

COMMONWEALTH OF PENNSYLVANIA

LEGISLATIVE JOURNAL

TUESDAY, JUNE 4, 2002

SESSION OF 2002

186TH OF THE GENERAL ASSEMBLY

No. 43

HOUSE OF REPRESENTATIVES

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

THE SPEAKER PRO TEMPORE (PATRICIA H. VANCE) PRESIDING

PRAYER

REV. ROBERT A. GRAYBILL, Chaplain of the House of Representatives, offered the following prayer:

Shall we pause in prayer:

We pause before the Lord, our God, as the House of Representatives, a group of elected officials who are called to lead within this nation. I ask of You, O Lord God, that You be their companion to nurture their spirit as they work together this day for the betterment of this Commonwealth.

Give to each of them a refreshed mind that remains open to the process of negotiating over the various bills before them so they can see the good possibilities that can be accomplished and also have a sense of the improvements that can be made.

Give to each of them a revived heart that is willing to listen once again to the fears and the heartaches of the people whom they represent, the people back home with their questions and their visits here. Revive in their hearts a sense of patience as they try to listen to the real important matters that they bring to this body.

And give to each a reawakened soul that is driven by a great desire and a sincere compassion to make sound decisions that can improve the quality of life among the people of Pennsylvania, so these leaders can sense their decisions are more than just a legal process but that really they are a part of Your will, O God, for this State.

And for all of us, Lord, as the day comes to a close, we ask that You will give us a sense of peace that comes from knowing that we have listened to each other and have taken our actions based upon a sense of integrity both within our mind and within our soul.

Hear our prayer we ask. 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, June 3, 2002, will be postponed until printed. The Chair hears no objection.

JOURNALS APPROVED

The SPEAKER pro tempore. However, the Journals for Tuesday, January 29; Wednesday, January 30; Monday, February 4; Tuesday, February 5; Wednesday, February 6; and Monday, February 11, 2002, are approved.

HOUSE BILLS INTRODUCED AND REFERRED

No. 2673 By Representatives CRUZ, YOUNGBLOOD, GEORGE, BISHOP, JAMES, TIGUE, PISTELLA, HARHAI, DALEY, TANGRETTI, McGEEHAN, MELIO and WASHINGTON

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, prohibiting the sale of food, nonprescription drugs and cosmetics under certain circumstances; and imposing penalties.

Referred to Committee on JUDICIARY, June 4, 2002.

No. 2674 By Representatives STEIL, CAPPELLI, CREIGHTON, DALLY, HENNESSEY, MELIO, PISTELLA, ROBINSON, RUBLEY, E. Z. TAYLOR, TURZAI, WASHINGTON and YOUNGBLOOD

An Act amending Title 62 (Procurement) of the Pennsylvania Consolidated Statutes, further providing for application of part, for definitions, for public access to procurement information, for reciprocal limitations, for procurement responsibility, for Board of Commissioners of Public Grounds and Buildings, for method of source selection and for competitive sealed bidding; providing for competitive electronic auction bidding; further providing for competitive sealed proposals, for small procurements, for sole source procurement, for multiple awards, for competitive selection procedures for certain services, for selection procedure for insurance and notary bonds, for cancellation of invitations for bids or requests for proposals, for debarment or suspension, for security and performance bonds, for printing, for anticompetitive practices, for bid or proposal security and for contract performance security and payment bonds; providing for letters of intent, for protests of solicitations or awards and for contract controversies; further providing for the Board of Claims and for compliance of public procurement units; and making repeals.

Referred to Committee on STATE GOVERNMENT, June 4, 2002.

No. 2675 By Representatives STEELMAN, BISHOP, BROWNE, CAPPELLI, M. COHEN, COLAFELLA, COY, CREIGHTON, DeWEESE, D. EVANS, GEORGE, GORDNER, GRUCELA, HALUSKA, HARHAI, JAMES, LEDERER, LESCOVITZ, McCALL, McILHATTAN, MYERS, PALLONE, PETRARCA, PIPPY, ROBERTS, SHANER, SOLOBAY,

STABACK, SURRA, TANGRETTI, TRAVAGLIO, TRELLO, TRICH, WALKO, WANSACZ, J. WILLIAMS, YOUNGBLOOD and G. WRIGHT

An Act amending the act of August 6, 1991 (P.L.326, No.33), known as the Agriculture and Rural Youth Development Act, further defining "agriculture and rural youth organization"; further providing for authorization and purpose and for funding; and making an appropriation.

Referred to Committee on AGRICULTURE AND RURAL AFFAIRS, June 4, 2002.

No. 2676 By Representatives STEELMAN, BEBKO-JONES, BELARDI, BELFANTI, BISHOP, BROWNE, CAPPELLI, CAWLEY, CORRIGAN, COSTA, COY, CREIGHTON, CURRY, EGOLF, FLICK, GEORGE, GRUCELA, HENNESSEY, HORSEY, JOSEPHS, KELLER, LAUGHLIN, LUCYK, MARKOSEK, McGEEHAN, MELIO, MUNDY, PETRARCA, PISTELLA, ROEBUCK, RUBLEY, SHANER, STABACK, E. Z. TAYLOR, THOMAS, DIVEN, FEESE, FREEMAN, GORDNER, HARHAI, HESS, JAMES, KAISER, KREBS, LESCOVITZ, MANDERINO, McCALL, McNAUGHTON, MICHLOVIC, PALLONE, PIPPY, READSHAW, ROONEY, RUFFING, SOLOBAY, STURLA, J. TAYLOR, TIGUE, TRELLO, WALKO, WASHINGTON, WOJNAROSKI, YOUNGBLOOD, J. WILLIAMS, VEON, WANSACZ, WATSON, G. WRIGHT and YUDICHAK

An Act amending Title 51 (Military Affairs) of the Pennsylvania Consolidated Statutes, further providing for employment discrimination for military membership or duty.

Referred to Committee on VETERANS AFFAIRS AND EMERGENCY PREPAREDNESS, June 4, 2002.

No. 2677 By Representatives BLAUM, WASHINGTON, YUDICHAK, CREIGHTON, CLARK, MUNDY, JAMES and J. WILLIAMS

An Act amending the act of August 9, 1955 (P.L.323, No.130), known as The County Code, further providing for billing and collection of third, fourth, fifth, sixth, seventh and eighth class county taxes.

Referred to Committee on LOCAL GOVERNMENT, June 4, 2002.

No. 2678 By Representatives ROHRER, M. BAKER, BARRAR, BASTIAN, BENNINGHOFF, BROOKS, BUNT, CAPPELLI, COLEMAN, CORRIGAN, FAIRCHILD, FEESE, FORCIER, FREEMAN, GEORGE, GRUCELA, HARHART, HARPER, HERMAN, HORSEY, JAMES, KELLER, LAUGHLIN, LEH, LUCYK, YEWIC, YUDICHAK, ZIMMERMAN, MARKOSEK, McCALL, McGEEHAN, McILHATTAN, McNAUGHTON, MICOZZIE, MUNDY, PETRARCA, PIPPY, PISTELLA, READSHAW, ROBINSON, SATHER, SAYLOR, STABACK, STERN, R. STEVENSON, E. Z. TAYLOR, TIGUE, WALKO, WANSACZ, WASHINGTON, WILT and BROWNE

An Act amending the act of August 26, 1971 (P.L.351, No.91), known as the State Lottery Law, further defining "income" for purposes of pharmaceutical assistance for the elderly.

Referred to Committee on FINANCE, June 4, 2002.

BILLS REMOVED FROM TABLE

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

Mr. PERZEL. Madam Speaker, I move that the following bills be removed from the table:

HB 891;
 HB 893;
 HB 894;
 HB 1924;
 HB 2068;
 HB 2470;
 HB 2552;
 HB 2591;
 SB 106;
 SB 413;
 SB 986;
 SB 1045;
 SB 1179;
 SB 1184;
 SB 1192;
 SB 1204; and
 SB 1248.

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

BILLS ON SECOND CONSIDERATION

The following bills, having been called up, were considered for the second time and agreed to, and ordered transcribed for third consideration:

HB 891, PN 3885; HB 893, PN 3884; HB 894, PN 3883; HB 1924, PN 3886; HB 2068, PN 2731; HB 2470, PN 3536; HB 2552, PN 3890; HB 2591, PN 3878; SB 106, PN 113; SB 413, PN 1992; SB 986, PN 1197; SB 1045, PN 1994; SB 1179, PN 1485; SB 1184, PN 1835; SB 1192, PN 1823; SB 1204, PN 1547; and SB 1248, PN 1836.

BILLS RECOMMITTED

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

Mr. PERZEL. Madam Speaker, I move that the following bills be recommitted to Appropriations:

HB 891;
 HB 893;
 HB 894;
 HB 1924;
 HB 2068;
 HB 2470;
 HB 2552;
 HB 2591;
 SB 106;
 SB 413;
 SB 986;

SB 1045;
SB 1179;
SB 1184;
SB 1192;
SB 1204; and
SB 1248.

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

SENATE MESSAGE

AMENDED HOUSE BILL RETURNED
FOR CONCURRENCE AND
REFERRED TO COMMITTEE ON RULES

The clerk of the Senate, being introduced, returned **HB 1237, PN 3774**, with information that the Senate has passed the same with amendment in which the concurrence of the House of Representatives is requested.

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
June 3, 2002

RESOLVED, (the House of Representatives concurring), That when the Senate adjourns this week, it reconvene on Monday, June 10, 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, June 10, 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.

COMMUNICATION FROM JOINT STATE GOVERNMENT COMMISSION

The SPEAKER pro tempore. The Chair acknowledges receipt of the Report of the Task Force on 21st Century Energy Policy for Pennsylvania, submitted by the Joint State Government Commission.

(Copy of communication is on file with the Journal clerk.)

BILL REPORTED FROM COMMITTEE, CONSIDERED FIRST TIME, AND RECOMMITTED TO COMMITTEE ON RULES

HB 496, PN 534

By Rep. GANNON

An Act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further providing for fleeing or attempting to elude police officer.

JUDICIARY.

RESOLUTION REPORTED FROM COMMITTEE

SR 149, PN 2032 (Amended)

By Rep. GANNON

A Concurrent Resolution directing the Joint State Government Commission to establish a bipartisan task force with an advisory committee to study and make recommendations regarding certain segments of the prison population in Pennsylvania State correctional institutions.

JUDICIARY.

LEAVES OF ABSENCE

The SPEAKER pro tempore. Are there requests for leaves of absence?

The Chair recognizes the majority whip, who requests a leave for the gentleman from Delaware, Mr. RYAN, for the day. Without objection, that leave is granted.

The Chair recognizes the minority whip, who asks that the gentleman from Westmoreland County, Mr. TANGRETTI, be placed on leave for the day. Without objection, that leave is also granted.

MASTER ROLL CALL

The SPEAKER pro tempore. The Chair is about to take the master roll call. Members will proceed to vote.

The following roll call was recorded:

PRESENT—200

Adolph	Egolf	Mackereth	Santoni
Allen	Evans, D.	Maher	Sather
Argall	Evans, J.	Maitland	Saylor
Armstrong	Fairchild	Major	Scavello
Baker, J.	Feese	Manderino	Schroder
Baker, M.	Fichter	Mann	Schuler
Bard	Fleagle	Markosek	Scrimenti
Barrar	Flick	Marsico	Semmel
Bastian	Forcier	Mayernik	Shaner
Bebko-Jones	Frankel	McCall	Smith, B.
Belardi	Freeman	McGeehan	Smith, S. H.
Belfanti	Gabig	McGill	Solobay
Benninghoff	Gannon	McIlhattan	Staback
Birmelin	Geist	McIlhinney	Stairs
Bishop	George	McNaughton	Steelman
Blaum	Godshall	Melio	Steil
Boyes	Gordner	Metcalfe	Stern
Brooks	Grucela	Michlovic	Stetler
Browne	Gruitza	Micozzie	Stevenson, R.

Bunt	Habay	Miller, R.	Stevenson, T.
Butkovitz	Haluska	Miller, S.	Strittmatter
Buxton	Hanna	Mundy	Sturla
Caltagirone	Harhai	Myers	Surra
Cappelli	Harhart	Nailor	Taylor, E. Z.
Casorio	Harper	Nickol	Taylor, J.
Cawley	Hasay	O'Brien	Thomas
Civera	Hennessey	Oliver	Tigue
Clark	Herman	Pallone	Travaglio
Clymer	Hershey	Perzel	Trello
Cohen, L. I.	Hess	Petrarca	Trich
Cohen, M.	Horsley	Petrone	Tulli
Colafella	Hutchinson	Phillips	Turzai
Coleman	Jadlowiec	Pickett	Vance
Cornell	James	Pippy	Veon
Corrigan	Josephs	Pistella	Vitali
Costa	Kaiser	Preston	Walko
Coy	Keller	Raymond	Wansacz
Creighton	Kenney	Readshaw	Washington
Cruz	Kirkland	Reinard	Waters
Curry	Krebs	Rieger	Watson
Dailey	LaGrotta	Roberts	Williams, J.
Daley	Laughlin	Robinson	Wilt
Dally	Lawless	Roebuck	Wojnaroski
DeLuca	Lederer	Rohrer	Wright, G.
Dermody	Leh	Rooney	Wright, M.
DeWeese	Lescovitz	Ross	Yewcic
DiGiroalamo	Levdansky	Rubley	Youngblood
Diven	Lewis	Ruffing	Yudichak
Donatucci	Lucyk	Sainato	Zimmerman
Eachus	Lynch	Samuelson	Zug

ADDITIONS—0

NOT VOTING—0

EXCUSED—2

Tangretti Ryan,
Speaker

LEAVES ADDED—3

LaGrotta Preston Stevenson, R.

CALENDAR

RESOLUTION PURSUANT TO RULE 35

Mr. MAYERNIK called up **HR 589, PN 3917**, entitled:

A Resolution honoring the players of the University of Pittsburgh Basketball Team, Head Coach Ben Howland, Associate Head Coach Jamie Dixon, Assistant Coaches Barry Rohrsen and Ernie Zeigler and Director of Operations Chris Carlson on the occasion of winning the most games in team history, concluding the regular season with a top 10 national ranking, capturing the West Division in the Big East Conference, playing in the Big East Tournament Championship game, earning an NCAA Tournament berth and advancing to the "Sweet 16" for the first time since 1974.

On the question,
Will the House adopt the resolution?

The following roll call was recorded:

YEAS—200

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

NAYS—0

NOT VOTING—0

EXCUSED—2

Tangretti Ryan,
Speaker

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

SUPPLEMENTAL CALENDAR A

RESOLUTION PURSUANT TO RULE 35

Mrs. MILLER called up **HR 594, PN 3934**, entitled:

A Resolution honoring the Berks County Agricultural Land Preservation Board on its attainment of 25,000 acres of preserved farmland.

On the question,
Will the House adopt the resolution?

The following roll call was recorded:

YEAS—200

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

NAYS—0

NOT VOTING—0
EXCUSED—2

Tangretti Ryan,
Speaker

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

REPUBLICAN CAUCUS

The SPEAKER pro tempore. The Chair recognizes the gentleman, Mr. Feese, for the purpose of a caucus announcement. Mr. FEESE. Thank you, Madam Speaker. Madam Speaker, the Republicans will begin a special caucus at 12 o'clock, and we anticipate returning to the floor at 2 o'clock. The SPEAKER pro tempore. The Chair thanks the gentleman.

DEMOCRATIC CAUCUS

The SPEAKER pro tempore. Does the gentleman, Mr. Coy, seek recognition? Mr. COY. Thank you, Madam Speaker. The Democrats will caucus at noon in the caucus room, and there will be informal discussions preceding the noon caucus. Thank you. The SPEAKER pro tempore. The Chair thanks the gentleman.

**BILLS REPORTED FROM COMMITTEE,
CONSIDERED FIRST TIME, AND
RECOMMITTED TO COMMITTEE ON RULES**

HB 2335, PN 3229 By Rep. BOYES

An Act amending the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, further defining "taxable income" for corporate net income tax.

FINANCE.

HB 2348, PN 3260 By Rep. BOYES

An Act amending the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, further providing for the sale or transfer of unused net operating lost tax credits.

FINANCE.

HB 2584, PN 3942 (Amended) By Rep. BOYES

An Act amending the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, further providing for a limited exclusion from certain classes of income.

FINANCE.

HB 2594, PN 3943 (Amended) By Rep. BOYES

An Act amending the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, further defining "taxable income" for purposes of corporate net income tax.

FINANCE.

HB 2668, PN 3921

By Rep. BOYES

An Act repealing certain acts and parts thereof relating to taxation.
FINANCE.

HB 2669, PN 3922

By Rep. BOYES

An Act repealing obsolete provisions on tax extensions.
FINANCE.

COMMITTEE MEETING POSTPONED

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

Mr. FLICK. Thank you, Madam Speaker.

For two reasons: one, to announce a committee meeting change, and the other a point of personal privilege. Which may I do first, Madam Speaker?

The SPEAKER pro tempore. Could we have the committee, please.

Mr. FLICK. The committee meeting scheduled tomorrow at 10 a.m. for the Labor Relations Committee is going to be postponed 1 week. It will be next Wednesday at 10 o'clock in hearing room 3 of the Keystone Office Building.

Thank you, Madam Speaker.

ANNOUNCEMENT BY MR. FLICK

The SPEAKER pro tempore. The gentleman may proceed with his point of personal privilege.

Mr. FLICK. Point of personal privilege.

Madam Speaker, I would like to notify the members that my administrative aide, Michele Warren, will not be with me for the next couple of months. She is on maternity leave, and she and her husband, Brad, are the proud parents of Adam Joseph Warren, who was born at 2:43 a.m. on Sunday, June 2. He weighed in at 6 pounds 12 ounces and was 18 1/2 inches long. And his proud grandparents, Joseph and Betty Jane Gall and Robert and Beverly Warren, are doing well, and the parents, Brad and Michele Warren, are also doing well, and we just want to congratulate them all.

Thank you, Madam Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman.

RECESS

The SPEAKER pro tempore. Are there any further announcements? If not, this House stands in recess until 2 p.m.

RECESS EXTENDED

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

AFTER RECESS

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

ACTUARIAL NOTE

The SPEAKER pro tempore. The Chair acknowledges receipt of an actuarial note, amendment No. 2933 to HB 1043, PN 1188.

(Copy of actuarial note is on file with the Journal clerk.)

SUPPLEMENTAL CALENDAR B

RESOLUTION PURSUANT TO RULE 35

Mr. COLEMAN called up **HR 597, PN 3945**, entitled:

A Resolution recognizing June 1 through 9, 2002, as "National Fishing and Boating Week."

On the question,
Will the House adopt the resolution?

The following roll call was recorded:

YEAS—200

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

Diven	Lewis	Ruffing	Yudichak
Donatucci	Lucyk	Sainato	Zimmerman
Eachus	Lynch	Samuelson	Zug

NAYS—0

NOT VOTING—0

EXCUSED—2

Tangretti Ryan,
Speaker

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

CALENDAR CONTINUED

BILL ON THIRD CONSIDERATION

The House proceeded to third consideration of **HB 968, PN 3857**, entitled:

An Act amending the act of September 27, 1961 (P.L.1700, No.699), known as the Pharmacy Act, defining “pharmacy technician” and “immediate supervision,” and providing for registration, qualifications and supervision of pharmacy technicians.

On the question,
Will the House agree to the bill on third consideration?
Bill was agreed to.

The SPEAKER pro tempore. This bill has been considered on three different days and agreed to and is now on final passage.
The question is, shall the bill pass finally?

(The bill analysis was read.)

On the question recurring,
Shall the bill pass finally?
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—200

Adolph	Egolf	Mackereth	Santoni
Allen	Evans, D.	Maher	Sather
Argall	Evans, J.	Maitland	Saylor
Armstrong	Fairchild	Major	Scavello
Baker, J.	Feese	Manderino	Schroder
Baker, M.	Fichter	Mann	Schuler
Bard	Fleagle	Markosek	Scrimenti
Barrar	Flick	Marsico	Semmel
Bastian	Forcier	Mayernik	Shaner
Bebko-Jones	Frankel	McCall	Smith, B.
Belardi	Freeman	McGeehan	Smith, S. H.
Belfanti	Gabig	McGill	Solobay
Benninghoff	Gannon	McIlhattan	Staback
Birmelin	Geist	McIlhinney	Stairs
Bishop	George	McNaughton	Steelman
Blaum	Godshall	Melio	Steil
Boyes	Gordner	Metcalfe	Stern
Brooks	Grucela	Michlovic	Stetler

Browne	Gruitza	Micozzie	Stevenson, R.
Bunt	Habay	Miller, R.	Stevenson, T.
Butkovitz	Haluska	Miller, S.	Strittmatter
Buxton	Hanna	Mundy	Sturla
Caltagirone	Harhai	Myers	Surra
Cappelli	Harhart	Nailor	Taylor, E. Z.
Casorio	Harper	Nickol	Taylor, J.
Cawley	Hasay	O’Brien	Thomas
Civera	Hennessey	Oliver	Tigue
Clark	Herman	Pallone	Travaglio
Clymer	Hershey	Perzel	Trello
Cohen, L. I.	Hess	Petrarca	Trich
Cohen, M.	Horsley	Petrone	Tulli
Colafella	Hutchinson	Phillips	Turzai
Coleman	Jadlowiec	Pickett	Vance
Cornell	James	Pippy	Veon
Corrigan	Josephs	Pistella	Vitali
Costa	Kaiser	Preston	Walko
Coy	Keller	Raymond	Wansacz
Creighton	Kenney	Readshaw	Washington
Cruz	Kirkland	Reinard	Waters
Curry	Krebs	Rieger	Watson
Dailey	LaGrotta	Roberts	Williams, J.
Daley	Laughlin	Robinson	Wilt
Dally	Lawless	Roebuck	Wojnaroski
DeLuca	Lederer	Rohrer	Wright, G.
Dermody	Leh	Rooney	Wright, M.
DeWeese	Lescovitz	Ross	Yewcic
DiGirolo	Levdansky	Rubley	Youngblood
Diven	Lewis	Ruffing	Yudichak
Donatucci	Lucyk	Sainato	Zimmerman
Eachus	Lynch	Samuelson	Zug

NAYS—0

NOT VOTING—0

EXCUSED—2

Tangretti Ryan,
Speaker

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.

GUESTS INTRODUCED

The SPEAKER pro tempore. The Chair is pleased to welcome to the hall of the House, as the guest pages of Representative Carole Rubley, Jon Mason and Jurgen Reinhoudt. They are seniors at Conestoga High School and are working as interns in Representative Rubley’s district office. Would they please rise.

BILLS ON THIRD CONSIDERATION

The House proceeded to third consideration of **HB 325, PN 3863**, entitled:

An Act amending the act of December 1, 1977 (P.L.249, No.83), entitled, as amended, “An act prohibiting employers from firing

employees who lose time from employment in the line of duty as volunteer firemen, fire police and volunteer members of ambulance services and rescue squads; and providing penalties,” further providing for the termination or discipline of volunteer firefighters; and making editorial changes.

On the question,
Will the House agree to the bill on third consideration?
Bill was agreed to.

The SPEAKER pro tempore. This bill has been considered on three different days and agreed to and is now on final passage. The question is, shall the bill pass finally?

(The bill analysis was read.)

On the question recurring,
Shall the bill pass finally?

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—200

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

DiGirolamo	Levdansky	Rubley	Youngblood
Diven	Lewis	Ruffing	Yudichak
Donatucci	Lucyk	Sainato	Zimmerman
Eachus	Lynch	Samuelson	Zug

NAYS—0

NOT VOTING—0

EXCUSED—2

Tangretti
Ryan,
Speaker

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

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

* * *

The House proceeded to third consideration of **HB 1034, PN 3855**, entitled:

An Act amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, further providing for willful failure to pay support orders.

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

Mr. **MAYERNIK** offered the following amendment No. **A2535**:

Amend Title, page 1, line 3, by removing the period after “orders” and inserting

, for investigating performance of county agency, for annual reports to Governor and General Assembly and for reports to department and coroner.

Amend Bill, page 1, by inserting between lines 14 and 15

Section 2. Sections 6343, 6347 and 6367 of Title 23 are amended by adding subsections to read:

§ 6343. Investigating performance of county agency.

* * *

(c) Department reviews and reports.—

(1) The department shall conduct child death reviews and provide written reports on any child death where child abuse is suspected and where a county agency has investigated child abuse or neglect reports related to the child or to other children of either of the child’s parents or has provided protective or general protective services involving the child or other children of either of the child’s parents. Agency performance, including, but not limited to, the investigation of prior child abuse or neglect reports, assessment of risk, acceptance of the family for services, provision of services, case closure and compliance with this chapter and related regulations, must be analyzed in each review and report. An explanation regarding the nature and extent of the review shall be provided in each report.

(2) On and after January 1, 2003, the child death review and report shall be completed no later than six months following the date of the oral report of suspected child abuse to the department. A copy of each child death report shall be maintained

in the appropriate Harrisburg office of the department.

(3) This section shall not be construed to preclude the department from reviewing and providing a written report on any child death where child abuse is suspected or confirmed and the agency had no prior involvement with the child or the child's family.

§ 6347. Annual reports to Governor and General Assembly.

* * *

(c) Reports on child deaths.—The department shall prepare and transmit annually to the Governor and to the General Assembly a report on its findings and recommendations regarding its child death reviews and reports conducted under section 6343(c) (relating to investigating performance of county agency). The annual report shall include, but not be limited to, the following:

(1) A breakdown of child deaths reviewed versus those not reviewed and a discussion explaining the lack of reviews for some child deaths.

(2) The regulatory compliance problems identified in the course of the child death reviews and a discussion outlining the actions taken by the department and the county agencies.

(3) The practice or decision-making problems identified in the course of the child death reviews and a discussion outlining the actions taken by the department and the county agencies.

(4) The good practice, effective decision making and regulatory compliance identified in the course of the child death reviews.

(5) The numbers of license revocations, provisional licenses and full licenses given to county agencies reviewed under section 6343(c).

(6) Recommendations for administrative, regulatory or statutory change, including improvement of the department's monitoring and inspection process, necessary to fulfill the purposes of this chapter.

§ 6367. Reports to department and coroner.

* * *

(c) Reports of child death.—In addition to the child abuse report required under subsection (a), a county agency shall immediately provide information to the department regarding its involvement with the child and with either of the child's parents when a child dies and child abuse is suspected. The county agency shall inform the department of any history of protective or general protective services provided to the child or to other children of either of the child's parents by the county agency under this chapter or by court order and shall inform the department if the child was in the agency's custody at the time of the child's death. The county agency shall provide this information in writing on forms provided by the department within 48 hours of the oral report.

Section 3. The Department of Public Welfare shall promulgate regulations necessary for implementing the amendment of 23 Pa.C.S. §§ 6343, 6347 and 6367.

Amend Sec. 2, page 1, line 15, by striking out "2" and inserting
4

Amend Sec. 3, page 2, line 1, by striking out "3" and inserting
5

On the question,

Will the House agree to the amendment?

The SPEAKER pro tempore. On that question, the Chair recognizes the gentleman, Mr. Mayernik.

Mr. MAYERNIK. Thank you, Madam Speaker.

This amendment amends the Child Protective Services Law contained in Title 23. It has also express support from the Department of Welfare, who reviewed the language, and it would require the Department of Welfare to conduct child death reviews in cases where child abuse is suspected, complete written reports

on child deaths in cases where child abuse is suspected, and to prepare an annual report to the Governor and the members of this body of the Pennsylvania General Assembly. The reports would include an analysis of the county agency's handling of each case. In such reviews, the reports would have to be done when a county children and youth agency has investigated the child abuse or neglect reports related to an affected child or to other children of either of the child's parents or if the agency provided protective services involving children or other children of the parents.

REMARKS SUBMITTED FOR THE RECORD

Mr. MAYERNIK. Madam Speaker, I would like to suspend in reading the rest of this and submit my comments for the record and ask for an affirmative vote.

The SPEAKER pro tempore. The Chair thanks the gentleman.

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

Madam Speaker, this amendment amends the Child Protective Services Law contained in Title 23.

It also has the expressed support of the Pennsylvania Department of Welfare, who reviewed the language.

It would require the Pennsylvania Department of Public Welfare to conduct child death reviews in cases where child abuse is suspected, complete written reports on child deaths in cases where child abuse is suspected, and to prepare an annual report to the Governor and the Pennsylvania General Assembly.

The reports would include an analysis of the county agency's handling of each case.

Such reviews and reports would have to be done when a county children and youth agency has investigated child abuse or neglect reports related to an affected child or to other children of either of the child's parents, or if the agency provided protective services involving the child or other children of either of the child's parents.

This amendment permits the DPW to review and provide a written report related to any child's death where child abuse is suspected or confirmed but the agency had no prior involvement with the child or the child's family.

The completion of child death reviews and reports must be done within 6 months and each child death report must include an explanation of the nature and the extent of the review.

County agencies would be required to immediately provide information to the DPW regarding its involvement with the child and with either of the child's parents when a child dies and child abuse is suspected.

Madam Speaker, this amendment would require the DPW to prepare and transmit an annual report to the Governor and the General Assembly that outlines its findings and recommendations. In the report, DPW could recommend improvements for the monitoring and inspection process regarding child abuse.

Finally, county agencies would have to inform the DPW of any history of protective or general protective services provided to a child or to other children of either of the child's parents as well as to inform the department if the child was in the agency's custody at the time of the child's death. Within 48 hours of a child's death, county agencies would have to submit a written report to DPW on any involvement in the child's case.

Our children and youth system is State supervised but county administered. It is imperative that both work together to make improvements on our current system and help both agencies better detect child abuse problems to prevent tragedies.

Madam Speaker, our children are precious and we must, as a matter of public policy, protect their welfare.

I urge an affirmative vote.

The SPEAKER pro tempore. The Chair recognizes the lady from Montgomery County, Mrs. Cohen, on the amendment.

Mrs. COHEN. Thank you, Madam Speaker.

This is agreed upon, and we would urge everyone to vote for this. Thank you.

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

The following roll call was recorded:

YEAS—200

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

NAYS—0

NOT VOTING—0

EXCUSED—2

Tangretti Ryan,
Speaker

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 pro tempore. Before we have the next amendment, could we please some have order and some quiet in the House. It is very, very difficult to hear people explaining their amendment.

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

Mr. VITALI offered the following amendment No. **A2616**:

Amend Sec. 1 (Sec. 4354), page 1, lines 12 and 13, by striking out “[summary offense] ~~felony~~ MISDEMEANOR of” in line 12 and all of line 13 and inserting

summary offense for the first violation and a misdemeanor of the third degree for any second or subsequent violation.

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

The SPEAKER pro tempore. On that question, the Chair recognizes the gentleman, Mr. Vitali.

Mr. VITALI. Thank you, Madam Speaker.

What the bill in chief does is increase the penalty for willful failure to pay child support from a summary offense to a misdemeanor of the third degree. Although I disagree with that for reasons I will not get into, what this amendment attempts to do is to soften the impact of the bill so that one who willfully fails to pay child support would only incur the penalty of a misdemeanor of the third degree upon a second offense.

I have a lot of problems with the bill in chief, and if the Speaker will give me a little leeway, I will go into them in order to understand the amendment. The problem with the bill is— And this is not an uncontroversial bill. It is my understanding that the Philadelphia District Attorneys Association does not support this. What it does, there are numerous remedies available at the disposal of the court to enforce child support, one of which is contempt proceedings and other civil remedies. What this amendment attempts to do— The problem, getting back to the amendment at hand, the problem is if you make failure to pay child support a misdemeanor, you may be hurting the same children that the amendment is trying to help. I say this for this reason: One, if one is charged with a misdemeanor of the third degree, that carries a term of imprisonment of up to 1 year in jail. In order for a defendant who owes child support to in fact pay it, he needs not to be in jail, and in fact having a criminal record would hurt that. Secondly, one in fact charged with a misdemeanor of the third degree, the first thing he can and will do, if able to, will be to go to a lawyer to defend him, and the first thing that lawyer will

want will be a retainer fee of perhaps \$1,000 or more. That is money that instead of going for child support would be going to legal fees.

I appreciate the fact that the maker of this bill has good intentions in wanting to use this as a vehicle to ensure that child support is paid. My fear is that it will have just the opposite effect of in fact hurting the process. So what my amendment intends to do is to soften the impact by keeping current law, first offense as a summary offense for failure to pay child support, then second offense would be a misdemeanor.

So I would ask for an affirmative vote.

The SPEAKER pro tempore. On the amendment, the Chair recognizes the lady from Montgomery County, Mrs. Cohen.

Mrs. COHEN. Thank you, Madam Speaker.

Madam Speaker, I rise to oppose this amendment for several reasons.

Number one, the amendment totally guts the bill and essentially puts the situation where it is right now.

The bill deals with two specific items: number one, someone who willfully refuses to pay child support – willful – and that is critical. Secondly, even more important, it deals only with people who can afford to pay this child support but refuse to pay it. So it has nothing to do with taking food away from children and hurting the children that we are indeed under this bill trying to protect. This deals with someone who has the financial means to support, to pay the support, but who thumbs their nose at the law, let alone his own children.

It seems to me that the proponent of the amendment has made some spurious arguments; that is, if a person has to go to jail because he can afford to pay support but willfully refuses to pay that support from jail, there are work release provisions and capabilities where he will be able to go out and earn the dollars that he needs to pay this child support.

So I urge you to vote against this amendment, because do not forget, under the current law, if he is in for contempt of court, he is in jail. This law will change and make him pay because he is willfully denying the payment and he can afford it. Under current law, he could still go to jail. So we are dealing with people who willfully refuse, who flaunt the law, and who have the ability to pay.

I urge everyone to support our children and not support people who willfully flaunt the law by voting “no” on this amendment.

Thank you, Madam Speaker.

The SPEAKER pro tempore. On the amendment, the Chair recognizes the lady from Montgomery County, Ms. Harper.

Ms. HARPER. Thank you, Madam Speaker.

I likewise rise to oppose the amendment. The maker of the amendment— Madam Speaker, may I please ask for some order?

The SPEAKER pro tempore. You certainly may. Could we please have quiet in the hall of the House. The lady does deserve to be heard. Would members please take their seats.

Ms. HARPER. Thank you, Madam Speaker.

I rise to oppose the Vitali amendment. The maker of the amendment has described it as one which would soften the penalties in this case. I do not believe that this body needs to soften the penalties for people who willfully fail to pay child support when ordered. I think that is the wrong direction, and what we should do is oppose this amendment and make it very clear that the children of the Commonwealth are entitled to support when it

is ordered by the courts and we will back that up to the fullest extent of the law.

Thank you, Madam Speaker.

LEAVE OF ABSENCE

The SPEAKER pro tempore. The Chair returns to leaves of absence, and we have a request that the gentleman, Mr. PRESTON, from Allegheny County be placed on leave for the remainder of the day. The Chair hears no objection.

CONSIDERATION OF HB 1034 CONTINUED

The SPEAKER pro tempore. The Chair recognizes the gentleman, Mr. Vitali, for the second time.

Mr. VITALI. Thank you, Madam Speaker.

Just a few points in rebuttal.

One, I am puzzled by the remarks that this amendment guts the bill. I mean, what the lady does, the maker of the bill in chief does, is simply make it a misdemeanor of the third degree to fail to pay child support. It changes it from a summary to a misdemeanor. What this does is simply keeps it as a summary for a first offense and makes it as a misdemeanor of the third degree for a second offense. I do not understand why that is gutting the bill, and I do not think that should be misrepresented to the House. This is not a gutting of the bill; it just is applying penalties in stepped measures, which one could argue is more effective in enforcing it.

Second, in response to the gentledady from Montgomery County, make no mistake about it, this is not being soft on crime. The Philadelphia District Attorneys Association does not support this, does not support this bill. The District Attorneys Association does not support the Cohen bill by making it a misdemeanor of the third degree for willful failure to pay child support. Now, they support a lot of get-tough-on-crime stuff; they do not support this.

Everybody wants parents who owe child support to pay; so do I. The question is, what is the best way to go about doing it? The reality of the situation is that the courts have many tools – and I have practiced domestic relations law for a dozen years, handled hundreds of support cases; I am not sure if the maker of the bill has – but the court has many tools at its disposal short of a year in jail to pay or incarceration. There is, one, as we mentioned, contempt proceedings. We have wage attachments. We have a Federal income tax intercept. There are many tools at our disposal. We also have, and it is little used, current law, which makes it a summary offense for willful failure to pay support. So there are many tools at our disposal.

I am simply saying that the amendment simply is a stepped approach to enforcement. My concern is that if a person is hit with a misdemeanor offense carrying a year in jail, it is, one, going to take his ability, earning ability, away to in fact pay support; two, it is going to cost him to pay lawyer’s fees when he is going to pay child support. Now, having been in that system, I want to tell you it is often not a case of simply willful failure to pay support or snubbing your nose at the court, because those in the system know that child support is a very emotionally charged scenario. Someone, a father, may wrongfully be under the misimpression, because he is being denied visitation, there may be motions factoring into this, there may be reasons he is simply refusing to pay, and short of just snubbing the court, the reality is if we allow punishment to be meted out in stepped-up options as

opposed to simply going right to a misdemeanor, it may require a more effective way of getting money to the kids, which we all want to see happen.

So I would ask that this chamber consider the amendment I am approaching as a reasonable approach and an improved approach upon the bill in chief, and I would ask for an affirmative vote. Thank you.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the majority whip, from Jefferson County, Mr. Smith.

Mr. S. SMITH. Thank you, Madam Speaker.

Madam Speaker, for the reasons that were articulated by the two previous speakers from Montgomery County, I would urge the members to vote against this amendment.

Thank you very much.

The SPEAKER pro tempore. The Chair recognizes the lady from Montgomery County on the amendment, for the second time.

Mrs. COHEN. Thank you, Madam Speaker.

First, I think it would be appropriate to wish the maker of the amendment a happy birthday. I understand today is his birthday.

Secondly, I would like to say that I do respect the views that the maker of the amendment has put forth, particularly since he just said that he has been in the system so that he does understand the problems associated with it. However, I think certain corrections have to be made.

It is my understanding that both the Pennsylvania District Attorneys Association and the Philadelphia district attorneys have taken no position on this bill; they do not oppose it. They have taken – or this amendment and the bill – they have taken no position. What we are concerned about, Madam Speaker, is our children. We are not talking about hardworking people who cannot afford to pay child support.

Madam Speaker, excuse me, but I cannot even hear myself.

The SPEAKER pro tempore. The lady is correct. She does deserve to be heard. Could we have quiet in the hall of the House.

Mrs. COHEN. Thank you, Madam Speaker.

We are not dealing with someone who wants to pay child support but cannot afford it. We are not dealing with someone who does not want to pay child support but cannot afford to pay. We are dealing with people who are laughing at us, us the lawmakers who want to protect their children, and they should not get stepped-up or stepped-down chances, because our children are hungry. They need to have someone who can afford to pay support, who has been ordered by the court to pay this support. We must protect our children.

I urge you to vote “no” on this amendment so that the children that are going hungry can get the support that the court has said that they deserve and that we all know they deserve.

I ask you, please vote “no” on this amendment. Thank you, Madam Speaker.

The SPEAKER pro tempore. On the amendment, the Chair recognizes the gentleman from Northumberland, Mr. Belfanti.

Mr. BELFANTI. Thank you, Madam Speaker.

I would like to interrogate Representative Cohen for a brief moment, if possible.

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

Mr. BELFANTI. Madam Speaker, could you explain to me how, if one is placed in a prison cell for a year, that child has an easier time getting child support than if the individual is first told

that if you do not do this within X number of days, we will put you in jail for 30 days as a summary offense, which I believe the gentleman, Mr. Vitali’s amendment would do, and then if you further decline to pay your support, you would be perhaps sentenced to 1 year in prison. How does the money flow from the prison cell to the child if the person is incarcerated for a year?

Mrs. COHEN. Thank you, Madam Speaker.

I am glad that you asked that question, because I think it will clarify the situation for everyone.

Number one, currently, as you mentioned, there is a two-tiered remedy that the courts have. There is the contempt remedy and there is the summary offense, so that currently it is a crime that can be prosecuted as a summary offense. However, it is not used. People are thumbing their nose at that. They really do not care. By increasing the penalty, it then becomes worrisome to the person that can afford to pay what he is obligated to pay, and my apologies, because I am using the pronoun “he.” Many times it is a woman who is also in arrears, but more than 99 percent of the time it is indeed the man that is responsible. But if a person is sentenced, to use your example, to a year in jail, there are work release programs; there are many alternatives and many possibilities for a person to be given the opportunity to earn the dollars that he is ordered to pay. But understand that this bill deals – and I have said it before; I will repeat – this bill deals with the person who willfully refuses to pay and, most importantly, who has the ability to pay. So we are only punishing people who have the ability to pay, not the man that is working for minimum wage who would like to pay but simply cannot keep his head above water. These people can afford to pay, but they are thumbing their nose at the law. These are the people that we are after, because the system is not working now. The contempt provision is not working and summary judgment is not working, but nobody wants to be convicted of a third-degree misdemeanor. Now the law has meat in it, and trust me, they will pay up quickly.

Mr. BELFANTI. Thank you, Madam Speaker.

That concludes my interrogation. I would like to speak on the Vitali amendment.

The SPEAKER pro tempore. You may proceed.

Mr. BELFANTI. Thank you, Madam Speaker.

As the gentlewoman from Montgomery County just explained, I think she used the term 99 percent of the time it is the male or the father who is liable for child support in this State, and one of the reasons for that, Madam Speaker, is we are still one of the few States that has not tackled the issue of presumptive joint custody. In this State, almost immediately upon the divorce decree, the mother is awarded full physical and perhaps 50-percent legal custody. In many instances, Madam Speaker, as some of the hearings I attended on presumptive joint custody, the mother, even though there is a court order requiring that the mother provide X number of days per month in visitation, flagrantly flaunts that court order, and you cannot couple the two. There is no way in our court system that you can bring the mother into court for refusing to let the father any access to his children, while at the same time perhaps his only remedy then is to go to the court and say, look, I want to pay my child support, but I want you to enforce my visitation rights. Immediately the courts say, that is apples and oranges; you cannot deal with both issues. So in some instances, child support is withheld very legitimately for perhaps a month or two or three so that a parent has the ability to go to court and have their day insofar as a contempt proceeding against the mother in most instances, sometimes a father, who is using the child as a tool

or a weapon.

Therefore, Madam Speaker, the Vitali amendment brings some moderation to the table in that regard. I believe the individual should have two options, but during option phase number one, while it is still a summary offense, that father who is being prevented from visitation, even though there is a legitimate court order to do so, has the ability to have his day in court on that issue prior to being thrown in prison for a year and then have to apply for work release simply because he or she wants the other court order, the one on visitation, to be upheld.

So I think the Vitali amendment allows that type of individual the time, the necessary time, and the ability to go to court and see that the law is enforced and both court orders are enforced equally. Therefore, I see no harm whatsoever to the bill by having the Vitali amendment added to it and then passing the bill with that amendment as part of it. I think that would be a more rational approach, and again, because we are one of the few States that does not have presumptive joint, 50-50 legal and physical custody, it is even more important in Pennsylvania than many of our neighboring States.

Thank you, Madam Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Westmoreland County, Mr. Pallone.

Mr. PALLONE. Thank you, Madam Speaker.

I am here to support the Vitali amendment.

As it is being presented today, it is a beautiful marriage for the penalty of not paying child support. It allows a husband or wife or father or mother the opportunity to err once on the side of the law and only be charged with the summary offense or some other activity. The second offense then becomes the misdemeanor-3, which carries a more severe penalty.

Ironically, in Pennsylvania, the way the domestic relations office charges child support on a monthly basis, at the moment of charge, every single payer in Pennsylvania is delinquent a month, because it is charged retroactively. So any spiteful recipient, whether it be the mother or father of the child or children, can then use this law unfairly to try and imprison the payer in any kind of case like that.

We have seen that the district attorneys from Philadelphia oppose it. If any one of us talked to our local county commissioners, we are going to find out that they most certainly oppose it, because it is going to require additional assistant public defenders and one or more assistant district attorneys to prosecute these cases. It is nothing more than another unfunded mandate on the counties.

And last and certainly not least, because of the classification of the crime of a misdemeanor-3, under the new Federal law, any individual who is prosecuted and found guilty under this new law as it is being proposed would not be able to purchase a weapon in Pennsylvania. The misdemeanor-3 classification under Federal law forbids them from owning or purchasing weapons, under the new Federal law.

I think the Vitali amendment gives the payer an opportunity to err once and then ultimately make proper restitution. If we do not accept the Vitali amendment, the ramifications that come out of this would be severe.

Thank you, Madam Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Cumberland County,

Mr. Gabig.

Mr. GABIG. Thank you, Madam Speaker.

I would like to say a couple of things that are I would say in the nature of technical responses to some of the things I have listened to on the floor and then make a more general policy argument on this issue as I rise against the Vitali amendment.

A misdemeanor of the third degree is the lowest misdemeanor there is. It carries a maximum penalty in this Commonwealth of a year in prison. We have a system where that means you can get a maximum sentence of 6 to 12 months; a maximum sentence of 6 to 12 months in a county prison. For a first offense, under the sentencing guidelines, the standard range would call for no jail sentence. For a second offense, if your prior record score was 2 or 3, there would be no jail sentence. I think if your prior record score is 4, which includes all your criminal record obviously, not just for these types of offenses, you can start to look at some minor incarceration in a county prison. So you would have to have a significant prior record score before you would be looking at any type of jail sentence, so I think the information regarding a year in jail for your first offense, that just simply would not be the case under our sentencing guidelines.

Secondly, by way of a technical response to some of the objections, if you were indigent or could not afford an attorney, you would have a public defender, so you would not be spending any money for a private attorney. If you could afford an attorney, you would have a private lawyer, just like for any crime you commit.

But I think that the real issue is not a technical issue; it is fundamentally a moral issue. We have duties as parents to provide for our children, and if in the course of your life you are in court and a judge orders you to fulfill your legal and moral obligation to take care of your children and you say, no, I am not going to follow your order; after you went through this legal process to have to be ordered to do your duty to take care of your children, you say willfully, I am not going to obey that court order; even though they have considered all of your financial wherewithal, all of your ability to pay, they have considered the ability to pay of the other parent, and you say, no, forget it, that seems to me that we as a policymaking house – not a D.A.'s office, not a law enforcement office; a policymaking house – should say, you know what? You are going to have to pay a penalty. The criminal sanction of a misdemeanor, a low-grade misdemeanor, should come into effect to try to deter you, number one, from doing that and other similar situations, but if you continue to do so, you will have to suffer a criminal penalty; probation initially, no doubt, but a criminal penalty. You have a duty to take care of your children, and when the court has to order you to do so and you say no, that should be a misdemeanor, not a summary, which is a traffic ticket. That is a traffic ticket. Now, what is more important, taking care of your kids or going 26 in a 25-mile-an-hour? That is what the issue is,

I believe.

So that is why I support the bill, which we are not talking on, but I think that just having an M-3, to gut it down to a summary first offense, I think it makes it too weak and it is too soft.

Thank you, Madam Speaker.

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

Mr. THOMAS. Thank you, Madam Speaker.

Madam Speaker, on this issue of child support and willful failure to pay, I think that we must do all that we can to make sure

that children get the support that they need. However, I am concerned about whether the path that we have chosen in this bill will accomplish what it is that we want to do. And as everybody in this House knows, during the last 5 years we have enacted a number of laws which restrict individuals convicted of a felony from being able to even clean nursing homes. You cannot go into nursing aide training; you cannot work in nursing homes; you cannot work in health-care facilities. And in many of our counties, health-care-related jobs represent 40 to 50 percent of job opportunities in many of our counties. So we have passed a number of laws that directly close the door on being able to generate income for any purpose, and so I think that by declaring willful failure to pay child support a felony and thereby precluding an individual from working, limiting the arena of opportunities that are available to him or her in the event that they make a decision to provide child support, I think does not accomplish what it is that we want.

I think the Vitali amendment says that something needs to be done, that there is a price that needs to be paid, and that we must be very aggressive in seeking out individuals who willfully fail to pay child support. I think the Vitali amendment accomplishes that and also does not close the door on the availability of opportunities that individuals can seek out in an effort to satisfy child support obligations.

So I think the Vitali amendment is a reasonable step towards achieving our ultimate end, and that is, to get folks to take care of what they should be taking care of and should not even need the intervention of the law in order to bring about that. But be as it may, we do have people who walk around and think that they have no obligation to take care of their kids, and I think every member of this General Assembly can say without question that you will not and cannot in the Commonwealth of Pennsylvania walk around and willfully fail to take care of your kids, and so the Vitali amendment will send a strong message and at the same time not send a message that then ultimately cuts off future support that could end up going to children who are not being supported today.

So I urge members from both sides of the aisle to support the Vitali amendment.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Chester County, Mr. Ross.

Mr. ROSS. Thank you, Madam Speaker.

The debate has gone on a long time, and I do not want to take up the House's time any further, but I did think there was one word in here that is very important to pay attention to, and that is the word "willful." We are not talking about people who are laid off and otherwise unable to keep up with their child support. We are talking about defiant people. We are talking about people that are essentially thumbing their noses at the system and at the children that they need to be supporting. And for them to have a second chance, I think, is not the message we want to be talking about here. We want to be standing up and saying no to them and demanding that they pay their child support. Thank you.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Northumberland, Mr. Belardi, for the second time – Belfanti; sorry.

Mr. BELFANTI. That is quite all right. I would not mind passing out the parking around the Capitol, but I am just a chairman.

Thank you, Madam Speaker.

Madam Speaker, the word, the term, "willful" is very subjective. I would like to pose another question, this time to the

gentleman, Mr. Vitali, if he would stand for a brief interrogation.

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

Mr. BELFANTI. Mr. Vitali mentioned that he has some experience in domestic relations law, and I would like to pose to him a situation that occurred in my legislative district that led to the willful withholding of child support for a temporary period of time, and the situation was this: A gentleman worked at a lumber company, did not have health and welfare benefits. He had paid his own health and welfare benefits after he and his wife separated and subsequently divorced. His wife, on the other hand, was a licensed practical nurse, worked at an area hospital, and while they were married, he was covered under her health and welfare plan. Subsequent to the divorce, she not only, of course, dropped him, but in order to punish him, she dropped her children from her health and welfare policy, requiring her husband to pay an additional \$200 a month in health and welfare insurance on children that she intentionally had dropped from her coverage plan, even though she had 100 percent, full physical custody of the children.

Madam Speaker, under that scenario, would your amendment provide the time needed for an individual like this to go to court, go to the domestic relations office, go to a judge, and request that since those children were entitled to health and welfare coverage under the custodial parent's health policy, that the court require that individual to withdraw the vindictiveness and make sure the children got coverage, because they put the father in a situation where he could no longer afford his own health-care coverage because he had to pay for health and welfare coverage as part of his child support.

Mr. VITALI. It is not easy to give a simple yes or no answer to your question, but I think your scenario underscores a very important point, and that is, domestic relations cases – and again, as a lawyer, I have handled both plaintiff and defendant domestic relations cases for a dozen years – are emotionally charged cases where sometimes vindictiveness and hatred and emotions prevail over reason, and simply not paying a support order is not like committing some other crime, like stealing from a 7-Eleven. There are reasons; it is a different set of scenarios.

So what my amendment would do, in recognition of the fact that this is emotionally charged between two people emotionally connected, would simply say, for a first offense, you are not dealing with a misdemeanor of the third degree that can put you in jail for a year; it is a lesser penalty, maybe a shot over the bow for the husband or the father, just a shot over the bow for that initial offense of a summary, keeping that hammer of a misdemeanor for the second offense maybe bringing the person back to his senses. I mean—

The SPEAKER pro tempore. Would the gentleman just answer the question, please.

Mr. VITALI. Well, I am doing the best I can, because it was a— But I think the point is, it is an emotionally charged situation. So that would be my response. Thank you.

Mr. BELFANTI. Thank you, Madam Speaker.

One final question for the maker of the amendment.

Can the gentleman, Mr. Vitali, tell me if the Domestic Relations Association of Pennsylvania has taken a position on either HB 1034 or on your amendment?

Mr. VITALI. I can say this: With regard to the bill in chief, they have opposed previous versions. Now, if everyone would listen to this. The Domestic Relations Association of Pennsylvania

opposed the substance of this bill in its previous form, which was HB 1754 of 2000. They have not had time to take a position on its current version. This is a controversial bill in chief we are dealing with, which is opposed, again, by the Philadelphia District Attorneys Association, the Domestic Relations Association of Pennsylvania, and what my amendment attempts to do is make a bill that has a lot of objections from very reputable groups softer in its impact.

So therefore, I hope that answers your question.

Mr. BELFANTI. Thank you, Madam Speaker.

That concludes my interrogation and my final remarks on HB 1034.

The SPEAKER pro tempore. You may proceed.

Mr. BELFANTI. Thank you, Madam Speaker.

As the gentleman, Mr. Vitali, has stated and I think as I tried to bring to light, there are many, many reasons where an individual might be considered by a court to willfully, albeit temporarily, violate a domestic or custody support payment for a temporary period of time, because that individual may not enjoy the same protection from the court on the issue of presumptive joint custody or on the issue of even court-ordered visitation, let alone situations where the custodial parent intentionally causes the noncustodial parent to pay much higher child support as a result of a vindictive action, like having the children dropped from their health and welfare plan just so that the noncustodial parent will not be able to pay his or her bills to live or survive, forcing the individual into some form of contempt proceeding, which presently can be handled by the court under present State law, under various mechanisms.

I just believe that HB 1034, without the Vitali amendment, is throwing the baby out with the bathwater. It is overkill, it is unnecessary, and the Vitali amendment would do nothing to impede the net result that the prime sponsor of the bill would want. If the person is a habitual, willful, flagrant violator of paying child support, the effects of this bill will eventually put that person in jail. So the Vitali amendment does nothing but slow that process down and allow the court to hear arguments as to why a month or two or three's support payments may have been willfully withheld for a very legitimate reason.

Thank you, Madam Speaker. I urge support for the Vitali amendment.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the lady from Montgomery County, Ms. Harper.

Ms. HARPER. Madam Speaker, thank you.

I would like to, as a practitioner of family law for more than 20 years in this Commonwealth, address some of the issues and misconceptions about the current state of the law in Pennsylvania.

First of all, neither the Vitali amendment nor HB 1034 deal with custody in any way. They deal with a willful failure to pay child support. They do not deal with people who do not pay child support because they do not have jobs or cannot afford it. They only deal with a willful failure to pay child support.

More importantly, it is morally, ethically, and right now legally wrong, under the law of Pennsylvania, to withhold child support over a visitation dispute, a property dispute, or any other dispute. Children eat every day. They need to have support every week.

It is not right, under current Pennsylvania law, nor would I ever counsel any client of mine to withhold child support to force a custody issue. That is dead wrong. Nothing in this amendment and

nothing in this bill changes that situation and nor should it. Instead, this is about people who have the present ability to pay child support that the court has ordered and who decide not to pay it, regardless of their children's needs, regardless of the fact that kids need to eat every single day, even when their parents are fighting over something that they deem important.

What is important here is that the Vitali amendment weakens the bill. It says to people, it is okay to willfully fail to pay court-ordered child support for a period of time. It gives you a free strike. It lets you go ahead and fail to pay child support that your kids need the first time, and it is wrong. We have a full complement of civil penalties.

Madam Speaker, I cannot hear myself.

The SPEAKER pro tempore. The lady is absolutely correct. It is very, very noisy. Could we please have some quiet on the floor. Would the members in the side aisles please take their seats.

You may proceed.

Ms. HARPER. Thank you, Madam Speaker.

So I would like to address the fact that neither the Vitali amendment nor the bill itself deals with custody. That is a separate proceeding under Pennsylvania law. No one should ever be counseled to withhold basic court-ordered child support in order to force a wedge in any other domestic relations issue. That is legally and morally wrong. What this bill talks about is strengthening the penalties against those people who willfully fail to pay. What the Vitali amendment does is weaken the bill substantially and let people know that it is okay to blow off your court-ordered child support, regardless of what the children need.

So I would urge the members to please vote "no" on the Vitali amendment. Thank you.

The SPEAKER pro tempore. The Chair recognizes the lady from Philadelphia, Ms. Youngblood, on the amendment.

Ms. YOUNGBLOOD. Madam Speaker, I rise and ask the members of the General Assembly to oppose the Vitali amendment.

To me, if we state that the children of this great Commonwealth are our future, they deserve to receive child support. Anyone that has been to domestic relations is aware that child support and visitation are separate issues and are never intermingled. They are also aware that when parents sit down, they sit down with a master. The master determines the child support on a sliding scale. Then it is approved. It is worked out whether or not either parent can afford to pay for the health benefits.

I think it shows that here we are arguing over whether or not children should receive child support or whether the parent should go to jail. I think it is a felony when a parent does not pay adequate child support for a child that they brought into this world and said that they would cherish and love and help to make a productive individual when they are an adult in this great Commonwealth.

I think it is something that we need to look at when a person willfully withholds child support. What message are they sending to the child or children that they brought into this world?

The SPEAKER pro tempore. The Chair thanks the lady.

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

The following roll call was recorded:

Bebko-Jones	Evans, D.	Lucyk	Rooney
Belardi	Frankel	Manderino	Shaner
Belfanti	Freeman	McCall	Staback
Casorio	George	Michlovic	Steelman
Cohen, M.	Gruitza	Mundy	Stetler
Colafella	Haluska	Pallone	Sturla
Corrigan	Hanna	Petrarca	Surra
Curry	Harhai	Petrone	Thomas
Daley	Josephs	Pistella	Travaglio
DeLuca	Kaiser	Rieger	Trich
Dermody	Kirkland	Roberts	Vitali
Donatucci	LaGrotta	Robinson	Waters
Eachus	Levdansky	Roebuck	Wright, G.

NAYS—144

Adolph	Evans, J.	Maher	Sather
Allen	Fairchild	Maitland	Saylor
Argall	Feese	Major	Scavello
Armstrong	Fichter	Mann	Schroder
Baker, M.	Fleagle	Markosek	Schuler
Bard	Flick	Marsico	Scrimenti
Barrar	Forcier	Mayernik	Semmel
Bastian	Gabig	McGeehan	Smith, B.
Benninghoff	Gannon	McGill	Smith, S. H.
Birmelin	Geist	McIlhattan	Solobay
Bishop	Godshall	McIlhinney	Stairs
Boyes	Gordner	McNaughton	Steil
Brooks	Grucela	Melio	Stern
Browne	Habay	Metcalfe	Stevenson, R.
Bunt	Harhart	Micozzie	Stevenson, T.
Butkovitz	Harper	Miller, R.	Strittmatter
Buxton	Hasay	Miller, S.	Taylor, E. Z.
Caltagirone	Hennessey	Myers	Taylor, J.
Cappelli	Herman	Nailor	Tigue
Cawley	Hershey	Nickol	Trello
Civera	Hess	O'Brien	Tulli
Clark	Horsey	Oliver	Turzai
Clymer	Hutchinson	Perzel	Vance
Cohen, L. I.	Jadlowiec	Phillips	Veon
Coleman	James	Pickett	Walko
Cornell	Keller	Pippy	Wansacz
Costa	Kenney	Raymond	Washington
Coy	Krebs	Readshaw	Watson
Creighton	Laughlin	Reinard	Williams, J.
Cruz	Lawless	Rohrer	Wilt
Dailey	Lederer	Ross	Wojnaroski
Dally	Leh	Rubley	Wright, M.
DeWeese	Lescovitz	Ruffing	Yewcic
DiGirolamo	Lewis	Sainato	Youngblood
Diven	Lynch	Samuelson	Zimmerman
Egolf	Mackereth	Santoni	Zug

NOT VOTING—3

Baker, J.	Blaum	Yudichak
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EXCUSED—3

Preston	Tangretti	Ryan, Speaker
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Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

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

BILL PASSED OVER TEMPORARILY

The SPEAKER pro tempore. HB 1034 will go over temporarily.

RULES COMMITTEE MEETING

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

BILL ON CONCURRENCE
REPORTED FROM COMMITTEE

SB 1089, PN 2041 (Amended) By Rep. PERZEL

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for DNA testing of certain offenders; reestablishing the State DNA Data Base and the State DNA Data Bank; further providing for duties of the Pennsylvania State Police; imposing costs on certain offenders; reestablishing the DNA Detection Fund; further providing for the apportionment of liability and damages; imposing penalties; and making a repeal.

RULES.

CONSIDERATION OF HB 1034 CONTINUED

On the question recurring,
Will the House agree to the bill on third consideration as amended?
Bill as amended was agreed to.

The SPEAKER pro tempore. This bill has been considered on three different days and agreed to and is now on final passage.
The question is, shall the bill pass finally?

The Chair recognizes the lady from Montgomery County, Mrs. Cohen, on final passage.
Mrs. COHEN. Thank you, Madam Speaker.
I think that we have really discussed the bill in discussing the last amendment.
Just a few comments.

We are talking about our children, and as the Representative from Philadelphia, Representative Youngblood, and Representative Harper from Montgomery County stated, our children have to eat every day. We cannot combine visitation and custody with court-ordered child support.

I have heard the word "eventually" used; eventually these people will pay. That is not fair to our children. I do not understand how anyone can say, well, eventually I will pay, but give me once, twice, three times to fool around with the law, to flaunt the law, to display my arrogance against the legislature and against the court system. That is not right. Our children are hungry every single day, and they deserve food.

It was mentioned about a man who cannot afford to pay health care. We are not discussing health care. We are talking about people who can afford this. For the sake of our children, please vote "yes" on this bill.

Thank you, Madam Speaker.

The SPEAKER pro tempore. On final passage, the Chair recognizes the gentleman, Mr. Vitali, from Delaware County.

Mr. VITALI. Thank you, Madam Speaker.

I am not going to beat a dead horse here. I know which way this vote is going to go.

But I do agree with the gentelady from Montgomery County that the goal should be to get as much money to children as we can. The question really is, what is the better approach? And I just want to remind the members again, the Domestic Relations Association of Pennsylvania has opposed previous versions of the bill because they disagree with the methodology. They want money to go to children, too. The Philadelphia District Attorneys Association, the Philadelphia District Attorney’s Office, opposes this bill, and I just think it is the prudent move, and I would just again remind those members of that and ask for a “no” vote.

Thank you.

On the question recurring,
Shall the bill pass finally?

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—189

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

DeWeese	Levdansky	Ruffing	Youngblood
DiGirolamo	Lewis	Sainato	Yudichak
Diven	Lucyk	Samuelson	Zimmerman
Eachus	Lynch	Santoni	Zug
Egolf			

NAYS—8

Cohen, M.	Josephs	Pallone	Thomas
Gruitza	Michlovic	Roberts	Vitali

NOT VOTING—2

Bishop	Donatucci
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EXCUSED—3

Preston	Tangretti	Ryan, Speaker
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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.

GUESTS INTRODUCED

The SPEAKER pro tempore. The Chair is pleased to welcome to the hall of the House Christopher Manderino from Monessen, PA. Chris is a guest page this week and just completed 10th grade at Giebel Catholic School. He is the guest today of Representative Kathy Manderino. He is seated with the pages in front of the chamber. Would the gentleman please rise.

The Chair is also pleased to welcome to the hall of the House, as the guest of Representative John Pippy, Julie Woloshin, who is his intern. She is a senior at Robert Morris College, where her major is social sciences. She is serving as an unpaid intern this summer. She is also accompanied by Representative Pippy’s legislative aide, Briana Din. They are seated to the left of the Speaker. Would the ladies please rise.

**BILLS REPORTED FROM COMMITTEES,
CONSIDERED FIRST TIME, AND
RECOMMITTED TO COMMITTEE ON RULES**

HB 2619, PN 3949 (Amended) By Rep. KENNEY

An Act amending the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, further providing for mastectomy and breast cancer reconstruction.

HEALTH AND HUMAN SERVICES.

HB 2651, PN 3900 By Rep. SEMMEL

An Act amending Title 51 (Military Affairs) of the Pennsylvania Consolidated Statutes, further providing for the purposes of the Pennsylvania Veterans’ Memorial Trust Fund.

VETERANS AFFAIRS AND EMERGENCY
PREPAREDNESS.

GUESTS INTRODUCED

The SPEAKER pro tempore. The Chair is pleased to welcome to the hall of the House, as the guests of Representative Lawrence Curry, 55 fifth grade students, parents, and teachers from Jenkintown Elementary School in Jenkintown, Pennsylvania, who are touring the Capitol today. They are seated in the gallery. Would they please rise.

The Chair is also pleased to welcome to the hall of the House, as the guest of Representative George Kenney, Michael Stewart, who is a sophomore at Central Bucks East High School. Would Michael please rise.

THE SPEAKER PRO TEMPORE (BRETT FEESE) PRESIDING

SENATE BILL FOR CONCURRENCE

The clerk of the Senate, being introduced, presented the following bill for concurrence:

SB 1383, PN 1880

Referred to Committee on STATE GOVERNMENT,
June 4, 2002.

GUEST INTRODUCED

The SPEAKER pro tempore. The Chair is pleased to welcome today, as the guest of Representative Youngblood, Alex McManimen, who is a third-year student at Villanova Law School. Alex is seated to the left of the Speaker. Alex, would you please rise. Welcome to the hall of the House.

COMMUNICATION FROM SPEAKER

SPEAKER PRO TEMPORE APPOINTED

The SPEAKER pro tempore. Communication from the Speaker, which the clerk will read.

The following communication was read:

House of Representatives
Commonwealth of Pennsylvania
Harrisburg

June 4, 2002

To the Honorable House of Representatives:

Pursuant to House Rule 1, this is to advise that I have appointed the

Honorable Brett Feese to serve as Speaker Pro Tempore for Tuesday, June 4, 2002.

Very truly yours,
Matthew J. Ryan
The Speaker

ANNOUNCEMENT BY MS. WASHINGTON

The SPEAKER pro tempore. For what purpose does the lady, Ms. Washington, rise?

Ms. WASHINGTON. Mr. Speaker, I just rise to let everyone know in the House that today is Representative Mark Cohen's birthday.

The SPEAKER pro tempore. The Chair thanks the lady.

Ms. WASHINGTON. Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair recognizes the lady, Ms. Washington.

Ms. WASHINGTON. Thank you, Mr. Speaker.

I just found out that it is also Representative Kevin Blaum's birthday as well, and Greg Vitali's.

The SPEAKER pro tempore. Happy birthday.

SUPPLEMENTAL CALENDAR C

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 1089, PN 2041**, as further amended by the House Rules Committee:

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for DNA testing of certain offenders; reestablishing the State DNA Data Base and the State DNA Data Bank; further providing for duties of the Pennsylvania State Police; imposing costs on certain offenders; reestablishing the DNA Detection Fund; further providing for the apportionment of liability and damages; imposing penalties; and making a repeal.

On the question,

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

The SPEAKER pro tempore. It is moved by the gentleman, Mr. Perzel, that the House concur in the amendments.

For what purpose does the gentleman, Mr. Vitali, rise?

Mr. VITALI. Just to get a brief description of this bill; just to get a brief description of this bill.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Allegheny, Mr. Turzai, for the purpose of a description of the bill.

Mr. TURZAI. The bill upon concurrence is a bill that comes over from the Senate that provides for DNA testing of certain offenders, and added to the bill upon concurrence is a provision dealing with the issue of joint and several liability, and it amends the existing comparative negligence statute such that with respect to recovery against joint defendants, those defendants that are less

than 60 percent liable shall not be subject to joint and several liability, with two exceptions, and the exceptions are those defendants found less than 60 percent liable who have committed an intentional tort and/or a fraudulent intentional tort.

The bill also does not change subparagraph (a) of existing section 7102 of the comparative negligence statute, meaning that the plaintiff's behavior or acts are not taken into account with respect to comparing strict liability cases. However, under the change under (b.1), "Recovery against joint defendant," it is applicable to defendants who are found liable on the basis of strict liability.

The bill also addresses the issue of employers. It makes it clear that an employer who is found liable to an employee under workmen's compensation statutes is not subject to this amendment in the concurred bill.

It also makes clear that with respect to releases, there is a change with respect to joint tort-feasor releases. Those plaintiffs that have been able to get a windfall as a result of a settlement with the defendant beyond what the ultimate verdict is when trying a case against another defendant, that that recovery is reduced to a certain percentage.

Those are the substantive changes to the bill, SB 1089 upon concurrence.

Mr. Speaker, if I might—

The SPEAKER pro tempore. The gentleman may proceed.

Mr. TURZAI. In making these changes, I wanted to address a number of arguments.

It goes without question that our civil litigation system needs significant commonsense reform. There are too many frivolous claims, inflated awards, and nuisance settlements. People are tired of having their decisions second-guessed and are tired of being subjected to the stresses of litigation.

The expansion of the doctrine of joint and several liability is one of the tools in today's litigation environment that fosters lawsuit abuse. It is just one. We come here today upon concurrence with SB 1089 to make that change.

Everybody has received plenty of documents as to what joint and several liability is. There is no need to repeat it. But the fact of the matter is, joint and several has expanded from its origins. It originally applied only to concerted actions between defendants. Now it applies to independent actions. Cases have turned into a witch hunt for a defendant with deep enough pockets to pay a sizable award. Critics accurately call joint and several liability the deep-pocket theory—

The SPEAKER pro tempore. The gentleman, Mr. Turzai. The gentleman was requested to give a description of the amendment. You are now into final passage, which we are not at that point in the debate, so if the gentleman is done with the description of the amendment, then we would need to wait until the final debate.

Mr. TURZAI. Yes, Mr. Speaker.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Luzerne County, Mr. Blaum.

Mr. BLAUM. Thank you, Mr. Speaker.

Mr. Speaker, I rise in opposition to concurrence and for some very good reasons.

We heard the gentleman talk about frivolous lawsuits and lawsuit abuse. Well, when we did SB 407, the topic was frivolous lawsuits. When we did medical malpractice, we heard an awful lot about lawsuit abuse. But joint and several liability does not fall under those two categories, and what is proposed in this amendment is a radical change in the way Pennsylvania deals with

the age-old concept in our system of jurisprudence called joint and several liability.

Mr. Speaker, we are not here today talking about frivolous lawsuits. Joint and several liability has nothing to do with frivolous lawsuits. It has everything to do with once a lawsuit which apparently has merit because the plaintiff has been vindicated, the decision then is, how are the damages apportioned amongst and between the responsible parties?

The concept of joint and several liability is hundreds of years old. States that have dealt with this have done it dramatically different, in far limited fashion, than is before the House of Representatives right now.

Joint and several liability is not about a lawsuit without merit. It is about an injured Pennsylvanian and how they will be made whole, if that is possible at all.

I can only do this by example, Mr. Speaker.

If a plaintiff is injured by a drunk driver and a lawsuit is brought, the damages are not apportioned until that plaintiff is successful in the lawsuit. So we are not talking about a lawsuit that has no merit; we are talking about one that has already been litigated and the plaintiff has been found to be successful.

And then how are the damages apportioned? A slip of paper is then given to the jury, and they have to determine whether or not the defendants in this case— Let us say the defendants in this drunk driving case are the driver of the car and the tavern that has been found to be serving that person, even while after they have been intoxicated. Before any money can be awarded, each of the defendants must be found first to be determined whether or not they were negligent. If in fact they were, the jury can determine that, yes, the driver of the car was negligent and, yes, the restaurant who served the alcoholic beverages time and time again was negligent.

That is not enough to receive an award in Pennsylvania. Not only do you have to be found negligent; it must also be determined that you are a substantial reason which caused that injury. So the jury has to decide a second thing: Was the driver of the car whom they already found negligent, was he also substantially responsible? Was the restaurant which served the alcoholic beverages substantially responsible? Only after those two things have been determined can an award be made.

And if that jury has now decided the driver and the tavern are both responsible for the injury that occurred, they have to answer another question on that sheet of paper from the judge. They have to apportion the percentage of responsibility. The jury may determine that the driver of the car is 70 percent responsible. They may determine that the restaurant which repeatedly served the alcoholic beverages is 30 percent responsible.

Mr. Speaker, if the driver of that car is an uninsured motorist and the restaurant's responsibility rises to 30 percent, under this amendment the injured Pennsylvanian, perhaps a member of your family, gets very little.

Understand what the percentage means, because throughout the debate over the last few weeks, I know you have heard, is it not a shame that somebody who is only 30 percent responsible can end up paying 100 percent of the damages? The jury must, at the demand of the judge, apportion the percentage of responsibility— 70 percent to the drunk driver; 30 percent to the restaurant who repeatedly supplied the alcoholic beverages. It must equal 100 percent. In assigning 30 percent of the responsibility to the restaurant or tavern, the jury in no way says, no way says, that that

restaurant is not 100 percent responsible for the misdeeds and the actions that caused that accident. The jury, if it could, would probably assign 100 percent responsibility to both the driver and the restaurant who supplied the alcohol and caused the injury. Understand that because they may assign 70 percent to the driver, 30 percent to the restaurant, that does not mean that the injured party should not receive 100 percent of what is owed to pay for those injuries.

Under this amendment, that injured person would receive very little, because you have an uninsured motorist who was drunk, intoxicated behind the wheel, and you have a bar that was serving the alcohol and the jury did not find that that responsibility rose to the threshold of 60 percent contained in the amendment.

Also in the amendment is something called the empty chair, which is a new addition to the amendment just in the last few minutes that you all should be aware of, and what it means is, the defendants, if in fact that bar was assigned 60 percent responsibility, that bar would have the ability to bring in, to lasso and bring in, as many other defendants as they possibly can. Why? In the hopes that when the jury eventually finds and apportions the percentages of responsibility, hopefully that that bar would end up at 59 percent instead of 60 percent and thereby avoid their responsibilities. This type of legislation in other States has led to more litigation, not less. To bring in other parties, other defendants, into a lawsuit which they were unaware of, had very little to do with, is something that will happen because of the empty-chair provision in this amendment.

Mr. Speaker, we have heard that other States have modified their joint and several liability laws. That is true. A few have, and every one of them have provided a long list of exceptions. New York exempts traffic accidents, similar to the ones I mentioned. They exempt acts of terror. They exempt crimes under the hate crimes law, and a whole series of other offenses are exempted from the legislation. This amendment contains no exceptions that we can find.

This is a radical change in the joint and several liability concept in the Commonwealth of Pennsylvania that ends up hurting Pennsylvanians. It is not about lawsuit abuse, because we are talking about a meritorious lawsuit in which a plaintiff was vindicated. We are not talking about frivolous lawsuits but, rather, lawsuits of merit where awards are given, and when the percentage of responsibility is apportioned, by setting the threshold at 60 percent, it is designed to make sure that no one has to pay to make that victim whole. That is the way the amendment reads, with no exceptions as other States have.

What you are being asked to vote for, I believe, is not something you considered even possible a month or two ago. I would ask the members for a negative vote and to support the motions which we will be offering very shortly.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman.

POINT OF ORDER

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

Mr. GANNON. Thank you, Mr. Speaker.

Mr. Speaker, first a point of order, please.

The SPEAKER pro tempore. The gentleman will state his point.

Mr. GANNON. Mr. Speaker, this is not the bill that was on our voting schedule, and I am questioning how this bill, which is not

the bill that was on the voting schedule, is now before the House for consideration.

The SPEAKER pro tempore. There was an agreement to run this bill, even though the 1-hour period had not expired. We could, if you want – there are a few more minutes until that hour expires – we could suspend the rules, if you would like, or we could continue at this point.

Mr. GANNON. No. That is okay, Mr. Speaker. Thank you.

Mr. Speaker, I would like to interrogate the person who is asking us to adopt the amendments inserted by the House.

The SPEAKER pro tempore. The gentleman, Mr. Turzai, indicates he will stand for interrogation.

Mr. GANNON. Thank you, Mr. Speaker.

Mr. Speaker, the prior speaker talked about the situation with the tavern or the club where the club had served an individual alcohol to the point that they became intoxicated and incapable of safely operating a motor vehicle and then as a result caused injury or death.

I see that in the amendment or I believe in the amendment there is language that excludes an intentional tort-feasor. Would the driver of the vehicle that was involved in the accident, would that be an intentional tort-feasor under this bill?

Mr. TURZAI. Well, it depends on the actions of the driver. If there was evidence that the driver wanted to commit suicide and, you know, had told that to somebody before they were driving and they were traveling at a speed of 100 miles per hour and it appeared to some witness that they crossed into the other lane, clearly I think that is evidence of intentional behavior on the part of the driver. If it is because somebody ran a red light and killed somebody, I think the evidence would point to that it was a negligent behavior and not an intentional behavior. So it would be fact specific.

Mr. GANNON. So a drunk driver would not be considered an intentional tort-feasor under this amendment.

Mr. TURZAI. It depends on his conduct; it depends. It is fact specific, as I stated.

Mr. GANNON. Well, what you are saying is—

Mr. TURZAI. In and of itself, I think what your question is, Mr. Speaker, is that in and of itself, is the fact that a person is a drunk driver, that he is drunk, in and of itself, does that mean that it is an intentional tort? My position would be no. I think, however, that his behavior could be found to be intentional both on the basis of his driving – there could be an intentional act with respect to his driving – and also with respect to if there was evidence of intent to get smashed, for the lack of a better phrase, I think you could make that argument, but it is very fact specific. In and of itself, it would not be, I would contend.

Mr. GANNON. Frequently, drunk drivers raise the defense that because they are so inebriated, they are so drunk, they cannot form an intent. Assuming that was the case, what you are saying is that this bill would not exclude the drunk driver under that language that excludes the intentional tort.

Mr. TURZAI. It depends on, again, it depends on the fact pattern. Let us say—

Mr. GANNON. Wait, wait. Hold it.

Mr. TURZAI. No, no. Let us say—

Mr. GANNON. If I may, if I may, Mr. Speaker—

Mr. TURZAI. Let me give you a fact pattern where I think it would—

Mr. GANNON. —if I may, let me give you, since we are talking fact patterns, I would like to assume a certain set of facts.

Mr. TURZAI. Please, please do.

Mr. GANNON. And that is assume that it is—

The SPEAKER pro tempore. The gentleman will suspend.

We need one person asking the question and then one person answering the question rather than the bantering back and forth.

Mr. GANNON. Thank you, Mr. Speaker.

I would like to at least spread on the record a set of facts that we can agree to in terms of the debate to see if this amendment would apply, and let us assume that it is a drunk driver and that the drunk driver's defense is that he was incapable of formulating an intent, that he was so drunk and he had been served alcoholic beverages by a club, and my question is, under this bill that would not be an intentional tort. That is your interpretation.

Mr. TURZAI. That is incorrect, because the fact that you are adding into the fact pattern is that he raises it as a defense. The facts that you would be looking at are: what was his behavior, what was his behavior at the time he was drinking the alcohol, and what was his behavior at the time that he drove the vehicle? Was it intentional behavior when he drank in the sense that he intended to get completely inebriated, and at the time that he was driving, was it intentional that he wanted to in fact drive his car into another individual? The fact that he raises that defense in and of itself does not take him out of this exclusion necessarily.

Mr. GANNON. Let me try again, Mr. Speaker. I do not know if I am making myself clear. You have a drunk driver. His blood alcohol content is so high that he has no clue what he is doing. He is incapable of formulating an intent to do anything, but he is driving his car and he kills somebody. Is that an intent? That tort under your language, under this amendment, is not an intentional tort and therefore he is not excluded. Is that a fair statement?

Mr. TURZAI. No, it is not. That driver could be excepted from this under the intentional language under certain circumstances and if so found by a fact finder, either a judge or a jury. It is fact specific.

Mr. GANNON. Well, I am giving you the facts. The facts specific are, the facts specific are that he is so drunk that he cannot formulate an intent, but he is drunk and he is driving his car and he kills somebody. Assume that those facts are true. There are no other facts that come into play. Those are the facts; they are true. This would not be an intentional tort under your proposal.

Mr. TURZAI. Mr. Speaker, let me refer to you some language, and then maybe this will answer it.

Mr. GANNON. I mean, under the proposal that you are advancing. I do not know whether this is your proposal or not.

Mr. TURZAI. Mr. Speaker, I am not sure really where the line of questioning is going, but it would be my belief that if somebody intentionally— Look, somebody who can get out there and drive a car while they are drunk, who can exhibit those particular skills, can be found to have acted with intent, and I would disagree with your contention that that person could not be excepted out under that language. I would disagree with it.

Mr. GANNON. You would disagree with what, Mr. Speaker? I am sorry.

Mr. TURZAI. That a person who was drunk enough but still capable of driving that vehicle, that that person would be exempted by this— That that person would not fit into the exemption based on the intentional language.

Mr. GANNON. So you are saying that that person would come under the intentional language?

Mr. TURZAI. I believe that they arguably could fall under the exemption, yes.

Mr. GANNON. Okay. So that that person would fall under the exception.

Mr. TURZAI. Arguably, yes.

Mr. GANNON. Okay.

Now, you have a situation where the tavern provided alcoholic beverages to this person. Would they also be considered an intentional tort-feasor?

Mr. TURZAI. I believe again that is fact specific. I think if it is somebody who did not exhibit any— Let us say it is somebody who is at the bar. They are not slurring their speech; they are acting normally, given what all the witnesses' testimony would be; they have not done anything out of the ordinary like taking their pants down or getting into a fight with somebody – those sorts of signs, those sorts of pieces of evidence, that under dramshop you are to be required to establish liability, depending on what that degree of behavior is.

Now, let us say that that person punched 10 people; let us say that that person peed on the floor; let us say that that person was given 15 drinks before he entered into a vehicle and never left that stool. Is that intentional behavior on the part of the tavern owner? Arguably, yes. It is going to be fact specific, but I will go back to the fact pattern. It is not going to be an intentional action if you do not have those indices of behavior.

Mr. GANNON. Under existing law would that tavern be an intentional tort-feasor, under existing law the way it is right now?

Mr. TURZAI. Given the fact pattern that I outlined to you with the person urinating on the floor, punching a couple people, being served 15 drinks, arguably, yes.

Mr. GANNON. Well, that is not the case I am talking about. I am talking about the case where the tavern serves alcoholic beverages to someone to the point that they are drunk. I mean—

Mr. TURZAI. They are not going to be found—

Mr. GANNON. They are not punching—

Mr. TURZAI. They are not going to be—

The SPEAKER pro tempore. The gentlemen will suspend.

This is not an argument, gentlemen. This is an interrogation – a question, then an answer. Thank you.

Mr. GANNON. Mr. Speaker—

Mr. TURZAI. It would be my—

The SPEAKER pro tempore. The gentleman, Mr. Turzai, will suspend.

The gentleman, Mr. Gannon, was about to ask a question.

Mr. GANNON. Thank you, Mr. Speaker.

The SPEAKER pro tempore. The gentleman, Mr. Gannon.

Mr. GANNON. Mr. Speaker, I really would like, if I ask a question and give you a certain set of facts, that we assume that those facts are true simply for this debate. I mean, you can throw other facts in later on if you wanted to debate, but I really want to get to a fact pattern that is seen a great deal in this Commonwealth, the general fact pattern that we see most. We do not usually have—

The SPEAKER pro tempore. The gentleman, Mr. Gannon, will ask a question during interrogation, please.

Mr. GANNON. Thank you, Mr. Speaker.

So the facts are that the tavern served alcoholic beverages to a customer to the point that that customer's blood alcohol level was sufficient enough that they were impaired. Now, are they, under existing law, are they an intentional tort-feasor or not? There are

no other facts. They were not running; they were not punching people; they were not peeing on the floor; they were not carrying on, but they were sufficiently – alcohol blood level was sufficient that they were greatly impaired.

Mr. TURZAI. In and of itself, no.

Mr. GANNON. Okay. Thank you.

So now we have a situation where we have what you have said previously was an intentional tort-feasor, the driver who is drunk, and we have the tavern that is not an intentional tort-feasor, and under your amendment the intentional tort-feasor is excluded, is an exception to this joint and several repeal. Now, what happens to the tavern? Where do they fit into this equation now? What is their percentage of liability? How is that determined under this amendment?

Mr. TURZAI. Let me just think that through. If the suit is against— First of all, obviously, if the suit is against – if you do not mind if I just walk through this, and then I will get to yours next.

Mr. GANNON. Fine.

Mr. TURZAI. In the first instance, if it is two negligent defendants—

Mr. GANNON. No, it is not.

Mr. TURZAI. —and you are saying if one is an intentional defendant, if the jury has found that one is an intentional defendant and one is a negligent defendant, what is the result of that in terms of finding— I believe that they would still, and in fact I am correct about this, the jury would still apportion liability; they would still apportion liability. They would say— Let me just use 50-50 for purposes of the argument. I am not saying that is what the liability would be, but let us say that it is 50-50. The tavern would in fact, if they were not found to be intentional and they were only found to be negligent, would be subject to 50 percent of those damages. Let us say it is a million dollars for purposes of discussion. They would be subject to paying to the plaintiff \$500,000. The driver, however, who was found to be intentional would be subject to the full million, and that driver would be able to, if that driver paid that full million, the driver would be, as it is under present law, still be able to go after the other \$500,000 from the tavern, but the plaintiff would have the ability to go after the driver for the full million. The plaintiff would not have the ability to go after the tavern for the full million. The plaintiff would have the ability to go after the tavern for the \$500,000. That would be how it would work.

Mr. GANNON. So the tavern, even though they have served an alcoholic beverage to a driver to the point that he was incapable of safely operating a vehicle, would not be subject to the full liability, yet the driver of the car would be considered an intentional tort-feasor and he would not come under the – he would be excluded from this or he would be an exception to this repeal of joint and several.

Mr. TURZAI. Under the facts that you gave me, yes.

Mr. GANNON. So the plaintiff would end up only collecting a portion of the damages that they would be entitled to receive, where the driver was uninsured and had no insurance and had no driver's license and had perhaps other DUI (driving under the influence)—

Mr. TURZAI. Well, the plaintiff would be able to recover the \$500,000 against the tavern owner, and in addition, given that it is an auto case, if the plaintiff had uninsured liability or underinsurance liability, would be able to turn to its own carrier to recover some dollar amount as well. So that is not completely

accurate.

Mr. GANNON. Well, that would be all well and— I do not mean to debate, Mr. Speaker, but my facts were that the plaintiff, it was irrelevant in terms of what insurance the plaintiff had. We are trying to find out whether or not the plaintiff would be fully compensated for the injuries that were inflicted on him or her because of the negligence, the intentional conduct of one and the negligence of another, and you are saying the answer is no under the facts that I gave to you, under those facts.

Mr. TURZAI. That plaintiff would be able to recover \$500,000 from the tavern owner and could go after that driver for whatever amount it was insured or had assets.

Mr. GANNON. Okay.

Now, if I may ask another question. If an individual or a corporation sells a product and that product is purchased from a manufacturer, say, in China and that Chinese product is sold by the manufacturer and it had a defect and that defect caused a catastrophic injury – let us assume it was a steam table and it blew up – how would the damages be apportioned among the seller and the Chinese manufacturer in China? How would that work out?

Mr. TURZAI. Well, let me ask you a question, and I apologize. I just want to be clear about this. Or let me answer it— I think it leads to two answers. Assuming that the Chinese manufacturer is subject to being in court and that you have established jurisdiction over that Chinese—

Mr. GANNON. Well, let us assume that they are not.

Mr. TURZAI. Okay.

Mr. GANNON. They have no other business contacts, the Chinese company has no other business contacts in the United States other than simply selling that product and shipping it to the seller in Pennsylvania and a Pennsylvania citizen is severely injured as a result of that product, a defect in that product. How would those damages be apportioned if this amendment were the law? How would the plaintiff be compensated?

Mr. TURZAI. Well, it would actually inure as a benefit, arguably, to the plaintiff in that the only party that would be in that case would be I think you have said just two defendants. There would only be one defendant in that case, and while that defendant certainly might be able to argue on the merits, it is a one-on-one case; joint and several liability is not going to apply to that case.

Mr. GANNON. I am sorry, but, Mr. Speaker, there are two parties liable here for this injury.

Mr. TURZAI. Right. But if you do not establish jurisdiction over that particular party in that case, then they are not in fact a party to that case. You have got to bring them into court and they have got to be a named defendant. So joint and several liability is not going to apply to the fact pattern that you just stated; it is not going to apply. Now, that does not mean that the defendant might not try to point the finger at that Chinese manufacturer without him being there to limit his liability, but joint and several liability is not going to apply to that fact pattern.

Mr. GANNON. I am sorry, Mr. Speaker. Go ahead. I am sorry.

Mr. TURZAI. That is my answer.

Mr. GANNON. So your answer is that in that situation that you have an offshore manufacturer, they would not be subject to joint and several liability?

Mr. TURZAI. Not if they are not a named party present in that suit. That is accurate.

Mr. Speaker, I would also just say, you know, that is how it is currently, and it would remain the same; that does not change.

Mr. GANNON. Thank you.

Mr. Speaker, where you have a Pennsylvania manufacturer selling a product in Pennsylvania through a seller, a seller sells the product, it has got a manufacturing defect, how would that liability be apportioned under this law – proposed law; excuse me.

Mr. TURZAI. Yes. If both of those defendants are present, as you have suggested, and you have strict liability claims, you know, against them, and I am sure there are negligence claims, too, if you have those claims against them, you would not take into account the plaintiff's actions or the plaintiff's behavior in terms of reducing the ultimate award as you do in negligent situations. However, you would apportion, you would apportion the damages between strict liability defendant number one and strict liability defendant number two. Let us assume they are 70-30, and you would go after strict liability one for the 70 and you would go after strict liability two for the 30 to the degree that the jury or the judge found them causally responsible.

Now, I might say that presently, under the present law, we have juries and judges apportion liability among strict liability defendants all the time in terms of contribution. So we definitely in our system already understand that juries and judges can make that decision as fact patterns. And keep in mind also— And I should not have used the 70-30 example; I apologize. Let me use the 50-50 example, because in the 70-percent example, the 70 percent actually you could go after that party for the whole kit and caboodle; you could go after the full million dollars against the 70-percent one. You could only go after the \$300,000 against the 30-percent one. If it was 50-50, if it was 50-50, you could only go after \$500,000 and \$500,000 respective against each strict liability defendant.

Mr. GANNON. Now, Mr. Speaker, the Judiciary Committee held some hearings with respect to this issue of joint and several liability, and in those hearings the committee was informed that there are, in the Restatement of Torts, there are five versions, four or five versions of joint and several liability that were dealt with by the committee that wrote that section of the restatement. Is this proposal any one of those versions?

Mr. TURZAI. I cannot tell you. I do know that the restatement in fact does proffer up different versions with respect to joint and several liability and that the restatement is really ambiguous on the issue and did not take a clear position. I cannot tell you, I really cannot tell you if this version follows either word for word or in spirit one of the versions proffered by the restatement.

Mr. GANNON. So you—

Mr. TURZAI. I can tell you— Well, let me just leave it at that, and I will answer the questions.

Mr. GANNON. Go ahead. I am sorry, Mr. Speaker. I did not mean to interrupt you.

Mr. TURZAI. No; that is the answer. I cannot tell you for sure.

Mr. GANNON. So you do not know whether, from your knowledge, this version that we are seeing here was not taken from one of the versions of the Restatement of Torts that was put together by the committee that studied this issue.

Mr. TURZAI. No. That is correct. I do know that there are a variety of joint and several statutes in the United States from State to State, and I think you would be hard-pressed to see that any of them specifically adopted one of the suggestions by the authors of that particular committee with respect to the restatement. I do know also that in a number of law review articles and treatises that did talk about what the restatement authors did, that they thought that they basically punted and really did not come down one way

or another in terms of the spirit of the law as opposed to the exact terms of the law.

Mr. GANNON. So, Mr. Speaker, would it be fair to say that the committee was informed that Pennsylvania has in fact adopted one of those provisions or recommendations of the restatement? That is current law in Pennsylvania. So it would be fair to say that what this amendment does is it nullifies that version which we currently have in place, which is in the Restatement of Torts, and replaces it with another version which we do not know whether or not it is in the restatement.

Mr. TURZAI. Mr. Speaker, if you are correct on that, that may be true. I can only say this, and I do not mean to be argumentative, but if you are saying that implicitly the restatement is across the board the Bible on all these issues, that is just not the case; it is just not the case, and many States do not look to the restatement to identify their tenets completely of tort law. It is one place to look; it is certainly not the sole place to look, and it depends on the makeup of the committee that is addressing what provision of the tort law in the restatement.

Mr. GANNON. Mr. Speaker, one final question. Thank you.

The original bill amended a freestanding act of May 28, 1995, and the amendment, as I understand and read this, guts the entire bill, guts the entire bill and replaces it with an amendment or language amending Title 42 of “Judiciary and Judicial Procedure,” and my question is, what was the purpose or the intent of changing the purpose of this bill through this amendment?

Mr. TURZAI. Mr. Speaker, I do not mean to be smart or argumentative with you. Do you mean – and I apologize if I do not have this right – but you are saying that SB 1089, why add it into SB 1089?

Mr. GANNON. I am sorry. SB 1089, PN 1799—

Mr. TURZAI. Yes.

Mr. GANNON. —which was adopted, that is the version that was the amendments by the Senate—

Mr. TURZAI. Right.

Mr. GANNON. —to House amendments. That amended a freestanding act, and my question is that the amendment guts the bill entirely and replaces it with an amendment to Title 42, and my question was, what was the purpose? What was the intent of changing the purpose of this legislation?

Mr. TURZAI. Well, Mr. Speaker, they both, first of all, they are both addressing the Judicial Code. So both the existing SB 1089 and what has been added are addressing aspects of the Judicial Code, so they are germane.

And secondly, it is my understanding, and I might just check, but it is my understanding that nothing has been changed about SB 1089, nothing has been deleted or changed in SB 1089, only that we have added language to SB 1089, but we have not taken any language out of SB 1089.

Mr. GANNON. Well, Mr. Speaker, I am looking at SB 1089, PN 1799, and from my review it does not amend the Judicial Code. It amends a freestanding act providing for DNA testing of certain offenders. I will not read the whole thing, but the amendment does amend the Judicial Code. So the amendment now no longer amends a freestanding act but takes this bill and now amends the Judicial Code, which changes the purpose of the bill. The purpose of the bill initially was not to amend the Judicial Code; this amendment does, and I was wondering what was the intent to change the purpose of the bill to now amend the Judicial Code?

The SPEAKER pro tempore. The gentleman will suspend.

The gentleman, Mr. Gannon, the purpose of interrogation is to elicit information regarding the bill itself, not the procedural history. As the gentleman knows, the bill was amended in Rules Committee, and I believe the gentleman is a member of that Rules Committee. So if you could move on to questioning regarding the substance of the bill, please.

PARLIAMENTARY INQUIRY

Mr. DeWEESE. Point of parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his point.

Mr. DeWEESE. I am going to inquire about a point, Mr. Speaker, not state a point, but the gentleman, Mr. Gannon, has asked a fundamental question, and the crux of that question has a constitutional basis, and I do not think we can proceed from this point favorably until Mr. Turzai is allowed to answer the question. I think this is not superficial; this is not peripheral; this is fundamental, and I think it is a categorical imperative for the gentleman to respond to the question. We may have a very serious constitutional problem because of the parliamentary mechanisms that have been deployed by the majority, and I think now is as good a time to confront them as any. In fact, I think this is an eminently appropriate moment in our dialogue to answer the gentleman. The gentleman from Delaware County has offered a good question, and I think, contrary to what I have just heard, that it is pertinent.

The SPEAKER pro tempore. The Chair thanks the gentleman for his comment.

The gentleman, Mr. Gannon, will you proceed along the lines of questioning the substance of the bill?

Mr. GANNON. Mr. Speaker, I have to echo the sentiments of the minority leader. I think that question is very substantive since it does possibly go to an issue of constitutionality in terms of the procedure that was followed, and I think the House, in terms of getting to that issue, if in fact we do get to that issue, should be entitled to a response as to what the intent was for changing the purpose of a bill, and I restate it: the purpose of the initial bill was to amend a freestanding act of May 28, 1995. It did not amend the Judicial Code. The amendment guts the bill entirely and amends the Judicial Code. The purpose of this bill was obviously changed, and I would like to know, if we can, what the intent was, because I think, as the minority leader pointed out, it gets to a very important question of constitutionality and that those provisions are in our rules and in the Constitution for very good reasons, and I think the House has the right to consider that.

The SPEAKER pro tempore. The gentleman, Mr. Gannon, the House votes on constitutionality of substance, not constitutionality of procedure. I am just trying to keep us focused on the substance, which is the issue. The gentleman might well pose his questions to somebody like the chairman of the Rules Committee, if you believe that is the appropriate procedure, and we can address it then, but the questions should be directed to the substance.

PARLIAMENTARY INQUIRY

Mr. DeWEESE. Mr. Speaker, another point of parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his point.

Mr. DeWEESE. And this is directed to the Chair.

If the freestanding proposal that we are attempting to amend or

to deal with that was already amended had to do with DNA testing, how are we allowed by our parliamentary rules and the interpretation offered by the Parliamentarian from extirpating all of that language and then adding language on a completely different subject? I thought that was in direct contravention to the rules of our House and to the mandates from which this Assembly has been working – under, obviously, a constitutional undergirding.

The SPEAKER pro tempore. The gentleman, Mr. DeWeese, the bill was amended so it is a Title 42 bill, and both subject matters, the DNA portion of the bill as well as the joint and several liability portion, are appropriate subject under the Judicial Code, under Title 42. You can make a motion challenging the constitutionality at some point of that bill on that issue, if you or any other member of the House so chooses.

The gentleman, Mr. Gannon.

Mr. GANNON. Thank you, Mr. Speaker.

Mr. Speaker, I mean, I am trying to get to what I think is a very substantive issue here, and Representative Turzai, Mr. Speaker, has been the individual who is advocating the adoption of this amendment, which is inclusive. It includes, as I understand it, Senate language and House language and Senate language to House amendments and now a House amendment, but it is one amendment. This has not been inserted into this SB 1089. What has happened here is that the bill has been completely gutted, blank page, and now the amendment amends a Judicial Code, and I think it is a fair question in terms of the substance of the issue. I think a constitutional question, if we get to that, and I am trying to find out if we are getting to that, is very, very substantive since it does deal with the organic rights of the citizens of the Commonwealth. So I think in terms of what was the intent to change the purpose of the bill, there had to be an intent to change the purpose, because I believe that is what has happened here, and I think that it is a fair question to Representative Turzai, who has been advocating the adoption of the amendment.

The SPEAKER pro tempore. The gentleman, Mr. Gannon, will state his question, and we will see if the question focuses on the substance of the bill.

Mr. GANNON. Now, I did not write this down, so I have got to go from memory.

SB 1089, PN 1799, is a bill amending an act of May 28, 1995. Actually, it was adopted, apparently, during our special session on crime providing for DNA testing, et cetera, et cetera. It is a freestanding act. The amendment that we are asked to consider and being asked to adopt completely guts that bill – takes out the original bill, takes out the House amendments, takes out the Senate amendments to House amendments to that freestanding act – and replaces it with an amendment to the Judicial Code, and my question is, what was the intent of changing the purpose of the bill?

The SPEAKER pro tempore. The gentleman, Mr. Turzai.

Mr. TURZAI. Thank you, Mr. Speaker.

Mr. Speaker, my understanding is from a procedural perspective that it was a freestanding act, changes were made to that freestanding act by the Senate in enacting SB 1089, that it has come over to the House, and that as a typical point of procedure from what I understand in terms of enacting legislation, we have in fact codified SB 1089 into the Judicial Code that is a benefit to those individuals who can make use of the DNA aspects of this particular bill.

In addition, we are codifying those changes put in here by the House under Title 42, section 7102. Both of them in fact, both the

DNA portion of it and the portion dealing with comparative negligence, are in fact making changes to the Judicial Code, and as a result, they are germane. It is also my understanding that it is the exact same procedure we used when we adopted the lobby reform act.

Mr. GANNON. Thank you, Mr. Speaker. That is all the questions I have at this time.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. Does the gentleman, Mr. Gannon—

PARLIAMENTARY INQUIRY

Mr. DeWEESE. Point of parliamentary inquiry.

The SPEAKER pro tempore. The Chair recognizes the gentleman, Mr. DeWeese, and will state his point.

Mr. DeWEESE. Apropos of the gentleman's last comment, that it is the same procedure that we used when we passed the lobbyist reform act, the gentleman and the membership should be aware that that particular legislation is now on appeal to the Supreme Court. So it is not as if it has already been determined that that methodology was pristine and worthy of emulation.

Mr. TURZAI. Mr. Speaker?

The SPEAKER pro tempore. The Chair thanks the gentleman.

Does the gentleman, Mr. Gannon, desire to be recognized on concurrence now since his interrogation is completed?

Mr. GANNON. Yes, Mr. Speaker. Briefly, Mr. Speaker.

The SPEAKER pro tempore. The gentleman is recognized.

Mr. GANNON. Mr. Speaker, it is fairly obvious from the colloquy and the dialogue between myself and Representative Turzai that this is an extremely complex issue. This is not a substantive law that is just new, is only a couple years old, and has been tried and found to be untrue. This principle of law that we are attempting to change here with an amendment that is probably less than 2 hours old has been part of our jurisprudence now for a couple of hundred years. It dates back to precolonial times under the common law of England. In fact, the concept of mutual responsibility was adopted by the English courts as part of their common law and was brought into the Colonies by the settlers and was adopted by Pennsylvania as part of its statutory law.

It has worked very, very well, the idea of mutual responsibility. Every time the concept has been applied, whether any particular party had felt that they were treated fairly or unfairly did not mean it does not work. Our system of jurisprudence is to compensate. We have decided that we want to compensate victims who have been injured as a result of the negligence, whether intentional or otherwise, of individuals. Many times we find individuals or groups acting in concert, acting mutually, and we have developed a system of allocating that responsibility among those mutual participants, those folks who are mutually responsible.

Sometimes individuals feel that they were not treated fairly. Our system tries to be fair to everyone; our system tries to be equitable, but that does not mean that every single time that it has to work that way, but the key is that the person who has been injured, the person who is before a court or a jury or an arbitrator, the key is that they should be adequately compensated, and this amendment is all about undoing decades of jurisprudence, decades of allocating responsibility, decades and decades of compensating victims of injury and death.

Now, I used an example, when I was doing my interrogation, of a give-a-fact situation, and I did not just make that up. I did not just pull that out of the air about the drunk driver. In fact, that was an actual case that was discussed before the Judiciary Committee, where a young boy by the name of Dan was killed by a drunk driver who had no insurance, and he was killed because he had been plied with about 17 martinis over a very short period of time, and that fact was recorded on a security videotape. The fact is, the fact is that if we adopt this amendment, the families of this Commonwealth, the sons like Dan, will never be properly compensated. I mean, it is arguable that you can never put a dollar value on the loss of a child, but this adds insult to that injury by telling Dan's mother you cannot go back to that tavern that plied that man with liquor, because the guy that caused the accident, he is the one that killed your son, not the bartender.

So when we talk about the inability to receive full compensation, we are right at the heart of this issue, and what we are doing is we are now impairing, and for what reason? Who are we protecting? Who are we really protecting with this amendment? Is it the good businessperson? Is it the good driver? Is it the good manufacturer? No, we are not protecting them. Who is at our doors banging away that we have to have this reform, that I am sick and tired of paying these claims, that they are trying to put me out of business? And by the way, the question has been asked more than once, give me one example of a company that has been put out of business because of the legal principle of mutual responsibility; give me the name of one company that has gone bankrupt because of the application of the principle of mutual responsibility. No one has come forward; no one has come forward.

We have heard the term "lawsuit abuse." What is lawsuit abuse? Your son is killed in an accident and you sue the person that did it? That is lawsuit abuse? You want to seek compensation, because you cannot punish them. You cannot send them to jail, because they were negligent, but if you go after them physically, you are going to end up in jail. Our system says that the punishment is a civil fine, and the amount of that fine is to be determined by the jury. That is the punishment that we have allocated. That is why we do not have violence in the streets, because people have a recourse. And now what are we doing here? We are starting to narrow down the focus of that recourse. And are people going to seek other avenues of redress if they cannot find satisfaction in court? I hope not, but maybe they will.

In our hearings before the judiciary court, we found that in those States that had adopted language similar to this, chaos reigned. Those fact situations that had evolved over years and years of litigation and jurisprudence which were resolved under the principle of mutual responsibility or joint and several now have to be dealt with all anew. We have to look at them all over again because we have dramatically changed something that has been in our system of law for hundreds and hundreds of years, and we have done it in 2 hours and one vote.

We are looking at those folks, and who are we protecting? Well, we are not protecting the good guys. Why would we want to protect the bad guys? Why would we want to protect the manufacturer of shoddy goods, the manufacturer of equipment that blows up on the user and kills them or maims them? Why do we want to protect bad hospitals? They are the ones that are out here knocking at the door, the Hospital Association. They are the ones that are pounding away for something like this. Is that what we are doing? Is that why we are here? We are all about protecting? I am not saying that they are bad. The jury has looked at that on a

case-by-case basis. They have seen facts that you and I are never even aware of and they have made a determination that you are guilty of something and you should be punished, and that punishment is a civil fine, and now we are asked to tinker with that system.

It has been in place for a couple hundred years. It has worked very well, but now maybe the bad guys out there have seen the opportunity. Maybe we can get in here and protect ourselves; ask us to protect them, not protect themselves. They can protect themselves by manufacturing goods that are not defective, that are high quality, American made. They can protect themselves by making sure that patient safety is the highest consideration. They look after those patients so we do not have incidents of people that go into a hospital to get well coming out worse than when they went in. That is how you protect yourself, not coming to the legislature and saying, change the law that is over a couple of hundred years old. That is wrong; that is wrong.

Now, we do know from the hearings that there were about five other scenarios, five other ways to go with respect to joint and several liability or mutual responsibility. Now, people a lot smarter than I looked at those alternatives, and this has been done over the past couple of years. These are people that know a lot more about this than I do. Pennsylvania, through its course of developing its law, decided to pick one of those alternatives. We picked one that is in the Restatement of Torts, and for those of you who may say, well, what is the Restatement of Torts, it is a volume of books that is a compendium of all of the laws on specific subjects, and it is put together by scholars from around the country – lawyers, scholars, professors, people who know a lot more about this topic than I do – and when they came to that section on restatement, they could not come to one agreement, and they could not come to one agreement because this is a very complex issue. One hearing of the House Judiciary Committee is not enough to get a full understanding, and 2 hours of debate, 3 hours of debate on a Tuesday evening is not enough to get a full understanding of the complexities and the impact of what we are being asked to do here, but there are about four other alternatives that are in the restatement. We never even looked at them. We do not even know if this is one of those alternatives, and my guess it is not; my guess it is not. I do not know who put this together or where this came from or, you know, who ginned this up.

I have no idea of what the full consequence of what we are being asked to vote here is. I know it eliminates existing law, which has worked very well for hundreds and hundreds of years; I know that, but I do not know what it puts in its place. Every time we talked about it, we kept on coming up with various facts that may or may not even exist. I think we need more substantive information than that before we make such a dramatic change in how we protect our citizens from drunk drivers, from bad products, whether they are made here in Pennsylvania or some other State or in a foreign country. I think we can do more and we have a higher duty than just run something through because we have got people knocking on our door at the back of the House and not giving us one single fact situation to show us an example, one good example of how this current law has kept the business out of Pennsylvania, how this one single law has bankrupted a company or put it out of business. And we have heard, oh, well, Pennsylvania should be business-friendly and we can be business-friendly by changing this law.

We have a sister State, Delaware, corporation capital of the world, most business-friendly State in the United States, according

to a lot of bigwigs that run all these multimillion-dollar companies, which are asking us here to change the law today. And you know what? Delaware has the same joint and several and mutual responsibility law that Pennsylvania has. They have not changed it; they have not changed it. How come those bigwigs are not down in the corporation capital of the world in Delaware, a little tiny State like that? I am sure they could influence that legislature – change that law; do away with joint and several. They could probably get anything they want down there, but they have not even asked for it. They are up here instead, and yet they tell us Pennsylvania is not business-friendly, not business-friendly. What? Because we have a law that has been in existence for hundreds of years and deals with mutual responsibility, the same law that Delaware has. Delaware is business-friendly; Pennsylvania is not. Why are they not asking both States to change their laws?

Mr. Speaker, I ask for a “no” vote on this amendment. Thank you.

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 think the gentleman from Delaware County did a very good job, particularly in the last 5 to 10 minutes, of outlining and articulating why this is a very bad bill, a very bad idea, and a very bad concept.

As the gentleman said, and it is worth repeating here on the floor of the House, Mr. Speaker, this law has been in existence since the beginning of the State of Pennsylvania, and it has lasted this long I think for very good and compelling reasons, and frankly, in many ways it has saved the lives of thousands of Pennsylvanians, certainly put the lives back together of thousands of Pennsylvanians over the history of this State.

Mr. Speaker, I think it is important to remember that we are talking here about apportioning blame, apportioning costs, to actors that have already been considered by a jury and determined to be guilty of negligence. On the other hand of that equation, we have a totally innocent party – sometimes an injured worker, sometimes a neighborhood trying to recover from a toxic waste site – but a totally innocent party who simply is trying to find a way to be compensated for their injury and for their damage.

Mr. Speaker, the gentleman from Delaware also talked about the hospitals in this State that have done a good job, admittedly, over the last 2, 3, 4, 5 weeks of contacting members of this House asking that we pass this bill here today, and I do not blame them, Mr. Speaker. That is their job. Their job is try to get the best financial deal, perhaps, for that hospital corporation. And members on even the Democratic side of the aisle have told me how compelling some of the stories were from their local hospitals and that they have heard from the board of directors and they have heard from the management of the hospitals and that some of those stories were compelling and perhaps giving them pause or consideration in voting for this bill.

Mr. Speaker, I would make the case that, unfortunately, even members on the Democratic side have not heard from the other people in those hospitals that are going to be adversely affected if this bill passes. Yes, there is no question that the hospital corporation would do better if SB 1089 were to become law, but make no mistake about it that the people that live in our districts, the people that live in our counties, the people that work at those hospitals are going to feel the repercussions of this bill if it passes

like this. The hospital will do better, but I guarantee you that any lawyer in this State worth his or her salt, worth his or her salt in properly providing representation for an injured patient, somebody who was wronged, somebody who a jury is going to determine was negligent, make no mistake about it, Mr. Speaker, that that orderly is going to be sued, that that nurse's aide is going to be sued, that that nurse is going to be sued, that that doctor is going to be sued, that that specialist is going to be sued, that every single person in that chain of health-care command is now going to be at risk in that suit. Any lawyer in the State would tell you that would be their responsibility and their job.

Mr. Speaker, you have not heard from those workers in that hospital because they do not see this coming. They do not understand the repercussions of changing joint and several liability, a very arcane area of law to most of the people that live in our districts, but make no mistake about it, if they understood that they are now going to be parties to suit because the hospital wanted some kind of protection, that they also would be calling your office – that orderly, that nurse's aide, that nurse.

Make no mistake about it also that if this passes, some hospitals will come back here and say, yes, our insurance rates went down, but I guarantee you as I stand here today that that umbrella insurance for that nurse is going to go up and that hospital is shifting the cost from themselves, to some degree, to the workers in that hospital. There is no question about that; there is no mistaking that. If they knew, if those people in our districts knew, they would be calling our offices also. Mr. Speaker, I hope some members here will take that into account, and that is just one example of I think the practical way that this law impacts average working people in the State of Pennsylvania, just one example of many.

Mr. Speaker, I have heard all the comments over the last couple of months from the business community that liability insurance is too high in this State and we need to bring liability insurance costs down so I can do business in the State of Pennsylvania. Yet, Mr. Speaker, in this bill is not a single requirement that insurance rates come down at all, not a single requirement that any business will receive a reduction in their insurance costs.

MOTION TO SUSPEND RULES

Mr. VEON. Mr. Speaker, to correct that very significant flaw in this bill and to provide some serious rate reductions, some automatic, mandatory rate reduction, I want to move to suspend the rules for the purposes of offering amendment A3053, which would call for a mandatory 20-percent rate rollback for liability insurance in the State of Pennsylvania.

The SPEAKER pro tempore. The gentleman, Mr. Veon, moves that the rules of the House be suspended for the immediate consideration of amendment A3053.

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

The SPEAKER pro tempore. On that question, the gentleman, Mr. Veon, is recognized.

Does the gentleman, Mr. DeWeese, defer to the gentleman, Mr. Veon, on the motion to suspend?

Mr. DeWEESE. No.

The SPEAKER pro tempore. The gentleman, Mr. DeWeese, is recognized.

Mr. DeWEESE. I am here, Mr. Speaker, to advocate on behalf of business. I would like to think, along with many of my colleagues, that we are business Democrats, and I am certain that most of my cohorts on the other side of the aisle have campaigned since time immemorial as devotees of the Pennsylvania business community.

I think that the gentleman from Beaver, who acquiesced and allowed me so politely to have the podium, is doing me a favor. I cannot imagine that this will not be a unanimous vote. I cannot imagine that I would have to generate much ardor in debate to ask that we pass along with this proposal, which has an ineluctable momentum and will pass tonight – notwithstanding the perturbations, vexations, and confusion of many of us, this bill will probably pass – so we are trying to strengthen this measure, Mr. Speaker, with an amendment that would give an automatic rollback to business, mom and pop as well as Heinz Ketchup, everybody, 20 percent. Now, that is a substantial figure.

We are going to do some real business here in the General Assembly tonight. There are exceptions in other States. This passes constitutional muster – New York has done it; other States have done it – an automatic rollback. Now, the chamber of commerce would have to be for reducing the insurance premiums for their membership. The NFIB (National Federation of Independent Business) would have to be allied with us as we try to roll them back. I see my friend from Montgomery County on the back row; I see that smiling physiognomy. He is going to be with me, I am sure.

We need Republican votes to suspend the rules, but we need them so we can reduce the amount of money that our businessmen and businesswomen in Pennsylvania will have to pay for insurance. This is a no-brainer. I just cannot wait till you guys vote against it.

I have no further comments, Mr. Speaker.

The SPEAKER pro tempore. Does the gentleman want to state his position on the motion to suspend?

Mr. DeWEESE. Mr. Speaker, for those of you who cannot read between the lines, I embrace Mr. Veon's motion.

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

Mr. PERZEL. Mr. Speaker, when we did medical malpractice several weeks ago, we neglected to have a tort section to medical malpractice. At Methodist Hospital in South Philadelphia, 91 people at the OB-GYN (obstetrics-gynecology) portion of that hospital just lost their jobs because they can no longer afford to pay the insurance premiums that they have to pay. The orthopedic surgeons all over the Commonwealth of Pennsylvania are either leaving, telling us they are leaving, or getting ready to leave, Mr. Speaker. You will not have to take a bus to Canada to get your prescriptions; you will have to take a bus to Canada to get your operations unless we do something relatively soon, Mr. Speaker.

We are asking the members of this General Assembly to give our medical profession a break so that we can keep our doctors here in Pennsylvania – a rollback, yes. They said that this would change what we are doing. We are only asking to make our changes to reflect what they already do basically in New York State and in New Jersey, Mr. Speaker, nothing more than that.

For those reasons I would ask for a negative vote on the gentleman's motion to suspend the rules.

one of them – the former owner, the current owner, the gas tank manufacturer – and they went in front of a jury, and the jury decided that there was negligence. Unfortunately, Mr. Speaker, in this case, three of those companies are now out of business. So if this were to pass and all five of those actors were only apportioned 20 percent of the blame, only 40 percent of the money from the two existing operators could now be recovered to clean up that MTBE. Where does the other 60 percent come from to clean up that neighborhood?

Mr. Speaker, joint and several liability, the law that exists today, allowed that neighborhood – totally innocent; did not do anything but get up in the morning and try to drink the water; did not do anything else; totally innocent party – under current law, those innocent parties would be made whole, that MTBE would be cleaned up, and one of those five actors would pay for it. Is that an ideal situation? Maybe not, Mr. Speaker, and I have heard some people say that that is wrong. What is more wrong is that those innocent neighbors who just got up and cannot drink the water cannot get that MTBE cleaned up by those people who put it there in the first place, Mr. Speaker. In this business, sometimes we have to figure out what is more wrong, and in my judgment, that is much more wrong than saying that only two of those people that are now currently in business should have to pay for that cleanup.

MOTION TO SUSPEND RULES

Mr. VEON. Mr. Speaker, so again, the challenge has been for people like me to take real-life, practical examples and articulate them here on the floor, articulate them to the people of Pennsylvania, and say, that is what this law is all about; that is what we are changing here under joint and several liability – the elimination thereof, the reduction thereof. They are innocent parties, Mr. Speaker, and, Mr. Speaker, to make sure that in Pennsylvania we maintain a strong toxic tort law, that those neighborhoods get cleaned up from contaminants like MTBE or any other kinds of toxins that invade our neighborhoods, to make sure that that happens, I would like to move to suspend the rules for the purposes of offering amendment A3049.

The SPEAKER pro tempore. The gentleman, Mr. Veon, moves that the rules of the House be suspended for the immediate consideration of amendment 3049.

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

The SPEAKER pro tempore. On that question, the Chair recognizes the gentleman, Mr. DeWeese.

Mr. DeWEESE. Thank you, Mr. Speaker.

I think a casual observer of this process would think that the Republican Party in this chamber would form a veritable juggernaut to line up and stampede toward a favorable vote. The gentleman's reasoning was empirical. The fact that we are trying to at least leave in this proposal language that would protect toxic tort victims is a very, very modest modulation of the proposal.

We have not had a chance to amend this bill today because of the mechanisms employed by the majority party, so we have to have a suspension vote. A suspension vote naturally takes more than a simple majority. In fact, a simple majority voted with us the last time. But we have not had a chance, so rather than throw in the towel, we are trying to take a few punches at this proposal, and we are welcoming Republican votes, Republican votes that will help

us protect the victims of toxic waste. Now, how in the world you can shave tomorrow morning let alone sleep tonight if you vote against this opportunity to protect people from the aggressions of the toxic wastes in our State is unfathomable.

I cannot remember exactly how old I was when I read the abominable stories about Love Canal and the factories that polluted that setting, but it is happening all over the United States, it is happening in Pennsylvania, and at least, at least, we must make sure that victims are protected. If factory A and factory B and factory C are all responsible, and factory A and factory B are bankrupt and out of business, then that last remaining entity must pony up.

Gentlemen and ladies of the Republican side, almost en masse Democrats will vote in favor of protecting people who are jeopardized and harmed by toxic wastes. The rest of the story is in your hands. Will victims be first in your priority on the next vote or will you succumb to other inducements? I hope that you will be idealistic; I hope that you will be protective of the rights of the innocent victims of toxic wastes.

Thank you, Mr. Speaker. I would ask that Mr. Veon's motion be sustained. Thank you.

The SPEAKER pro tempore. The Chair thanks the gentleman.

LEAVE OF ABSENCE

The SPEAKER pro tempore. The Chair recognizes the gentleman, Mr. Smith, who requests a leave of absence for the gentleman from Mercer, Mr. STEVENSON, for the remainder of the day. Without objection, the leave will be granted. The Chair hears no objection.

CONSIDERATION OF SB 1089 CONTINUED

The SPEAKER pro tempore. The question recurs, will the House agree to the motion to suspend? On that question, the Chair recognizes the gentleman, Mr. Turzai.

Mr. TURZAI. On the issue of the motion to suspend, we would ask for a "no" vote.

A number of points that I would like to make. First of all, under the proposed changes, if the behavior of the toxic polluter rises to the level of a criminal act, an intentional act, that polluter does not get the benefit, under the existing statute that we are proposing, does not get the benefit of the modification of joint and several liability, number one.

Number two, a toxic tort case, while typically thrown in into those class action suits – another issue – is a strict liability case, and in fact, if somebody pollutes and you can go after them, you can recover. You show your liability in a court of law, and you can recover against them just like you would in any other case. Let us take an example of somebody who is a polluter, owns the property; you go after them with respect to the case. You do not have to go after other people that do not have assets. File your suit against that polluter; joint and several does not even come into play; collect your judgment against that particular party.

Now, I have been told that we understand the proposal, that there is a willingness to look at your amendment, that it is, in the opinion of our side, intriguing for the lack of a better phrase. But at this point in time we believe that it is handled by the existing statute, and we would ask for a "no" vote on the suspension.

Thank you.

The SPEAKER pro tempore. The Chair recognizes the gentleman, Mr. DeWeese, on the motion to suspend.

Mr. DeWEESE. Thank you, Mr. Speaker.

Before we poleax the people, I would like to make one other observation, and that is that Governor Schweiker's budget proposal is going to seriously hamper the amount of money that the Department of Environmental Protection will have. Therefore, the Commonwealth will not be able to be as aggressive at protecting some of our population if not many of our population against toxic polluters. Let me repeat: There will be tens and tens of millions of dollars fewer in the State DEP budget; i.e., there will be less aggressive opportunities for us to protect these people. If the State of Pennsylvania is not going to protect the people, then we should allow the law to be amended by Mr. Veon to make certain that the statute protects the people.

This is not a very complicated process. We can, by suspending the rules and voting for the Veon amendment, Mr. Speaker, we can set into statute the ability to protect Pennsylvania's public from toxic polluters. It is that simple. The Democrats will hopefully vote to do that, and I would welcome Republican support. Thank you.

The SPEAKER pro tempore. The Chair thanks the gentleman.

The question recurs, will the House agree to the gentleman, Mr. Veon's motion to suspend for the immediate consideration of amendment 3049?

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

The following roll call was recorded:

YEAS-101

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

NAYS-92

Adolph	Egolf	Lynch	Rubley
Allan	Evans, J.	Mackereth	Sather

Argall	Fairchild	Maher	Saylor
Armstrong	Feese	Maitland	Scavello
Baker, J.	Fichter	Major	Schroder
Baker, M.	Fleagle	Marsico	Schuler
Bard	Flick	McGill	Semmel
Barrar	Forcier	McIlhinney	Smith, B.
Bastian	Gabig	McNaughton	Smith, S. H.
Benninghoff	Geist	Metcalfe	Steil
Birmelin	Godshall	Micozzie	Stern
Brooks	Gordner	Miller, R.	Stevenson, T.
Browne	Habay	Miller, S.	Strittmatter
Cappelli	Harhart	Nailor	Taylor, E. Z.
Civera	Hasay	Nickol	Taylor, J.
Clark	Herman	Perzel	Tulli
Clymer	Hershey	Phillips	Turzai
Cohen, L. I.	Hess	Pickett	Vance
Coleman	Hutchinson	Pippy	Watson
Cornell	Jadlowiec	Raymond	Wilt
Creighton	Krebs	Reinard	Wright, M.
Dailey	Leh	Rohrer	Zimmerman
DiGirolamo	Lewis	Ross	Zug

NOT VOTING-4

Bunt	Horsey	Keller	Santoni
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EXCUSED-5

LaGrotta	Stevenson, R.	Tangretti	Ryan, Speaker
Preston			

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. The Chair recognizes the gentleman, Mr. Veon.

Mr. VEON. Thank you, Mr. Speaker.

Mr. Speaker, just for the record, the State of New Jersey just recently made sure that they exempted toxic torts from their recent change in the law, Mr. Speaker, which is another reason to vote against this bill here, Mr. Speaker, and— I thought the gentleman—

POINT OF ORDER

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

Mr. TURZAI. Yes, sir. A point of order.

The argument that Mr. Veon is now presenting addressed the motion to suspend, and I believe at this point it is not germane.

Mr. VEON. No— Oh; I am sorry, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman.

The Chair recognizes the gentleman, Mr. Veon.

Mr. VEON. No, Mr. Speaker. I really just wanted to point out that I think it was a big mistake to vote "no" on that motion to suspend, and I did want to make the point that another reason to vote against this bill is in the State of New Jersey, which has a history of dealing with toxic waste sites, in some cases similar to parts of Pennsylvania, they did exempt toxic torts from their most

recent change that they made in joint and several liability. It is an important area of the law. We should not be doing that here today, Mr. Speaker, and that is the point I wanted to make earlier.

Mr. Speaker, I would like to give another example, because this is another real example in the State of Pennsylvania, in southwestern Pennsylvania. Mr. Speaker, in this case, and again, I think it points out the reason why we have had this law in place since the inception of the State of Pennsylvania, so that innocent parties could recover. In this case, Mr. Speaker, a gentleman in a nursing home walked out of the nursing home unbeknownst to anyone on the staff, and, Mr. Speaker, that staff failed to do a bed check that night, and hours later other staff at that nursing home found that individual outside of the nursing home almost but not quite frozen to death. Mr. Speaker, the staff brought that gentleman in from outside and they put him in a bed in that nursing home, and the management of the nursing home made the decision to turn up the heat in the room to in some way help this gentleman thaw out. The management made that decision. The staff carried out the order. They also made the decision to not call the authorities or not call for medical help, and that is a real-live, real practical example here in the State of Pennsylvania.

Under current law, that family can sue the nursing home and would sue the nursing home, the owner and operator of the nursing home. That family could, should, ought to, and did sue the management of that nursing home for negligence. Mr. Speaker, that family could, should, ought to, and did sue the staff at that nursing home for their negligence. And make sure that we understand that if this law were to pass here and a jury were to find what I think is a very obvious, clear case, all three parties guilty – staff, management, owner of the nursing home – we know in the real world that that staff and that manager, while determined to be negligent, guilty of negligence by a jury, and now they have apportioned the “blame,” quote, unquote, in this case and each of them is one-third responsible, we know in the real world that that staff does not have any money to recover, and we know in the real world that that manager does not have any money to recover. Mr. Speaker, this is an innocent man with an innocent family who ought to be fairly compensated for negligence by staff, management, and the nursing home. They should be made whole, Mr. Speaker, and if this law passes, make no mistake about it, they would be lucky to collect one-third of what they are due simply from that nursing home. It is not right, Mr. Speaker.

MOTION TO SUSPEND RULES

Mr. VEON. For the purposes of making it right, I would like to offer amendment A3051. Amendment A3051 would exempt nursing homes, exempt nursing homes from this bill so that we could continue to protect seniors and their families when they are mistreated, maltreated, wrongly treated in the nursing homes in the State of Pennsylvania. They ought to have a right to recover. They ought to have a right to recover under existing law to be made whole, Mr. Speaker, not to shift that blame around and shift those costs around and make sure that that family does not recover but a third of what they are due. So my amendment A3051 would exempt nursing homes. Do the right thing. Leave nursing homes under the existing law so families have a right to recover when their family members are mistreated and maltreated.

I ask for a suspension of the rules, Mr. Speaker, for the purposes of offering my amendment.

The SPEAKER pro tempore. The gentleman, Mr. Veon, moves

to suspend the rules of the House for the immediate consideration of amendment A3051.

On the question,

Will the House agree to the motion?

The SPEAKER pro tempore. On that motion, does the gentleman, Mr. DeWeese, or Mr. Veon desire to be recognized on the motion to suspend?

Mr. DeWEESE. The gentleman from Allegheny County, Mr. Turzai, indicated he wanted the microphone. I was just being deferential.

The SPEAKER pro tempore. Does the gentleman, Mr. DeWeese, desire recognition on the motion to suspend?

Mr. DeWEESE. I do.

The SPEAKER pro tempore. The gentleman will suspend for a moment.

On our motions to suspend we have been going far afield, beyond the actual motion to suspend. We have tried to permit

latitude, so if the gentleman could focus on the actual motion to suspend. Thank you.

Mr. DeWEESE. Thank you, Mr. Speaker.

I have not heard any ululating cries of affirmation for anything we have tried to do so far, and I do not pretend to be an oracle, so I am not expecting a land-office business on votes for the Veon motion. However, I would think, I would think that my Republican colleagues would join us on at least protecting nursing homes and eliminating nursing homes from this legislation. I think you are either going to let them freeze or you are going to vote with us.

The example that the gentleman from Beaver County offered was glaring, but unfortunately, it is not singular. There are innumerable other examples of elderly folks who are going to get mistreated, mishandled, and accidents are going to happen, and his example even rings with a clarion sound, because it is obvious that the workers in those settings are not going to have the resources that would be compensatory and the managers in those settings are not going to have the resources that would be compensatory, but the facilities themselves would, and if joint and several liability is altered in the way that this proposal desires, then many, many of our seniors who are in nursing facilities will be maltreated. We are trying to put them in a solid setting, not trying to put them at risk.

The joint and several system that has been a part of the fabric of our law for hundreds of years is being molested tonight, and we are trying with amendment after amendment to try to salvage at least some of our traditions and some of our legal standards, and nursing homes is a very, very obvious and probable place to position ourselves. Again, I would hope that the Democrats, as they have done, would try again to sustain Mr. Veon’s motion to suspend the rules and offer an amendment that would protect our senior citizens in our nursing homes.

Thank you very much, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman.

On the question of the motion to suspend, the Chair recognizes the gentleman, Mr. Turzai.

Mr. TURZAI. Mr. Speaker, I would ask the body to vote “no” on this motion to suspend.

First of all, this bill overall is about jobs, making Pennsylvania competitive. Secondly, the fact pattern outlined by Mr. Veon is just not accurate. In the first instance, the nursing home is going to

have insurance that is going to cover the behavior of its employees. They are going to be covered. So the fact that you are saying that the assets are not going to be available is inaccurate. Second of all, the claim that might be brought against the nursing home would probably be for the nursing home’s activities, but it would also be for the activities of their employees under our respondeat-superior theory.

This fact pattern is not going to be affected by joint and several liability. That person that has been injured will be compensated under the law, and your statute or your amendment that you are attempting to get a suspension for is waving at something that is not there. It is not a real problem.

Thank you.

The SPEAKER pro tempore. The Chair thanks the gentleman.

The question is, will the House agree to the gentleman, Mr. Veon’s motion to suspend the rules of the House for the immediate consideration of amendment A3051?

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

The following roll call was recorded:

YEAS—102

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

NAYS—93

Adolph	Egolf	Lewis	Ross
Allen	Evans, J.	Lynch	Rubley
Argall	Fairchild	Mackereth	Sather
Armstrong	Feese	Maher	Saylor
Baker, J.	Fichter	Maitland	Scavello
Baker, M.	Fleagle	Major	Schroder
Bard	Flick	Marsico	Schuler
Barrar	Forcier	McGill	Semmel
Bastian	Gabig	McIlhattan	Smith, B.
Benninghoff	Geist	McIlhinney	Smith, S. H.
Birmelin	Godshall	Metcalfe	Steil
Brooks	Gordner	Micozzie	Stern
Browne	Habay	Miller, R.	Stevenson, T.
Bunt	Harhart	Miller, S.	Strittmatter

Cappelli	Hasay	Nailor	Taylor, E. Z.
Civera	Herman	Nickol	Taylor, J.
Clark	Hershey	Perzel	Turzai
Clymer	Hess	Phillips	Vance
Cohen, L. I.	Hutchinson	Pickett	Watson
Coleman	Jadlowiec	Pippy	Wilt
Cornell	Kenney	Raymond	Wright, M.
Creighton	Krebs	Reinard	Zimmerman
Dailey	Leh	Rohrer	Zug
DiGirolamo			

NOT VOTING—2

Keller	Tulli
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EXCUSED—5

LaGrotta	Stevenson, R.	Tangretti	Ryan, Speaker
Preston			

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. Does the gentleman, Mr. Veon, desire recognition?

Mr. VEON. Yes, Mr. Speaker, on the bill.

The SPEAKER pro tempore. The gentleman is recognized.

Mr. VEON. Thank you, Mr. Speaker.

Mr. Speaker, again I would want to say that the gentleman from Allegheny is incorrect, and another reason to vote against this bill, he made the case that my facts were wrong. My facts were on target, Mr. Speaker, and the fact is that if you have two defendants in the case, under this law, both of them cannot be found 100-percent responsible. That is the problem with this law. If that nursing home example that I have given previously, if you cannot get that defendant over 60-percent responsible, that innocent family is not going to recover. That is exactly what the problem is with the bill that the gentleman is offering here today and a compelling reason to vote against it, Mr. Speaker.

Mr. Speaker, I just have one more practical example that I would like to give, and this case is an example but one that is too recognizable in today’s business world. Mr. Speaker, let us assume that you have a company, a large company, and that company requires its employees to invest in their own stock, and, Mr. Speaker, that company also decides to block those workers from divesting that stock when the stock is not doing so well. And let us just say, Mr. Speaker, that you also have an accounting firm that happens to be advising that large company requiring its employees to invest in its stock and not allowing them to divest. Let us assume that that accounting firm knows exactly what that large company is doing wrong, and let us just assume for a moment, Mr. Speaker, that that company went bankrupt. And let us assume for a moment that those employees lost their life savings because of the actions of those corporate hierarchy in that now bankrupt company and those accountants in the unnamed-for-the-moment accounting firm – lost their life savings. Totally innocent parties; put the money into the account assuming

they get a rate of return; lost it all because of bad actors in that company and bad actors in that accounting firm. The company is now bankrupt. Your lawyer is trying to recover for you, the innocent investor, the innocent employee of the large, now-bankrupt company.

We are all very familiar with the example of Enron and Arthur Andersen, and, Mr. Speaker, under this gentleman's bill that is in front of us here today, we know that not a nickel is going to be recovered from Enron for any of those workers, and by passing this bill, we are setting up the exact law in the State of Pennsylvania to allow some company to do that to our workers. Under existing law, in this State – in my opinion, rightly so – the lawyer could go after that accounting firm who is culpable, maybe not 100-percent culpable, but under existing law they are going to make sure that those workers are made whole – totally innocent workers.

Mr. Speaker, it is not right. We should not allow to happen in the State of Pennsylvania what happened in the State of Texas to Enron employees. We should not allow that to happen to a single worker in the State of Pennsylvania ever, Mr. Speaker. This bill would allow that to happen.

MOTION TO SUSPEND RULES

Mr. VEON. Mr. Speaker, for the purposes of not allowing that to happen, not in this State, not now, not ever, I want to offer amendment A3050, which would exempt pensions from the law that the gentleman wants to pass here tonight in the House chamber, and I would like to make a motion to suspend the rules for the purposes of offering that amendment at this time, Mr. Speaker.

The SPEAKER pro tempore. The gentleman, Mr. Veon, moves that the rules of the House be suspended for the immediate consideration of amendment A3050.

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

The SPEAKER pro tempore. On that motion, the Chair recognizes the gentleman, Mr. DeWeese.

Mr. DeWEESE. Thank you, Mr. Speaker.

I would obviously advocate the suspension of the rules so that Mr. Veon's proposal could be acceded to by the membership.

It was not all that many weeks ago that the Enron fiasco was on the front page, and there is no more empirical case than the one that was just described. It is hard for me to embellish or embroider or adumbrate what Michael Veon said, but in plain language appears that Arthur Andersen, partly responsible and with still having deep pockets, could not pay back Pennsylvania's schoolteachers if Pennsylvania's schoolteachers are out hundreds and hundreds of millions of dollars in their pension money that was invested in Enron. Now, if that is a figurative or a literal recollection, it does not matter, because if Pennsylvania's retirees, if Pennsylvania's pensionnaires, are adversely affected, then a joint and several action cannot take place that would redeem them if this passes. So notwithstanding the boardroom buccaneers that have been advocating some of these changes, we are giving you one more chance right now to exempt pensions as we carry this unhappy proposal to its conclusion.

I think that what happened with Enron and Arthur Andersen is so obvious, so clear, so outstanding an example of corporate

depredation, and we have a chance right here today on Tuesday, June 4, with the Veon amendment, if we will suspend the rules, to arrest those kinds of actions taking place in our State. Pennsylvania's pensionnaires need to be protected. This is a chance. You can either vote for Pennsylvania's pensionnaires or vote against Pennsylvania's pensionnaires, and Pennsylvania's Democrats are going to stand alongside our pensionnaires.

Thank you for a favorable vote on suspension of the rules to pass the Veon amendment.

The SPEAKER pro tempore. The Chair thanks the gentleman.

The Chair recognizes the gentleman, Mr. Turzai, on the motion to suspend.

Mr. TURZAI. Thank you, Mr. Speaker.

First of all, this does not affect pensionnaires' lawsuits. That is a risk action, and those are in Federal court. That is number one. These apply to State actions.

Number two, Enron situation's intentional fraud has been exempted. Individuals that violate laws to the degree of intentional fraud, a criminal conduct, have been specifically exempted from using the benefit of the proposal here. That has been specifically exempted.

Secondly, the statute as we are proposing it, the language that we propose, is in fact not talking to pocketbook losses. Case law has indicated that the existing comparative negligence statute applies to damages to property and damages to body and does not address pocketbook losses. We have not changed the statute in that regard. It is a fact pattern that is irrelevant to the existing statute as we have proposed it.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman.

REMARKS SUBMITTED FOR THE RECORD

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

Let me make clear that it was our intention in drafting the amendments to SB 1089 upon concurrence that SB 1089 as amended does in fact amend section 7102 of Title 42 to eliminate joint liability in actions involving economic and noneconomic losses, including "pocketbook losses," except in actions for intentional fraud or an intentional tort or where a defendant has been held liable for not less than 60 percent of the total dollar amount awarded in damages. While some Pennsylvania case law might be interpreted to exclude "pocketbook losses" under Title 42, section 7102(a), such losses are clearly intended to be included and are included in the coverage of Title 42, section 7102(b).

As I pointed out in my statements on the floor, the intentional fraud exception specifically addresses concerns arising out of the collapse of Enron Corporation. See *Bortz v. Noon*, 556 Pa. 489 (1999) (no liability for affirmative misrepresentation without evidence of intent to deceive or knowledge of falsity).

The SPEAKER pro tempore. The question is, will the House agree to the gentleman, Mr. Veon's motion to suspend the rules for the immediate consideration of amendment A3050?

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

The following roll call was recorded:

YEAS—104

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

NAYS—89

Adolph	Egolf	Lynch	Ross
Allen	Evans, J.	Mackereth	Rubley
Argall	Fairchild	Maher	Sather
Armstrong	Feese	Maitland	Saylor
Baker, J.	Fichter	Major	Scavello
Baker, M.	Fleagle	Marsico	Schroder
Bard	Flick	McGill	Schuler
Barrar	Forcier	McIlhattan	Semmel
Bastian	Gabig	McIlhinney	Smith, B.
Benninghoff	Geist	Metcalfe	Smith, S. H.
Birmelin	Godshall	Micozzie	Steil
Brooks	Gordner	Miller, R.	Stern
Browne	Habay	Miller, S.	Stevenson, T.
Bunt	Harhart	Nailor	Strittmatter
Cappelli	Hasay	Nickol	Taylor, E. Z.
Civera	Herman	Perzel	Taylor, J.
Clark	Hershey	Phillips	Vance
Clymer	Hess	Pickett	Watson
Coleman	Hutchinson	Pippy	Wilt
Cornell	Jadlowiec	Raymond	Wright, M.
Creighton	Leh	Reinard	Zimmerman
Dailey	Lewis	Rohrer	Zug
DiGirolamo			

NOT VOTING—4

Keller	Krebs	Tulli	Turzai
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EXCUSED—5

LaGrotta	Stevenson, R.	Tangretti	Ryan,
Preston			Speaker

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. Does the gentleman, Mr. Veon, desire recognition? The gentleman is in order.

Mr. VEON. Thank you, Mr. Speaker.

Mr. Speaker, I appreciate the patience of the members as I have tried to point out certainly what in my judgment are real, practical, day-to-day examples where I think thousands of Pennsylvanians would be adversely affected if this bill were to become law, and it has been a challenge to battle the multimillion-dollar public relations campaign of the chamber of commerce, the business community. It has been a challenge to get out these real-life but important, practical stories of how average Pennsylvanians are impacted, and I appreciate the patience of the members here as I have tried to demonstrate that on the floor of the House.

Mr. Speaker, it is a bad idea; it is a bad bill. I strongly urge a “no” vote. Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman.

The question recurs, will the House agree to the bill as amended? The Chair recognizes the gentleman from Allegheny County, Mr. Turzai.

Mr. TURZAI. Thank you, Mr. Speaker.

In rebuttal to comments raised by Mr. Blaum, Mr. Gannon, Mr. Veon, in addition to the fact patterns that we have already discussed, first and foremost, I think it is an important point to recognize, Mr. Speaker, we in this legislature are not potted plants. The common law is not sacrosanct. The common law is judge-made law. We in the legislature enact policy decisions overturning common law all the time. In 1978 when you enacted the comparative negligence statute, you changed common law. States all over this United States have changed the common law since 1973 by enacting the repeal or the modification of joint and several liability.

With respect to some of the other points raised by the previous speakers. In the first instance, this does deal with frivolous claims and frivolous lawsuits, because what the joint and severability tool does is it is an armor in the plaintiff’s hands. What you do is a plaintiff can pull in anyone remotely connected to a case, particularly a defendant with a lot of money, and if a plaintiff can prove that person is at fault, then that person could pick up the entire tab. It is a policy that encourages bringing deep pockets into a lawsuit.

Also, we have heard that we have not heard of any businesses that have been shut down. The way the joint and several liability affects businesses from a day-to-day basis is primarily in the settlement of suits. Any attorney who tries cases, plaintiff or defense, can tell you the truth. When you go in and you are in front of a settlement conference with a judge, there is not one question that is asked, there are two questions that are asked: one, what do you think your liability is? and second, can the plaintiff come out against you? I assure you, every single day those defendants whose assets you can get at more clearly are going to pay higher in a settlement amount because they have got to take that risk into account. A defendant whose assets are more difficult to get after is paying less in a settlement amount. That risk gets contemplated every single day in our courts, and that is the effect of the joint and several liability tool. So it is not an urban myth.

One legal scholar, and I think it is important to note, indicated that there is such a high level of unpredictability in the court system, and joint and several compounds that problem. Cases routinely go to juries on thin evidence and tenuous theories

of liability, and then it gets compounded that a nominal defendant becomes a 10-percent defendant who has to cover more than his fair share.

Reasons for modifying joint and several fly in the face of the inflammatory arguments and incorrect arguments that have been put forth by the opposition here today. One, it is an issue of fairness. And the tort system, what is the purpose of the tort system? The tort system is, first and foremost, to do corrective justice. It is about individual responsibility. Second, joint and several does not promote that at all. Taking one person's fair share of liability and making them pay for somebody else's fair share does not promote corrective justice.

Secondly, the tort system is to promote deterrence. Joint and several has nothing to do with the promotion of deterrence. In fact, it undermines it. What we want in a tort system is to have people to take care of what they control, that which is in their purview, to take charge of it, to take reasonable steps to protect against those people that they deal business with. Joint and several is about not protecting what I can control; it is about trying to figure out how to protect against actions by people whom I have no idea whether I am going to end up in bed with them or not as a result of this rule.

There has been encroachment, Mr. Speaker, over the years of a social welfare perspective to the tort system as opposed to an individual responsibility, a moral responsibility, and a deterrence aspect to the tort system. This particular bill puts common sense back into play. It does not focus on communitarian principles of shifting loss to deep pockets. It deals with the problem between one party and the plaintiff.

Pennsylvania is behind other States. We are way behind other States. We are asking for one measure of tort reform here today – one measure. States have capped punitive damages, noneconomic damages, eliminated the collateral-source rule, established statutes of repose. We have not done anything other than in the medical arena and in a very minimal sense. We need to catch up. This joint and several liability is our first step. Forty-three States have either modified or eliminated it.

And finally, we need to talk about economic development and jobs. If you think that it is just an academic exercise, then you are missing the point. It affects business every single day. We referred to Texas earlier. They enacted the elimination of joint and several in 1995, and a study indicated that they had \$11.6 billion in annual growth State product, \$7-billion in additional personal income, and \$2.9 billion in annual retail sales, and it created 198,000 jobs in that 5-year period.

We in the State of Pennsylvania will benefit. Companies do look at the litigation environment. An Allegheny Policy Institute study indicated that Pennsylvania is dead last. We need to make some changes in this State, and we can do it as a first step by enacting a modification of joint and several liability.

Thank you very much.

The SPEAKER pro tempore. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Luzerne County, Mr. Blaum, for the second time.

Mr. BLAUM. Thank you, Mr. Speaker.

As I walk around the floor and talking to various members, I think the whole concept of joint and several liability is beginning to become apparent, the idea that we are not talking about the bringing of a frivolous suit; we are talking about a suit in which a plaintiff has won the case, and now the responsibility has to be apportioned.

There is a case, Mr. Speaker, involving a taxicab company involved in a horrible accident, maiming a woman and her child, and in that case the taxicab company was found to be a third responsible, the driver was found to be a third responsible, and the company which manufactured the brakes was found to be a third responsible. The driver did not have the wherewithal to come up with his one-third, the brake company had gone out of business, but thankfully the cab company had the necessary insurance, and those seriously injured people received adequate compensation.

Understand that in this amendment there is a 60-percent threshold, that if this ever became law, and I think you and I believe it will not, but if it ever became law, that cab company would be responsible for only 33 1/3 percent of what that woman and her child deserved. That woman and her child could be yours. I always am amazed at the debates here on the floor of the House over the last 6 months, how we pretend that this could not happen to us, that this could not happen to someone you love, a member of your family, you know, their children, and when they go to sue and they find out that there is a 60-percent threshold on the cab which seriously injured your sister and her child, oh, my goodness, I voted for that darn thing. That is the practical reality of joint and several liability. That is why it has been around for 300 years. That is why we should not change it here today.

I am so sick of hearing on the floor of the House about other States that have done this. Yeah, New York has done it, but they have exempted automobile accidents. They have exempted terrorist acts. They have exempted hate-crime acts. They have exempted actions arising out of any cause of action other than simple negligence. They have exempted administrative proceedings. They have exempted environmental actions, which you voted against. They have exempted crimes against women. They have exempted medical malpractice cases. They have exempted warranty actions based on negligence. They have exempted cases involving drugs and alcohol. This amendment exempts nothing – nothing – and all these people are going to be protected, as the gentleman, Mr. Gannon, said – the bad nursing home, the bad polluter, the bad cab company. They are the ones that are protected by this.

And the sponsor of the amendment said, you know, it is going to limit the number of people brought into a suit. That is not true, and let me tell you why. If you look at section 7102, subsection (b.2) of the amendment, you get to see that if, let us say, the cab company believes it is going to be 60-percent responsible – uh-oh, I am going to hit the threshold that the Republican House and Republican Senate and Republican Governor now set in Pennsylvania; I am going to hit that 60-percent threshold – guess what? The cab company is going to bring in the people who paved the road. The cab company is going to bring in the people who made the shock absorbers. The cab company is going to bring in the people that made the bumpers. Why? Why would a business do that to another business? Because they do not want to hit the 60 percent. If they get to 58 percent, they are only going to be responsible for 58 percent, not 100. That is how it really works.

I understood SB 407. I did not agree with it, but I understood it. I understood the medical bill that we debated here. This is not the same thing. This is important for the people of Pennsylvania. This is about someone who has a legitimate case, someone who has a legitimate case and won, and now that they won, they cannot get compensation because nobody hits this arbitrary threshold that this amendment sets.

I do not believe the Senate is going to adopt this bill; I do not think there are very many of you that believe the Senate is going to adopt this, yet you are being asked to put up all these horrible votes not agreeing with these exemptions. We should not be here today doing this.

We had a fantastic hearing in the Judiciary Committee. There was a wonderful woman there from the Pennsylvania Chamber of Commerce who talked about her 9-month-old daughter and went on about how great this concept is, until I asked her and turned the tables and said, okay, it is your 9-month-old daughter now that is hurt; in that case, when somebody is only this percentage responsible and that percentage responsible, what would you do? She said, I would go after every one of them. Why? Because that is her responsibility as a mother, to protect that child, make that child whole, get the necessary funds necessary so that kid can have a meaningful life long after she is gone. If it costs, you know, hundreds of thousands of dollars to take care of this kid for the rest of their life, your son or daughter, and yet because of this vote today you can only collect one-third of that, one-third of what is necessary to properly care for that person in a horrible situation for the rest of their life, you can only get one-third because of that darn vote I cast back on June 4, 2002. We should not be here today.

I read off the exemptions that exist in other States. Other States have not adopted this. Because of the subsection (b.2) which I mentioned, where businesses can bring other businesses in so that they do not hit the 60 percent, this amendment actually does away totally – totally – with joint and several liability. You know where that puts us? That puts us in the same categories of the economic development giants of Alaska and Idaho and Kansas and Louisiana and Nevada, New Mexico, Utah, Wyoming. They are the only places that have done away with joint and several liability. New York modified it, but they created every exemption in the world so that it is a reasonable piece of legislation and does not do damage. Connecticut did away with it and came right back and undid what they had done.

MOTION TO SUSPEND RULES

Mr. BLAUM. You voted against suspending the rules to create significant exceptions to this bill. I wish you voted for suspension of the rules. I am going to offer one more. I am going to offer amendment 3057 and ask you to suspend the rules so we can exempt from this things which involve drugs and alcohol, so that drug and alcohol offenses against people in Pennsylvania are not going to be apportioned so that nobody hits that 60-percent threshold, so that people injured by these characters can recover the necessary funds.

The gentleman mentioned, you know, Enron and Arthur Andersen and it reaches fraud. That is not so. But even if it were, let us assume there is a case where there is no illegal activity, but a company the size of Enron declaring bankruptcy is 70-percent responsible, Arthur Andersen only 30-percent responsible, everybody is out of luck. That is not the kind of law we should be adopting in Pennsylvania. At least let us suspend the rules to exempt from this amendment situations that arise out of the use of drugs and alcohol.

Mr. Speaker, I ask that the rules be suspended so that we can offer amendment 3057.

The SPEAKER pro tempore. The gentleman, Mr. Blaum, moves that the rules of the House be suspended for the immediate consideration of amendment A3057.

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

The SPEAKER pro tempore. On the motion to suspend, the Chair recognizes the gentleman, Mr. Smith.

Mr. S. SMITH. Thank you, Mr. Speaker.

You know, each of these amendments that are being asked to be considered under suspension of the rules draw out some, in my opinion, some weird little niches that are kind of scare tactics. This bill is a good bill and it is good for Pennsylvania, and I simply urge the members to oppose this suspension of the rules and allow us to vote this bill. It will be good for Pennsylvania.

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

The following roll call was recorded:

YEAS—105

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

NAYS—91

Adolph	DiGirolamo	Lynch	Sather
Allen	Egolf	Mackereth	Saylor
Argall	Evans, J.	Maher	Scavello
Armstrong	Fairchild	Maitland	Schroder
Baker, J.	Feese	Major	Schuler
Baker, M.	Fichter	Marsico	Semmel
Bard	Fleagle	McGill	Smith, B.
Barrar	Flick	McIlhinney	Smith, S. H.
Bastian	Forcier	Metcalfe	Steil
Benninghoff	Gabig	Micozzie	Stern
Birmelin	Geist	Miller, R.	Stevenson, T.
Brooks	Godshall	Miller, S.	Strittmatter
Browne	Gordner	Nailor	Taylor, E. Z.
Bunt	Habay	Nickol	Taylor, J.
Cappelli	Hasay	Perzel	Tulli
Civera	Herman	Phillips	Turzai
Clark	Hershey	Pickett	Vance

Clymer	Hess	Pippy	Watson
Cohen, L. I.	Hutchinson	Raymond	Wilt
Coleman	Jadlowiec	Reinard	Wright, M.
Cornell	Krebs	Rohrer	Zimmerman
Creighton	Leh	Ross	Zug
Dailey	Lewis	Rubley	

NOT VOTING—1

Keller

EXCUSED—5

LaGrotta Preston	Stevenson, R.	Tangretti	Ryan, Speaker
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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. Does the gentleman, Mr. Blaum, desire further recognition? The gentleman indicates he does not.

The Chair recognizes the gentleman from Lackawanna County, Mr. Cawley.

Mr. CAWLEY. Thank you, Mr. Speaker.

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

The SPEAKER pro tempore. The gentleman, Mr. Turzai, indicates that he will stand for interrogation.

Mr. CAWLEY. Thank you.

Mr. Speaker, just so I am clear on this, if in a lawsuit a firm is declared 40-percent responsible for recovery to be made, is that what that firm will pay, is 40 percent?

Mr. TURZAI. Yes; they would be responsible for the 40 percent that was found against them. A \$100,000 award, they would be responsible for \$40,000.

Mr. CAWLEY. All right. I have a situation in Lackawanna County where from 1963 until 1980, 400-and-some firms have dumped waste from as far away as Texas and including the Army, Navy, and Air Force from Massachusetts. Included in that waste happens to be 500,000 tons of battery casings. That is 10 stories high on a 10-acre site. This site I am talking about is a total of 44 acres.

The firm that now owns the site did not dispose of anything in that site. They acquired the site.

Would you assume that this firm that acquired the site and did not dispose of any waste at that site would be responsible for the cleanup of that site? I mean, I am asking this because—

Mr. TURZAI. I mean, if you are asking – and I apologize – but are they responsible for the cleanup of that site? I believe, you know, that is a regulatory issue. Can they be found liable as a result of that? I believe under a strict liability theory, yes, they can be.

Mr. CAWLEY. Would you assume that this firm who did not dispose of anything in that site – which, by the way, has been declared by EPA (Environmental Protection Agency) as hazardous, high hazard and low hazard – if the firm did not dispose of anything at that site, do you believe that with this

legislation that we are going to pass, this firm would be found 60 percent, they would reach that threshold of being 60-percent liable for the removal of that waste?

Mr. TURZAI. Well, first of all, if the claim is brought under CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act), that is a Federal claim, and most of these claims are brought under CERCLA and would not be affected by this, what we are proposing today.

Mr. CAWLEY. This claim, by the way, is going to be brought with the State.

Mr. TURZAI. To the extent that it is brought under a State claim, I would assume but I cannot speak that they are not going to hit the 60-percent figure. That would be my assumption, yes.

Mr. CAWLEY. Okay.

This is where I come in. Four hundred-and-some firms disposing of waste from 1963 until 1980. We have no idea how many of those firms are still in business. We do know that a firm now owns that property. This firm is a worldwide firm. This firm has made it public that this firm has no intentions of cleaning up this site, total removal of the cleanup of this site. Just by your testimony, we just heard that this firm would probably not reach the 60-percent threshold. So basically, what you are telling me is, let us assume that the jury or the judge was responsible enough to say that this firm is going to clean up 40 percent or pay for 40 percent of the cleanup, 40 percent of the cleanup which would run in the neighborhood of about \$30 to \$40 million, and they are going to pay one-third of this. Who is going to pay the rest? Is it going to be the Commonwealth of Pennsylvania? Is it going to be DEP (Department of Environmental Protection)? EPA? Who is there to protect those people that live in that town when we pass something like this that we know that this site is not going to be addressed – a high-hazard site and a low-hazard site; no liners, no nothing; mines underneath this site; no double-lined site, no double-lined liners; no leachate collection system; nothing to protect the groundwater; nothing to protect the mine fire in case a mine fire starts and all of this stuff is now going to be burning. It is reported that some of it may be nuclear waste from the Army, the Navy, or the Air Force when we did not have regulations back in the sixties.

This is exactly the type of tort that should be exempted. As Representative Blaum mentioned and Representative Veon, these are things that have to be addressed. We must address those things, and there are some members over here, there are quite a few members over here, that believe as well as anyone else that something has to be done, but how can we do it when a bill, when an amendment, is put before us on a yes-no vote, when there are some people on this side of the aisle that are willing to compromise and willing to meet and willing to put something in the language that belongs in the language, and someone mentioned earlier that there are going to be— This bill may be good; this bill will be good. There is no doubt in my mind this bill will be good, but whom is this bill going to be good for? Is this bill going to be good for the people that live in this town? It absolutely is not. Is this bill going to be good for the people that live across this Commonwealth of Pennsylvania that we have Superfund sites, which, as mentioned, is a Federal issue. We also have more sites that are not declared Superfund sites. And for these toxic sites to be eliminated, it takes money, and we know that in order to get the money to remove this waste from all of these toxic sites in Pennsylvania, you have to go after the people who are responsible

for this, and if it ends up that the people that are responsible for this are going to be paying 25 and 30 percent, those are the people that are going to be helped, not the people that we took an oath and we raised our hand and said that we will protect their health and their safety. Whether we like it or not, we have an obligation. I would never vote for something that is going to put 5,000 people in my district no place but in the dugout, and I am not going to do it, and I do not think that anyone else should do this.

I really and honestly believe that there are legislators in this room that are willing to sit down and put some amendments in this bill. Mr. Gannon had mentioned several things that should be in this bill. There should be exemptions in here. There really and honestly should be, and I think it can be if we forget about Democrat and Republican and just sit down and discuss this issue that has to be addressed and discuss it in a way that all of us can support, and that is doable, and that ought to be done. We have that obligation to do it.

MOTION TO RECOMMIT

Mr. CAWLEY. And, Mr. Speaker, in order to do this, I am going to make one motion. I am not going to be part of it, because I do not understand this language with the law. I understand very well what the problems are in my district, and they have to be addressed. But I think we have the minds in here and we have other people who are well knowledgeable on this issue that we could put language in this bill that we will be better than any other State with this issue.

Therefore, Mr. Speaker, I would like to make a motion to send this bill to the Judiciary Committee – not to kill the bill, by any means, but to put things in this bill, such as insurance rates ought to be addressed. We should not be giving a blank check to anybody on this bill. Business people are going to save money. Where are they going to save money? They are going to save money on their insurance rates when there are lawsuits coming, and that is where they are going to save lots of money. So those people, the business people, will be helped. The insurance companies are going to be helped because they are going to be paying a lot less money. Those insurance people, there ought to be strings attached, and they ought to reciprocate by lowering rates in Pennsylvania to those people that are carrying their policies.

Toxic tort has to be addressed. We do not know what we are doing. The things that we are doing right now, we are going to be very, very sorry for a couple years down the road when some of our constituents come up with very, very serious problems. That has got to be addressed.

How do you make a person whole, that we heard on the floor today, how do you make someone whole that has lost two legs? Somebody is going to be happy that they do not have to pay for it, or maybe they are only going to be paying 30 percent. How does that make that person whole? It absolutely does not.

How does it make someone whole when the mother and father are going to be dead and that person is going to be living 25 years longer? The money that they are going to receive for that lawsuit is probably going to be good enough for a couple months in the hospital. That is what they are going to be covered for. This is a disgrace.

Mr. Speaker, I make a motion to send it to the Judiciary Committee, with the very serious intent that people legitimately sit down with those in Judiciary and put some language in this bill that ought to be put in the bill and now we at least have something

to vote on and something that we may be proud of.

Thank you.

The SPEAKER pro tempore. The Chair thanks the gentleman.

The gentleman, Mr. Cawley, moves that SB 1089 be recommitted to the Committee on Judiciary.

On the question,

Will the House agree to the motion?

The SPEAKER pro tempore. On that question, the Chair recognizes the gentleman, Mr. Perzel.

Mr. PERZEL. Mr. Speaker, with all due respect to my colleagues, both Mr. Cawley and Mr. Gannon, I do not believe that you would see this bill ever come out of the Judiciary Committee. The chairman of the committee has already said that he is totally opposed to the concept whatsoever. So I do not think you would ever get an opportunity to vote on something like this again.

I think it is important, Mr. Speaker, to note a few things.

I have a copy of the Legal Intelligencer dated Thursday, May 23, 2002, where they advocate – it is the oldest legal journal in America – where they advocate even a stronger version than the version we have before this floor of joint and several liability, Mr. Speaker. I would like to read: By modifying the law of joint and several responsibility in this way, Pennsylvania will ensure that defendants with minor roles will not be forced to bear the unfair burden or risk economic ruin and will discourage the current incentives to sue nonculpable deep pockets.

That is a statement that is jointly endorsed by the Democrat candidate and by Mike Fisher, the Republican candidate, along with Jack Murtha, one of our senior congressional delegation members.

Mr. Speaker, what we are trying to do here has been endorsed by the Pennsylvania Orthopaedic Association, the Hospital Association, the Council for Small Hospitals, the Pennsylvania School Bus Association. The list is over 100, Mr. Speaker. I am not going to read them all. By businesses small and large, Mr. Speaker: the Elsner Engineering company, 70 employees are for this, Mr. Speaker; High Industries, 2,700 employees; UPS, 16,000 employees, Mr. Speaker; United States Steel Corporation, 5,000 employees; the University of Pittsburgh, Mr. Speaker; GlaxoSmithKline; Meetinghouse Garden Apartments and Townhouses, Mr. Speaker. There are people all over Pennsylvania that are for the concept of what we are trying to do here today.

I would like to just mention a couple hospitals. We mentioned this in medical malpractice, and it is coming to fruition that we are losing our people in our hospitals and our emergency wards and our OB-GYNs, Mr. Speaker. I mentioned at South Philadelphia Methodist Hospital, 91 jobs; Jefferson University laid off 179 jobs; Albert Einstein, in one of the poorest areas of the State, Mr. Speaker – the poorest areas of the State – the people that are already underserved, Mr. Speaker, are going to lose 234 jobs.

I am asking you to give Pennsylvania an opportunity to be where 37 other States already are – an opportunity to make sure that we can keep our doctors, keep our hospitals, keep our businesses, and keep our jobs here.

So I would respectfully ask we not send this to the Judiciary Committee, where we all know that it will meet an untimely death, Mr. Speaker. Thank you.

The SPEAKER pro tempore. On the motion to recommit, the Chair recognizes the gentleman, Mr. Gannon.

Mr. GANNON. Thank you, Mr. Speaker.

Mr. Speaker, the majority leader is half right.

If I may, this is a Senate bill that came back to the House for concurrence on Senate amendments to House amendments. The Rules Committee amended the bill again, which they are permitted to do under our rules, and under our rules, only the Rules Committee is permitted to amend a bill at this stage of its legislative process. If this bill were referred to the Judiciary Committee, we could certainly take a look at it and study it but we could not make any changes to it.

With that said, however, there is another bill in the Judiciary Committee sponsored by Representative Turzai which deals with the issue of joint and several liability. That bill would be subject to amendment by the Judiciary Committee and change and could be reported out by the committee.

A little history on this issue with respect to the Judiciary Committee as myself as Republican chairman and Representative Blaum as Democrat chairman: We had a bill in our committee, SB 406, which I did not like, and on the debate on the floor of the House, I made it pretty clear that I did not like that bill. However, with the help of Representative Blaum, we did amend that bill in committee, and that amendment was made with the cooperation of the stakeholders. The amendment was agreed to. Representative Blaum and I fashioned an amendment. We got agreement. It did not necessarily mean we agreed with it, but we did make what we saw were some positive changes to the bill. At that point we did report the bill out of committee.

So I as the chairman of the Judiciary Committee and Representative Blaum as the Democrat chairman do have a track record of reporting bills that we do not like but that this House wishes to consider. So if this motion is adopted and this bill is referred back to the jurisdiction of the Judiciary Committee, I will call up Representative Turzai's bill. We have already had one hearing on that bill, and quite frankly, I found out a lot of information about the issue of mutual responsibility around the United States, particularly with reference to the alternatives out there that have been developed by people a lot smarter than myself and who know this issue a lot better than I do, and I think within those four alternatives, there is a compromise; there is a compromise.

Maybe a law that is 300 years old and is tried and true and has been tested, maybe it should be changed; maybe it should be modified. But we cannot do that in the environment that we are working with here tonight. The only way this issue has been presented to us as a body is by those folks in the back of the House who have been churning out letters and mailgrams and telephone calls – not from constituents; I have not heard from too many people that pack a lunch every morning and go off to the factory or to the office. I am hearing from the guys on the 14th floor, the 15th floor, that have the mahogany offices, condominiums down in Florida, the places at the shore, the places in Vale, and they have their yachts and their boats and their planes. They are the ones that are calling me and telling me that this is hurting them economically. That may be true; that may be true.

But I think that we should take this opportunity to get this issue back into the Judiciary Committee, give Representative Blaum and myself an opportunity to continue the work that we started, rather than stopping us cold where we are right now, and taking Representative Turzai's bill, working out a compromise with the stakeholders – and we are willing to sit down with them; we have

done it in the past; we are not shy; we will do it again – but work out an agreement and a compromise among those alternatives which we know are already out there that have been studied, that have been worked up, and may have been adopted by some other States – I do not know – and we could report that bill out for consideration by the House as a House bill, because we can change that bill and we can amend that bill and we can fashion a bill that would be agreeable to most if not all of the members of this chamber.

So I would support Representative Cawley's motion to refer this back to the Judiciary Committee with that promise.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman.

On the motion to recommit, the Chair recognizes the gentleman from Luzerne County, Mr. Blaum.

Mr. BLAUM. Thank you, Mr. Speaker.

Mr. Speaker, I, too, rise in support of what I thought was a very sincere motion by Representative Cawley to recommit this bill to Judiciary.

We had a very good debate here on the floor of the House. It is very similar to the Judiciary Committee hearing we had on this issue. It is an arcane part of the law, and as the hearing went on and members learned more and more, I think their eyes began to open. I believe that perhaps here on the floor of the House today that members' eyes have begun to open wide as to the ramifications of exactly what this bill does.

When the majority leader says that 37 other States have done this, that is not true. Because of subsection (b.2) of this bill, which allows other businesses to bring in other businesses so that they do not hit the 60 percent, you effectively do away with joint and several liability in Pennsylvania. There are only 13 States – and I read them off to you – there are only 13 States – not a powerhouse among them, not an economic powerhouse among them – who have taken that drastic step. No other States have done that, nor should we.

This bill requires study, and I ask that it be recommitted to Judiciary. We should not be doing this here today as a committee of the whole. It should be recommitted, and I ask the members for an affirmative vote.

The SPEAKER pro tempore. The Chair thanks the gentleman.

On the motion to recommit, the Chair recognizes the gentleman from Philadelphia, Mr. Thomas.

Mr. THOMAS. Thank you, Mr. Speaker.

Mr. Speaker, I rise to ask that this bill not be recommitted to Judiciary, because I think, Mr. Speaker, that what has happened this evening and this afternoon, I think a couple things need to be cleared up.

One, I have talked to Einstein Hospital, Jefferson Hospital, and other hospitals. Not one hospital has said to me that this SB 1089 represents the lighthouse between whether people will work or not work. This bill is not about employment development, nor is it about economic development. It really comes down to selflessness over selfishness. It comes down to people who believe that they need to limit one's availability to seek relief amongst joint and several tort-feasors. That is it in a nutshell.

So, Mr. Speaker, I think that what we have got to do this evening, especially in light of the fact that we have not taken into consideration environmental, products liability, and a number of other areas that we should have taken into consideration and tried to strike some balance of reasonableness in how we came down –

60 percent. We really can do much better than that. A defendant who is 20- or 25-percent or even 15-percent responsible for the causing of an accident and the intended injury to a plaintiff should not be able to get off the hook. The proposal in front of us would do that, because they had not set the level high enough or had not met the 60-percent liability factor.

I suggest to you that we can do better, we should do better, we have a responsibility to the people of the Commonwealth to do better.

I have further extensive remarks that I will submit for the record so we will not burden the body at this time, but I do ask that people vote against this particular proposal, and let us do a better job.

The SPEAKER pro tempore. The Chair thanks the gentleman.

REMARKS SUBMITTED FOR THE RECORD

The SPEAKER pro tempore. The gentleman will submit his remarks for the record.

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

In many, many cases tried in our civil courts, the law of joint liability between negligent defendants is applied without any problem. Where each defendant is adequately insured or has assets to pay for the injury to the plaintiff, the plaintiff is “made whole” in accordance with the jury’s verdict.

However, if one or more of the defendants whom the jury has determined as negligent and a substantial cause of the injury is unable to pay – is “judgment-proof” – there is going to be an unfair result. It is simply unavoidable. An inability to pay on the part of a defendant has consequences.

The issue before us, as we consider whether to repeal the concept of joint liability, is how to best manage what is admittedly an unfair result. We can choose to have the shortfall shared by the other defendants, all of whom have been found to be negligent and a substantial cause of the plaintiff’s injuries – or we can let that burden fall on the plaintiff, who has already suffered injuries the jury’s verdict sought to compensate. Given the choice of visiting this unfairness upon someone – as we must – I am not willing to further burden an innocent plaintiff, so that the remaining defendants, all found to some degree negligent by the jury, do not have to pay “more than their share.”

Make no mistake about it – if you repeal the joint liability doctrine, some defendants will win, but for every winner there must indeed be a loser, and individual plaintiffs – injured parties – will lose.

While I have heard a lot of talk that defendants should not have to pay “more than their share,” I would like to point out an area of the law where they consistently pay “less than their share.” If a defendant is allocated 45 percent of the blame for an accident or injury, but the plaintiff’s fault is found to be 55 percent, the defendant found to be 45-percent responsible pays nothing. That apparently is acceptable to those same defendants who today lament ever having to pay “more than their share.”

There may be times when, as a matter of public policy, we may want to scale back the application of the joint liability rule. I would suggest to you that a defendant whose allocated percentage was less than 5 percent or 10 percent (the threshold could vary in cases involving large numbers of defendants) should not face the prospect of joint liability, but that other defendants whose level of fault was determined to be higher, should. The rationale of such a flexible rule would recognize that, at some point, that happening of the accident and the causing of injury becomes almost inevitable, and the small-scale defendant really did not cause the accident

or make it happen in a commonsense view of the event. Our current law deals with that concept by requiring that a jury find each defendant to be a “substantial factor” in causing the accident or injury before any share of blame can be allocated to him. But the term “substantial” is said to be fraught with uncertainties, and we are told that defendants who fear a 1-percent finding are therefore forced to settle. Frankly, in all the discussion I have heard on the topic, I have found it difficult to understand how a 1-percent finding would be considered to be “substantial” by a jury. In my limited experience, I would surmise that if four defendants were assigned blame at 33 percent – 33 percent – 33 percent – 1 percent, the jury would much more likely find the first three defendants equally guilty and find the 1-percent defendant to have not been a substantial cause of the accident.

In my own experience, I have sometimes found that unprepared, unconfident attorneys, or attorneys with “something better to do” will hide behind this “uncertainty” – this phantom 1-percent possibility – to settle a case which ought to have been tried, to avoid facing a jury they are not ready or willing to face. Setting a 10-percent level should help to take away that excuse and yet preserve the right of the plaintiff to just and complete compensation.

The suggestion that we should set that level at 60 percent makes it a practical impossibility that injured parties will be compensated in full, where some defendant is judgment-proof. Even in the case of two joy-riders speeding down a street and striking a pedestrian, a jury is likely to assign blame on a 50-50 basis, and under a 60-percent rule, neither would be jointly liable for the full verdict. But the fact is that without either one of those defendants’ involvement, the injury probably would not have occurred. Shifting the risk of nonpayment onto the plaintiff makes no sense, when either defendant should bear that burden instead.

An interesting irony is presented here. In the past, we have heard of plaintiffs suing everyone – “a shotgun approach.” Under this bill, the 60-percent level will lead to defendants joining as many others as they can. With two defendants in a case, maybe one will be held 60-percent liable. With four defendants, it is not likely any one defendant would be held 60-percent liable. With seven defendants, the chances of any one defendant being held 60-percent liable is negligible.

Be assured that the unfairness asserted by the proponents of repeal can be remedied in a more surgical and much less sweeping way than a wholesale repeal. Joint liability works well in many situations. Repealing it outright is like amputating an arm to resolve a gangrene infection in a patient’s thumb. Reasonable people would say – “just take off the thumb – go no further – do no more harm than necessary.”

We have the ability to surgically repair our system, but a 60-percent level of negligence does not do it fairly. Ten percent makes sense. Twenty percent might make sense. Someone who is responsible to that degree cannot honestly say that they have not been a very real cause of the injury. If we have to burden someone with a loss – and in those situations of a judgment-proof defendant, we must – it should be placed on a defendant found negligent by the jury and not on an already once-injured plaintiff.

I ask you to vote against this proposal.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Chester County, Mr. Schroder.

Mr. SCHRODER. Thank you, Mr. Speaker.

Mr. Speaker, I rise in support of concurrence on this bill.

Mr. Speaker, I would just like to respond to some of the remarks and comments and I think some of the misconceptions that I believe have been put forth out here this afternoon and this evening during this debate.

Mr. Speaker, we have heard this bill called a, quote, “radical change.” I do not understand that, Mr. Speaker. It is so radical that only very few, very few States actually still have pure joint and several liability left, and even some of those, from what I understand, have contributory negligence doctrines, so if the

plaintiff is only 1-percent liable, they cannot recover anyway. But 43 States have either eliminated totally or modified their joint and several liability doctrines in much the same way that we are doing here tonight.

Mr. Speaker, I also heard arguments about defendants bringing in additional parties to reduce their percentage of liability and that somehow this is a backdoor way to defeat, to eliminate, joint and several liability totally. Well, Mr. Speaker, that argument falls under its own weight. Under today's system, those same defendants are already brought in by plaintiffs under the search for a deep pocket, and those defendants might have little or no involvement or only be remotely involved in the case, so that is already going on, Mr. Speaker.

We are also told, Mr. Speaker, that this doctrine is part of our jurisprudence for hundreds of years. It is in the fabric of our law. Well, I think we can all think of some examples in our laws over the years and throughout the course of our country and our history that have been changed, reformed, or eliminated as just bad public policy, and I would submit to you that this doctrine fits within that.

Mr. Speaker, I also heard an interesting, inflammatory comment tonight that under this bill we are protecting the bad guys. Now, Mr. Speaker, that argument makes a jump and a leap in logic, because it assumes that just because you are sued, you are somehow a bad guy. Well, Mr. Speaker, that just does not add up. You are not necessarily a bad guy under the current system, but sometimes your only sin that brings you into the lawsuit in the first place is your deep pocket. So, Mr. Speaker, it is absolutely nonsense to say that the purpose of this bill is to protect the bad guys out there, because once again, that argument falls under its own weight as well.

We heard about employment situations, and I think Representative Turzai did a nice job of covering that. I will just repeat that vicarious liability doctrine is not affected by this legislation; it is not eliminated.

Mr. Speaker, I want to tell you about a family-owned-and-run bus company in my district, in Chester County. I have heard it said here that joint and several only comes into play after the verdict is already rendered and after dividing up who is responsible for what, but here is an example of how this comes into play much earlier in the process than that.

This bus company took a group of people down to the city of Philadelphia, and after the group left the bus, well after they left the bus, a woman was injured because she fell on either a sidewalk or steps or something that had no connection to the bus, yet the bus company was sued as a defendant in that lawsuit. Now, the bus company knows that if they are somehow just held for a fraction, a mere fraction, of that defendant's liability, they could end up paying her entire verdict, and that places a tremendous burden and a tremendous amount of pressure on the bus company to settle the case – in other words, to pay to get out from under a case they should never have been in in the first place.

Joint and several liability is used in this type of situation to extort settlements from defendants who should not be in lawsuits in the first place. So do not believe that this is something that only comes after the jury has rendered their verdict. It has very profound implications for businesses and for companies all across the board.

Mr. Speaker, we mentioned medical malpractice earlier. I was not even going to touch on that tonight, except we all know that our hospitals have long sought reform of the joint and several liability doctrine. Well, just this afternoon, Mr. Speaker,

I was informed that a trauma center in Chester County, the Brandywine Hospital, has to shut down its trauma unit. They are unable to get the specialists that they need because of the continuing medical malpractice crisis and situation. This is something we have been warned about time and time again that it would happen. Now, this shutdown, fortunately, is only temporary. Later in June they will contract with a provider to provide some of the services that they need, but this will only take them up to September, and they will be facing the same situation over again. So this shutdown, albeit temporary, is only a portent of things to come if we do not continue to reform this legal system.

Mr. Speaker, this is not about people in mahogany desks on the 14th floor with condos down in Florida; this is about the continued viability of our health care, of our economy, and it is about fundamental fairness. A defendant should only have to pay the portion of liability that is assigned to them – no more, no less – period.

REMARKS SUBMITTED FOR THE RECORD

Mr. SCHRODER. Mr. Speaker, I have additional remarks, but I will be submitting those for the record. Thank you.

The SPEAKER pro tempore. The gentleman will submit his remarks for the record. The Chair thanks the gentleman.

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

In Pennsylvania, joint and several liability is the rule whenever responsibility is apportioned among parties under the existing "Comparative Negligence" statute, section 7102 of Title 42, of which subsection 7102(b) expressly preserves joint and several liability, 42 Pa. Cons. Stat. 7102(b). Pennsylvania is one of only a few States that have not reformed the doctrine. Therefore, SB 1089 would amend 42 Pa. Cons. Stat. 7102(b) to eliminate joint liability for economic and noneconomic loss, except in actions for intentional fraud. The bill does not affect the Pennsylvania law of comparative negligence, comparative fault, or strict liability, because it does not amend section 7102(a).

The bill does, however, specifically eliminate joint liability, except in actions for fraud, by requiring each defendant to pay its fair share of the damages it caused. The outmoded doctrine of joint and several liability encourages plaintiffs to sue defendants with minor culpability and remote causal connection to act as informal insurers of far more irresponsible parties. Joint and several liability undermines the fair allocation of liability by judge and jury when deep-pocket defendants are forced to pay more than their fair share.

By making deep pockets rather than fault the determining factor, joint and several liability defeats the deterrent purpose of tort law by allowing those most responsible for an injury to escape the consequences of their actions. Therefore, the bill also ensures that joint and several liability will continue to apply in "...an action in which a defendant has been held liable for intentional fraud..." The exception specifically addresses concerns arising out of the collapse of Enron Corp. Under the law of Pennsylvania, an intentional misrepresentation must be material, made falsely, with knowledge of falsity, with the intention of misleading another into relying on it who justifiably relies on the misrepresentation and whose injury is proximately caused by the reliance. *Bortz v. Noon*, 556 Pa. 489 (1999) (no liability for affirmative misrepresentation without evidence of intent to deceive or knowledge of falsity).

The SPEAKER pro tempore. The Chair recognizes the gentleman from Delaware for the second time, Mr. Gannon.

Mr. GANNON. Thank you, Mr. Speaker.

Mr. Speaker, I had a colloquy earlier with Representative Turzai, and one of the questions came up about the company that was in Asia that manufactured a product that was defective and sold here in Pennsylvania, and I believe Representative Turzai said, well, that would not come into play, because only the defendant that was in court would be responsible. And we have a law in Pennsylvania that says that if a party does any commercial activity here – they sell a product, for example, in Pennsylvania, whether directly or indirectly; they have had sufficient contacts with Pennsylvania – the court would have jurisdiction.

After the colloquy I had an opportunity to sit down and read the amendment, which at the time of our interrogation was only about an hour and a half old, and quite frankly, I had not had enough time to analyze it. But there is an item in the amendment that has been referred to a couple of times in the course of the debate, and that is on page 10, and it is lines 17 to 20. It says, “Nothing in this section shall...create, abolish or modify a cause of action or...limit a party’s right to join another potentially responsible party.” And as we discussed in the interrogation, the potentially responsible party was that company in Asia that maybe had a sweatshop; maybe they had 14-year-old kids putting those parts together and making that equipment.

And the issue then becomes, if they are the party that is responsible, how do you get your money? How do you collect? How is the plaintiff compensated if in fact now we have the seller pushing his liability off to this offshore company, which is exactly what is going to happen. The defendants are going to be pushing their liability off to that party which is a defendant in the case but is really not responding and also may know full well from their position – they have no warehouses; they have no offices; they have no employees; maybe they have a traveling salesman that comes into the State every once in a while – but there are no assets that they have in this State that the plaintiff can get to get compensation.

So now we have a situation where we do have in this bill a provision that specifically prevents and protects those offshore, foreign manufacturers, and I do not know why in the world we would want to do that, we would want to prevent people in Pennsylvania from being adequately and fully compensated because they cannot collect the damages that have been assessed.

A lot of people, many of us, remember that movie “Titanic” and the book “A Night to Remember,” written by Walter Lord, and we remember the captain; we remember some of the passengers; we remember Molly Brown and her heroic acts of saving lives. But what do we remember the captain for? We remember the captain, in addition to going down with the ship, but we remember him for something far more significant. In the lower holds of that ship were Irish immigrants coming to the United States. They were down in steerage; they were down in the lower classes. And what did the captain do? The captain put gates across the passageways to keep those immigrants from coming upstairs and mingling with the passengers in the first-, second-, and third-class cabins. And when that ship went down, those immigrants who were coming to this country for the opportunity that it presented to them were trapped. Now, we know the boat did not have enough life rafts for all the passengers, so we do not know how many would have survived, but if those gates had not been shut and locked and denied them passage to the upper decks, maybe a couple of them would have got away; maybe a couple of them would have lived. But the captain of the ship, because of his actions, prevented that from happening.

And we are taking an action tonight here that we are going to be remembered for. Do we want to be remembered for the actions of the captain of the ship, where we are taking and denying Pennsylvanians – the citizens who brought us here, who sent us here, at this people’s house – we are now taking away a significant right that they have had for hundreds and hundreds of years? Is that what we are going to be remembered for?

I do not think that is why we were sent here by the people, in this people’s chamber, and I do not think we want to be remembered. After all, everyone in this room is a descendant of an immigrant, and maybe some of us would have been the descendants of some of those immigrants had they survived that sinking and those gates not been locked.

And as I said before, Mr. Speaker, there has never been any attempt by any of the stakeholders to reach a compromise on this legislation, on this issue; no compromise. This is what they wanted. This is what they will probably get this evening.

I think this is such a serious issue that this warrants taking a step back; that this warrants sitting down with the stakeholders, sitting down with the business people, sitting down with the hospitals, sitting down with the insurance companies, the attorneys, and representatives of victims, and coming to an agreement to truly change the law and modify it; modernize it, if you will, but not overturn it, not throw it out, not completely turn it on its head with just a matter of a few hours of debate. That is wrong. It is a wrong process. It is wrong legislation. It is wrong for the people of this Commonwealth.

I ask for a “no” vote on concurrence in these amendments.

Thank you, Mr. Speaker.

THE SPEAKER PRO TEMPORE (PATRICIA H. VANCE) PRESIDING

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

Mr. COHEN. Thank you, Madam Speaker.

Mr. Turzai accurately said that, over time, the concept of joint and several liability has taken on a social welfare perspective. He did not say when this dramatic change took place. Somehow he forgot to mention that it took place in that great conservative era of Warren Harding, Calvin Coolidge, and Herbert Hoover. The consensus in the 1920s was so great that Herbert Hoover appointed to the U.S. Supreme Court Benjamin Cardozo, the Chief Justice of the New York Court of Appeals who was the leading exponent of this change.

The issue, Judge Cardozo wrote eloquently, is, how do we structure society so as to minimize harm to others? How do we give people incentives to behave in a responsible manner on behalf of others?

What message are we trying to send our citizens? Should we be trying to tell them that each Pennsylvanian, as Mr. Wansacz fears, has to annually pay to insure themselves and their dependents against every imaginable wrong committed by others? Is the message we want to send that the innocent must bear the costs of others’ wrongdoing in order to improve Pennsylvania’s business climate?

There is no perfect justice in the world. Some victims are more resilient than others. Two men may hit their spouses or girlfriends with identical force, but the one who causes her death will spend a lifetime in prison, while the one who only causes minor bruises will pay a much lesser penalty. The same is true in civil law.

Harming a very weak person – a so-called eggshell victim – creates a greater penalty than harming a victim who is less vulnerable.

Whatever the injustice is of a defendant causing 50 percent of the harm paying 100 percent of the costs, that injustice is far, far less than a 100-percent innocent victim getting reimbursed for 50 percent of the costs or less than 50 percent of the costs.

You do not see medical doctors campaigning for this bill. This bill means that medical doctors will do far more work for which they will not be paid. They may have to lay off employees.

You do not see hospital executives campaigning for this bill. This bill means that hospitals will do more work for which they will not be paid. They, too, may have to lay off more employees.

Whom are we here for? Are we here for innocent victims, or are we here to protect wrongdoers?

The question of what the percentage of fault is is inherently arbitrary, but the costs of victimization are real, and this bill means that many of the costs will not be met.

I strongly urge a “no” vote on concurrence in the interest of the innocent victims of Pennsylvania. Let us trust the Republican majorities of the Supreme Court and the Superior Court to responsibly apply the doctrines of joint and several liability.

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

Mr. THOMAS. Thank you, Madam Speaker.

Madam Speaker, as I said earlier, I rise to nonconcur on SB 1089.

Madam Speaker, I have heard the litany of businesses that support SB 1089. I have heard that SB 1089 is designed to reverse this climate of social welfare that can be gleaned from tort reform. Madam Speaker, I have heard that SB 1089 is really about providing jobs for many of our institutions. I think I have heard the alphabets of why SB 1089, but, Madam Speaker, in the alphabet discussion from A through Z, I have not heard about the innocent victims, nor have I heard about how this bill is going to improve the lives of so many people who are not in a position to provide a real defense to whether it be a product that injured them, whether it be a toxic waste environment, whether it be an occupational hazard. I have not heard how SB 1089 improves the circumstances of innocent victims.

And, Madam Speaker, until we draw a balance, until we strike a balance between those who are harmed and those who have to pay, then we have not really done anything about tort reform. All we have done is turned the clock back maybe 200 years.

Joint and several liability has been gleaned as the archangel of protection for those who are seriously injured through no fault of their own. Joint and several liability has been advanced not as a principle of justice but as a principle of protection. Joint and several liability has been advanced not as a principle of common law but actually a principle of statutory construction, brought on by real circumstances affecting real people. The principle of joint and several liability has basically been advanced to say to innocent victims that your relief will be shared by all of those who participated in your harm and especially by those who are in the best position to deal with the harm that you suffer.

Madam Speaker, we even heard a scenario about a lady who took a bus to Philadelphia County and got off the bus and was injured and subsequently sued the bus company, and we heard an analysis that it was wrong for her to sue the bus company without a discussion as to whether or not her fall or her injury was caused

by something that the bus did or did not do. We did not hear any of that discussion. So, Madam Speaker, that is how this whole dialogue has proceeded. We have heard about the economic pain on the person or institution that caused harm, but we have not heard about the necessary relief which must come to the injured victim.

So, Madam Speaker, I think that it would be wrong and we would turn the clock back if we supported SB 1089, and so I urge my colleagues on both sides of the aisle, on this day, at this hour, let us stand up for the people’s business, not the business of business but the people’s business; let us stand up for them. Let us say that joint and several liability has not been as problematic as it has been articulated.

Madam Speaker, I have not seen any evidence – documentary, testimonial, or circumstantial – to give rise to the fact that it is time to do away with joint and several liability. I have heard allegations, but I have not seen any credible facts.

And, Madam Speaker, I have even heard that pensioners, that Federal courts have original jurisdiction to hear matters involving pensioners or to hear matters involving other issues as it relates to State government. And, Madam Speaker, so I have even heard this evening that we are granting original jurisdiction to the Federal courts, and the Federal courts do not have original jurisdiction over some things that have not been preempted from State courts, but, Madam Speaker, many of the issues that we talked about this evening, there is concurrent jurisdiction in State courts. State courts always have, especially State appellate courts can always entertain writs of mandamus, which mandate that agencies of State government comply in a certain way. State courts are in a position to provide declaratory judgments on certain issues. So, Madam Speaker, I think it is wrong to say that SB 1089 forces you to go into certain courts and limits you from going into other courts.

Madam Speaker, it is time to be honest, to be straightforward, with the people of Pennsylvania. For the proponents of SB 1089, tell the people the truth. Do not cloud it. If it is what you want, be honest about it. But let us not allow allegations to become the foundation for reversing years, years of statutory construction and credible State law and credible case law.

And last but not least, Madam Speaker, let us deal with this issue of people are able to go into courts at will. Madam Speaker, for many of the people in this room, you know that in the absence of a case of controversy, you have no basis for filing a complaint in any State court. In the absence of some adversarial relationship, you have no basis for going into court. And if you happen to go into the good courts of Montgomery County, Delaware County, or Chester County, Madam Speaker, in those counties, as in many other counties, nobody is just filing frivolous lawsuits and getting their day in court. There is pretrial discovery. There is preinvestigation of complaints to make sure that before a complaint gets to the trial level or gets to a level where some form of relief is determined, Madam Speaker, our judges, the people that we put on the bench in these counties, are in a good position, and they are good people. So in and everybody is just not swarming the court system in the Commonwealth of Pennsylvania. In and everybody is not just bringing frivolous lawsuits and juries of providing awards to frivolous lawsuits.

Madam Speaker, our judicial system has not broken down yet. Our judicial system might require some intervention, but if you hear what has been said this evening, one would believe that everybody is just jumping up and running in and out of our courts

and getting all kinds of awards. That is not the reality.

So, Madam Speaker, in closing, once again I say for the proponents of so-called tort reform, be honest with the people not only that you represent but with the people of Pennsylvania. And for the opponents, for the opponents, for those who believe now is not the time nor do we have the circumstances that require this level of intrusion on the principles of joint and several liability, for those of you, like myself, who believe that now is not the time nor do we have these circumstances to justify this level of intrusion on a sound principle of law as joint and several liability, vote nonconcurrency; vote “no” on SB 1089. Thank you.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Lackawanna County, Mr. Wansacz.

Mr. WANSACZ. Thank you, Madam Speaker.

May I interrogate the maker of the bill, please?

The SPEAKER pro tempore. The gentleman, Mr. Turzai, agrees. You may proceed.

Mr. WANSACZ. Thank you.

This will be a very quick interrogation.

All I would like to know, would this legislation, if passed, would this legislation lead to higher insurance premiums?

Mr. TURZAI. No, I do not believe that it would lead to higher insurance premiums. I believe that it would lead to lower insurance premiums, and the reason being is that right now when a person or a business is buying their insurance policy, they are not only covering their own acts or behaviors that they can take protective steps to ensure, but in fact written, implicitly written into those premiums, is money set aside to cover the acts of other parties that they may have to cover as a result of joint and several liability. If you reduce, if you reduce that ability to go after a person for somebody else’s acts, if you take that premium out of that cost – and it is built into the cost structure; there is no doubt about it – then you will reduce that person’s insurance premiums. You are only paying insurance for your responsibility.

Mr. WANSACZ. Thank you, Madam Speaker.

I am done with interrogation. If I could, I would like to speak on final passage.

The SPEAKER pro tempore. You may proceed.

Mr. WANSACZ. There was a scenario presented to me that, quite frankly, offended me. You all saw the letter that states: If a person is out consuming beverages at a local establishment, goes out and gets in an accident and paralyzes a young woman, the local establishment was 30-percent wrong and the consuming customer was 70-percent wrong. The award, let us say, was for \$1 million. The 70-percent-wrong consuming customer has a \$15,000 policy; the 30-percent-wrong local establishment has a \$200,000 policy. Under this legislation the paralyzed victim will receive a combined \$75,000. However, there is a shining star in the sky. Let us call this foresight. The victim had a \$500,000 uninsured policy because she was paying a higher premium to cover herself for this dollar amount.

Now the question is, will every single intelligent person – let us call them the Democratic Party – realize they are going to have to start and cover more insurance? Let me think about this. Will the insurance company give me, the average person, the extra coverage in my insurance without an increase in my premiums? Maybe, just maybe. Why? Because just maybe the insurance industry may find a way to sell a new policy. People have life insurance, health-care coverage. Why not a no-fault insurance policy? This will eventually cost the average person either more in

premiums or more money out of their pocket for a different policy.

I ask, if this bill is supposed to help the middle guy, the average person, the hospitality establishment, will their insurance rates go down to what they were this year? The answer is no, and that side of the aisle proved that by voting to reduce the rates 20 percent just a little while ago. Now, will their auto insurance go up? If the people are smart and they protect themselves, yes.

Now, what if this victim was a 15-year-old girl? Who will make this girl whole again? The taxpayers of Pennsylvania. And I am sure we will see this as an opportunity to raise health-care costs, because the State has the ultimate responsibility of providing health-care payment to those injured who have no other options – uncompensated care.

In conclusion, Madam Speaker, we have heard a lot of good arguments here today. I have been undecided on this bill because I understand both sides of this issue. With my family being in the hospitality business, I thought long and hard about this. This idea is good. However, this bill is bad.

Madam Speaker, my family’s business insurance rates have doubled this past year with no suits against us. With the passage of this bill, will our premiums go down just like the doctors’ premiums did? I think not. And our health-care and our auto insurance premiums, will they go up? I believe so. Let me repeat this: This is a good idea, but it is a bad bill as written.

Madam Speaker, this is simple. Let me say it again: a simple “no” vote on raising, raising insurance premiums.

Thank you. I encourage a “no” vote.

The SPEAKER pro tempore. The Chair thanks the gentleman.

PARLIAMENTARY INQUIRY

The SPEAKER pro tempore. The Chair recognizes the gentleman from Lancaster County, Mr. Sturla.

Mr. STURLA. Thank you, Madam Speaker.

Madam Speaker, point of parliamentary inquiry.

The SPEAKER pro tempore. You may proceed.

Mr. STURLA. Thank you, Madam Speaker.

Madam Speaker, given that this is a bill, a Senate bill on concurrence in House amendments that were inserted in the Rules Committee, if we vote to not concur, where does this bill go? Does it go to conference committee? Does it go back to our Rules Committee? Where does it go?

The SPEAKER pro tempore. We would send a message back to the Senate that we have nonconcurrent in their amendments.

Mr. STURLA. And does it just—

The SPEAKER pro tempore. Cease just one moment, please.

Mr. STURLA. Madam Speaker, if I could, concurrently, I would like to know what happens, if we do concur, where it goes then also.

The SPEAKER pro tempore. The gentleman, Mr. Sturla, the answer to your question: If we nonconcur, it does not go back— You cannot hear me? If we nonconcur, it does not go back to the Senate and, most likely, would go to the Rules Committee. If we do concur, it does go to the Senate.

Mr. STURLA. Is there any specific place in the Senate where it has to go or is that up to the Senate to decide which committee it goes to? Does it go to their Rules Committee? Does it go to—

The SPEAKER pro tempore. The gentleman, Mr. Sturla, it would be up to the Senate pro tem where that would go in the Senate.

Mr. STURLA. Okay. So it does not go to the full Senate, unless—

The SPEAKER pro tempore. It is up to the Senate pro tem.

Mr. STURLA. It is up to the Senate pro tem to decide that.

If it goes to our Rules Committee, if we vote to nonconcur and it goes to our Rules Committee, can the Senate insist on a conference committee?

The SPEAKER pro tempore. No.

Mr. STURLA. No. Okay.

Thank you, Madam Speaker.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Berks County, Mr. Rohrer.

Mr. ROHRER. Thank you, Madam Speaker.

Madam Speaker, I really was not intending to rise earlier in the debate, but the more I listened, I think the more I thought that I had to express some comments.

Frankly, we have heard a lot of arguments tonight, and I know for those who have watched and for those who have sat here in this House tonight, we have heard a lot of things. I know from some counties in this State, from Luzerne and Beaver in particular and some others, we have heard a lot of arguments that really have not been true; they have not been accurate; they have been misleading; they have been scare tactics, and they are not true. To even assert that those who would support concurrence for this bill tonight would be in support of drunken drivers, for malicious abusers in our elder-care centers, for intentional doers of evil in some business somewhere across the State whose intent is to hurt people, I mean, if we would listen to these arguments, that is what one would think. Madam Speaker, that is the furthest thing from the truth.

I do not think there is any person sitting here on either side of this aisle tonight who is not concerned about innocent victims. I am concerned about innocent victims just as much as anybody else, and I think that is an argument, an assertion, that is just plain not fair and not accurate. But, you know, as we talk about these issues tonight, we have heard a lot about the potential victims, and I know we can all come up with these illustrations that are very, very hard to find, but we can concoct them and they sound really, really touching. In fact, they are, if they would occur like we have heard, and I am sensitive to those things as much as anybody else is.

You know, but, frankly, Madam Speaker, there is an entire class of people, victims, that we have not even talked about tonight that I think ought to be mentioned, and they are the victims, Madam Speaker, who exist under current law. You can say, well, who in the world are victims under current law? I think they are victims of people everybody in this room ought to be concerned about, and they are the people who have been adversely affected because as an employee of companies that have been improperly drug into the lawsuit arena, they have lost their jobs, and we have heard comment about, are there any people who have lost jobs? The answer is, absolutely yes, and I know a lot of them. I used to work in an industry where many people lost their jobs because they were improperly brought into this lawsuit arena where someone was hoping to get something for nothing that they did not deserve, and the companies could not exist, and the employees lost their jobs.

You know, those are people that vote for us; those are people who, frankly, try to work to put bread on their tables; they are people who are trying to raise their families; those are people who

are trying to maintain family-sustaining jobs, and yet they have been robbed of those dreams and those ambitions because of current law. No one has even talked about them tonight, and I find that highly conspicuous by its absence, I guess. In all of our concern about the potential, have we totally neglected the thousands across this State who are either underemployed or unemployed because of current law?

Madam Speaker, I suggest that tonight, as we are about ready to vote on this issue, that we consider those people, because they are real. If you go back home and you talk to your people in your districts, you will talk to those people. I have, and I am concerned for them, and we need to change the current system in this State. It is long overdue for a lot of reasons.

So I request that we all here tonight support concurrence of this most important bill. It is the right thing for the people of this State.

Thank you, Madam Speaker.

The SPEAKER pro tempore. We have a few more speakers, and it would help if we had some quiet in the hall of the House.

The gentleman, Mr. Pallone, waives off. We thank the gentleman.

The Chair recognizes the lady from Montgomery County, Ms. Bard.

Ms. BARD. Thank you, Madam Speaker.

Madam Speaker, I rise in response to statements in this debate that intimate that this legislation will be detrimental to the people of this Commonwealth. The reality is that we must enact tort reform if we are to protect our children and our elderly. Without this tort reform, we will see our hospital trauma centers close. Without this tort reform, we will see more jobs lost, not just the recent 250-person layoff at Jefferson. In reality, Madam Speaker, this is critical legislation for the protection of our residents in Pennsylvania.

Madam Speaker, how long can any business survive with skyrocketing liability insurance rates, experienced by Abington Hospital in Montgomery County over the past 3 years, increases from \$7 million to \$12 million to \$21 million per year for liability insurance? Where does it all end?

If we do not pass tort reform, there is no doubt in my mind that we will be responsible for the continued dismantling of our quality health-care system, and there is no question that if we continue to lose our hospital services and medical staff, people will be harmed, perhaps even die because of our inaction.

We are asked in this debate how this legislation will help innocent victims. I will give you an example. January 1, New Year's Eve of this year, four teens were seriously injured in an automobile accident, and they were rushed to the Abington Memorial Hospital in Montgomery County. They were extremely fortunate indeed, because for the second year in a row Abington had somehow managed to find a way to obtain medical liability insurance to keep that trauma center open into the new year. There were doctors at that trauma center New Year's Eve when those teens needed their services, and those teens may have received the difference in time in life-care services because that trauma center was open versus having to travel far away to another trauma center.

Madam Speaker, this is critical legislation, and we do need to pass tort reform now.

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

Mr. CLYMER. Thank you, Madam Speaker.

Madam Speaker, a number of members have already articulated on the health-care issue, an issue that I wanted to get into, and since they have done a magnificent job in explaining the health-care crisis we have in Pennsylvania and the need for us to concur in this legislation before us, my remarks are, let us get together and let us help the business community and the health-care industry and support this legislation.

Thank you, Madam Speaker.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Philadelphia County, Mr. James.

Mr. JAMES. Thank you, Madam Speaker.

Madam Speaker, may I question the maker of the motion? I just have one question.

The SPEAKER pro tempore. The gentleman, Mr. Turzai, agrees. You may proceed.

Mr. TURZAI. Yes.

Mr. JAMES. Madam Speaker, it is my understanding that under current law that— Well, you know, over some past few years we have had a number of church bombings, church fires in the black community, and that as a result of that, there were lawsuits, and because of the lawsuits, the actors, the actual people that were doing the bombings, did not have a lot of resources, but because of joint and several liability, the organizations which these negative or hate-crime perpetrators belonged to were sued and successfully were won. Now, it is my understanding that that was because of current law. Now, with this law, I mean, the way you want to change it, that would not have been possible or would not be possible in the future?

Mr. TURZAI. Madam Speaker, my understanding is that you are inquiring about a defendant that commits a church bombing. Under this statute a defendant who has committed a church bombing does not get the benefit of the modification of joint and several liability. The language that exempts intentional acts would exempt those defendants that committed church bombings. It would also exempt, given the laundry list that was presented earlier by Representative Blaum, crimes against women; it would also exempt terrorist acts. Thank you.

Mr. JAMES. Thank you.

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

Mr. TURZAI. I guess we are ready to roll, but this bill is about jobs.

The one last point is, who is this bill going to protect? Who is it for? Who do you think is absorbing the costs of defending? Who is absorbing the costs of inflated settlement grants and the costs of picking up costs for other defendants – higher insurance premiums, higher taxes, and higher costs of goods? It is consumers; it is jobs; USX employees; that is who is paying it.

The SPEAKER pro tempore. Could we please have order. Let the gentleman finish, please.

Mr. TURZAI. I would ask the body to support the bill.

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—117

Adolph	Feese	Maitland	Rubleby
Allen	Fichter	Major	Ruffing
Argall	Fleagle	Mann	Sather
Armstrong	Flick	Markosek	Saylor
Baker, J.	Forcier	Marsico	Scavello
Baker, M.	Frankel	Mayernik	Schroder
Bard	Gabig	McCall	Schuler
Barrar	Geist	McGill	Semmel
Bastian	Godshall	McIlhattan	Smith, B.
Benninghoff	Habay	McIlhinney	Smith, S. H.
Birmelin	Haluska	McNaughton	Stairs
Brooks	Hanna	Metcalfe	Steil
Browne	Harhart	Miller, R.	Stern
Bunt	Harper	Miller, S.	Stetler
Buxton	Hasay	Nailor	Stevenson, T.
Cappelli	Herman	Nickol	Strittmatter
Clymer	Hershey	Oliver	Sturla
Cohen, L. I.	Hess	Perzel	Taylor, E. Z.
Coleman	Hutchinson	Phillips	Taylor, J.
Cornell	Jadlowiec	Pickett	Trich
Corrigan	Kaiser	Pippy	Tulli
Coy	Kenney	Raymond	Turzai
Creighton	Lederer	Readshaw	Vance
Dally	Leh	Reinard	Watson
DiGirolamo	Levdansky	Rieger	Wilt
Diven	Lewis	Robinson	Wojnaroski
Donatucci	Lynch	Roebuck	Wright, M.
Egolf	Mackereth	Rohrer	Zimmerman
Evans, J.	Maher	Ross	Zug
Fairchild			

NAYS—78

Bebko-Jones	Eachus	Manderino	Solobay
Belardi	Evans, D.	McGeehan	Staback
Belfanti	Freeman	Melio	Steelman
Bishop	Gannon	Michlovic	Surra
Blaum	George	Micozzie	Thomas
Boyes	Gordner	Mundy	Tigue
Butkovitz	Grucela	Myers	Travaglio
Caltagirone	Gruitza	O'Brien	Trello
Casorio	Harhai	Pallone	Veon
Cawley	Hennessey	Petrarca	Vitali
Civera	Horsey	Petrone	Walko
Cohen, M.	James	Pistella	Wansacz
Colafella	Josephs	Roberts	Washington
Costa	Keller	Rooney	Waters
Cruz	Kirkland	Sainato	Williams, J.
Curry	Krebs	Samuelson	Wright, G.
Daley	Laughlin	Santoni	Yewcic
DeLuca	Lawless	Scrimenti	Youngblood
Dermody	Lescovitz	Shaner	Yudichak
DeWeese	Lucyk		

NOT VOTING—2

Clark	Dailey
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EXCUSED—5

LaGrotta	Stevenson, R.	Tangretti	Ryan, Speaker
Preston			

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.

**THE SPEAKER PRO TEMPORE
(BRETT FEESE) PRESIDING**

SENATE MESSAGE

HOUSE AMENDMENTS
CONCURRED IN BY SENATE

The clerk of the Senate, being introduced, informed that the Senate has concurred in the amendments made by the House of Representatives to **SB 1017, PN 1867**.

SENATE MESSAGE

HOUSE BILL
CONCURRED IN BY SENATE

The clerk of the Senate, being introduced, returned **HB 529, PN 572**, with information that the Senate has passed the same without amendment.

SENATE MESSAGE

AMENDED HOUSE BILLS RETURNED
FOR CONCURRENCE AND
REFERRED TO COMMITTEE ON RULES

The clerk of the Senate, being introduced, returned **HB 96, PN 3930**; and **HB 1546, PN 3866**, with information that the Senate has passed the same with amendment in which the concurrence of the House of Representatives is requested.

APPROPRIATIONS COMMITTEE MEETING

The SPEAKER pro tempore. For the information of the members, there will be a meeting of the Appropriations Committee at 10:45 a.m. tomorrow in the Appropriations conference room.

**BILLS SIGNED BY
SPEAKER PRO TEMPORE**

Bills numbered and entitled as follows having been prepared for presentation to the Governor, and the same being correct, the titles were publicly read as follows:

HB 529, PN 572

An Act amending the act of June 5, 1913 (P.L.419, No.276), entitled "An act to authorize the display of the State, county, city, borough, or other municipal flags on public buildings in the Commonwealth," providing for display of the Pennsylvania flag over memorials, caskets and at funerals of certain persons.

SB 369, PN 1998

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, authorizing police officers to record certain oral communications.

SB 769, PN 1843

An Act amending the act of June 24, 1931 (P.L.1206, No.331), known as The First Class Township Code, further providing for members of the civil service commission, for organization and a quorum of the commission and for compensation.

Whereupon, the Speaker pro tempore, in the presence of the House, signed the same.

VOTE CORRECTIONS

The SPEAKER pro tempore. The Chair recognizes the lady from Montgomery County, Mrs. Dailey.

Mrs. DAILEY. Thank you, Mr. Speaker.

On SB 1089 my switch malfunctioned. I wanted it to be in the "yes" column. Thank you.

The SPEAKER pro tempore. The lady's remarks will be spread across the record.

The Chair recognizes the gentleman, Mr. Thomas.

Mr. THOMAS. Thank you, Mr. Speaker.

Mr. Speaker, my switch malfunctioned on the final vote for I believe it was 1034. I would like to be recorded in the affirmative rather than the negative.

The SPEAKER pro tempore. That would be SB 1089, Mr. Thomas?

Mr. THOMAS. No; 1034.

The SPEAKER pro tempore. 1034.

Mr. THOMAS. HB 1034.

The SPEAKER pro tempore. HB 1034. The gentleman's remarks will be spread upon the record.

The Chair recognizes the gentleman, Mr. Yudichak.

Mr. YUDICHAK. Thank you, Mr. Speaker.

I would like to correct the record on HB 1034, amendment 2616. I would like to be reflected in the negative.

The SPEAKER pro tempore. The gentleman's remarks will be spread upon the record.

The Chair recognizes the gentleman, Mr. Santoni.

Mr. SANTONI. Thank you, Mr. Speaker.

To correct the record.

On the motion to suspend the rules, SB 1089, amendment 3049, my button malfunctioned. I would like to be recorded in the affirmative.

The SPEAKER pro tempore. The gentleman's remarks will be spread upon the record.

Are there any other corrections of the record?

The Chair recognizes the gentleman, Mr. Clark.

Mr. CLARK. Mr. Speaker, on that last vote, on concurrence in the amendments to the Senate bill, my switch malfunctioned, and I would like it if you would record me in the affirmative. Thank you.

The SPEAKER pro tempore. The gentleman's remarks will be spread upon the record.

Are there any other corrections of the record? Any other business to come before the House?

STATEMENT BY MR. MICHLOVIC

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

Mr. MICHLOVIC. Thank you, Mr. Speaker.

I would like to make a comment with concurrence of the members of the floor.

The SPEAKER pro tempore. On unanimous consent?

Mr. MICHLOVIC. Unanimous consent.

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

Mr. MICHLOVIC. Thank you, Mr. Speaker.

Mr. Speaker, over this past weekend, another storm hit western Pennsylvania. We are still determining whether it was a tornado or not, but unfortunately, it took one life and placed several other people in the hospital, and it caused millions of dollars' worth of damage. Today teams are out all over western Pennsylvania, particularly in Allegheny County, trying to determine what damages were made to various people's property, and the newspapers are reporting that they are doing this for the purpose of getting State and Federal help. Well, I know they may get Federal help if they get the right count, but there is no money for them to get State help.

We are still without a disaster assistance fund, and I will leave this chamber this year long before we are able to establish such a fund. But there is still a desperate need, and we will have, if history serves correctly, as it has in the last several years, we will have more storms and more damage to families and businesses all over this Commonwealth, and they will need our help, and they will not have our help unless we establish that disaster fund.

So I appeal to my colleagues that are still here to remember this: It is going to hit their district someday, and they are going to need that help. We need to establish a small disaster assistance fund so in circumstances like these, our constituents can get help.

I thank the Speaker and the members of the House for the opportunity to make these comments. Thank you.

The SPEAKER pro tempore. The Chair thanks the gentleman.

BILLS PASSED OVER

The SPEAKER pro tempore. Without objection, all remaining bills on today's calendar will be passed over. The Chair hears no objection.

ADJOURNMENT

The SPEAKER pro tempore. Any further corrections of the record?

Hearing none, the Chair recognizes the lady from Montgomery, Ms. Harper.

Ms. HARPER. Mr. Speaker, I move that this House do now adjourn until Wednesday, June 5, 2002, at 11 a.m., e.d.t., unless sooner recalled by the Speaker.

On the question,

Will the House agree to the motion?

Motion was agreed to, and at 7:55 p.m., e.d.t., the House adjourned.