service and my client agrees to pay me a fee, and that fee will be based on any amount that is recovered, a percentage of that amount, and if there is no recovery, then there is no payment. However, I do not ask my client to give up any rights or to reduce any remedies that my client would have.

Under this contract – and I am getting to what is the consideration, because as I understand the law, in order for a contract to be binding on the parties, there must be a consideration; there has to be a meeting of the minds that there is going to be a contract and then there has to be consideration. And my question to you is, what are the elements of the meetings of the minds between the two parties prior to the procedure with the understanding that the physician is also going to be paid for his services either directly or through some insurance mechanism? What is the meeting of the minds that is taking place here and what is the additional consideration for this additional contract to limit the right, to limit the recovery that the patient would be entitled to should they suffer a negligent injury?

Mr. SCHRODER. I would also point out that the language in the amendment specifically states that consideration shall not be required for an agreement permitted in this subsection. So we have specifically waived that as long as the agreement provides that the signers agree to be legally bound.

Mr. GANNON. What is the public policy reason for not requiring the physician to give any consideration to the patient for inducing that patient to sign this type of an agreement?

Mr. SCHRODER. Well, I think the overarching public policy consideration is what we have been talking about here all night, and that is to limit skyrocketing jury verdicts and awards, claims payments, bring some stability to the malpractice marketplace, make sure that our health-care system remains viable for the 12 million Pennsylvanians who need it and need to have access to it. I believe that those are all very overarching and very serious public policy considerations that admittedly, admittedly, Mr. Speaker, require us to make some tough decisions in these times.

Mr. GANNON. Well, Mr. Speaker, I note in the amendment there is a requirement for medical education, which has been a

void in our licensing requirements for physicians since I can ever remember, but if a physician does not complete the medical education requirement— I know that as a practicing lawyer, if I do not meet my educational requirements, the Supreme Court will suspend my practice, my license to practice, and I believe all of our other requirements. Now, I did not see it in that specific language, but you could help me out. Is there in the bill, if a physician does not complete the medical education requirement that would be set forth by the bureau, will his license or her license be suspended or revoked?

Mr. SCHRODER. Mr. Speaker, my understanding is that it cannot be renewed. It would be a condition of renewal, and I believe that is similar to what the osteopaths have right now with their continuing education, which is also mandated by the State.

Mr. GANNON. But that physician could continue to practice until that nonrenewal occurred. Is that what you are saying?

Mr. SCHRODER. Mr. Speaker, I believe that is probably correct, but I also believe in your attorney example that that is the same, that is also the same. You practice until your renewal time comes up. If you do not complete the requirements at that time, then you are cut off by the Supreme Court.

Mr. GANNON. I will take that as a question, and I will tell you that it is not. Your license is suspended if you do not meet your requirements, whether it has been renewed or not.

Mr. SCHRODER. My point is that that comes up at the same time generally. Well, we do not need to get into a debate on— We will discuss that off the floor maybe.

Mr. GANNON. Now, Mr. Speaker, in the course of this debate which has taken place over probably the past couple of months, the physicians have been telling me and I am sure they are telling you and I heard from your opening remarks supporting the passage of this amendment that there is a need for immediate relief. There is a medical malpractice crisis that medical liability insurance premiums are skyrocketing and there has to be some immediate relief provided to our doctors. What would be that immediate relief under this proposal?

Mr. SCHRODER. Mr. Speaker, if I may, I believe what I said, and we can check the record, I believe that I was urging us to act immediately. I still believe that. I am not going to stand here and say that the provisions in this language will provide overnight relief. We can only do what we can do, but, Mr. Speaker, I do believe that the provisions in here will provide substantive relief. It might come over a period of time, but I believe it will lead to not only reduced medical malpractice premiums but also opening the market back up for insurers to come back in, which will also provide further relief as competition acts to make premiums more competitive.

Mr. GANNON. As the prime sponsor of the amendment, Mr. Speaker, has any medical malpractice insurance company writing business in Pennsylvania, including the three that I mentioned in my earlier remarks, has any one of those companies or all of those companies promised that they would reduce insurance premiums if this amendment became law?

Mr. SCHRODER. Mr. Speaker, I know there have been many discussions with the insurance providers, you know, throughout Pennsylvania. At this point I do not have information on whether they have made promises or not. I do know that some of the ones who have left or who have stopped writing have said they want to see certain things done like were contained in this bill so that they can consider coming back into Pennsylvania.

Mr. GANNON. What companies have stopped writing, Mr. Speaker? I am not aware of any that have stopped writing, other than PHICO and St. Paul, which is withdrawing from other States also, not just Pennsylvania.

Mr. SCHRODER. Certainly, Mr. Speaker, I know of St. Paul; AIG is another one. These are, you know, big insurers. I believe there are more, but I do not have the list in front of me right now. We might be able to get that from our staff, but I do not have that in front of me right now.

Mr. GANNON. Thank you, Mr. Speaker.

Mr. Speaker, they are all the questions I have, and I appreciate your forbearance in trying to answer those questions.

THE SPEAKER PRO TEMPORE (BRETT FEESE) PRESIDING

Mr. GANNON. If I may, Mr. Speaker?

The SPEAKER pro tempore. The gentleman is in order.

Mr. GANNON. Mr. Speaker, the Pennsylvania CAT Fund informs us that since 1976 through the year 2000, less than 2 percent of the doctors covered by the CAT Fund have accounted for almost 42 percent of the payments, and about 151 doctors, individual physicians, have accounted for over 12 percent of the money paid out by the fund. Considering that we have 55,000-plus doctors in the Commonwealth of Pennsylvania, 2 percent is a really, really small number that arguably are causing a crises in medical health care and medical insurance in Pennsylvania, and it just seems strange to me that we are here tonight debating legislation that does not make life easier for the patient who is injured. I do not see where it really does a lot for that other 55,500-and-whatever, less the 2 percent that are causing most of the claims; it does not seem to do much for them. But when we look at those tort reform measures in this proposal, it really protects that little 2 percent. It does nothing, nothing at all to discipline them, to take away their license, to prevent them from going into the operating room and doing it again. It lets them continue on, and who bears the cost? Well, when we look at the subrogation proposal, we find that the cost is going to be borne by the citizens of Pennsylvania – their health insurance premiums, their health insurers. The cost is going to be shifted back to them and not on the negligent doctor that caused the injury.

So why do we protect the small number of doctors who are causing the crisis? We should be doing something affirmatively to get them out of the operating room, to get them out of the medical office; help them get into another profession.

There is another interesting provision in this bill, Mr. Speaker, and as I have told this House before in prior debate, I worked for the insurance industry before I came into the General Assembly, and I worked for an insurer that did a lot of medical malpractice—

The SPEAKER pro tempore. Will the gentleman suspend.

Will conferences on the floor please break up.

The gentleman, Mr. Gannon.

Mr. GANNON. Now, we have a provision in this amendment that says, look, if you are brought into the emergency room and your condition is such that you cannot sign this agreement to limit your noneconomic damages to \$250,000, then we are going to presume that you would have signed that agreement and we are going to limit that recovery to \$250,000, and then if you ultimately come out of it and you are rational, then we can induce you or ask you to sign this agreement.

I had a case, medical malpractice case, where a young girl was involved in an automobile accident and she went into the hospital. She was brought in pretty badly banged up, and she needed surgery because they found that her spleen had been ruptured, and the doctors decided that she needed surgery. The doctor happened to be watching a baseball game or a football game on TV at the time, and at that time – I do not believe they do it anymore – they used to give you a drug; it was a derivative of vitamin K, and the purpose of that drug was to coagulate your blood; it was to thicken the blood so that you did not bleed quite as much under surgery; it was to reduce bleeding, but you had to be given a very small amount of that medication. Well, the doctor wrote out an order, while he was watching television, to the nurse to give this young lady this medication in preparation for surgery, and instead of putting .30, he put 3.0. He moved the decimal point to the wrong place, and the young lady was given a massive dose of this medication. And what it did in the sight of the nurse, who immediately after the injection realized what had happened, it began to coagulate her blood, literally turning it into Jell-O, and as that medication coursed through her veins and it came in contact with her blood, it began to coagulate and turn into a Jell-O-like substance, went into her lungs; it went into her legs; it went into her arms; it went into her heart, kept on pumping; it ultimately went into her brain, and she lived for a short time, but I can tell you she died an extremely, extremely excruciating death as a result of that negligent act.

Under this bill we are looking the people of Pennsylvania in the eye and we are telling them if it ever happens to your daughter or your son or your wife or your husband under those similar circumstances, all you are going to get is \$250,000, because that is the law. No matter what a jury thinks, no matter what a person thinks under the same or similar circumstances, no matter what the facts are, \$250,000; that is going to be it for your pain and suffering, your pain and suffering, the agonizing death that was caused because of negligent medical care.

I know it is extremely difficult to put value on life. I think it is almost an insurmountable task to ask a jury to do that, but that is our system, and now here we are tonight, we are tampering with that system, and we, on our terms, are dictating to the people of this State the maximum value of your life under a set of circumstances if you receive emergency care or if you are foolish enough to sign one of these agreements, these contracts, which do not require anything more from your physician.

Mr. Speaker, we have defined the issue here really as good doctors paying more for their medical malpractice insurance than they should. I believe that is really what this is about, and I do not think a lot of us will disagree with that, but why do we have a piece of legislation that talks about that but does not really do anything about that? Why are we protecting doctors who are negligent? Why do we not help those doctors, those good doctors, to reduce the costs that they have to pay to do business here in Pennsylvania? Good doctors should pay less.

Mr. Speaker, the other issue that I believe should have been addressed in this amendment but was not was the reimbursement. I have a letter here, which I believe all the members received, from the Managed Care Association of Pennsylvania. I know we all hate managed care, but they talk about the fact that the lack of subrogation is going to be extremely costly to the health insurance industry in Pennsylvania, and somebody is going to have to pay that bill. We are shifting that cost back to those premium payers, back to those businesses, and back to those individuals. They are

the ones that are going to pay for this, not the negligent doctor or the negligent hospital. And they tell us that when this was being negotiated, when there was input being got from I do not know who, because I never saw any public input on this whole process, that the health insurers of this State were not seated at the table in the negotiations and the discussions and the drafting of this amendment.

Many of our members have expressed the reservations that I have about this amendment and what we are trying to do here. I commend Representative Micozzie for the work that he has done on the CAT Fund. I think he has really tried to address a very, very complex issue and come to some resolution. I am hopeful that the language that has been put into this amendment to deal with the CAT Fund will succeed and we will see some relief on that.

I think the patient safety language has made a small step forward, and I think the licensing changes, they went from zero to something, which is an improvement, but I think there is a long way to go. We should look at what some other States do in terms of their disciplining doctors who are negligent time and time again. They are very, very, very few, but they are out there and they are causing severe problems, and we can do something about it and we should do something about it. I think we are making a very, very small step here.

I have very, very serious reservations about the tort reform, putting that in quotes, "tort reform" provisions. I think we are asking the 12 million people of Pennsylvania to give up very, very substantial rights that they have at this time. We are asking them to bear the cost. We are asking Pennsylvania's 12 million citizens to bear the cost of a small, small number of negligent doctors in the consequence of their acts, and I think we can do better.

I am going to support this amendment because this is a process, but I think it should be on the record every reservation that has been expressed about this. Something is going to come out of this process, let us be honest about it. The hysteria has gripped this Capitol for too long; the hysteria has gripped it. This has not been rational; it has not been logical; it has not been well thought out. We have hodgepodged paragraphs together. We have thrown things in; we have pulled things out. There was not one bit of public input on this amendment up to this point in time, and before this process is finished, we should guarantee the public, the people of this Commonwealth, that they should have an opportunity to have something to say about what is going on in here, not the doctors, not the hospitals, not only the lawyers, but the public. And not only the patients, although I think they have an important say, too, particularly the injured patients, but the public, the people of Pennsylvania, should have some say about what course they want us to take in this matter, and we absolutely should get a better definition of the crisis that we are being told exists here.

The Insurance Department tells us that loss ratios are going down; the jury verdicts in Philadelphia, which everybody screams about, going down. The number of doctors, based upon the bureau of licensing – I have to rely on some credible source – they tell us the number of doctors is about the same; it has gone up and down marginally over the past couple years. There have not been any great leaps and bounds. Yes, doctors do leave the State and doctors do come in, and they leave for all different reasons, and I would venture to say probably the principal reason they leave this Commonwealth is because they are not paid enough for the services they provide. In every other State except Pennsylvania, Medicare is the worst payer; in Pennsylvania, Medicare is the best, and that is not right.

We are expecting a lot from our doctors, and we are not paying what is due. And yet their premiums are high relative to their income, yet when we look at the numbers that come from the Catastrophic Fund, Pennsylvania premiums for the amount of insurance that we provide are very competitive to the other States, but the income is not, and that is really what is hurting the medical profession here. And we have not addressed that issue in this bill, and there has been almost a fear to address that issue. That is the first thing we should have looked at instead of running around taking away the rights of our citizens.

So this amendment has a lot of faults. I think there are a lot of legal issues that have to be resolved here. Ultimately we are going to do something, and ultimately our courts are going to have the final say, and then we will see where the dust settles and what we have done and what we have accomplished and what we have not done and what we have not accomplished. But I do know this: the doctors that come to me say they want some immediate result. Now, Representative Schroder, he said immediate action. I heard my doctors tell me they wanted immediate results. But we know, even from the prime sponsor, there are not any immediate results expected from what we are doing here, and that is unfortunate, because good doctors in Pennsylvania are going to continue to suffer.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Bucks, Mr. Clymer. Mr. CLYMER. Thank you, Mr. Speaker.

The year was December 1, 1994, the year that the Pennsylvania organ donor program came into effect, and because of that law we have had thousands of Pennsylvanians receive organ transplants. In fact, the people that have shown their generosity of our fellow Pennsylvanians since that date of December 1, 1994, until June 30, 2001, the number of Pennsylvanians who said they are willing to designate their organs, the organs that have been designated by Pennsylvanians, not necessarily used but designated in that timeframe, are 3,446,000 organs that have the possible use depending on the situation of that particular donor. But they have brought life and hope to thousands of our citizens, because many of those organs have been used in transplants, such as the heart, kidney, eye, liver, and tissue transplants. And the progress has been outstanding. Truly, in Pittsburgh and in Philadelphia, we are pioneers in medical research, and this has enabled thousands of our citizens, as I just mentioned, to have a new freedom, a new hope for life, because of what we have accomplished through this.

In fact, Mr. Speaker, one of the persons who has been helped – he was helped prior to this becoming law – was our own Governor Bob Casey. If it had not been for those highly skilled physicians, those fantastic surgeons in the Pittsburgh arena, he may not have lived those wonderful years to serve out his governorship here in Pennsylvania. And I remember very clearly the day that he walked back into this House; I believe he addressed a joint session of the General Assembly. This body rose as one to give him an outstanding reception because we were so happy, our hearts were filled, that this man was able to return to normalcy for some degree because of that operation.

Now, Mr. Speaker, if you follow me here for a moment, and then I think we later on named the organ donor program after former Bob Casey. Like I said, it took the top surgeons who were involved in the Pittsburgh medical field to make those two transplants, and in Philadelphia we have an equal number—

PARLIAMENTARY INQUIRY

Mr. DeWEESE. Mr. Speaker? Mr. Speaker?

The SPEAKER pro tempore. For what purpose does the gentleman rise?

Mr. DeWEESE. A point of parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his point.

Mr. DeWEESE. What does the gentleman's very worthy anecdotal recollections have to do with the Schroder amendment?

Mr. CLYMER. Well, I am getting to that. Just give me time. Just give me time; I am getting to that.

The SPEAKER pro tempore. The gentleman will suspend.

The gentleman, Mr. DeWeese, I think he is getting to his point, so we would ask the gentleman, Mr. Clymer, to expedite—

Mr. CLYMER. I am.

The SPEAKER pro tempore. —the process to that point, if you would, please.

Mr. CLYMER. I am moving very quickly toward there.

The SPEAKER pro tempore. Okay. Thank you.

Mr. CLYMER. Because of these highly skilled surgeons, Mr. Speaker, these wonderful things have happened. Now, what is happening, if we do not pass this amendment, we are going to see the loss of these great physicians out in the Pittsburgh and the Philadelphia regions. The very people that have made a wonderful contribution to our fellow Pennsylvanians will not be here; they are going to leave, and that is going to be a tragedy to this State. And I might add they also bring forth economic development as well, because they bring a team of people with them, and they are able to do these major surgeries, whether it be the heart or the liver, the kidneys. That also has an economic impact in that it provides jobs, jobs in the hospitals. The hospitals are successful because of these surgeons. And, Mr. Speaker, people who work in the ICU (intensive care unit) that care for the patients, people who do laboratory work, physical therapy, there is a wonderful trickle-down effect that creates jobs for many of these other people.

So this is important to our urban centers as well as to southeastern Pennsylvania, and certainly if I lived in the city of Philadelphia or Pittsburgh, I would be very acceptable to vote for this amendment. But I raise the point, and that is that we are going to lose these outstanding people, these outstanding surgeons, these outstanding physicians, and then what happens to this great program that we have put together? It becomes kind of moot, and I hope that situation will never occur.

So, Mr. Speaker, I urge all members to vote for this amendment. Thank you very much.

The SPEAKER pro tempore. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Beaver County, Mr. Veon.

Mr. VEON. Thank you, Mr. Speaker.

Mr. Speaker, I rise to strongly oppose the Schroder amendment.

Mr. Speaker, I know that the hour is late in that many members have had an opportunity to make comments here on the House floor tonight, and I will work hard to make my remarks as brief as possible. But I know, Mr. Speaker, that even the gentleman, the author of the amendment that I strongly disagree with, comes to this issue with sincerity, and I know, Mr. Speaker, that it is not very often, frankly, that we get to deal with an issue that literally — literally — has life-and-death consequences for the people that we represent. And I know, Mr. Speaker, that because of that there has

been great tolerance here amongst the members as we each have tried to articulate our positions on this issue, and, Mr. Speaker, again, very seldom do we get this opportunity to create law that does literally affect life or death in the State of Pennsylvania.

Mr. Speaker, I think that a number of members have made good points about why you should not be for this amendment, and I want to very briefly reiterate that in my judgment, this amendment is an incredible missed opportunity. It is a missed opportunity to do something real on medical malpractice reform. In fact, moments of the debate have been somewhat surreal, because we have had members in this chamber stand up here on the House floor and tell us what the Senate ought to do to improve the bill that we are voting on in the House today, not what the House ought to do to improve the bill but what the Senate ought to do to improve a bad bill that we are prepared to vote on in the House today. Those moments have been surreal as I have listened to those comments here. And I am sure that they mean well, but I thought it would be our responsibility in the House of Representatives to not miss this opportunity, to in fact try to make real reform.

And again, I have listened to the gentleman, the maker of the amendment, the author of the amendment, talk about a crisis, and other speakers have said there is a crisis, and crisis by definition means that we need to do something immediately to solve that problem, some immediate relief, some immediate attention to deal with this crisis in the State of Pennsylvania. Granted, I believe that there is a problem with rates in this State, but, Mr. Speaker, this bill does nothing to solve the crisis.

By the Pennsylvania Medical Society's own admission in comments that they have made in the newspapers in the last several days, they have been quoted as saying there will be no immediate rate relief for doctors in the State of Pennsylvania. So all the doctors that are intently following this debate, make sure they understand that; make sure it is clear from their association in Pennsylvania. Their own association says this bill, this prescription, will have no immediate impact on their rates in the State of Pennsylvania, no immediate impact. It will have some long-term impact. What is long term? I have yet to hear the gentleman tell me. Will it be 1 year before there is relief? Will it be 2 years before the so-called restructuring of this will bring real immediate rate relief to doctors' malpractice rates in the State of Pennsylvania, or will it be longer than that? I have yet to hear anybody articulate when the relief is going to be upon us. There are no mandatory rollbacks and rates in this bill; it is a missed opportunity.

Mr. Speaker, another significant missed opportunity is on dealing with bad doctors in this State. When we started this debate, all well-meaning members said that we need to do something about doctors, bad doctors. By any of our subjective definitions, collectively we would say, those are bad doctors. In the history of the CAT Fund, less than 1 percent of the doctors have been responsible for 25 percent of the payouts in the CAT Fund, and yet in this bill, because of this missed opportunity, we do not do anything to take bad doctors out of this system, to create a system where not only do the doctors police themselves but where the State of Pennsylvania polices the doctors. And not only do we not police the doctors, but we even go further than that and in this bill, I guess to somehow affect rates over the long term, we say that if you sue the doctor, the State of Pennsylvania by this law is going to continue the conspiracy of silence, because you have no access, you do not have any ability to recover in court, one iota of information about that doctor from the State licensing board.

So not only will the doctors not police themselves, not only will the State of Pennsylvania not take this opportunity to police those doctors, but now we are going to shield them with a conspiracy of silence by a law of the State of Pennsylvania, and, Mr. Speaker, it is a missed opportunity. There were well-meaning members on both sides of this issue that wanted to correct the problem with bad doctors in the State of Pennsylvania. We are missing that opportunity here tonight.

Mr. Speaker, the last point I want to emphasize, because it is the most egregious, and I think the gentleman from Luzerne County was the most articulate on this point, and I cannot help but emphasize that even though the hour is late, that in the State of Pennsylvania, if this law passes, if this law passes, every single patient who walks into every doctor's office in every single one of our districts will have to sign a form, and the form that they sign is going to do two important things. Number one, they are going to be required to sign the form, and in that form they will give up their right to sue by a jury, give up their right to sue and have that case decided by a jury of their peers in the State of Pennsylvania. They give that right up by signing that document. And the second thing that they do is they agree, by signing that form, that no matter what happens to them, no matter what happens to them, and even if by our own subjective opinions a doctor performs malpractice on that person, we are capping their noneconomic damages, we are capping their pain and suffering, at \$250,000. Mr. Speaker, that is the most egregious part of this bill. It is reason enough to vote against this bill.

Mr. Speaker, I have heard some folks say, well, you do not have to sign that form. Well, this bill says if you do not sign that form, that doctor can refuse to treat you in the State of Pennsylvania – can refuse to treat you. It does not matter what your ailment is, it does not matter what condition you go in front of that doctor, it does not matter what your problem is, that doctor can refuse to treat you. And you talk about coercion, you talk about an unconscionable situation, you talk about forcing people to sign a document that is not in their best interests, that, Mr. Speaker, is unconscionable, and “unconscionable” is a word that we have used to describe some legislation in Pennsylvania before. This is unconscionable. This is so unconscionable that the maker of the amendment had to put it in the bill, on page 14. It is so unconscionable he had to put it in the bill to make it clear, on page 14, that this language shall not be deemed unconscionable by act of the State legislature. And “unconscionable” happens not only to be a term that we use to describe those kinds of egregious bills that we do not like in this legislature, but it also is a legal term of art. And I am no lawyer, but the legal term of art says that a court can rule that a contract is unconscionable, as a legal term of art, meaning it is so lopsided, so one sided, so much in favor of one of the parties in that contract, that it can be ruled unconscionable, and by a legal term of art it says if it is unconscionable, it can be null and void. They are so afraid that any judge in the State of Pennsylvania would look at that relationship between that doctor and that patient and say, that is unconscionable. Not only would you say it, not only would our constituents say it, not only would the average person on the street say it, but any judge in the State of Pennsylvania would see it and say it. To prevent that, the maker of this amendment had to write it into the amendment to say it is the intent of the legislature to say that this language and this contract is in fact not unconscionable.

And speaking of unconscionable, when that same patient goes to the emergency room, does not have the ability to make a

decision whether to sign the consent form or not, goes to the emergency room – any constituent in any district in this State – that person entering the emergency room is deemed by this amendment to have signed that consent form by implication of being in the emergency room for a medical emergency. Mr. Speaker, regardless of what the maker of this amendment writes in this language, that is unconscionable.

Mr. Speaker, I heard some members justifiably talking about the real life and real live problems that doctors are having paying their medical malpractice rates in this State, and that is true. And granted, those are real life problems and they are real live problems and they are important problems to those people, but let us not forget that what we are talking about are also real life, real live problems. How about the documented case of the woman who went into the emergency room bleeding, and those emergency room doctors, they recommended after some analysis a hysterectomy, and the operation was started to remove her uterus. In the course of that operation they discovered that that woman was in fact pregnant, and that woman – a real life case in the State of Pennsylvania – lost that child. She not only lost that child, she lost her ability to ever have another child, and, Mr. Speaker, under this amendment and this law, that woman would be capped at \$250,000. Regardless of her pain, regardless of her suffering, she is capped at \$250,000, period.

There are many real life, real live, real important personal cases just like that one. We could spend the next few hours talking about cases just like that. And folks in the abstract can talk about pain and suffering being somebody else's problem and pain and suffering not being justified or warranted to receive a fair and adequate settlement in front of a jury of your peers, and that we in the State legislature, not the juries, are going to determine what that woman's pain and suffering was for a medical mistake where she lost her child and is never able to bear another child. Mr. Speaker, that is unconscionable, and, Mr. Speaker, for that compelling reason alone we should do what some members have said: we should send a message to the State Senate that they need to come back to this chamber with a bill that works, with a bill that makes sense, with a bill that does something about the rates, and with a bill that is in fact not unconscionable.

Mr. Speaker, vote “no” on the Schroder amendment.

The SPEAKER pro tempore. The Chair thanks the gentleman.

REMARKS SUBMITTED FOR THE RECORD

The SPEAKER pro tempore. The Chair recognizes the lady from Philadelphia, Ms. Washington.

Ms. WASHINGTON. Thank you, Mr. Speaker.

Mr. Speaker, we have heard many pros and cons to the Schroder amendment, and because I do not want to belabor our time, I would like to submit my remarks for the record, and I will be a negative vote for this amendment.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. The lady will submit her remarks, and the Chair appreciates the lady submitting her remarks.

Ms. WASHINGTON submitted the following remarks for the Legislative Journal:

Mr. Speaker, I rise here today to agree to speak for those who are not represented in this bill and in fact those that will suffer if this were ever to become law; that is, namely the millions of ordinary Pennsylvanians who

in any given year need medical attention – the truck drivers, the cooks, the waitresses, the teachers, the small business men and women, the single mothers struggling to make ends meet. Because under this proposal, as has been pointed out by several of my colleagues, a patient who needs medical attention must first sign a waiver that would limit their ability to sue before they can get treatment.

This bill will not reduce employers' premiums; it will not reduce patients' copays; it will not even provide immediate relief to the problem at hand. All it will do is tell the people they do not matter. The people are being told that in order to receive treatment, they must sign away the one tool they have to seek recourse if, God forbid, something horrible and avoidable were to happen.

Mr. Speaker, that is not right, and it should not be. I was elected to represent the people, and that is what I am going to do. Thank you.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Westmoreland, Mr. Pallone. The gentleman waives off.

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

Mr. GORDNER. Thank you, Mr. Speaker.

I would just like to mention four comments and concerns that I have with the bill and hope that the Senate addresses them.

First, on the issue of joint and several liability, I hope that the Senate addresses that issue to make sure that those that are injured can access the damages that are appropriate.

I have a concern, as others have mentioned, with the cap on the noneconomic damages of \$250,000, and I would hope that that amount would be raised as well.

Two other issues, and this one I am not sure that others have mentioned, but coming from a member of the House Professional Licensure Committee, I and some of the other members of the committee have a concern that licensure issues are being addressed in this bill, which is not the past practice of this General Assembly. In the past when we have dealt with such issues as continuing education, issues with other things with the board, they have been done through a specific licensure bill. The things that are in this amendment should be done through a Medical Practice Act amendment or an amendment to the Osteopathic Practice Act and not to this CAT Fund and would urge that when the Senate takes whatever action they do, that they find an appropriate licensure act to amend to take care of some of the requirements such as continuing education, reporting provisions, et cetera.

The last thing, I guess, that I have a concern in, as it has been mentioned here before, one of the things I was most proud about in regard to the 1996 workers' compensation law was an amendment that I was able to convince the Senate leadership to put in, and that was an amendment that required an independent actuary to look at the savings that were going to result from the changes we did in the workers' comp law and require that those savings be passed on back then to the businesses and owners who were paying the premiums. That was something that was very important. In 1993 we passed the Mellow-Madigan bill and were concerned that even in 1996 the savings were not being seen by the premium payers. So in that 1996 act we put in specific provisions that said that an independent actuary had to look at what actions were being taken, what the cost savings would be, and then require that those savings be passed on to the premium payer. As others have mentioned, we are concerned that the actions that we are doing today and that we may do 2 weeks from now, that ultimately the insurance companies may not pass on those savings. I filed an amendment today, although it was not timely filed, that would have required

those same actions in those bills. I do hope that the Senate will consider that language and include it in the final act, again, to make sure that the doctors and the hospitals see the savings that are a result of what we are doing.

With those conditions and concerns I will be voting in favor of this bill and hope that those concerns and issues will be addressed.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Centre County, Mr. Benninghoff.

Mr. BENNINGHOFF. Thank you, Mr. Speaker.

I would submit my comments for the record, but I will have a difficult enough time reading them myself much less the stenographer, so if you will indulge me for 2 minutes, I will share a couple comments.

We heard the comments a little earlier whether or not we have a crisis, and I think it is interesting, if you look at the statistic, that over 74 percent of our orthopedic residents choose not to practice in Pennsylvania. To me, that is a crisis. But more importantly, I think we have got to get this thing a little bit more local and think about your own neighborhoods, families, and the people you represent. I would suspect if you went to see a physician or wanted to see a specialist and were told there was not one there because they chose to leave, that would be a crisis to you.

I need to take a moment to commend Representative Schroder, Representative Micozzie, and Representative Sam Smith, not just for the work they put into the bill but, more importantly, for indulging some of my aggressive scrutiny and sometimes tough questioning on some of the bills. Whether you are tired and think that this debate is somewhat cumbersome, I think it is important, because I do not believe there is another issue that is more important for us to address and may be more important in our legislative careers than what we are talking about tonight. It may not be the magic pill to fix everything, but it is a good start, and I commend them for their efforts and I commend them for being willing to take some criticism along the way.

We do have an obligation to address this. I think the people back home, who are probably less versed in the overall comprehensive issue we are discussing tonight, whether it is the tort reform, the malpractice, or the patient safety, are depending on us and believe in us to do the right thing, and that is what I am asking you to consider when you go to vote.

I ask you to take 2 minutes to think about why we are even engaged in this conversation. Why are we even talking about malpractice? Why has it ever come about? Well, it is because there have been medical errors. I do not believe that patients originally sue just to collect money. I think a lot of them sue because they want answers. Something has happened, oftentimes to a loved one, and they want answers. Unfortunately, the frustrations are sometimes that our different establishments do not give them those answers directly, so they need to choose the only option they have, and that is to take a legal route. With that in mind, I think we need to get away from the finger-pointing of it being a doctor-versus-attorney debate. This is not about rewarding or helping one group or the other. It has to be focused on one issue, and that is quality care, quality patient care, which I think we can all stand together and want to support.

I want to compliment the makers of the amendment for including patient safety in that. For any of us that ever worked around the industry, we believe that is truly the driving force and the need for the original intent of malpractice and malpractice

insurance. It is obviously what is driving the rates up. But I would caution that we are not done, and I would ask our colleagues in the Senate to take some serious consideration, to take it maybe one step farther, and even the members in this Assembly, to consider something called statewide peer review, an objective, impartial authority that could have cases referred to them, not within the institution where the occurrence occurred, not physicians who work in the same hospitals necessarily having to be observing each other, but an objective, impartial organization that would help to instill patients' confidence back in the medical system. There are a couple key points to that, and then I will close.

That is a complicated idea, but I think it is a good idea and I think we need to entertain it. It would help to ensure quality. More importantly, it would allow those people who have gone into this profession, which I think most of them have, with great integrity to be able to speak up and stand up when they see problems without worrying about being persecuted, without being encouraged or enticed to move on and disappear or be quiet because they have spoken up. We as a patient expect that those in white are going to take care of us. We do not know some of these little things that go on behind closed doors. But more importantly, we want to be guaranteed quality. I would like to see the rules of evidence be introduced in a situation like that, that if someone were not able to speak up or if somebody was brought in as a witness, that they had the integrity not to lie, and if they chose to lie to try to persecute someone for false claims, they could be charged for perjury. Pretty radical thinking, but something to think about, because I think it will make a difference.

Again, I think we need to think about the fact that medicine is not an exact science. We have got luxuries in this country, and one of them is being that we have the greatest health care in all the United States, and unfortunately, that luxury and the easy access that many of us have, the fact that some third-party person pays for it – we do not even see what the overall bill costs us; we do not feel the pain oftentimes out of our pocket – insulates us until it is a problem. Then we want to point a finger about it. We as consumers in this Commonwealth as well as this United States need to be smart about our health care no differently than if we are shopping for a car or some other commodity in the world that we try to live in.

Health care is an important issue that touches all our lives, and I would encourage all of us to be in support of this amendment. Bipartisan; this is not a Democrat-versus-Republican, a Senate-versus-House issue. This is an issue for the citizens of Pennsylvania, the ones that have elected us, that have trusted us to come here and represent their concerns, because it will be a crisis in their life if it is their family that is affected or yours as well.

Thank you, Mr. Speaker. I will close with that. I appreciate your time and again compliment the makers of the amendment.

The SPEAKER pro tempore. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Fayette County, Mr. Roberts.

Mr. ROBERTS. Thank you, Mr. Speaker.

I certainly agree with the objections raised by Mike Veon and some of the others here, and I certainly do not agree with a contract between a patient and a doctor, and there are other things in this bill that I do not agree on, but I am here to support the Schroder amendment.

Now, the question was raised earlier, do we really have a crisis? Well, I am here to tell you that I have three orthopedic surgeons in Fayette County who actually shut their doors right after Christmas,

and they were closed for 2 weeks. To me, that is a crisis. They went to Florida; okay. No, they went to the Bahamas. That was a crisis. What happened was, people in Fayette County who had broken bones, who had casts on their arms, then had to drive to Pittsburgh. The hospital went into an emergency contingency situation because they did not have their orthopedic surgeons.

In the southwestern part of the State we have, out of Pittsburgh, five neurosurgeons. Two have already decided to leave the State; a third has decided to leave the country; a fourth has decided to retire. That will leave us with one neurosurgeon in the southwestern part of the State. If you do not call that a crisis situation, I do not know what is.

Now, I went to the rally this afternoon for the patients' rights folks, and anyone that would have been there and listened to what was going on, if you cannot sympathize with some of those folks who were talking, I do not know where your head is, because it is a serious situation, and those folks certainly were entitled to compensation for the problems that they are being dealt with by the medical community. So yes, we have to protect the patients' rights.

But I think it was Tom Ridge that likened this situation to a three-legged stool, and it was Tom Ridge, I think, that said that all three parts have to work together, and I think in this case the three functions are the medical community, the trial lawyers, and the insurance representatives, and I guess the hospital folks have to fall in with the Medical Society. But I think that we all know that there are an awful lot of negotiations going on, and I think we know that this bill, regardless of what it has in it and what we object to, is going to go to the Senate; it is going to come back completely different than what we send over there or a lot different than what we send over there. But I think it is important for us to send this bill with a large majority of a vote to let the Senate know that we are serious about this and we have to do something about the problems.

Now, I do not really think money is the issue and I do not think lifestyles is the issue, and in fact I had 70 people come here from Fayette County yesterday for a press conference that I held, and one of the doctors that came here, one of the orthopedic surgeons that came here, was the lead spokesman for the group, and I asked him where a third doctor was that I was expecting to be here who had a lot of figures about what he had to pay for medical malpractice insurance and what he got reimbursed for different procedures, and this particular orthopedic surgeon said to me, I am not concerned with that doctor being here because he wanted to talk about his lifestyle; he wanted to talk about how much money he was making, and I am not here because I am worried about some doctor's lifestyle. Now, this was coming from an orthopedic surgeon. He was not concerned about some doctor's lifestyle; he was concerned about keeping physicians in Pennsylvania to provide quality health care for our constituents, for our residents of Pennsylvania. That is really what this is all about.

We have a serious situation going on, and we need to make sure that we do something to ensure that we have quality health care in Pennsylvania and so that our constituents and the residents of this great State do not have to travel many, many miles to get medical treatment. So no, it is not a matter of money; it is a matter of keeping doctors here, it is a matter of keeping them from leaving this State. Are they leaving? We have heard a lot of talk about numbers, but I am here to tell you I know doctors that left, good friends of mine; they have gone, and I have to tell you that if a doctor is a good doctor, good physicians find it very easy to go

somewhere else. They are in demand; they really are.

Is there a review process today? Yes, there is. I think every hospital has a review process, a peer review process, and I know doctors that have been kicked out of the hospital and they have had to move and found it difficult. But the good doctors find it easy to leave. We do not want them to leave; we want them to stay. We need to find some help. We need to be working together – Representatives, Senators, Republicans, Democrats, the medical community, the trial lawyers, the hospital association, and the insurance federation. We need to roll up our sleeves and get this done.

I ask for a “yes” vote on the Schroder amendment. I think it is important that we send a large vote, a large positive vote, over to the Senate so they can know that we are serious about what we are doing here, and let them get another bill and send it back to us. So I ask you for a “yes” vote. Thank you.

THE SPEAKER (MATTHEW J. RYAN) PRESIDING

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman, Mr. Cawley.

Mr. CAWLEY. Thank you, Mr. Speaker.

I would like to interrogate the maker of the amendment. This will only be about 20, 25 minutes.

The SPEAKER. The Chair appreciates the brevity of the gentleman’s remarks.

Mr. CAWLEY. Thank you, Mr. Speaker.

Mr. Speaker, on page 14, line 31, “If the injury is, or was, caused by a foreign object—”

The SPEAKER. The gentleman will yield.

Are you asking to interrogate the gentleman, Mr. Schroder?

Mr. CAWLEY. Yes.

The SPEAKER. Please continue. I am sorry.

Mr. CAWLEY. For brevity, let us skip down to line 34: “If the injured individual is a minor under 14 years of age, the action must be commenced within four years....” What is the present statute of limitations now?

Mr. SCHRODER. Mr. Speaker, that would be 2 years with the discovery rule. In other words, 2 years from the time that the patient discovered the injury.

Mr. CAWLEY. Okay. Several of the speakers had mentioned, Mr. Speaker, about the \$250,000 agreement or contract. Do you know – I do not know what this answer is – is it possible for a doctor to walk away from a patient if a patient refuses to sign this \$250,000 limit?

Mr. SCHRODER. Let us remember, first of all, that the \$250,000 figure is the minimum. I know there are a lot of people who think that that is what they will all be; I am not sure myself that that is the case. I think there will be room and in fact there is room to negotiate that figure.

Mr. Speaker, the provisions of the bill would allow that, but I also have to tell you, Mr. Speaker, that the doctors I know are more committed to their profession, more committed to their patients, that I do not think there are going to be, you know, patients left in the lurch if they decide not to do that. I just believe that the quality of doctors and their dedication, devotion, to the health-care profession and to their patients will largely preclude that.

Mr. CAWLEY. Thank you, Mr. Speaker.

Mr. Speaker, regarding the subject that we just discussed, at

least some patients may have an option whether to enter into that contract or not, but in the emergency room, on page 15, line 32, if someone comes into that hospital unconscious and possibly near death – an emergency – those people, those patients, have no option. Now, correct me on this. It looks to me like they are absolutely limited to \$250,000. Is that correct? I mean, they have no option whatsoever. It looks like we are taking their rights away.

Mr. SCHRODER. Mr. Speaker, I believe your reading of that is correct, that they would be limited to that.

Mr. CAWLEY. Thank you.

On page 20, line 59 – 20 and 21, Mr. Speaker – “The trier of fact may award damages for loss of work earnings for the duration of the claimant’s pre-injury work-life expectancy or until the claimant reaches 65 years of age, whichever occurs earlier, if such a finding is supported by the evidence.” Mr. Speaker, what is the present law now where it looks like we are limiting it to 65 years of age? What is the present law?

Mr. SCHRODER. Bear with me one minute, Mr. Speaker.

Mr. Speaker, I believe that there is not a 65-year age limit today. I believe that it would be the jury that would make that determination today.

Mr. CAWLEY. Okay. So this amendment puts that limit in there at 65, correct?

Mr. SCHRODER. That is my belief and understanding. That is correct.

Mr. CAWLEY. All right. Page 21, line 19: “Liability to a claimant for periodic payments not yet due for medical expenses terminates upon the claimant’s death.” Why, and what is the present law on that?

Mr. SCHRODER. I believe the reason why is because after the claimant’s death, there will be no more medical expenses.

Mr. CAWLEY. What is the present law on that? What is the present language on that? I do not believe that there is a limit on the present language.

Mr. SCHRODER. Right now, under our system, there are not provisions for future payments, or excuse me, periodic payments of future damages. So it is just calculated in as part of the award right now.

Mr. CAWLEY. Okay. In other words, that would save some money also.

Mr. SCHRODER. That would, under the theory that once the person is, you know, no longer with us, that their medical expenses do cease at that point.

Mr. CAWLEY. Okay. I am going to go pretty quick. I know how late we are.

On page 22, line 3, this addresses the collateral source, reasonable costs: “Such costs shall be reimbursed in the years that the costs accrue in 12 equal monthly payments....” and it mentions in here about preexisting conditions. What percent of doctors presently in Pennsylvania – I am sorry – insurance companies presently in Pennsylvania will insure someone for preexisting conditions? There are not many at all, to the best of my knowledge. But it looks like this is the route you can go, but there is a dead-end to this road. They are not going to insure you with preexisting conditions.

Mr. SCHRODER. Mr. Speaker, I understand your point, but if the defendant requires the plaintiff to do this, the defendant is the one that is going to be hanged, and if preexisting conditions cause this to be cost prohibitive, then I believe the answer is that it would not be viable for the defendant to require this.

Mr. CAWLEY. Okay. Page 22, Mr. Speaker, line 35. Just take a look at it, and I have a question. From line 35 to line 42. Just basically – it will go quickly – is it not a fact that this already is the law in Pennsylvania?

You can get back to us with that answer.

Mr. SCHRODER. Yes. I believe that this, you know, would be an argument with regard to damages, and in Pennsylvania right now, neither the plaintiff or defendant is permitted to argue specific damages in our cases. However, one of the other changes in this bill will allow damages to be argued.

Mr. CAWLEY. Okay. Page 24, line 52: “Medicine shall be—” I am sorry. This regards confidentiality. “All reports, communications, records, papers...” so on and so forth, after the investigation by the State Board of Medicine – here is the point that concerns me – “shall be confidential and privileged, shall not be subject to subpoena or discovery and shall not be introduced into evidence in any judicial or administrative proceeding. No person who has investigated...” this, so on and so forth. Why should this information be confidential, and why should not this information be open to the public so that the public knows and has an idea as to what doctors in Pennsylvania are doing a good job and what doctors have a lot of lawsuits against them? Why was this not discussed with the proposition to make these records open to the public, which affects everyone in Pennsylvania? That is why we want to make sure we have access to proper medical care.

Mr. SCHRODER. Mr. Speaker, it is my understanding that all of the information in here is available from the original source, from the client’s records. It is just not available through the State medical or osteopathic boards. So what I am saying is the information would be available, I believe, but in a different way.

Mr. CAWLEY. Where do we get— This looks very clear to me, very, very clear: “shall be confidential and privileged.” It does not say I can look at it or anyone else. You know, you are either pregnant or you are not. There is no in-between.

Mr. SCHRODER. Mr. Speaker, I believe the answer to your question is, as I said before, they would still be able to get, you know, different records from the hospital, from the doctor’s office, for other proceedings. That would not change. It is just that the records going to or that are in the possession of the board, you would not be able to get them from that source. So I just believe it is a difference in sources where you can obtain that information.

Mr. CAWLEY. My last question is, it appears to me— First of all, this is very difficult to understand for me, and I believe if this is Latin to me, this language in this 37 pages, then the lady on the bus up in the city of Scranton is going to understand even less.

We know that the major, at least the phone calls that I have received and the meetings that have taken place over the past 6 months, the major problem – and I would venture to say that this is probably the case of 90 percent of the legislators in this room – the biggest complaint was the enormous amount of money the doctors were paying. The things that we are doing in this bill, it appears that we are helping out the insurance industry. The insurance industry is the one that is going to be saving on everything that I was talking to you about, and I did not receive any phone calls from anyone in the insurance industry. I did not think that they had any concerns. In fact, the only thing that I was thinking of is that the Insurance Commissioner’s office and the insurance industry ought to be investigated to find out exactly what they did with that in excess of \$500 million over a year, and they showed expenses of \$570 million. That was my concern,

but— This is a statement, Mr. Speaker. I am going to close with this.

It is very obvious that someone is going to benefit from this amendment. It appears to me that the big gainer from this amendment is the insurance industry. We have no language in here that all of the millions of dollars that the insurance industry is going to recoup because of most of the language in this amendment, we have no assurance whatsoever that these savings are going to be passed on to lower the premiums that the doctors are paying or for the health care. We have offended a lot of people in this State and taken away many of the rights such as in the emergency room. And I met with the doctors this morning; I met with them several months ago, and I very honestly said to them, in my opinion, the doctors have to give up something, the lawyers have to give up something, and the insurance industry does. It looks to me like the only one benefiting from this is the insurance industry. And I said to the doctors this morning, Mr. Speaker, that I would look at the amendment, which I did not have access to it this morning, and I would look at every amendment that was presented, and I am only as good as those doctors and lawyers and insurance executives want me to be, because they have to educate me on the issues. And I will tell you the truth: I cannot vote for this because of the fact, the one major fact that I was not made aware of this morning in the meetings with the physicians, is this \$250,000 limit. Now, some people think that this is legalized extortion, and you are going to probably read about this in Pennsylvania, because when people really do not have a choice and they need an operation, they are being basically forced to sign these agreements, and I would say once again, in closing, those people that are going to those emergency rooms have no choice. Those people are going to wake up out of their comas, hopefully, or wake up after being injured and find out that they are limited, whether they like it or not, to \$250,000. If this is changed in the Senate, if we are assured here in Pennsylvania that the premiums are going to go down for the doctors and we are absolutely going to take care of medical costs in Pennsylvania and take care of people’s rights, then I will support it 100 percent. So hopefully they are going to make some changes in the Senate, but I am not going to depend on that, so I am voting “no” now.

Thank you.

The SPEAKER. The Chair thanks the gentleman.

REMARKS SUBMITTED FOR THE RECORD

The SPEAKER. The Chair understands the gentleman, Mr. Turzai, wishes to submit remarks for the record. Is that accurate? The gentleman will send them to the desk.

Mr. TURZAI submitted the following remarks for the Legislative Journal:

I rise in support of Representative Micozzie’s HB 1802 and in support of Representative Schroder’s amendment to that bill. I congratulate both of them for their hard work.

The tort reforms placed in this amendment are, as a whole, solid, commonsense reforms. These are reforms designed to limit the filing of frivolous lawsuits and claims.

These are reforms that are designed to prevent nuisance settlements.

These are reforms designed to prevent the artificial inflation of value of lawsuits.

These are reforms designed to make sure that only those parties that actually committed malpractice are sued and that damages reflect real costs and losses.

With these reforms, Pennsylvania will be catching up to the 45 other States that have enacted tort reform in some measure.

These reform measures will keep physicians, nurses, and other health-care providers in Pennsylvania and will attract younger physicians, nurses, and health-care providers to Pennsylvania.

These measures will make sure that patients continue to have access to the best possible health care in Pennsylvania.

These measures will work to improve the economy of Pennsylvania since health care is an important economic force in Pennsylvania.

That said, the reason this amendment is important is that it will work to end lawsuit abuse. Frivolous lawsuits and claims have soiled the reputation of our legal system in the eyes of the public. People, particularly health-care providers, are tired of being unfairly sued and unfairly subjected to the stress of litigation. The legal system needs some correction.

With these reforms, the day in which a plaintiff sues every and any health-care provider who appears on a chart – and even some who do not appear on a chart – should come to an end. This amendment will improve health care in Pennsylvania, improve our economy in Pennsylvania, and improve our legal system in Pennsylvania.

REMARKS SUBMITTED FOR THE RECORD

The SPEAKER. The gentleman, Mr. Hennessey, from Chester County. The Chair understands the gentleman has remarks which will be submitted. The gentleman may submit them.

Mr. HENNESSEY submitted the following remarks for the Legislative Journal:

Mr. Speaker, I applaud the efforts of Representatives Schroder and Adolph for turning up the heat on this issue. We need to fix the medical malpractice insurance problem, and we need to do it now!

That being said, there are some problems with this amendment, which should be looked at as these negotiations continue.

For periodic payments (§834-A of amendment A0240): Assume a child is severely injured and requires round-the-clock medical/nursing care:

If the parents want to keep that child at home, with in-house nursing care 24 hours/day, 7 days/week, but the insurance company wants to put the child in a nursing home, believing it to be cheaper,

- Who wins that argument?
 - Does the jury decide at the time of trial?
 - Does the judge decide under the “retained jurisdiction” language on page 21, lines 43-45?
 - Can parents insist that the child be cared for at home?

This amendment’s language currently leaves this an open question. We can determine who should make this decision and clear this up as this process continues.

With regard to the statute of limitations (§805-A), the present language of this amendment is not consistent with general personal injury law regarding minors. Generally, the law allows minors 2 years from the time they reach adulthood at 18 years of age. They have until 20 years of age to initiate a claim. The time limitations contained within this amendment are not consistent with existing law and are inconsistent even between themselves.

Adults have 2 years from when they know or should have discovered the injury or 4 years from the event, whichever comes first.

For a child 17 years old – applying the same standards, the time limits are age 19 or age 21.

A child 16 years old has until age 18 or age 20.

A child age 15 years has until age 17 or 19.

While a child under 14 years has until age 18, or 4 years from the event.

This creates a monstrous problem for our courts and all parties to litigation and a legal nightmare for individuals. We should find consistent standards, and the most logical is age 20, 2 years after adulthood, except for cases where the injury is not discoverable by that time.

With regard to the allowance of a contractual provision limiting damages to \$250,000 (§814-A), I pose the following rhetorical questions:

If an HMO has a list of 40 approved doctors, and all of those doctors require patients to sign a limitation of damages, what choice – realistically – does a patient have other than to sign?

If a person’s doctor sends him to a hospital which requires such a limitation of damages, can that person be realistically said to have a choice?

Generally, the law will not enforce a contractual agreement unless it finds that the agreement was entered voluntarily and not as the result of coercion. Can this type of contractual limit on damages be realistically seen as voluntary?

If the legislature has no authority under the Constitution to legislate “venue,” do we have the power to tell a court what is or is not unconscionable? We will have to see whether that provision can survive judicial scrutiny.

The elimination of joint and several liability (§816-A) in favor of a comparative negligence system among doctors is probably acceptable, but we should make a distinction between joint liability and the vicarious liability which attaches to hospitals under the principal-agent or employer-employee relationship. That liability has always attached without regard to a finding of negligence on the part of the principal and instead has always held the principal responsible for the acts of its employees. A hospital’s additional insurance coverage should provide an ongoing umbrella of protection to cover catastrophic cases.

For that same reason we should provide that a limitation-of-noneconomic-damages clause which a patient signs with his doctor, if it is enforceable at all, does not extend its provisions to institutions such as hospitals. A decision to limit a claim against an individual doctor in whom a patient invests his trust and confidence should not extend across the board to all other doctors, and especially not to hospitals, who typically employ large numbers of people totally unknown to the patient. Without at least a separate release being signed, there is no basis upon which to assume that a patient would intend his release of his personal doctor to extend so far.

We face a crisis here in Pennsylvania today, and it has been building for many years. This bill is far from perfect, but it provides an opportunity – a vehicle – to go to the Senate and bring back a better bill which addresses the serious issues which have been raised by many in today’s debate. Hopefully the bill we get back will be better than this one, but we need this one to pass to set the process in motion.

Thank you.

The SPEAKER. The gentleman, Mr. Vitali, from Delaware, do you have remarks as well to submit?

Mr. VITALI. I am on a hot streak, Mr. Speaker. I will be very brief.

The SPEAKER. The gentleman is recognized.

Mr. VITALI. Thank you, Mr. Speaker.

Mr. Speaker, I congratulate the maker of the amendment. I am going to vote “yes” for it because something needs to be done with regard to tort reform, and I think what we are doing tonight is those who vote for it are sending that message. But we all know this is not the language, ultimately, that is going to go into law.

I have strong objections to at least one section of this bill, the section that has been cited by many other speakers, regarding contracting away the noneconomic damages. I think we also have the opportunity or will have the opportunity to make a statement about that tonight, which hopefully the Senate will hear. I will be moving later on to suspend the rules to offer an amendment to delete that section. I just wanted the members to know that while they vote on the Schroder amendment.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair is advised only of the intent of the gentleman, Mr. DeWeese, to make remarks, then Mr. Schroder.

As is our custom, the Chair recognizes the gentleman, Mr. DeWeese.

Mr. DeWEESE. Thank you, Mr. Speaker.

I believe I can do my speech in 2 minutes.

Three quick points.

Number one, I am going to vote against the gentleman, Mr. Schroder's proposal tonight because there is no doctor discipline in this proposal; there is no doctor discipline in this proposal. And at the same time, for doctors – and Mr. Schroder admits it – there is no rollback of insurance rates in this proposal. That is reason number one.

Reason number two, and Mr. Cawley did an admirable job in adumbrating my second reason, but I want to repeat it for the record: Insurance rates for medical malpractice are sky-high in this State. Are we going to allow what could conceivably be insurance profiteering at will, or are we going to arrest it, or are we going to rely on the State Senate? Obviously, many people have come to the microphone and admitted that we are going to rely on the State Senate. We should have been relying the last 7 years on the Ridge-Schweiker team and on their Insurance Commissioner. The Ridge-Schweiker Insurance Commissioner never saw a medical malpractice increase in rates that they did not like. They have been very poor traffic cops on medical malpractice rates. My good friend, my good friend, the Attorney General of this State, Michael Fisher, has a health-care unit. Well, where has this health-care unit been when four out of eight medical malpractice insurance companies go out of business? Does Mike have a health-care unit or a health-care eunuch over there? I do not know. I said he was my good friend, so I hope he will not be too upset with my extravagant reference.

The third and final point, Mr. Speaker: I do not think the patients of Pennsylvania are being treated right by this program, by this legislation, that Mr. Schroder is offering tonight. I think moving the Schroder amendment to this bill will be like cutting open a patient and leaving surgical instruments and sponges and nonsterilized equipment inside. I think this amendment is legislative malpractice, Mr. Speaker.

For those reasons I will vote in the negative, and I will await what comes back from the State Senate. As has been said, as has been said, notwithstanding the sturdy efforts of Mr. Schroder and the steadfast efforts of the staff on both sides of the aisle, what we will end up voting upon in ensuing weeks will be almost unrecognizable. The Honorable Mr. Jubelirer and his friends in the State Senate will craft with industry representatives, with trial lawyer representatives, with medical representatives, a piece of legislation that will not resemble much of what we are passing tonight, and therefore, I do not think we should pass the Schroder amendment. Thank you.

The SPEAKER. The gentleman, Mr. Schroder.

Mr. SCHRODER. Thank you, Mr. Speaker.

Well, I feel fortunate that the gentleman did not refer to me as a eunuch, so I guess I got off okay there.

Mr. Speaker, first of all, it has been a long night, and I would like to thank all the members of the General Assembly for their patience and their indulgence. The interrogations and the colloquies, I think, were good, enlightening, and helpful, and I think did bring a number of good points to bear on this issue.

I would like to respond to a couple things, and I will be brief.

Very early on it was stated that there is no severability in this particular piece of legislation, this amendment. However, I would just point out that on page 34, in section 17, it specifically says that the provisions of this act are severable.

We were also asked about insurers that have stopped writing in the State, and in a few minutes, I had a couple initially, but we have come up with a number of others: Clarendon, St. Paul, CNI, Zurich, MIIX, Lexington, PHICO, AIG. These are just some, and there are probably others, but that was just a quick look into the records of that.

You know, Mr. Speaker, there is no doubt, there is no doubt that doctors make mistakes and mistakes are made in our health-care profession. They are human; they are human. However, our health-care profession is not the killing machine that some of the opponents of this bill would have us believe. Mr. Speaker, many other States, many States, have adopted the very same provisions that are found in this piece of legislation tonight. Caps and limits on noneconomic damages are not new. There are many of these provisions that are in States, and do you know what, Mr. Speaker? Patients who are malpracticed upon still sue, they still recover, they still have access to the courts, just as they will here in Pennsylvania after we reform this system. That will not change.

You know, Mr. Speaker, it is somewhat amusing to me, but every time we go to reform something that touches on insurance, I hear the same dire predictions: It is going to be a windfall for the insurance company; none of the savings are going to be passed on. Mr. Speaker, I heard the same predictions back here in 1996 when we reformed workers' compensation, but, Mr. Speaker, those were passed on, and I believe the gentleman, Mr. Gordner, raised a good point about that, and I am certainly going to urge the Senate to take his idea of having an actuarial review of the cost savings so that we can be sure that they are passed on to the doctors and to the physicians, the people that need those savings.

So, Mr. Speaker, once again I thank you for your indulgence tonight. As I have said before, we need to preserve the health-care system for 12 million Pennsylvanians. I believe our health-care system hangs in the balance based upon what we do here tonight, and I urge a "yes" vote on the amendment. Thank you.

LEAVE OF ABSENCE

The SPEAKER. The Chair recognizes the gentleman, Mr. Veon, who requests a leave of absence for the gentleman, Mr. RUFFING, for the balance of the day. Without objection, leave will be granted. The Chair hears no objection.

CONSIDERATION OF HB 1802 CONTINUED

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

The following roll call was recorded:

YEAS—144

Adolph	Fairchild	Major	Schroder
Allen	Feese	Manderino	Schuler
Argall	Fichter	Mann	Semmel
Armstrong	Fleagle	Markosek	Shaner
Baker, J.	Flick	Marsico	Smith, B.
Baker, M.	Forcier	Mayernik	Smith, S. H.
Bard	Frankel	McCall	Stairs
Barley	Gabig	McGill	Steelman
Barrar	Gannon	McIlhattan	Steil
Bastian	Geist	McIlhinney	Stern
Belardi	Godshall	McNaughton	Stetler
Belfanti	Gordner	Melio	Stevenson, R.
Benninghoff	Gruitza	Metcalfe	Stevenson, T.
Birmelin	Habay	Micozzie	Strittmatter
Bishop	Hanna	Miller, R.	Sturla
Boyes	Harhai	Miller, S.	Taylor, E. Z.
Browne	Harhart	Nailor	Taylor, J.
Bunt	Harper	Nickol	Tigue
Caltagirone	Hasay	O'Brien	Travaglio
Cappelli	Hennessey	Perzel	Trello
Casorio	Herman	Petrone	Trich
Clark	Hershey	Phillips	Tulli
Clymer	Hess	Pickett	Turzai
Cohen, L. I.	Hutchinson	Pippy	Vance
Colafella	Kaiser	Raymond	Vitali
Coleman	Keller	Readshaw	Watson
Cornell	Kenney	Reinard	Wilt
Corrigan	Krebs	Rieger	Wojnaroski
Coy	LaGrotta	Roberts	Wright, M.
Creighton	Lederer	Rohrer	Yewcic
Dailey	Leh	Ross	Yudichak
Dally	Lewis	Rubley	Zimmerman
DeLuca	Lucyk	Sainato	Zug
DiGirolo	Lynch	Santoni	
Donatucci	Mackereth	Sather	
Eachus	Maher	Saylor	Ryan,
Egolf	Maitland		Speaker

NAYS—53

Bebo-Jones	Evans, J.	Michlovic	Solobay
Blaum	Freeman	Mundy	Staback
Butkovitz	George	Myers	Surra
Buxton	Grucela	Oliver	Tangretti
Cawley	Haluska	Pallone	Thomas
Cohen, M.	Horsey	Petrarca	Veon
Costa	James	Pistella	Walko
Cruz	Josephs	Preston	Wansacz
Curry	Kirkland	Robinson	Washington
Daley	Laughlin	Roebuck	Waters
Dermody	Lescovitz	Rooney	Williams, J.
DeWeese	Levdansky	Samuelson	Wright, G.
Diven	McGeehan	Scrimenti	Youngblood
Evans, D.			

NOT VOTING—0

EXCUSED—4

Civera	Jadlowiec	Lawless	Ruffing
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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?

The SPEAKER. The gentleman, Mr. George, has three amendments, which are withdrawn. However, the gentleman desires to make a statement and is recognized. The gentleman will yield for a moment.

Conferences in the vicinity of the gentleman, Mr. George, please break up. Conferences in the vicinity of the gentleman, Mr. George. Mr. George is recognized. Break that conference up.

Mr. George.

Mr. GEORGE. Thank you, Mr. Speaker.

Mr. Speaker, sometime earlier today I had heard that you had ruled the amendments that I had intended to offer as out of order, and I respect your decision, and we see now, after 5 or 6 hours of debate, we are still not certain where we are going.

Now, my amendments were, as you would expect, very simple, very direct. I wanted to offer the doctors in the rural area who were receiving less compensation or payment a cheaper rate for insurance, and I think the doctors wanted something like that. And the other amendment, Mr. Speaker, was to allow them to make their payments by the month rather than come up with the \$80,000 or \$90,000 or \$100,000. And there were several others that I thought were very necessary, but, Mr. Speaker, we have been here a long time. I came in Monday morning, like everyone else, thinking we were going to work on something positive to eliminate the concern of the doctors. I am not a learned scholar like you or the rest of these attorneys, Mr. Speaker. I never realized that we could do what we had just done here a moment ago.

I will not delay the proceeding, because this is just the start of what is going to happen when it goes over to the Senate, but I can assure you, Mr. Speaker, that I am not only going to be diligent; I am very sincere in that I have always worked to maintain and hopefully bring doctors into the rural area. My doctors, I am happy to say, in Clearfield County that I know well are not responsible for these malpractice problems. I read a form today where one doctor was involved 17 times. This is not the situation in Clearfield County.

You are all honest individuals. You worked hard. You worked very seriously on this matter. Unfortunately, we may have gone too slow and too fast at the same time. My doctors, as I called today, were not happy with having to tell a patient that they could not work on them or could not attend to their needs unless they signed a release. I do not know, Mr. Speaker – you are much brighter than I – whether this is a contract or an effort to release somebody from their responsibility; I do not know. But I do know that I thank you for your flexibility, and I do know that this is going to the Senate, and maybe when it comes back, it will be a bill that the doctors can be happy with and that their patients can be happy with and that we can be proud of.

Thank you, Mr. Speaker.

The SPEAKER. The Chair appreciates the gentleman's position. Thank you very much.

RULES SUSPENDED

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

Mr. TAYLOR. Mr. Speaker, I move that the rules of the House

be suspended to permit me to offer amendment A0252.

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

The SPEAKER. Mr. Taylor is recognized on the motion.
Mr. TAYLOR. Thank you, Mr. Speaker.

Mr. Speaker, by anybody's definition, we have all acknowledged tonight there is a crisis, and everything we attempted to do had the intent of reducing the premiums for medical malpractice. Many members have talked about the fact that they were unsure whether or not the amendment would reduce premiums and when they would reduce premiums and mentioned that they thought that it should be in a bill or in language that doctors would actually realize savings.

Mr. Speaker, I ask that we suspend the rules so that I can offer amendment 252, which very simply will apply a 30-percent discount or a 30-percent reduction in the CAT Fund surcharge that doctors pay in 2002, 2003, and 2004, and I would ask for your support of the motion to suspend.

The SPEAKER. The Chair thanks the gentleman.

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

The following roll call was recorded:

YEAS—191

Adolph	Egolf	Major	Schuler
Allen	Evans, D.	Manderino	Scrimenti
Argall	Evans, J.	Mann	Semmel
Armstrong	Fairchild	Markosek	Shaner
Baker, J.	Feese	Marsico	Smith, B.
Baker, M.	Fichter	Mayernik	Smith, S. H.
Bard	Fleagle	McCall	Solobay
Barley	Flick	McGill	Staback
Barrar	Forcier	McIlhattan	Stairs
Bastian	Frankel	McIlhinney	Steelman
Bebko-Jones	Freeman	McNaughton	Steil
Belardi	Gabig	Melio	Stern
Belfanti	Gannon	Metcalfe	Stetler
Benninghoff	Geist	Michlovic	Stevenson, R.
Birmelin	George	Micozzie	Stevenson, T.
Bishop	Godshall	Miller, R.	Strittmatter
Blaum	Gordner	Miller, S.	Sturla
Boyes	Grucela	Mundy	Surra
Browne	Gruitza	Nailor	Tangretti
Bunt	Habay	Nickol	Taylor, E. Z.
Butkovitz	Haluska	O'Brien	Taylor, J.
Buxton	Hanna	Oliver	Thomas
Caltagirone	Harhai	Pallone	Tigue
Cappelli	Harhart	Perzel	Travaglio
Casorio	Harper	Petrarca	Trello
Cawley	Hasay	Petrone	Trich
Clark	Hennessey	Phillips	Tulli
Clymer	Herman	Pickett	Turzai
Cohen, L. I.	Hershey	Pippy	Vance
Cohen, M.	Hess	Pistella	Veon
Colafella	Horsey	Preston	Vitali
Coleman	Hutchinson	Raymond	Walko
Cornell	Kaiser	Readshaw	Wansacz
Corrigan	Keller	Reinard	Waters
Costa	Kenney	Rieger	Watson
Coy	Krebs	Roberts	Williams, J.
Creighton	LaGrotta	Robinson	Wilt
Cruz	Laughlin	Roebuck	Wojnaroski
Curry	Lederer	Rohrer	Wright, G.
Dailey	Leh	Rooney	Wright, M.

Daley	Lescovitz	Ross	Yewcic
Dally	Levdansky	Rubley	Youngblood
DeLuca	Lewis	Sainato	Yudichak
Dermody	Lucyk	Samuelson	Zimmerman
DeWeese	Lynch	Santoni	Zug
DiGirolamo	Mackereth	Sather	
Diven	Maher	Saylor	Ryan,
Donatucci	Maitland	Schroder	Speaker
Eachus			

NAYS—5

Josephs	McGeehan	Myers	Washington
Kirkland			

NOT VOTING—1

James

EXCUSED—4

Civera	Jadlowiec	Lawless	Ruffing
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A majority of the members required by the rules 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. TAYLOR offered the following amendment No. A0252:

Amend Sec. 4 (Sec. 702-A), page 8, by inserting between lines 48 and 49 (A0240)

(e) In calendar years 2002 through 2004, the aggregate annual assessment shall not exceed 70% of the surcharge imposed for calendar year 2001. The discount in the annual surcharge under this subsection may be funded pursuant to section 703-A(b) or (c).

Amend Sec. 4 (Sec. 702-A), page 8, line 49 (A0240), by striking out “(e)” and inserting

(f)

Amend Sec. 4 (Sec. 702-A), page 8, line 54 (A0240), by striking out “(f)” and inserting

(g)

Amend Sec. 4 (Sec. 702-A), page 9, line 26 (A0240), by striking out “(g)” and inserting

(h)

Amend Sec. 4 (Sec. 702-A), page 9, line 31 (A0240), by striking out “(h)” and inserting

(i)

Amend Sec. 4 (Sec. 702-A), page 9, line 36 (A0240), by striking out “(i)” and inserting

(j)

Amend Sec. 4 (Sec. 702-A), page 9, line 40 (A0240), by striking out “(j)” and inserting

(k)

Amend Sec. 4 (Sec. 702-A), page 9, line 46 (A0240), by striking out “(k)” and inserting

(l)

Amend Sec. 4 (Sec. 702-A), page 9, line 52 (A0240), by striking out “(l)” and inserting

(m)

Amend Sec. 4 (Sec. 702-A), page 10, line 19 (A0240), by striking out

“(m)” and inserting
(n)

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

The SPEAKER. On the question of the adoption of the amendment, the gentleman is recognized. Mr. Taylor.

Mr. TAYLOR. Thank you, Mr. Speaker.

As mentioned, this amendment actually amends A0240 and adds language which simply provides for a 30-percent reduction in the premiums that doctors pay to the CAT Fund for the next 3 years.

We had similar ideas when we talked about auto insurance reform and whether or not these are artificial reductions, and I submit to you that this is not an artificial reduction; it is a real reduction but one that health-care providers will pay for at the end of these reduction periods. This is not a free ride. It is a postponement of surcharges.

But, Mr. Speaker, I think that many hospitals and doctors would prefer the surcharge reduction now because of the instability of the market, and for those of you that represent teaching institutions, you know that not only do the hospitals pay medical malpractice premiums and CAT Fund premiums but they also pay for their residents and doctors. They are in a crisis that exceeds many of the hospitals in the Commonwealth. They would prefer to see these reductions now, so that when they revisit the problem in 2005, they will be looking at a much more stabilized market, and I would ask for your support.

The SPEAKER. Mr. Micozzie. The Chair recognizes Mr. Micozzie.

Mr. MICOZZIE. This is an agreed-to amendment, and I ask for your support.

The SPEAKER. Mr. Vitali.

Mr. VITALI. Thank you, Mr. Speaker.

Will the maker of the amendment stand for interrogation?

The SPEAKER. The gentleman, Mr. Taylor, indicates he will. You may proceed.

Mr. VITALI. Thank you, Mr. Speaker.

I just want to be clear how this works, because as I understand the CAT Fund, what you pay in is equal to what you pay out, and we are implementing some changes that may have some savings, some indefinite savings at some indefinite period in the future, so I am a little concerned when we just lop 30 percent off the top for next year and the year after. How is this going to work financially? Is this just a feel-good amendment, or does the math work?

Mr. TAYLOR. Mr. Speaker, if you notice in the amendment, it calls for an actual reduction in the surcharge to be funded, under section 703-A, with the department having the ability to borrow money for this surcharge. The money that is borrowed would

actually be paid back by the very health-care providers that are realizing the benefit of the surcharge in the next 3 years.

Mr. VITALI. So to be clear, we are simply deficit spending for a couple of years? Okay. Okay. I understand.

Thank you, Mr. Speaker. That ends my interrogation.

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—197

Adolph	Evans, D.	Major	Schuler
Allen	Evans, J.	Manderino	Scrimenti
Argall	Fairchild	Mann	Semmel
Armstrong	Feese	Markosek	Shaner
Baker, J.	Fichter	Marsico	Smith, B.
Baker, M.	Fleagle	Mayernik	Smith, S. H.
Bard	Flick	McCall	Solobay
Barley	Forcier	McGeehan	Staback
Barrar	Frankel	McGill	Stairs
Bastian	Freeman	McIlhattan	Steelman
Bebko-Jones	Gabig	McIlhinney	Steil
Belardi	Gannon	McNaughton	Stern
Belfanti	Geist	Melio	Stetler
Benninghoff	George	Metcalfe	Stevenson, R.
Birmelin	Godshall	Michlovic	Stevenson, T.
Bishop	Gordner	Micozzie	Strittmatter
Blaum	Grucela	Miller, R.	Sturla
Boyes	Gruitza	Miller, S.	Surra
Browne	Habay	Mundy	Tangretti
Bunt	Haluska	Myers	Taylor, E. Z.
Butkovitz	Hanna	Nailor	Taylor, J.
Buxton	Harhai	Nickol	Thomas
Caltagirone	Harhart	O'Brien	Tigue
Cappelli	Harper	Oliver	Travaglio
Casorio	Hasay	Pallone	Trello
Cawley	Hennessey	Perzel	Trich
Clark	Herman	Petrarca	Tulli
Clymer	Hershey	Petrone	Turzai
Cohen, L. I.	Hess	Phillips	Vance
Cohen, M.	Horsley	Pickett	Veon
Colafella	Hutchinson	Pippy	Vitali
Coleman	James	Pistella	Walko
Cornell	Josephs	Preston	Wansacz
Corrigan	Kaiser	Raymond	Washington
Costa	Keller	Readshaw	Waters
Coy	Kenney	Reinard	Watson
Creighton	Kirkland	Rieger	Williams, J.
Cruz	Krebs	Roberts	Wilt
Curry	LaGrotta	Robinson	Wojnaroski
Dailey	Laughlin	Roebuck	Wright, G.
Daley	Lederer	Rohrer	Wright, M.
Dally	Leh	Rooney	Yewcic
DeLuca	Lescovitz	Ross	Youngblood
Dermody	Levdansky	Rubley	Yudichak
DeWeese	Lewis	Sainato	Zimmerman
DiGirolamo	Lucyk	Samuelson	Zug
Diven	Lynch	Santoni	
Donatucci	Mackereth	Sather	
Eachus	Maher	Saylor	Ryan, Speaker
Egolf	Maitland	Schroder	

NAYS—0

NOT VOTING—0
EXCUSED—4

Civera	Jadlowiec	Lawless	Ruffing
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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?

RULES SUSPENDED

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

Mr. GANNON. Mr. Speaker, I move that the rules of the House be suspended to permit me to offer immediately amendment 284 to HB 1802.

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

The following roll call was recorded:

YEAS—197

Adolph	Evans, D.	Major	Schuler
Allen	Evans, J.	Manderino	Scrimenti
Argall	Fairchild	Mann	Semmel
Armstrong	Feese	Markosek	Shaner
Baker, J.	Fichter	Marsico	Smith, B.
Baker, M.	Fleagle	Mayernik	Smith, S. H.
Bard	Flick	McCall	Solobay
Barley	Forcier	McGeehan	Staback
Barrar	Frankel	McGill	Stairs
Bastian	Freeman	McIlhattan	Steelman
Bebko-Jones	Gabig	McIlhinney	Steil
Belardi	Gannon	McNaughton	Stern
Belfanti	Geist	Melio	Stetler
Benninghoff	George	Metcalfe	Stevenson, R.
Birmelin	Godshall	Michlovic	Stevenson, T.
Bishop	Gordner	Micozzie	Strittmatter
Blaum	Grucela	Miller, R.	Sturla
Boyes	Gruitza	Miller, S.	Surra
Browne	Habay	Mundy	Tangretti
Bunt	Haluska	Myers	Taylor, E. Z.
Butkovitz	Hanna	Nailor	Taylor, J.
Buxton	Harhai	Nickol	Thomas
Caltagirone	Harhart	O'Brien	Tigue
Cappelli	Harper	Oliver	Travaglio
Casorio	Hasay	Pallone	Trello
Cawley	Hennessey	Perzel	Trich
Clark	Herman	Petrarca	Tulli
Clymer	Hershey	Petrone	Turzai
Cohen, L. I.	Hess	Phillips	Vance
Cohen, M.	Horsey	Pickett	Veon
Colafella	Hutchinson	Pippy	Vitali
Coleman	James	Pistella	Walko
Cornell	Josephs	Preston	Wansacz
Corrigan	Kaiser	Raymond	Washington
Costa	Keller	Readshaw	Waters
Coy	Kenney	Reinard	Watson
Creighton	Kirkland	Rieger	Williams, J.
Cruz	Krebs	Roberts	Wilt
Curry	LaGrotta	Robinson	Wojnaroski
Dailey	Laughlin	Roebuck	Wright, G.
Daley	Lederer	Rohrer	Wright, M.
Dally	Leh	Rooney	Yeweic
DeLuca	Lescovitz	Ross	Youngblood
Dermody	Levdansky	Rubley	Yudichak
DeWeese	Lewis	Sainato	Zimmerman
DiGirolo	Lucyk	Samuelson	Zug
Diven	Lynch	Santoni	
Donatucci	Mackereth	Sather	
Eachus	Maher	Saylor	Ryan,
Egolf	Maitland	Schroder	Speaker

NAYS—0

NOT VOTING—0

EXCUSED—4

Civera Jadlowiec Lawless Ruffing

A majority of the members required by the rules 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. GANNON offered the following amendment No. A0284:

Amend Sec. 4 (Sec. 702-A), page 10, by inserting between lines 22 and 23 (A0240)

(n) A medical professional liability insurer shall not assess any premium increase to a health care provider, other than any base rate modifications:

(1) for any claim successfully defended by the insurer or the health care provider;

(2) for any claim against the provider that is dismissed or abandoned prior to final adjudication; or

(3) for any potential claim of which the insurer is put on notice but which is not asserted against the health care provider.

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

The SPEAKER. The Chair recognizes the gentleman.
Mr. GANNON. Thank you, Mr. Speaker.

Mr. Speaker, in my discussion with a number of physicians over this issue, I was told by many of them that they had never had a paid claim asserted against them, yet they had seen their premiums go up dramatically, and what I had found is, unlike other insurance, that if a claim is asserted but it is successfully defended or the claim is withdrawn or it is dismissed without any payment, the insurers would increase the premiums on these doctors, and I think that is unfair, because it has not been established that these doctors did anything wrong.

This amendment prohibits an insurer from assessing any premium increase against a doctor simply because he has had a claim which has been successfully defended by the insurer or the doctor or because a claim was made but it was dismissed or abandoned prior to final adjudication or the fact that the doctor may have reported a potential claim to the insurer but nothing ever came of it, and this ends that practice and only would permit the insurer to surcharge a doctor if in fact there is a paid claim as a result of negligence, and I would ask for a "yes" vote on this amendment.

The SPEAKER. On the question of the Gannon amendment, Mr. Micozzie.

Mr. MICOZZIE. I dare not go against Gannon. This is an agreed-to amendment.

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

The following roll call was recorded:

YEAS—197

Adolph	Evans, D.	Major	Schuler
Allen	Evans, J.	Manderino	Scrimenti
Argall	Fairchild	Mann	Semmel
Armstrong	Feese	Markosek	Shaner
Baker, J.	Fichter	Marsico	Smith, B.
Baker, M.	Fleagle	Mayernik	Smith, S. H.
Bard	Flick	McCall	Solobay
Barley	Forcier	McGeehan	Staback
Barrar	Frankel	McGill	Stairs
Bastian	Freeman	McIlhattan	Steelman
Bebko-Jones	Gabig	McIlhinney	Steil
Belardi	Gannon	McNaughton	Stern
Belfanti	Geist	Melio	Stetler
Benninghoff	George	Metcalfe	Stevenson, R.
Birmelin	Godshall	Michlovic	Stevenson, T.
Bishop	Gordner	Micozzie	Strittmatter
Blaum	Grucela	Miller, R.	Sturla
Boyes	Gruitza	Miller, S.	Surra
Browne	Habay	Mundy	Tangretti
Bunt	Haluska	Myers	Taylor, E. Z.
Butkovitz	Hanna	Nailor	Taylor, J.
Buxton	Harhai	Nickol	Thomas
Caltagirone	Harhart	O'Brien	Tigue
Cappelli	Harper	Oliver	Travaglio
Casorio	Hasay	Pallone	Trello
Cawley	Hennessey	Perzel	Trich
Clark	Herman	Petrarca	Tulli
Clymer	Hershey	Petrone	Turzai
Cohen, L. I.	Hess	Phillips	Vance
Cohen, M.	Horsey	Pickett	Veon
Colafella	Hutchinson	Pippy	Vitali
Coleman	James	Pistella	Walko
Cornell	Josephs	Preston	Wansacz
Corrigan	Kaiser	Raymond	Washington
Costa	Keller	Readshaw	Waters
Coy	Kenney	Reinard	Watson
Creighton	Kirkland	Rieger	Williams, J.
Cruz	Krebs	Roberts	Wilt
Curry	LaGrotta	Robinson	Wojnaroski
Dailey	Laughlin	Roebuck	Wright, G.
Daley	Lederer	Rohrer	Wright, M.
Dally	Leh	Rooney	Yewcic
DeLuca	Lescovitz	Ross	Youngblood
Dermody	Levdansky	Rubley	Yudichak
DeWeese	Lewis	Sainato	Zimmerman
DiGiroloamo	Lucyk	Samuelson	Zug
Diven	Lynch	Santoni	
Donatucci	Mackereth	Sather	
Eachus	Maher	Saylor	Ryan,
Egolf	Maitland	Schroder	Speaker

NAYS—0

NOT VOTING—0

EXCUSED—4

Civera	Jadlowiec	Lawless	Ruffing
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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?

MOTION TO SUSPEND RULES

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

Mr. VEON. Mr. Speaker, I move that the rules of the House be suspended to permit the immediate consideration of amendment A0278.

On the question,

Will the House agree to the motion?

The SPEAKER. On the question of suspension of the rules, Mr. Perzel.

Mr. PERZEL. Thank you, Mr. Speaker.

Just a few moments ago, the House of Representatives voted 144 to 53 to keep this portion of the piece of legislation in the bill, Mr. Speaker. I mean, I would be glad to work with Representative Veon to try to come to an agreement with the Senate and maybe come to a compromise, but I would have to urge the members to vote “no” on suspension at this point in time.

The SPEAKER. Mr. Veon, on suspension.

Mr. VEON. Thank you, Mr. Speaker.

Mr. Speaker, this is a motion to suspend the rules to give me the ability to offer this amendment, and this amendment has been debated at length. The amendment would simply remove all the language in the Schroder amendment that pertains to the consent form that we have debated here today repeatedly.

I think all the members have made their feelings very clear on this issue. I would ask for a motion to suspend for the purpose of offering an amendment that would remove this very unconscionable language on requiring patients to have a consent form signed before they receive any kind of treatment from a doctor.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

On the question recurring,

Will the House agree to the motion?

The following roll call was recorded:

YEAS—105

Bebko-Jones	Gabig	Markosek	Shaner
Belardi	Gannon	Mayernik	Solobay
Belfanti	George	McCall	Staback
Bishop	Gordner	McGeehan	Stairs
Blaum	Grucela	McNaughton	Steelman
Butkovitz	Gruitza	Melio	Stetler
Buxton	Haluska	Michlovic	Sturla
Caltagirone	Hanna	Mundy	Surra
Casorio	Harhai	Myers	Tangretti
Cawley	Harper	O'Brien	Thomas
Cohen, M.	Hershey	Oliver	Tigue
Colafella	Horsey	Pallone	Travaglio
Corrigan	James	Petrarca	Trello
Costa	Josephs	Petrone	Trich
Coy	Kaiser	Pistella	Veon
Cruz	Keller	Preston	Vitali
Curry	Kirkland	Readshaw	Walko
Daley	Krebs	Rieger	Wansacz
DeLuca	LaGrotta	Roberts	Washington
Dermody	Laughlin	Robinson	Waters
DeWeese	Lederer	Roebuck	Williams, J.
Diven	Lescovitz	Rooney	Wojnaroski

Donatucci	Levdansky	Sainato	Wright, G.
Eachus	Lucyk	Samuelson	Yewcic
Evans, D.	Manderino	Santoni	Youngblood
Frankel	Mann	Scrimenti	Yudichak
Freeman			

NAYS-92

Adolph	DiGirolamo	Maitland	Schroder
Allen	Egolf	Major	Schuler
Argall	Evans, J.	Marsico	Semmel
Armstrong	Fairchild	McGill	Smith, B.
Baker, J.	Feese	McIlhattan	Smith, S. H.
Baker, M.	Fichter	McIlhinney	Steil
Bard	Fleagle	Metcalfé	Stern
Barley	Flick	Micozzie	Stevenson, R.
Barrar	Forcier	Miller, R.	Stevenson, T.
Bastian	Geist	Miller, S.	Strittmatter
Benninghoff	Godshall	Nailor	Taylor, E. Z.
Birmelin	Habay	Nickol	Taylor, J.
Boyes	Harhart	Perzel	Tulli
Browne	Hasay	Phillips	Turzai
Bunt	Hennessey	Pickett	Vance
Cappelli	Herman	Pippy	Watson
Clark	Hess	Raymond	Wilt
Clymer	Hutchinson	Reinard	Wright, M.
Cohen, L. I.	Kenney	Rohrer	Zimmerman
Coleman	Leh	Ross	Zug
Cornell	Lewis	Rubley	
Creighton	Lynch	Sather	
Dailey	Mackereth	Saylor	Ryan,
Dally	Maher		Speaker

NOT VOTING-0

EXCUSED-4

Civera	Jadlowiec	Lawless	Ruffing
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Less than a majority of the members required by the rules 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 from Delaware, Mr. Vitali, who moves that the rules of the House—
The gentleman withdraws his amendment. Thank you.

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?

MOTION TO RECOMMIT

The SPEAKER. The Chair recognizes the gentleman,

Mr. Pallone, on final passage.
Mr. PALLONE. Mr. Speaker, if it is proper, I would move to recommit the bill as amended to committee for further review.
The SPEAKER. Would the gentleman indicate which committee?

Mr. PALLONE. Judiciary.
The SPEAKER. On the question, the gentleman's motion is to recommit this bill to the Judiciary Committee – recommit the bill with all amendments to the Judiciary Committee.
Mr. PALLONE. Yes, sir.

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

The SPEAKER. On the motion, Mr. Micozzie.
Mr. MICOZZIE. Mr. Speaker, there has been a lot of discussion, deliberation, over a long time to get to this point. I ask the members at this late date to not support the Representative's motion. Thank you.

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

The following roll call was recorded:

YEAS-62

Bebko-Jones	Evans, D.	Michlovic	Sturla
Belardi	Freeman	Myers	Surra
Belfanti	Grucela	O'Brien	Tangretti
Butkovitz	Haluska	Oliver	Travaglio
Buxton	Hanna	Pallone	Trello
Cawley	Harhai	Petrarca	Trich
Cohen, M.	Horsey	Pistella	Veon
Costa	James	Rieger	Vitali
Cruz	Josephs	Robinson	Walko
Curry	Keller	Roebuck	Wansacz
Daley	Kirkland	Rooney	Washington
Dermody	Lederer	Samuelson	Waters
DeWeese	Lescovitz	Scrimenti	Williams, J.
Diven	Levdansky	Solobay	Wright, G.
Donatucci	McGeehan	Staback	Yewcic
Eachus	Melio		

NAYS-135

Adolph	Fairchild	Maitland	Sather
Allen	Feese	Major	Saylor
Argall	Fichter	Manderino	Schroder
Armstrong	Fleagle	Mann	Schuler
Baker, J.	Flick	Markosek	Semmel
Baker, M.	Forcier	Marsico	Shaner
Bard	Frankel	Mayernik	Smith, B.
Barley	Gabig	McCall	Smith, S. H.
Barrar	Gannon	McGill	Stairs
Bastian	Geist	McIlhattan	Steelman
Benninghoff	George	McIlhinney	Steil
Birmelin	Godshall	McNaughton	Stern
Bishop	Gordner	Metcalfé	Stetler
Blaum	Gruitza	Micozzie	Stevenson, R.
Boyes	Habay	Miller, R.	Stevenson, T.
Browne	Harhart	Miller, S.	Strittmatter
Bunt	Harper	Mundy	Taylor, E. Z.
Caltagirone	Hasay	Nailor	Taylor, J.
Cappelli	Hennessey	Nickol	Thomas
Casorio	Herman	Perzel	Tigue
Clark	Hershey	Petrone	Tulli
Clymer	Hess	Phillips	Turzai
Cohen, L. I.	Hutchinson	Pickett	Vance

Colafella	Kaiser	Pippy	Watson
Coleman	Kenney	Preston	Wilt
Cornell	Krebs	Raymond	Wojnaroski
Corrigan	LaGrotta	Readshaw	Wright, M.
Coy	Laughlin	Reinard	Youngblood
Creighton	Leh	Roberts	Yudichak
Dailey	Lewis	Rohrer	Zimmerman
Dally	Lucyk	Ross	Zug
DeLuca	Lynch	Rubley	
DiGirolamo	Mackereth	Sainato	Ryan, Speaker
Egolf	Maher	Santoni	
Evans, J.			

NOT VOTING—0

EXCUSED—4

Civera	Jadlowiec	Lawless	Ruffing
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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,
Shall the bill pass finally?

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

The following roll call was recorded:

YEAS—164

Adolph	Evans, J.	Maher	Saylor
Allen	Fairchild	Maitland	Schroder
Argall	Feese	Major	Schuler
Armstrong	Fichter	Manderino	Semmel
Baker, J.	Fleagle	Mann	Shaner
Baker, M.	Flick	Markosek	Smith, B.
Bard	Forcier	Marsico	Smith, S. H.
Barley	Frankel	Mayernik	Solobay
Barrar	Gabig	McCall	Stairs
Bastian	Gannon	McGill	Steelman
Belardi	Geist	McIlhattan	Steil
Belfanti	George	McIlhinney	Stern
Benninghoff	Godshall	McNaughton	Stetler
Birmelin	Gordner	Melio	Stevenson, R.
Bishop	Grucela	Metcalfe	Stevenson, T.
Blaum	Gruitza	Micozzie	Strittmatter
Boyes	Habay	Miller, R.	Sturla
Browne	Haluska	Miller, S.	Tangretti
Bunt	Hanna	Mundy	Taylor, E. Z.
Butkovitz	Harhai	Nailor	Taylor, J.
Caltagirone	Harhart	Nickol	Tigue
Cappelli	Harper	O'Brien	Travaglio
Casorio	Hasay	Pezel	Trello
Cawley	Hennessey	Petrarca	Trich
Clark	Herman	Petrone	Tulli
Clymer	Hershey	Phillips	Turzai
Cohen, L. I.	Hess	Pickett	Vance
Colafella	Horsey	Pippy	Vitali
Coleman	Hutchinson	Preston	Wansacz
Cornell	Kaiser	Raymond	Watson
Corrigan	Keller	Readshaw	Wilt
Coy	Kenney	Reinard	Wojnaroski
Creighton	Krebs	Rieger	Wright, M.
Cruz	LaGrotta	Roberts	Yeweic
Dailey	Laughlin	Rohrer	Youngblood
Daley	Lederer	Ross	Yudichak
Dally	Leh	Rubley	Zimmerman
DeLuca	Lescovitz	Sainato	Zug

DiGirolamo	Lewis	Samuelson	
Donatucci	Lucyk	Santoni	
Eachus	Lynch	Sather	Ryan, Speaker
Egolf	Mackereth		

NAYS—32

Bebko-Jones	Evans, D.	Myers	Staback
Buxton	Freeman	Oliver	Surra
Cohen, M.	James	Pallone	Thomas
Costa	Josephs	Pistella	Veon
Curry	Kirkland	Robinson	Walko
Dermody	Levdansky	Roebuck	Washington
DeWeese	McGeehan	Rooney	Williams, J.
Diven	Michlovic	Scrimenti	Wright, G.

NOT VOTING—1

Waters

EXCUSED—4

Civera	Jadlowiec	Lawless	Ruffing
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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.

**BILL REPORTED FROM COMMITTEE,
CONSIDERED FIRST TIME, AND TABLED**

HB 1898, PN 3201 (Amended)

By Rep. FLICK

An Act amending the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment Compensation Law, providing for relief from certain employer charges.

LABOR RELATIONS.

The SPEAKER. There will be no more votes.
Tomorrow is a nonvoting day.

VOTE CORRECTIONS

The SPEAKER. Mr. Waters, do you desire recognition?
Mr. WATERS. Yes, Mr. Speaker.
On the last bill on final passage, my switch malfunctioned. I want to be recorded in the negative on that.
The SPEAKER. The remarks of the gentleman will be spread upon the record.
Mr. James.
Mr. JAMES. Thank you, Mr. Speaker.
I would like to stand for a correction of the record.
The SPEAKER. The gentleman will state it.
Mr. JAMES. On SB 607 on concurrence, my switch malfunctioned. I would like to be recorded in the negative.
The SPEAKER. The remarks of the gentleman will be spread upon the record.
The Chair recognizes the gentleman, Mr. Kirkland.
Mr. KIRKLAND. Mr. Speaker, I would like to be recorded as voting "yes" on final passage of HB 1802.

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

SENATE MESSAGE

AMENDED HOUSE BILL RETURNED FOR CONCURRENCE AND REFERRED TO COMMITTEE ON RULES

The clerk of the Senate, being introduced, returned **HB 1758, PN 3186**, with information that the Senate has passed the same with amendment in which the concurrence of the House of Representatives is requested.

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. Does the majority leader or minority leader have any further business?

Hearing none, the Chair recognizes the lady from Bucks County, Mrs. Watson.

Mrs. WATSON. Mr. Speaker, I move that this House do now adjourn until Wednesday, January 30, 2002, at 11 a.m., e.s.t., unless sooner recalled by the Chair.

On the question,

Will the House agree to the motion?

Motion was agreed to, and at 10:26 p.m., e.s.t., the House adjourned.