

Legislative Journal

MONDAY, JUNE 26, 1978

Session of 1978

162nd of the General Assembly

Vol. 1, No. 39

SENATE

MONDAY, June 26, 1978.

The Senate met at 1:00 p.m., Eastern Daylight Saving Time.

The PRESIDENT (Lieutenant Governor Ernest P. Kline) in the Chair.

PRAYER

The Chaplain, The Reverend STEPHEN E. MARTIN, Director of Youth Ministries, Trinity Lutheran Church, Camp Hill, offered the following prayer:

Dear Heavenly Father, we give You thanks for this day and for the many blessings You have given us. We thank Thee for this Senate and that Thou has established in our midst lawmaking powers dedicated to the upholding of order and liberty.

I beseech Thee, bless and preserve our form of government in State and Nation. Grant that our Legislators may be ever mindful of the welfare of all their constituents. Grant that they be guided to serve unselfishly the common good of the people. Protect, I beseech Thee, those liberties of rule by representation which are the cornerstone of our government.

Teach us, as citizens, the grace to use our freedom and, as Christians, to proclaim Thy word and to use each and every opportunity to serve our fellowman.

May we give proof of our gratitude in seeking the welfare of our State and using our privileges of ballot and freedom of press and speech for the improvement of our own community and of our entire Nation.

These blessings grant us, Dear Lord, in the Name and for the sake of Thy Son Jesus Christ our Lord. Amen.

The PRESIDENT. The Chair thanks Reverend Martin who is the guest this week of Senator Hopper.

JOURNAL APPROVED

The PRESIDENT. A quorum of the Senate being present, the Clerk will read the Journal of the preceding Session.

The Clerk proceeded to read the Journal of the preceding Session, when, on motion of Senator MESSINGER, further reading was dispensed with, and the Journal was approved.

COMMUNICATIONS FROM THE GOVERNOR

APPROVAL OF SENATE BILLS

The Secretary to the Governor being introduced, presented communications in writing from His Excellency, the Governor,

advising that the following Senate Bills had been approved and signed by the Governor:

SB 189, 192, 197, 521, 586, 647, 704, 964, 967, 1212, 1364, 1369, 1466, 1467, 1468, 1469, 1470 and 1475.

NOMINATIONS BY THE GOVERNOR REFERRED TO COMMITTEE

He also presented communications in writing from His Excellency, the Governor of the Commonwealth, which were read as follows, and referred to the Committee on Rules and Executive Nominations:

MEMBER OF THE BOARD OF TRUSTEES OF CALIFORNIA STATE COLLEGE

June 22, 1978.

To the Honorable, the Senate of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate Thomas Philip Stout, Box 317 F, R. D. 2, Washington 15301, Washington County, Forty-sixth Senatorial District for appointment as a member of the Board of Trustees of California State College, to serve until the third Tuesday of January 1983, and until his successor is appointed and qualified, vice Samuel R. Morosco, Washington, resigned.

MILTON J. SHAPP.

DISTRICT JUSTICE OF THE PEACE

June 22, 1978.

To the Honorable, the Senate of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate Thomas J. O'Neill, Esquire, 2279 Country Club Drive, Upper St. Clair 15241, Allegheny County, Thirty-seventh Senatorial District, for appointment as District Justice of the Peace in and for the County of Allegheny, Class 4, District 06, to serve until the first Monday of January, 1980, vice William J. Ruano, Esquire, Pittsburgh, retired.

MILTON J. SHAPP.

DISTRICT JUSTICE OF THE PEACE

June 22, 1978.

To the Honorable, the Senate of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate John DeFilippo, 140 West College Street, Canonsburg 15317, Washington County, Forty-sixth Senatorial District, for appointment as District Justice of the Peace in and for the County of Washington, Class 2, District 01, to serve until the first Monday of January, 1980,

vice Norbert K. Lesniakowski, Canonsburg, deceased.

MILTON J. SHAPP.

JUDGE, COURT OF COMMON PLEAS, BEAVER COUNTY

June 23, 1978.

To the Honorable, the Senate of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate Thomas C. Mannix, Esquire, 426 Fifth Street, Patterson Heights, Beaver Falls 15010, Beaver County, Forty-seventh Senatorial District, for appointment as Judge of the Court of Common Pleas of the Thirty-sixth Judicial District of Pennsylvania, composed of the County of Beaver, to serve until the first Monday of January, 1980, vice Honorable H. Beryl Klein, Aliquippa, resigned.

MILTON J. SHAPP.

JUDGE, COURT OF COMMON PLEAS,
CRAWFORD COUNTY

June 23, 1978.

To the Honorable, the Senate of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate Robert L. Walker, Esquire, 200 Beach Street, Linesville 16424, Crawford County, Fiftieth Senatorial District, for appointment as Judge of the Court of Common Pleas of the Thirtieth Judicial District of Pennsylvania, composed of the County of Crawford, to serve until the first Monday of January, 1980, vice Honorable F. Joseph Thomas, Mandatory Retirement.

MILTON J. SHAPP.

JUDGE, COURT OF COMMON PLEAS,
WASHINGTON COUNTY

June 23, 1978.

To the Honorable, the Senate of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate Samuel L. Rodgers, Esquire, 101 Sherwood Drive, McMurray 15317, Washington County, Forty-sixth Senatorial District, for appointment as Judge of the Court of Common Pleas of the Twenty-seventh Judicial District of Pennsylvania, composed of the County of Washington, to serve until the first Monday of January, 1980, vice Honorable Paul A. Simmons, Monongahela, resigned.

MILTON J. SHAPP.

MEMBER OF THE BOARD OF TRUSTEES OF
SCOTLAND SCHOOL FOR VETERANS' CHILDREN

June 23, 1978.

To the Honorable, the Senate of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate Mrs. Malvina Dickerson, 2125 Reed Street, Philadelphia 19146, Philadelphia County, Second Senatorial District, for appointment as a member of the Board of Trustees of Scotland School for Veterans' Children, to serve until the third Tuesday of January 1983, and until her successor is appointed and qualified, vice Doctor Ruth Miller Steese, Mifflinburg, resigned.

MILTON J. SHAPP.

HOUSE MESSAGES

HOUSE BILLS FOR CONCURRENCE

The Clerk of the House of Representatives being introduced, presented for concurrence **HB 2513**, which was referred to the Committee on Appropriations.

He also presented for concurrence **HB 2309**, which was referred to the Committee on Consumer Affairs.

He also presented for concurrence **HB 2160**, which was referred to the Committee on Finance.

He also presented for concurrence **HB 1521, 1523, 1657, 2007, 2220 and 2230**, which were referred to the Committee on Judiciary.

He also presented for concurrence **HB 674, 2314, 2488, 2489 and 2490**, which were referred to the Committee on Local Government.

He also presented for concurrence **HB 500**, which was referred to the Committee on Public Health and Welfare.

HOUSE NONCONCURS IN SENATE AMENDMENTS TO HOUSE BILLS

He also informed the Senate that the House has nonconcurrred in amendments made by the Senate to **HB 1851 and 1858**.

The PRESIDENT. The bills will be placed on the Calendar.

SENATE BILLS RETURNED WITH AMENDMENTS

He also returned to the Senate **SB 202, 825 and 1137**, with the information that the House has passed the same with amendments in which the concurrence of the Senate is requested.

The PRESIDENT. The bills, as amended, will be placed on the Calendar.

HOUSE ADOPTS REPORT OF COMMITTEE OF CONFERENCE

He also informed the Senate that the House has adopted Report of Committee of Conference on **SB 1204**.

HOUSE CONCURS IN SENATE BILLS

He also returned to the Senate **SB 1221 and 1471**, with the information that the House has passed the same without amendments.

HOUSE CONCURS IN SENATE AMENDMENTS TO HOUSE BILLS

He also informed the Senate that the House has concurred in amendments made by the Senate to **HB 1205, 1572, 2115, 2514 and 2515**.

BILLS SIGNED

The President (Lieutenant Governor Ernest P. Kline) in the presence of the Senate signed the following bills:

SB 1204, 1221, 1471, HB 470, 664, 858, 1187, 1205, 1572, 1684, 1685, 1823, 1838, 1888, 2115, 2292, 2454, 2514, 2515, 2518 and 2528.

ANNOUNCEMENTS BY THE SECRETARY

The SECRETARY. The Majority and Minority Leaders have given permission to the following committees to meet during today's Session:

The Committee on Public Health and Welfare to consider Senate Bill No. 1538, House Bill No. 1937 and House Bill No. 2343.

The Committee on Public Health and Welfare to consider House Bill No. 276.

The Committee on Appropriations to consider House Bill No. 2277 and House Bill No. 2554.

These committees will meet sometime during today's Session.

BILLS INTRODUCED AND REFERRED

Senators HANKINS, SMITH, ARLENE, McKINNEY, ORLANDO, FUMO and ROMANELLI presented to the Chair SB 1567, entitled:

An Act providing for and regulating jai alai with pari-mutuel wagering on the results thereof; creating the State Jai Alai Commission as a departmental administrative commission within the Department of Revenue and defining its powers and duties; providing for the establishment and operation of frontons subject to local option; imposing taxes on revenues of such plants; disposing of all moneys received by the commission and all moneys collected from the taxes; establishing the State Jai Alai Fund; authorizing penalties; and making appropriations.

Which was committed to the Committee on Law and Justice.

Senators HAGER, STAUFFER, DWYER, KUSSE, HOPPER, DOUGHERTY, GEKAS, CORMAN and MOORE presented to the Chair SB 1568, entitled:

An Act relating to legislative review of regulations.

Which was committed to the Committee on State Government.

Senators DWYER, ROSS and ANDREWS presented to the Chair SB 1569, entitled:

An Act providing for the conduct of a study to determine the feasibility of making the unfinished portions of the Beaver Valley Expressway a toll road.

Which was committed to the Committee on Transportation.

Senator NOLAN presented to the Chair SB 1570, entitled:

An Act amending the act of April 9, 1929 (P. L. 177, No. 175), entitled "The Administrative Code of 1929," transferring the senior citizens lottery administration to the Department of Aging.

Which was committed to the Committee on Aging and Youth.

SENATE CONCURRENT RESOLUTION**RECESS ADJOURNMENT**

Senator MESSINGER offered the following resolution, which was read, considered and adopted:

In the Senate, June 26, 1978.

RESOLVED, (the House of Representatives concurring), That

when the Senate adjourns this week it reconvene on Monday, September 11, 1978 unless sooner recalled by the President Pro Tempore, and when the House of Representatives adjourns this week it reconvene on Monday, September 11, 1978 unless sooner recalled by the Speaker of the House of Representatives.

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

RECESS

Senator MESSINGER. Mr. President, I request a recess of the Senate until 4:00 p.m., for the purpose of holding a Democratic caucus and a Republican caucus.

The PRESIDENT. Are there any objections? The Chair hears no objection, and declares a recess of the Senate until 4:00 p.m., Eastern Daylight Saving Time.

AFTER RECESS

The PRESIDENT. The time of recess having elapsed, the Senate will be in order.

HOUSE MESSAGES**HOUSE CONCURS IN SENATE BILLS**

The Clerk of the House of Representatives being introduced, returned to the Senate SB 283, 352, 1492 and 1499, with the information that the House has passed the same without amendments.

BILLS SIGNED

The President (Lieutenant Governor Ernest P. Kline) in the presence of the Senate signed the following bills:

SB 283, 352, 1492 and 1499.

**COMMITTEE OF CONFERENCE APPOINTED
ON HB 1860**

The PRESIDENT. The Chair announces, on behalf of the President pro tempore, the appointment of Senators LEWIS, SCHAEFER and JUBELIRER, as a Committee of Conference on the part of the Senate to confer with a similar committee of the House (if the House shall appoint such committee) to consider the differences existing between the two houses in relation to House Bill No. 1860.

Ordered, That the Clerk inform the House of Representatives accordingly.

CALENDAR**REPORTS OF COMMITTEES OF CONFERENCE****REPORT REJECTED**

SB 522 (Pr. No. 2035) — Senator MESSINGER. Mr. President, I move that the Senate adopt the Report of Committee of Conference on Senate Bill No. 522, entitled:

An Act amending the act of April 9, 1929 (P. L. 177, No.

175), entitled "The Administrative Code of 1929," further providing for powers and duties of the Secretary of Transportation as to real property.

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

POINT OF ORDER

Senator STAPLETON. Mr. President, I rise to a point of order.

The PRESIDENT. The gentleman from Indiana, Senator Stapleton, will state it.

Senator STAPLETON. Mr. President, is the Conference Report debatable?

The PRESIDENT. It is debatable, Senator, just as a bill and you may proceed.

Senator STAPLETON. Mr. President, I ask the Members not to adopt this Conference Report. I will move later to recommit this bill to the Committee of Conference. I do not believe that PennDOT should be allowed to sell property without the authority of the General Assembly. That is just one aspect of the Conference Report which I cannot accept.

I believe this report should be recommitted to the Committee of Conference where we can work out some of the corrective amendments to it. There are many other facets in the Conference Report which many of us do not believe should be there.

I would also like to mention that the Department of Agriculture, the Pennsylvania Farmers' Association and the Pennsylvania State Grange do not agree with the Conference Report as it is.

Mr. President, I would ask support from the Members in not accepting this Report of the Committee of Conference as it now stands.

The PRESIDENT. We will be at ease for just a minute.
(The Senate was at ease).

The PRESIDENT. Senator Stapleton, did I understand you to move that this bill be returned to the Committee of Conference?

Senator STAPLETON. No, Mr. President.

POINT OF ORDER

Senator BELL. Mr. President, I rise to a point of order.

The PRESIDENT. The gentleman from Delaware, Senator Bell, will state it.

Senator BELL. Mr. President, is the motion to return the bill to the Committee of Conference debatable?

The PRESIDENT. Senator, it would not be debatable, but it would be in order.

Senator BELL. Mr. President, I am suggesting it would be very unwise to send this bill back to the Committee of Conference. I see the names of the conferees; they are all very capable people. I know they have done a good job and furthermore, it is a good bill.

Mr. President, it was my understanding that the motion was to send the bill back to the Committee of Conference.

The PRESIDENT. That was not the motion, Senator. I clearly asked Senator Stapleton if he made that motion; he said he did not.

Senator BELL. Mr. President, is the bill now fully debatable?

The PRESIDENT. Indeed it is, Senator.

Senator BELL. Mr. President, I am speaking now in favor of the bill.

The PRESIDENT. I thought you had already done that, Senator, but you may proceed.

Senator BELL. No, Mr. President. I misunderstood what was happening on the floor.

Mr. President, I speak in favor of this bill. Number one, in my area there are many small pieces of land which are owned by PennDOT. The only reason they have not been sold is because they do not want the harassment of running a special bill through the Legislature. This bill would permit the sale of those parcels of land to the highest bidder at public auction. I believe that is good government.

Number two, I feel when PennDOT condemns land, they should condemn it in fee simple. The present practice is to condemn land and give a full property value and only get an easement. Then, for some reason, if that road is abandoned, the original owner gets the land back. He has the price of the land in his pocket; he has the land; and that is a ripoff of the Commonwealth.

This is a good bill; it is good legislation.

Senator ZEMPRELLI. Mr. President, we had a long discussion about the merits of this bill. There is no question that the bill, in spirit, is a good bill.

However, I would call the attention of the Senate to some serious defects in the bill relating to the redemption aspect. The section dealing with redemption suggests that once the property has been condemned and the purpose has been abandoned, the Department must then send a letter within 120 days. This, of course, presumes that the person who was the condemnee in the first place was both alive at the time of the condemnation and alive at the time they decided they were going to have an abandonment.

In many situations where I represented the condemnor as counsel, we were not sure where the title of the property was. The owner was dead; it may have been in the hands of a number of people who were not even aware of the fact that they had an ownership. I could go on and on.

I query, as was suggested to me in caucus by one Member—and I believe it is a good point—suppose the property descended to six different people and a notice has been sent out that they have the right to redeem. Five do not want to and one does. What interest does he acquire, a sixth, a fifth, a fourth or does he have a right to the entire fee?

So, in passing this bill, I think the Senate probably should pass this bill in the sense that there is an emergency here which needs to be dealt with, but the overall picture is that the bill, in terms of the redemption aspect, is totally defective and wholly unworkable. I would hope, when we return in the fall, we would give some serious thought to setting up the mechanics of how the redemption can be worked, what the notices should be and the proper procedures. I see these actions in court, Mr. President. They are just totally and wholly insufficient.

That is why I am reluctantly voting for the bill. I did not want anyone to think I was totally out of my mind when I vote for a bill which has such inadequate provisions in it.

Senator MANBECK. Mr. President, I am one of the signers

of the Conference Report and I, personally, thought I understood the bill. However, as the matter stands today, I have a commitment to the people of the Forty-eighth Senatorial District, the majority of the people that is. During the several days that have elapsed since the report was signed by me, I have been contacted by a number of people who are greatly concerned about the fee simple part of the bill and they have requested that I vote against the bill.

In compliance with my obligation to my constituents, I will be voting "no."

And the question recurring,
Will the Senate agree to the motion?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—17

Arlene,	McCormack,	Noszka,	Smith,
Bell,	McKinney,	Romanelli,	Stauffer,
Coppersmith,	Messinger,	Ross,	Sweeney,
Duffield,	Murray,	Scanlon,	Zemprelli,
Lynch,			

NAYS—31

Andrews,	Hager,	Kusse,	Reibman,
Corman,	Hankins,	Lewis,	Schaefer,
Dougherty,	Hess,	Manbeck,	Snyder,
Dwyer,	Holl,	Mellow,	Stapleton,
Early,	Hopper,	Moore,	Stout,
Fumo,	Howard,	Nolan,	Tilghman,
Gekas,	Jubelirer,	O'Pake,	Wood,
Gurzenda,	Kelley,	Orlando,	

Less than a majority of all the Senators having voted "aye," the question was determined in the negative.

RECONSIDERATION OF REPORT OF COMMITTEE OF CONFERENCE ON SB 522

REPORT RECOMMITTED TO COMMITTEE OF CONFERENCE

SB 522 (Pr. No. 2035) — Senator MESSINGER. Mr. President, I move that the Senate do now reconsider the vote by which the Report of the Committee of Conference on Senate Bill No. 522, Printer's No. 2035, was rejected.

Senator SCANLON. Mr. President, I second the motion.

The motion was agreed to.

And the question recurring,
Will the Senate adopt the Report of the Committee of Conference?

Senator MESSINGER. Mr. President, I move that the Report of the Committee of Conference on Senate Bill No. 522 be re-committed to the Committee of Conference.

The motion was agreed to.

REPORT ADOPTED

SB 1233 (Pr. No. 2034) — Senator MESSINGER. Mr. President, I move that the Senate adopt the Report of Committee of

Conference on Senate Bill No. 1233, entitled:

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes further providing for the imposition of sentences for murder.

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

Senator O'PAKE. Mr. President, for almost seven months now the State of Pennsylvania has been without a death penalty statute as a result of our State Supreme Court decision in the Moody case.

I have prepared an analysis of the bill, together with the legislative history, to be admitted into the record so that in the event this statute is appealed to the State Supreme Court and/or the United States Supreme Court the legislative history will be clear.

Very briefly, what this does is provide a separate sentencing hearing which would be separate from the trial on the question of guilt or innocence. It provides a carefully drawn and limited list of aggravating circumstances, ten in number, that must be considered by the sentencing authority, the jury, when deciding the appropriate penalty.

It permits the sentencing authority to consider a wide range of mitigating circumstances that could offset the presence of any of the ten aggravating circumstances, especially in light of the Moody case; the specific requirement that the mitigating circumstances permit the jury to focus on the character and record of the defendant.

Finally, Mr. President, the statute provides for a meaningful appellate review of any sentence of death based on standards which preclude an arbitrary or capricious sentence of death.

It is the recommendation of our Committee of Conference that we adopt this report. I invite my colleagues to join now in passing this statute to avoid any further delay so that it may serve as a deterrent to those who would commit senseless acts of killing innocent victims if such a statute were not on the books.

Mr. President, I submit the entire remarks for the record.

The PRESIDENT. The gentleman's remarks will be included in the record.

(The following prepared statement was made a part of the record at the request of the gentleman from Berks, Senator O'PAKE:)

I rise to speak in favor of the report of the Committee of Conference on Senate Bill 1233 and to set forth for this legislative record the reasoning underlying the concepts and language contained in the report.

I offer these remarks, Mr. President, to my colleagues here in the Senate who will have to vote on this serious matter today. But, perhaps more importantly, I offer these remarks for the benefit of those who will one day soon be asked to sit in judgment of the constitutionality of this statute now before us.

The past six years since the landmark United States Supreme Court decision of *Furman v. Georgia* have been marked by legislative attempts here and elsewhere to draft capital punishment laws which would reflect the will of the people, yet withstand constitutional scrutiny. Many of these efforts have been frustrated by an inability to successfully anticipate the actions of this nation's high court and our own Supreme Court.

As you know, Mr. President, our attempt of 1974 to restore capital punishment to Pennsylvania just recently was struck

down by the Pennsylvania Supreme Court.

Despite these recent frustrations and our uneasiness with the constant shifting by the United States Supreme Court, it does seem that a pattern has emerged from recent decisions which will lead us on the path to a constitutional death penalty law.

In a series of five decisions handed down in 1976, the United States Supreme Court established essential standards that a death penalty must meet. There appear to be five of these standards, Mr. President, and they are as follows:

1) The statute cannot impose a mandatory sentence of death. This is no problem in Pennsylvania, Mr. President, since Pennsylvania has not had a mandatory sentence of death since 1925.

2) The state must provide for a bifurcated trial, with the sentencing hearing separated from the trial on guilt or innocence.

3) The law must contain a carefully drawn and limited list of aggravating circumstances that must be considered by the sentencing authority when deciding the appropriate penalty.

4) The law must allow the sentencing authority to consider a wide range of mitigating circumstances that could offset the presence of any aggravating circumstances. Such mitigating circumstances must include ones that focus on the character and record of the defendant.

5) Finally, Mr. President, the statute must allow for meaningful appellate review of any sentence of death, based on standards which preclude an arbitrary or capricious sentence of death.

Pennsylvania's death penalty was struck down by our State Supreme Court on the fourth ground—the one requiring consideration of a wide range of mitigating circumstances including the character and record of the defendant. However, Mr. President, let me hasten to point out that our State Supreme Court in that case—the *Moody* case—did not speak to the other standards just mentioned either because the court specifically reserved decision on these matters or because the court simply failed to reach these issues.

Nevertheless, Mr. President, any capital punishment bill that passes this General Assembly must be prepared for review by both the United States and Pennsylvania Supreme Courts and must take into account all the constitutional standards articulated a few moments ago.

The report before you, I respectfully submit, does that and appears to meet the presently expressed constitutional requirements.

Let me give you a brief analysis of the proposed statute as unanimously agreed to by the conference committee.

As redrafted, Section 1311 sets out the general procedure for the first degree murder sentencing in an orderly, chronological fashion.

The first subsection, dealing with procedure in jury trials and beginning at the top of page 5, establishes the required bifurcated hearing procedure and establishes that the trial jury is the sentencing authority responsible for actually deciding whether a defendant convicted of a first degree murder will suffer death or life imprisonment. Failure of the jury to unanimously agree on a sentence will result in the imposition of a life sentence by the court.

Subsection (b) deals with non-jury trials and guilty pleas and provides in such cases that a jury shall be impaneled for the sentencing. However, if the defendant waives such a jury, the trial judge shall determine the sentence, considering the same aggravating and mitigating guidelines as the jury would have.

The rationale for requiring jury sentencing where at all possible in death penalty cases is found in the 1976 case of *Gregg v. Georgia*, which held Georgia's statute constitutional. Justice Stewart emphasized that jury participation provides a desirable "link between contemporary community values and the penal system." Although jury sentencing is not essential to constitutionality, Mr. President, it is clear the United States Supreme Court looks with favor on it.

Subsection (c), beginning at the bottom of page 5, provides a separate subsection on the trial court's instructions to the jury to highlight the importance of this procedure and to collect in one place the principal issues that confront the jury during their deliberations. To avoid errors, omissions and the possibility of reversal, the statute contains carefully drafted language on the responsibility of the trial court to properly charge the sentencing jury.

The purpose of paragraphs numbered (1) and (2) under "Instructions to Jury" is self-evident. It is clearly necessary that the court instruct the jury as to those aggravating and mitigating circumstances that are relevant. The specific limit placed on the court is to instruct *only* with regard to those aggravating and mitigating circumstances as to which there is some evidence. The purpose behind this limitation is to avoid a possibility of misleading and confusing the jury and thus prevent jury speculation as to those aggravating and mitigating circumstances for which there is no evidence. This limitation is derived from Georgia law.

The burden of proof on aggravating and mitigating circumstances also is established by this section. Aggravating circumstances must be proved beyond a reasonable doubt; mitigating must be proved by the defendant by a preponderance of the evidence.

The Florida "weighing" concept is incorporated here but we distinguish our law from Florida's by making the jury decide the sentence and requiring a unanimous verdict by the jury. In Florida, the jury only recommends and may so recommend by a majority vote. Of approximately twenty states which have rewritten their death penalties since 1976, fifteen or more have introduced the concept of weighing the aggravating against the mitigating circumstances.

Clause (iv) on page 6 is of critical importance because it directs the jury to impose the death sentence only if it "finds at least one aggravating circumstance specified in subsection (d) and no mitigating circumstances or if the jury unanimously finds one or more aggravating circumstances which outweigh any mitigating circumstances. In all other cases, the sentence must be life imprisonment.

Subsection (d) on page 6, specifies the aggravating circumstances, at least one of which must be found in order to impose the death sentence. In the 1976 case dealing with the Georgia statute—*Gregg v. Georgia*—the Supreme Court interpreted *Furman* to require that where discretion is afforded to a sentencing body that "discretion must be suitably directed and limited so as to minimize the risk of wholly arbitrary and capricious action." With respect to aggravating circumstances, *Gregg* mandates an enumerated list of clearly defined circumstances. The Pennsylvania Supreme Court, interpreting *Gregg* and its companion cases, has clearly held that "in order to protect a defendant from cruel and unusual punishment in a capital case, it is now necessary . . . that the aggravating circumstances that would justify the imposition of the death penalty be clearly defined for the sentencing authority."

Mr. President, we have retained the list of nine aggravating circumstances found in Pennsylvania's prior law, clarifying one of them, and adding a new one.

The new one is No. 9 found on page 7, Mr. President, "The defendant has a significant history of felony convictions involving the use or threat of violence to the person." It was felt by the conference committee that a murderer who has previously committed a number of violent crimes—such as rape—and been convicted of them—has the kind of record that should be considered an aggravating circumstance and that such a person should be subject to the death penalty. This wording is contained in a number of other state statutes.

Subsection (e) enumerates seven specific mitigating circumstances and one open-ended mitigating circumstance which are available for jury consideration. The seven enumerated circumstances which I will discuss in more detail, are specified and thus perform the function of alerting defendant's counsel to their availability. The inclusion of subsection (8) on page 8—the openended one—insures that constitutionality of the section by clearly allowing consideration of the entire character and record of the defendant. *Moody* has made clear that "it is now necessary . . . that the sentencing authority be allowed to consider whatever mitigating evidence relevant to his character and record the defendant can present." Mitigating circumstances shall include the following:

1) The defendant has no significant history of prior criminal convictions.

2) The defendant was under the influence of extreme mental or emotional disturbance.

3) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements

of law was substantially impaired.

4) The age of the defendant at the time of the crime.
5) The defendant acted under extreme duress, although not such duress as to constitute a defense to prosecution under section 309 (related to duress), or acted under the substantial domination of another person.

6) The victim was a participant in the defendant's homicidal conduct and consented to the homicidal acts.

7) The defendant's participation in the homicidal act was relatively minor.

8) Any other evidence of mitigation concerning the character and record of the defendant and the circumstances of his offense.

Subsection (f) on page 8 of the report, requires that the jury "set forth in such form as designated by the court the findings upon which the sentence is based." This procedure is derived from Georgia law. The idea here is to obtain something from the jury clarifying why they gave the death sentence which can be forwarded to the Pennsylvania Supreme Court for meaningful review. The conference committee felt the trial judge would be in the best position to determine the form these jury findings should take.

Subsection (g) clarifies and emphasizes that the jury is the sentencing authority. If the jury unanimously agrees upon a sentence, the court must impose upon the defendant that sentence fixed by the jury.

Finally, Mr. President, subsection (h) mandates that the Supreme Court of Pennsylvania review each sentence of death. It provides that the Supreme Court shall affirm the sentence of death unless it determines that:

- 1) The sentence of death was the product of passion, prejudice or any other arbitrary factor; or
- 2) The evidence fails to support the finding of an aggravating circumstance specified in subsection (d); or
- 3) The sentence of death is excessive or disproportionate to the penalty imposed in similar cases considering both the circumstances of the crime and the character and record of the defendant.

This review procedure is modeled after the Georgia statute, which, I mentioned, was held constitutional by the United States Supreme Court. Moreover, the high court emphasized their approval of this particular review procedure.

May I say, Mr. President, that the report before you, in the opinion of the Committee of Conference, contains a constitutional capital punishment law based upon the court decisions as we know them today. It is important too, Mr. President, to note that it is a fair law.

Comprehensive guidelines are given to the jury and the jury must unanimously agree on their findings, or no death penalty is given.

I know the conference committee joins me in expressing hope that the statute before you will not be used often in the future. However, let me invite my colleagues to join me in passing this statute so that it may serve as a deterrent to those who would commit senseless killings if such a statute were not on the books.

And the question recurring,
Will the Senate agree to the motion?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—42

Andrews,	Hess,	Messinger,	Schaefer,
Bell,	Holl,	Moore,	Smith,
Corman,	Hopper,	Murray,	Snyder,
Dougherty,	Jubelirer,	Noszka,	Stapleton,
Duffield,	Kelley,	O'Pake,	Stauffer,
Dwyer,	Kusse,	Orlando,	Stout,
Early,	Lewis,	Reibman,	Sweeney,
Fumo,	Lynch,	Romanelli,	Tilghman,
Gekas,	Manbeck,	Ross,	Wood,
Gurzenda,	McCormack,	Scanlon,	Zemprelli,
Hager,	Mellow,		

NAYS—6

Arlene, Hankins, McKinney, Nolan,
Coppersmith, Howard,

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Clerk inform the House of Representatives accordingly.

BILLS ON CONCURRENCE IN HOUSE

AMENDMENTS

BILL OVER IN ORDER

SB 645 (Pr. No. 2008) — Senator MESSINGER. Mr. President, I move that the Senate do concur in the amendments made by the House to Senate Bill No. 645.

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

Senator TILGHMAN. Mr. President, from this side of the aisle there was a request that this bill go over for a day. I would like to speak about this piece of legislation.

It was originally a piece of legislation to allow security and campus police to go on campuses of community colleges, but in turning to the bill it will be found that it has been amended by the addition of several pages relative to the method of handling the budget and revenue estimates in the Commonwealth of Pennsylvania from this day forward.

We have not had a chance to study this piece of legislation. We have not had a chance to go through it in detail. I understand the Majority Party wishes to run this bill today, although I see no earthly reason why it must be run before September, if my opinion is desired, because it does not take effect until next winter.

I have sponsored legislation to change the budgetary process in Pennsylvania. I am reading this as I sit here. We did not have a chance to go over it in caucus because we had Commissioner Sheppard before us relative to one of his appointments.

I would generally agree with what these extensive House amendments are trying to do but, quite frankly, if we look at this piece of legislation, we will find that, with one exception, the General Assembly is again cut out of the budgetary process.

Mr. President, I think the problems that exist throughout Pennsylvania, last year's budget problem, next year's budget problem—we will certainly have a long budget fight again next year. I am afraid to predict how long although I hope I am wrong—stems from the fact that we do not get information. We are not a part of the process. These amendments put in by the Majority Leader of the House, as I understand it, tend to go a little way towards correcting that. Certain information will be mailed to us at a more timely date, but we have no input into the making up of that information.

There is, in the back of the bill—and I will take some time speaking about this. In fact, I may read the whole bill simply because I have not had a chance to study it and I think it could well go over until tomorrow.

Mr. President, I desire to interrogate the gentleman from Lehigh, Senator Messinger.

The PRESIDENT. Will the gentleman from Lehigh, Senator Messinger, permit himself to be interrogated?

Senator MESSINGER. I will, Mr. President.

Senator TILGHMAN. Mr. President, I would ask the reason we cannot have a chance to study this piece of legislation, which is extensive and far-reaching, and why it must be run today?

Senator MESSINGER. Mr. President, actually one of the things we had discussed with the House leadership is that this is a Senate bill. If we concur today they can act on it tomorrow, and that is the last day on which they seem to want to act. Most of us agreed that this was an improvement over the budget procedure that existed up to this time. That is the reason we wish to act on it today.

Senator TILGHMAN. Mr. President, I understand that this act shall take effect July 1, 1978 and apply to the 1978-1979 fiscal year and each fiscal year thereafter. There is no conceivable way it can take effect on July 1, 1978. All the things in here cannot possibly be done in 1978. It may be done thereafter.

Would the Majority Leader oppose a motion or request that this bill go over for today?

REQUEST FOR BILL OVER IN ORDER

Senator MESSINGER. Mr. President, at this time I request that Senate Bill No. 645 go over in its order.

The PRESIDENT. Without objection, Senate Bill No. 645 will go over in its order.

Senator TILGHMAN. Mr. President, I would like to thank the Majority Leader for his consideration.

SENATE CONCURS IN HOUSE AMENDMENTS

SB 976 (Pr. No. 2005) — Senator MESSINGER. Mr. President, I move that the Senate do concur in the amendments made by the House to Senate Bill No. 976.

On the question,

Will the Senate agree to the motion?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—48

Andrews,	Hager,	McCormack,	Ross,
Arlene,	Hankins,	McKinney,	Scanlon,
Bell,	Hess,	Mellow,	Schaefer,
Coppersmith,	Holl,	Messinger,	Smith,
Corman,	Hopper,	Moore,	Snyder,
Dougherty,	Howard,	Murray,	Stapleton,
Duffield,	Jubelirer,	Nolan,	Stauffer,
Dwyer,	Kelley,	Noszka,	Stout,
Early,	Kusse,	O'Pake,	Sweeney,
Fumo,	Lewis,	Orlando,	Tilghman,
Gekas,	Lynch,	Reibman,	Wood,
Gurzenda,	Manbeck,	Romanelli,	Zemprelli,

NAYS—0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Clerk inform the House of Representatives accordingly.

SB 1042 (Pr. No. 1973) — Senator MESSINGER. Mr. President, I move that the Senate do concur in the amendments made by the House to Senate Bill No. 1042 but, hopefully, in the future, we will get a better title than this because if the people read this in the newspaper, they will get the wrong impression.

The PRESIDENT. It has been moved by Senator Messinger, with a special request for a new title writing technique, that the Senate proceed to concur in the amendments placed by the House in Senate Bill No. 1042.

On the question,

Will the Senate agree to the motion?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—48

Andrews,	Hager,	McCormack,	Ross,
Arlene,	Hankins,	McKinney,	Scanlon,
Bell,	Hess,	Mellow,	Schaefer,
Coppersmith,	Holl,	Messinger,	Smith,
Corman,	Hopper,	Moore,	Snyder,
Dougherty,	Howard,	Murray,	Stapleton,
Duffield,	Jubelirer,	Nolan,	Stauffer,
Dwyer,	Kelley,	Noszka,	Stout,
Early,	Kusse,	O'Pake,	Sweeney,
Fumo,	Lewis,	Orlando,	Tilghman,
Gekas,	Lynch,	Reibman,	Wood,
Gurzenda,	Manbeck,	Romanelli,	Zemprelli,

NAYS—0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Clerk inform the House of Representatives accordingly.

SENATE NONCONCURS IN HOUSE AMENDMENTS

SB 1180 (Pr. No. 1979) — Senator MESSINGER. Mr. President, I move that the Senate do concur in the amendments made by the House to Senate Bill No. 1180.

On the question,

Will the Senate agree to the motion?

Senator COPPERSMITH. Mr. President, I rise to speak against Senate Bill No. 1180.

When this bill left the Senate it was a measure that removed the prohibition of people who were not citizens from being teachers. That was ripped out in the House and some very significant policy changes were put into the bill.

I am concerned about the reduction of the school board term from six to four years. However, my primary concern is the reduction of the elementary school year from 990 to 900 hours.

Last year we were urged to vote for taxes and to vote for increased school subsidies on the grounds that if you put more money into the educational system, it would be better able to educate the children and eliminate many of the social problems such as welfare and crime which face us.

This year we have turned to the other side of the coin. Having put more money into the system to eliminate these social prob-

lems, we are asked to reduce the hours in the school year when studies have shown that many of the students graduating from our high schools and leaving elementary school are, in effect, functional illiterates.

I believe this is a horrible policy, this reduction from 990 to 900 hours. The argument is made that forty-seven per cent of the school districts have less than 990 hours. I submit that study does not show the number of school districts that are under 990 hours by five hours, or the number that have 900 hours.

The whole matter has been brought to fruition with an opinion by the Attorney General indicating that the rules of the State Board of Education are in conflict with the law.

My suggestion is that we do not have to act now. We do not have to hop to the tune of the Attorney General in this matter. We could wait over the summer while a Committee of Conference would consider this matter. We could find some of the studies indicating this reduction in the elementary hours is necessary.

Mr. President, one of the things which impressed me a great deal was that when we get the subsidy payments, we receive a great deal of material and computer printouts as to who gets the money and where it is going. There is no lack of scholarly and scientific research in regard to subsidy matters. On the vital policy question such as reduction of the elementary school year from 990 to 900 hours, a ten per cent reduction, I asked the Secretary of Education at a committee meeting as to what studies and what data they had to support this reduction. She had none. She gave her own personal opinion that, because of busing, the elementary school children might be too tired to benefit from the additional half hour they would get by going 990 hours.

Mr. President, I submit that this is a vital matter which could be determined by some studies indicating if there is this fatigue question. Also, in the material supporting this bill there is an indication that the Pittsburgh School System supported this measure. At the committee hearing, a representative of the Pittsburgh School System indicated that if this bill would pass, they would still have a five and a half hour school day. They wanted to maintain the five and a half hour school day and were not supporting this legislation.

I believe we should know where it is significant to school districts in regard to busing as to the length of the school days. When we cut from 990 to 900 hours, there is going to be great pressure on all the school districts, in negotiations, to cut to the minimum. At one time we are under pressure to increase salaries, to raise taxes, to increase subsidies, but on the other, we will be under pressure to cut the hours of the school year.

One other point I would like to make, Mr. President, is if you have a five and a half hour day, a certain amount of time is wasted in starting and finishing and having the children dress and undress, take their outer clothes off when they come and certain rest periods, so the half hour we are taking away would be the half hour that would be devoted to instruction completely and it makes no sense.

Studies have shown in recent years we have spent ten per cent less time in school years on basic educational courses and because we are getting into, what I call, the periphery, the

things that are not essential, it has had a serious effect on the education of the children. As this bill comes before us, it has not gone through the Senate Committee on Education. It has only been before us a week and we are asked, in effect, to buy a "pig in a poke." That has no research justification. We are given certain figures which, on close analysis, mean nothing. I strongly object to this procedure and I see no reason why this bill could not go into a Committee of Conference over the summer, where the matter could be researched by staff. When we come back in September we could deal with it in a deliberative and rational way.

And the question recurring,
Will the Senate Agree to the motion?

(During the calling of the roll, the following occurred:)
Senator NOSZKA. Mr. President, I would like to change my vote from "aye" to "no."

The PRESIDENT. The gentleman will be so recorded.

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—21

Andrews, Bell, Corman, Dougherty, Dwyer, Hess,	Hopper, Howard, Jubelirer, Kelley, Kusse,	Lewis, Manbeck, Messinger, Moore, Murray,	O'Pake, Reibman, Stauffer, Stout, Tilghman,
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NAYS—27

Arlene, Coppersmith, Duffield, Early, Fumo, Gekas, Gurzenda,	Hager, Hankins, Holl, Lynch, McCormack, McKinney, Mellow,	Nolan, Noszka, Orlando, Romanelli, Ross, Scanlon, Schaefer,	Smith, Snyder, Stapleton, Sweeney, Wood, Zemprelli,
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Less than a majority of all the Senators having voted "aye," the question was determined in the negative.

The PRESIDENT. The amendments are nonconcurrent in and the House will be so advised.

FINAL PASSAGE CALENDAR

BILL LAID ON THE TABLE

HB 191 (Pr. No. 3411) — Upon motion of Senator MESSINGER, and agreed to, the bill was laid on the table.

THIRD CONSIDERATION CALENDAR

BILL REREPORTED FROM COMMITTEE AS AMENDED ON THIRD CONSIDERATION AND FINAL PASSAGE

HB 217 (Pr. No. 3449) — Considered the third time and agreed to,

And the amendments made thereto having been printed as required by the Constitution,

On the question,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of

the Constitution and were as follows, viz:

YEAS—48

Andrews,	Hager,	McCormack,	Ross,
Arlene,	Hankins,	McKinney,	Scanlon,
Bell,	Hess,	Mellow,	Schaefer,
Coppersmith,	Holl,	Messinger,	Smith,
Corman,	Hopper,	Moore,	Snyder,
Dougherty,	Howard,	Murray,	Stapleton,
Duffield,	Jubelirer,	Nolan,	Stauffer,
Dwyer,	Kelley,	Noszka,	Stout,
Early,	Kusse,	O'Pake,	Sweeney,
Fumo,	Lewis,	Orlando,	Tilghman,
Gekas,	Lynch,	Reibman,	Wood,
Gurzenda,	Manbeck,	Romanelli,	Zemprelli,

NAYS—0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Clerk return said bill to the House of Representatives with information that the Senate has passed the same with amendments in which concurrence of the House is requested.

BILL ON THIRD CONSIDERATION AMENDED

HB 198 (Pr. No. 3453) — Considered the third time,

On the question,

Will the Senate agree to the bill on third consideration?

Senator ROMANELLI, by unanimous consent, offered the following amendments:

Amend Bill, page 5, by inserting between lines 29 and 30:

Section 5. Nothing in this act, or in any other law or court rule shall be construed to prohibit any constable or any employee of a court of common pleas, the Municipal Court of Philadelphia, the Traffic Court of Philadelphia, or any employee of a district justice from also being an officer of a political body or political party as such terms are defined in the act of June 3, 1937 (P. L. 1333, No. 320), known as the "Pennsylvania Election Code," and the same may hold the office of a county, State or national committee of any political party, and may run for and hold any elective office, and may participate in any election day activities.

Amend Sec. 5, page 5, line 30, by striking out "5." and inserting: 6.

On the question,

Will the Senate agree to the amendments?

Senator ROMANELLI. Mr. President, these amendments would permit court employees to hold political office. The Supreme Court Administrator, by edict, ruled that people who are considered court employees and constables in wards of the cities, boroughs and townships may not hold political office and still be an employee of the court. The position of constable is a political office; he runs either as a Democrat or a Republican. They also may not hold political office in the party which they represent, such as committee captains, committee people, ward leaders. These amendments would simply permit those people to hold political office.

Mr. President, I ask for the unanimous adoption of the amendments.

PARLIAMENTARY INQUIRY

Senator LEWIS. Mr. President, I rise to a question of parliamentary inquiry.

The PRESIDENT. The gentleman from Bucks, Senator Lewis, will state it.

Senator LEWIS. Mr. President, I would ask for a ruling from the Chair as to whether the amendments are germane to the principal purpose of the bill.

The PRESIDENT. We will be at ease for just a moment. I genuinely think it is, Senator. I took a quick look, but let me reexamine them.

(The Senate was at ease.)

The PRESIDENT. Senator Romanelli is in accordance with the general Rules which we have adopted and I would consider the amendments to be germane.

And the question recurring,

Will the Senate agree to the amendments?

They were agreed to.

Without objection, the bill, as amended, was passed over in its order at the request of Senator ROMANELLI.

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

HB 225 (Pr. No. 245) — Considered the third time and agreed to,

On the question,

Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—48

Andrews,	Hager,	McCormack,	Ross,
Arlene,	Hankins,	McKinney,	Scanlon,
Bell,	Hess,	Mellow,	Schaefer,
Coppersmith,	Holl,	Messinger,	Smith,
Corman,	Hopper,	Moore,	Snyder,
Dougherty,	Howard,	Murray,	Stapleton,
Duffield,	Jubelirer,	Nolan,	Stauffer,
Dwyer,	Kelley,	Noszka,	Stout,
Early,	Kusse,	O'Pake,	Sweeney,
Fumo,	Lewis,	Orlando,	Tilghman,
Gekas,	Lynch,	Reibman,	Wood,
Gurzenda,	Manbeck,	Romanelli,	Zemprelli,

NAYS—0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Clerk return said bill to the House of Representatives with information that the Senate has passed the same without amendments.

BILL OVER IN ORDER TEMPORARILY

SB 585 — Without objection, the bill was passed over in its order temporarily at the request of Senator MESSINGER.

BILL ON THIRD CONSIDERATION AMENDED

HB 920 (Pr. No. 3417) — Considered the third time,

On the question,

Will the Senate agree to the bill on third consideration?

Senator KELLEY, by unanimous consent, offered the following amendments:

Amend Sec. 2 (Sec. 1), page 3, lines 14 and 15 by striking out "7 OR THIRTY-TWO THOUSAND DOLLARS (\$32,000),"

Amend Sec. 2 (Sec. 1), page 3, line 16 by striking out the bracket before "thirteen"

Amend Sec. 2 (Sec. 1), page 3, line 17 by striking out "7 THIRTY-FIVE THOUSAND DOLLARS (\$35,000),"

Amend Sec. 2 (Sec. 1), page 3, line 17 by inserting a bracket after "and"

Amend Sec. 2 (Sec. 1), page 3, line 19 by inserting after "court": as may be fixed by the Executive Board and each member of the court and the executive secretary of the court

Amend Sec. 2 (Sec. 1), page 3, lines 23 through 27 by striking out "Each" in line 23 and all of lines 24 through 27

On the question,

Will the Senate agree to the amendments?

They were agreed to.

Without objection, the bill, as amended, was passed over in its order at the request of Senator KELLEY.

BILLS OVER IN ORDER

SB 951 — Without objection, the bill was passed over in its order at the request of Senator STAUFFER.

HB 1063 — Without objection, the bill was passed over in its order at the request of Senator MESSINGER.

BILL OVER IN ORDER AND RECOMMITTED

SB 1147 — Without objection, the bill was passed over in its order at the request of Senator MESSINGER.

In accordance with Senate Rule 2, Order of Business, as amended by Senate Resolution, Serial No. 13, Session of 1969, the bill was recommitted to the Committee on Business and Commerce.

RECONSIDERATION OF SB 1180

BILL OVER IN ORDER

SB 1180 (Pr. No. 1979) — Senator MESSINGER. Mr. President, I move that the Senate do now reconsider the vote by which the motion to concur in the amendments made by the House to Senate Bill No. 1180, Printer's No. 1979, was defeated.

Senator SCANLON. Mr. President, I second the motion.

The motion was agreed to.

Senator MESSINGER. Mr. President, I ask that the bill be reconsidered at this time.

And the question recurring,

Will the Senate concur in the amendments made by the House?

REQUEST FOR BILL OVER IN ORDER

Senator COPPERSMITH. Mr. President, I would like to ask

the Majority Leader if he would put the bill over in its order. It was our understanding that he would not be pushing this bill. It is now being reconsidered and he is asking for an immediate vote. I would request him to have the bill go over in its order until tomorrow. There is no rush.

Senator MESSINGER. Mr. President, may we be at ease?

The PRESIDENT. The Senate will be at ease for just a moment.

(The Senate was at ease.)

Senator MESSINGER. Mr. President, at this time I request that Senate Bill No. 1180 go over in its order.

The PRESIDENT. Without objection, Senate Bill No. 1180 will go over in its order.

THIRD CONSIDERATION CALENDAR RESUMED

BILL RECOMMITTED

HB 1171 (Pr. No. 3316) — Upon motion of Senator MESSINGER, and agreed to, the bill was recommitted to the Committee on Transportation.

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

HB 1220 (Pr. No. 1442) — Considered the third time,

On the question,

Will the Senate agree to the bill on third consideration?

Senator NOLAN, by unanimous consent, offered the following amendments:

Amend Title, page 1, line 8, by removing the period after "commission" and inserting: and limiting the right to impose tax limitations on certain proposal home rule charters or optional forms of government.

Amend Bill, page 1, by inserting between lines 19 and 20:

Section 2. The act is amended by adding a section to read:

Section 214.1. Notwithstanding any other provision of this act, no proposed home rule charter question or optional plan of government question which contains or proposes limitations on the amount of tax a home rule or optional plan government may levy shall be submitted for approval of the electorate.

Amend Sec. 2, page 1, line 20, by striking out "2." and inserting: 3.

On the question,

Will the Senate agree to the amendments?

Senator NOLAN. Mr. President, these amendments which I offer simply state that no commission on Home Rule Charter may place a limitation on taxes imposed in that charter when the question is put on the ballot. At the present time, the imposition of taxes is controlled by the different codes passed here in the Legislature of the Commonwealth, The borough codes, the county codes, the city codes, et cetera, limit the amount of tax.

Currently in Allegheny County they are considering the question of Home Rule Charter. The chairman of that commission, knowing that that charter will be defeated for the second time, is now considering putting Proposition 13 into that Home Rule Charter in order to secure a number of votes and assure the

passage of that Home Rule Charter.

These amendments will prevent any charter commission from putting a limitation on taxes in a charter. I feel if the Home Rule Charter is voted, those elected under the Home Rule Charter are the people who should determine the amount and the limitation of taxes within the guidelines set by the Legislature.

Mr. President, I ask for the adoption of these amendments.

Senator STAUFFER. Mr. President, I rise to oppose the amendments offered by the gentleman from Allegheny, Senator Nolan. Whereas I can appreciate what he is trying to do with regard to a particular situation, I believe the language of his amendments goes much too far.

Right now, within the various municipal codes, we have limitations on taxation. In addition to that, with the advent of Home Rule and optional forms of government legislation, one of the very real issues which has been addressed in that legislation is the possibility that in a particular municipality they would desire to put a limitation on taxation and write that limitation into their charter, the same as limitations are presently written into the various municipal codes.

The advantage of having this written into a Home Rule Charter is the fact that no one, including the Legislature, may increase that amount of taxation if a particular municipality has adopted a ceiling which it wishes to enforce.

The thrust of the amendments offered by the gentleman would be to change the Home Rule Charter law and totally eliminate the possibility of a limitation of this kind being written into a proposed charter. In my judgment this question should be answered at the referendum which in each municipality when a charter is presented to the people. If they want to have the charter approved with the limitation included in the proposal, they should have the right to do so. If they feel differently, if they would agree with the gentleman, they would obviously then vote to reject that charter.

On the basis of Home Rule and the right to make the choice at home and to put a limitation at home and not have the Legislature impose its will on a municipality, I would ask that the amendments be rejected.

Senator LEWIS. Mr. President, I believe, unfortunately, both of my colleagues who have previously spoken on this issue have missed the most important aspect of the topic. That is, under recent court interpretations of Act 62 of 1972 and implementation by no fewer than five municipalities in Pennsylvania, it has been determined that the taxation limitations established by this Legislature in the respective municipal codes are not applicable to Home Rule municipalities. I repeat: The taxation limits are not applicable.

This has meant that Home Rule municipalities now have no constraints whatsoever on the amount of taxation they may impose. The interpretations have been that Act 62 simply said that they are limited to the forms of taxation which we have prescribed legislatively.

For example, I can cite the current situation in Scranton which imposes an earned income tax of two per cent. You will recall, in fact, that this Legislature, in its tax enabling act, has limited the amount of taxation under that section to one per

cent. This has been the pattern in four other municipalities to date and it could well be the pattern in any other municipality in this Commonwealth which adopts a Home Rule plan.

I understand the problem the gentleman from Allegheny, Senator Nolan, is trying to address. However, I am afraid if we proscribe municipalities, considering the adoption of a plan, from placing any limitations in that plan itself before it is approved by the voters, we are opening up an endless opportunity for those who are subsequently elected, pursuant to the plan, to tax and tax and tax.

I would commend for the consideration of all the Members of the Senate the report which I saw cross my desk today from the Department of Community Affairs entitled, "Act 62 Five Years Later." It recounts, in some eight or ten pages, the best thinking of local government people from around the Commonwealth as shared in October of this past year. One of the principal subjects was the question and the problem of how or whether we should legislatively take action to bring what appears to be a potentially troublesome area in the application of the Home Rule Act back within legislative purview.

Until and unless we take that step, if we go further and tie the hands of those drafting the charter, we may end up inadvertently finding that the result is catastrophic and not one which we ever chose to have occur. Therefore, I feel the implementation of this proposal could potentially be disastrous to the taxpayers of Allegheny County.

The PRESIDENT pro tempore (Martin L. Murray) in the Chair.

Senator ZEMPRELLI. Mr. President, I listened with a great deal of interest to the arguments and, although I appreciate what the gentleman from Bucks, Senator Lewis, has said about the legality—and I firmly believe he is 100 per cent accurate in that area—there is a very pragmatic practical aspect to these amendments and that is it would be akin to the "bait and switch" situation that we see existing so many times. Whether the gentleman from Bucks, Senator Lewis, is correct or not would be a matter after the fact. Yet, I believe the point the gentleman from Allegheny, Senator Nolan, makes is precisely this: If somebody was to effectively write a matter equivalent to the Resolution 13 into a charter, that would be a point which would probably pass the charter independent of its other provisions because it would have that kind of popular appeal.

The question as to whether or not that provision should be in the Code would be determined after such time as the charter may be approved.

The point that I make, Mr. President, is that the provision would be severable. The City of Pittsburgh, independent of the merits of the charter, would have voted on an issue, perhaps, that was popular at the time and later corrected by the courts in a severability clause and the City of Pittsburgh would have ended up with a charter that it would not otherwise have. I believe that is the bottom line in the total situation and would suggest that the amendments are in order, not based on merit but on their probable use for the purposes I have set forth.

Senator KELLEY. Mr. President, I am not too sure that any one of us remembers civics and the history of this country

but, it seems to me, in recall, the Constitution of this great country was passed because of a compromise of a little bit of bait in the form of the Bill of Rights.

It seems to me that the proper place to put limitations is—if you have Home Rule, the concept is that people will write the fundamental document to guard and guide their local government, if they so choose—on their taxing powers and authorities. It is proper, right, and the opportunity should be afforded them.

You hear the idea of bait and things like that—it is nice for us to sit up here and play God—but we did give them the right to have Home Rule Charters and that necessarily is involved in the very fundamental aspect as to why this country came into being in the first place; the power of taxation. If they want to do it they should be able to do it and I will vote against the amendments.

Senator NOLAN. Mr. President, when Proposition 13 passed in California, every state in this Union, every local government in this United States, has been looking for a way to get it on the ballot.

There is no authorization for anyone in the State of Pennsylvania to put Proposition 13 on the ballot by referendum at the present time. To use Home Rule Charter as a gimmick to put this through is just not right, because, in my opinion, the charter was defeated before and it will be defeated again. With Proposition 13 we are running around the law in using the Home Rule Charter in order to push this through.

And the question recurring,
Will the Senate agree to the amendments?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—18

Arlene,	Lynch,	Nolan,	Ross,
Coppersmith,	McCormack,	Noszka,	Scanlon,
Fumo,	McKinney,	Orlando,	Smith,
Gurzenda,	Mellow,	Romanelli,	Zemprelli,
Hankins,	Murray,		

NAYS—29

Andrews,	Hess,	Lewis,	Snyder,
Bell,	Holl,	Manbeck,	Stapleton,
Corman,	Hopper,	Messinger,	Stauffer,
Dougherty,	Howard,	Moore,	Stout,
Dwyer,	Jubelirer,	O'Pake,	Sweeney,
Early,	Kelley,	Reibman,	Tilghman,
Gekas,	Kusse,	Schaefer,	Wood,
Hager,			

So the question was determined in the negative, and the amendments were defeated.

And the question recurring,
Will the Senate agree to the bill on third consideration?
It was agreed to.

On the question,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—48

Andrews,	Hager,	McCormack,	Ross,
Arlene,	Hankins,	McKinney,	Scanlon,
Bell,	Hess,	Mellow,	Schaefer,
Coppersmith,	Holl,	Messinger,	Smith,
Corman,	Hopper,	Moore,	Snyder,
Dougherty,	Howard,	Murray,	Stapleton,
Duffield,	Jubelirer,	Nolan,	Stauffer,
Dwyer,	Kelley,	Noszka,	Stout,
Early,	Kusse,	O'Pake,	Sweeney,
Fumo,	Lewis,	Orlando,	Tilghman,
Gekas,	Lynch,	Reibman,	Wood,
Gurzenda,	Manbeck,	Romanelli,	Zemprelli,

NAYS—0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Clerk return said bill to the House of Representatives with information that the Senate has passed the same without amendments.

BILL OVER IN ORDER

SB 1295 — Without objection, the bill was passed over in its order at the request of Senator MESSINGER.

BILLS ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 1454 (Pr. No. 2033) — Considered the third time and agreed to,

And the amendments made thereto having been printed as required by the Constitution,

On the question,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—45

Andrews,	Hankins,	McCormack,	Romanelli,
Arlene,	Hess,	McKinney,	Ross,
Bell,	Holl,	Mellow,	Scanlon,
Corman,	Hopper,	Messinger,	Schaefer,
Dougherty,	Howard,	Moore,	Snyder,
Duffield,	Jubelirer,	Murray,	Stapleton,
Dwyer,	Kelley,	Nolan,	Stauffer,
Early,	Kusse,	Noszka,	Stout,
Fumo,	Lewis,	O'Pake,	Sweeney,
Gekas,	Lynch,	Orlando,	Wood,
Gurzenda,	Manbeck,	Reibman,	Zemprelli,
Hager,			

NAYS—3

Coppersmith, Smith, Tilghman,

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Clerk present said bill to the House of Representatives for concurrence.

SB 1477 (Pr. No. 2010) — Considered the third time and agreed to,

And the amendments made thereto having been printed as required by the Constitution,

On the question,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—48

Andrews,	Hager,	McCormack,	Ross,
Arlene,	Hankins,	McKinney,	Scanlon,
Bell,	Hess,	Mellow,	Schaefer,
Coppersmith,	Holl,	Messinger,	Smith,
Corman,	Hopper,	Moore,	Snyder,
Dougherty,	Howard,	Murray,	Stapleton,
Duffield,	Jubelirer,	Nolan,	Stauffer,
Dwyer,	Kelley,	Noszka,	Stout,
Early,	Kusse,	O'Pake,	Sweeney,
Fumo,	Lewis,	Orlando,	Tilghman,
Gekas,	Lynch,	Reibman,	Wood,
Guizenda,	Manbeck,	Romanelli,	Zemprelli,

NAYS—0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Clerk present said bill to the House of Representatives for concurrence.

SB 1481 (Pr. No. 1945) — Considered the third time and agreed to,

And the amendments made thereto having been printed as required by the Constitution,

On the question,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—48

Andrews,	Hager,	McCormack,	Ross,
Arlene,	Hankins,	McKinney,	Scanlon,
Bell,	Hess,	Mellow,	Schaefer,
Coppersmith,	Holl,	Messinger,	Smith,
Corman,	Hopper,	Moore,	Snyder,
Dougherty,	Howard,	Murray,	Stapleton,
Duffield,	Jubelirer,	Nolan,	Stauffer,
Dwyer,	Kelley,	Noszka,	Stout,
Early,	Kusse,	O'Pake,	Sweeney,
Fumo,	Lewis,	Orlando,	Tilghman,
Gekas,	Lynch,	Reibman,	Wood,
Guizenda,	Manbeck,	Romanelli,	Zemprelli,

NAYS—0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Clerk present said bill to the House of Representatives for concurrence.

BILLS OVER IN ORDER

SB 1485, HB 1718, 1926 and 2420 — Without objection, the bills were passed over in their order at the request of Senator MESSINGER.

MEETING OF THE COMMITTEE ON PUBLIC HEALTH AND WELFARE

Senator COPPERSMITH. Mr. President, would I be in order now to have the meeting of the Committee on Public Health and Welfare off the floor?

The PRESIDENT pro tempore. The Chair hears no objection. There will be a meeting of the Committee on Public Health and Welfare in the Minority caucus room.

CONSIDERATION OF CALENDAR RESUMED
SECOND CONSIDERATION CALENDAR

NONPREFERRED APPROPRIATION BILLS ON SECOND CONSIDERATION

SB 1493 (Pr. No. 1895) and HB 2278 (Pr. No. 2898) — Considered the second time and agreed to,

Ordered, To be transcribed for a third consideration.

BILLS REREPORTED FROM COMMITTEE AS AMENDED OVER IN ORDER

SB 889 and 891 — Without objection, the bills were passed over in their order at the request of Senator MESSINGER.

BILL REREPORTED FROM COMMITTEE AS AMENDED REREFERRED

SB 979 (Pr. No. 2009) — Upon motion of Senator MESSINGER, and agreed to, the bill was rereferred to the Committee on Appropriations.

BILL REREPORTED FROM COMMITTEE AS AMENDED OVER IN ORDER TEMPORARILY

SB 992 (Pr. No. 2006) — Senator MESSINGER. Mr. President, I move that Senate Bill No. 992 be rereferred to the Committee on Appropriations.

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

Senator STAUFFER. Mr. President, could we go over the motion to rerefer until after the committee meeting which is being held off the floor? I believe there will be a desire to debate that motion and those interested would like the full participation of all the Members.

MOTION WITHDRAWN AND BILL OVER IN ORDER TEMPORARILY

Senator MESSINGER. Mr. President, I withdraw the motion to rerefer Senate Bill No. 992 to the Committee on Appropriations and request that we go over Senate Bill No. 992 temporarily.

The PRESIDENT pro tempore. At the request of Senator Messinger, Senate Bill No. 992 will go over temporarily.

BILL REREFERRED

HB 80 (Pr. No. 342) — Upon motion of Senator MESSINGER, and agreed to, the bill was rereferred to the Committee on Appropriations.

BILLS ON SECOND CONSIDERATION

SB 448 (Pr. No. 458) and HB 629 (Pr. No. 695) — Considered the second time and agreed to,

Ordered, To be transcribed for a third consideration.

BILLS OVER IN ORDER

SB 890 and 1022 — Without objection, the bills were passed over in their order at the request of Senator MESSINGER.

BILL ON SECOND CONSIDERATION

SB 1177 (Pr. No. 1419) — Considered the second time and agreed to,

Ordered, To be transcribed for a third consideration.

BILLS OVER IN ORDER

SB 1271 and 1383 — Without objection, the bills were passed over in their order at the request of Senator MESSINGER.

BILL ON SECOND CONSIDERATION
AND RECOMMITTED

SB 1384 (Pr. No. 1904) — Considered the second time and agreed to,

Ordered, To be transcribed for a third consideration.

In accordance with Senate Rule 2, Order of Business, as amended by Senate Resolution, Serial No. 13, Session of 1969, the bill was recommitted to the Committee on Constitutional Changes and Federal Relations.

BILL REREFERRED

SB 1450 (Pr. No. 2031) — Upon motion of Senator MESSINGER, and agreed to, the bill was rereferred to the Committee on Appropriations.

BILL OVER IN ORDER

SB 1460 — Without objection, the bill was passed over in its order at the request of Senator MESSINGER.

BILL OVER IN ORDER TEMPORARILY

SB 1504 — Senator MESSINGER. Mr. President, I request that Senate Bill No. 1504 go over in its order.

Senator STAUFFER. Mr. President, I wonder if the Majority Leader would agree to temporarily pass over Senate Bill No. 1504. I believe the gentleman from Lancaster, Senator Snyder, has amendments he would like to offer to that bill and would ask that it be considered today so his amendments could be considered, pending the completion of the committee meeting.

Senator MESSINGER. Mr. President, I request that we go over Senate Bill No. 1504 temporarily.

The PRESIDENT. At the request of Senator Messinger, Senate Bill No. 1504 will go over temporarily.

BILL ON SECOND CONSIDERATION

HB 2520 (Pr. No. 3402) — Considered the second time and agreed to,

Ordered, To be transcribed for a third consideration.

MEETING OF THE COMMITTEE ON URBAN
AFFAIRS AND HOUSING

Senator ROMANELLI. Mr. President, I would like to call a meeting off the floor of the Committee on Urban Affairs and Housing.

The PRESIDENT pro tempore. The Chair hears no objection. Senator Romanelli calls a meeting of the Committee on Urban Affairs and Housing in the Minority caucus room.

The PRESIDING OFFICER (Eugene F. Scanlon) in the Chair.

CONSIDERATION OF CALENDAR RESUMED

SB 1504 CALLED UP

SB 1504 (Pr. No. 1914) — Without objection, the bill, which previously went over in its order temporarily, was called up, from page 10 of the Second Consideration Calendar by Senator MESSINGER.

BILL ON SECOND CONSIDERATION AMENDED

SB 1504 (Pr. No. 1914) — The bill was considered.

On the question,

Will the Senate agree to the bill on second consideration? Senator SNYDER offered the following amendments:

Amend Title, page 1, line 5, by inserting after "terms": and requiring annual reports

Amend Sec. 1, page 1, line 10, by inserting after "amended": and the act is amended by adding a section

Amend Sec. 1, page 2, by inserting between lines 27 and 28:

Section 2013. Annual Reports.—An annual report shall be submitted by each State college and State-owned university to the Governor and the Appropriations and Education Committees of the Senate and the House of Representatives and shall include data for all programs of the State college or State-owned university. Each such report, to be submitted prior to November 1, shall cover the twelve-month period beginning September 1 of the preceding year and shall include for each team during the period:

(1) The following counts and distributions:

(i) The definitions and numbers of full-time faculty members, of part-time faculty members, of full-time students enrolled in graduate courses, and of part-time students enrolled in undergraduate courses.

(ii) A distribution of part-time faculty members by the percentage of full-time employment.

(iii) Total numbers of undergraduate student credit hours, divided into lower division and upper division levels, and of graduate student credit hours divided into three levels—master's, first professional and doctoral.

(iv) Number of different courses scheduled by level of instruction, distributed by the number of sections scheduled in each course and the sections distributed

by the number of students enrolled in each section.

(v) Number of terms scheduled and the dates thereof.

(2) A classification of faculty members of other professional employes by title including: professor, associate professor, assistant professor, instructor, lecturer, research associate, librarian and academic administrator; faculty members or other professional employes under each title to be subdivided by type of assignment; undergraduate courses only, graduate courses only, or both graduate and undergraduate courses; and each such set of faculty members or other professional employes to be further subdivided by type of employment; full-time or part-time; and the following aggregates for each such subdivided classification:

(i) The number.

(ii) The sum of credits assigned to undergraduate courses and the sum of credits assigned to graduate courses taught, divided into lower division, upper division, master's, first professional and doctoral levels.

(iii) The sum of undergraduate student credit hours and the sum of graduate student credit hours generated; divided into lower division, upper division, master's, first professional and doctoral levels.

(iv) Total salary paid.

(v) Total salary paid from college or university funds.

(vi) Total salary paid from Federal funds.

(vii) Total salary paid from other funds.

(3) For each term of the period covered for each full-time faculty member identified by school, department and title:

(i) An analysis of the average hours per week spent in college or university-related activities, stating specifically hours spent in undergraduate classroom contact and graduate classroom contact, hours spent in preparation, hours spent in research and hours spent in public service.

(ii) The total salary paid and the salary paid from college or university funds.

In addition to the above requirements relative to this appropriation, each report covering the twelve-month period shall include for all programs of the State college or State-owned university:

(A) Minimum number of credits required for a baccalaureate degree and for a master's degree.

(B) Number of bachelor's degrees, master's degrees, first professional degrees, and doctoral degrees awarded in the three previous years and estimated for that year.

On the question,

Will the Senate agree to the amendments?

Senator SNYDER. Mr. President, these amendments would

require that the fourteen State colleges and Indiana University furnish an annual report of the type they have for the past year on their faculty, teaching hours, number of courses offered, the credits given and other data which will enable the gauging of the productivity of the various colleges, the departments and the individual faculty members.

I should explain that these same provisions were in the General Appropriations bill. The Governor, in acting on the bill, stated that these provisions were unconstitutional in a General Appropriations bill and he would advise the colleges to ignore them. By inserting them in this bill we will have the same result we had a year ago when we obtained this data and I feel this is the logical way to do it.

I would like to comment on the general subject of this data. We have had the data now for approximately five or six years from the State-related universities. I believe it has been helpful in many concrete ways and in some subtle ways in getting more productivity from the hundreds of millions of dollars we spend on higher education.

And the question recurring,

Will the Senate agree to the amendments?

They were agreed to,

Without objection, the bill, as amended, was passed over in its order at the request of Senator SNYDER.

SB 992 CALLED UP

SB 992 (Pr. No. 2006) — Without objection, the bill, which previously went over in its order temporarily, was called up, from page 7 of the Second Consideration Calendar by Senator MESSINGER.

BILL REREPORTED FROM COMMITTEE AS AMENDED REREFERRED

SB 992 (Pr. No. 2006) — Senator MESSINGER. Mr. President, I move that Senate Bill No. 992 be rereferred to the Committee on Appropriations.

On the question,

Will the Senate agree to the motion?

Senator DOUGHERTY. Mr. President, I object to the motion to rerefer this bill to the Committee on Appropriations.

POINT OF INFORMATION

Senator DOUGHERTY. Mr. President, I rise to a point of information.

The PRESIDING OFFICER. The gentleman from Philadelphia, Senator Dougherty, will state it.

Senator DOUGHERTY. Mr. President, I would like to speak on the motion to rerefer.

The PRESIDING OFFICER. The motion is not debatable, Senator.

Senator DOUGHERTY. Mr. President, is the Chair saying the motion to rerefer is not debatable even to the purpose of rereferral?

The PRESIDING OFFICER. You may debate the purpose of the rereferral but not the substance of the bill, Senator.

Senator DOUGHERTY. Mr. President, I desire to interrogate

the gentlemen from Lehigh, Senator Messinger.

The PRESIDING OFFICER. Will the gentleman from Lehigh, Senator Messinger, permit himself to be interrogated?

Senator MESSINGER. I will, Mr. President.

Senator DOUGHERTY. Mr. President, will the Majority Leader advise us as to why this bill is being rereferred to the Committee on Appropriations? In my opinion, the bill contains no expenditure of State funds.

Senator MESSINGER. Mr. President, the bill is being rereferred at the request of the Chairman of the Committee on Appropriations, with the promise to those who object that this bill will be rereported after a study by the Committee on Appropriations. This was the opinion of our caucus.

Senator DOUGHERTY. Mr. President, can the Majority Leader tell me the reason for the rereferral? Is it not normal procedure that only bills containing provisions for State expenditure are rereferred to the Committee on Appropriations?

Senator MESSINGER. Mr. President, I believe the gentleman from Philadelphia, Senator Smith, can answer that question better than I.

Senator DOUGHERTY. Mr. President, I desire to interrogate the gentleman from Philadelphia, Senator Smith.

The PRESIDING OFFICER. Will the gentleman from Philadelphia, Senator Smith, permit himself to be interrogated?

Senator SMITH. I will, Mr. President.

Senator DOUGHERTY. Mr. President, could the gentleman advise me as to where, in the bill, there is any justification for rereferring this bill to the Committee on Appropriations?

Senator SMITH. Mr. President, it is the thinking of the Chairman of the Committee on Appropriations that there is a cost involved. It is involved with the subdensity clause dealing with the subsidy formula.

Mr. President, I desire to interrogate the gentleman from Philadelphia, Senator Dougherty.

The PRESIDING OFFICER. Will the gentleman from Philadelphia, Senator Dougherty, permit himself to be interrogated?

Senator DOUGHERTY. I will, Mr. President.

Senator SMITH. Mr. President, would the gentleman tell us whether or not there is a cost factor?

Senator DOUGHERTY. To the best of my knowledge, Mr. President, there is no cost factor involved.

Senator SMITH. Mr. President, I desire to interrogate the gentleman from Montgomery, Senator Tilghman.

The PRESIDING OFFICER. Will the gentleman from Montgomery, Senator Tilghman, permit himself to be interrogated?

Senator TILGHMAN. I will, Mr. President.

Senator SMITH. Mr. President, as the Minority Chairman of the Committee on Appropriations, could the gentleman tell me whether or not there is a cost factor involved?

Senator TILGHMAN. Absolutely not, Mr. President, no cost factor at all to the Commonwealth. If there is a cost factor it is being rendered to other people and I see no need whatsoever to study this bill in the Committee on Appropriations.

Senator SMITH. Mr. President, I do not believe I heard what the gentleman said to me. Would he repeat his answer?

Senator TILGHMAN. Mr. President, I said there is absolutely no cost to the Commonwealth of Pennsylvania as far as I see in

this bill. Therefore, I see absolutely no need for the bill to be rereferred to the Committee on Appropriations.

If the subsidy formula is being changed in this bill, we would appreciate the gentleman pointing out to us the page number and line.

Senator SMITH. Mr. President, as the Chairman of the Committee on Appropriations, I feel there is a cost factor involved. Since there is a possible cost factor involved, I simply want the bill rereferred to the Committee on Appropriations in order that we can ascertain whether or not there is a cost factor. It is not a big thing. It is possible there is no cost factor, but to the best information I have, there is a cost factor and I do feel the Committee on Appropriations should have the right to ascertain whether or not the cost factor is a substantial one or simply a small amount which could be absorbed with no problem.

Senator DOUGHERTY. Mr. President, if the gentleman from Philadelphia, Senator Smith, has concluded his interrogation of the gentleman from Montgomery, Senator Tilghman, and myself, I would like to further interrogate him.

The PRESIDING OFFICER. Will the gentleman from Philadelphia, Senator Smith, permit himself to be further interrogated?

Senator SMITH. I will, Mr. President.

Senator DOUGHERTY. Mr. President, could the gentleman tell us where in the bill he feels there might be an expenditure of funds by the Commonwealth?

Senator SMITH. Mr. President, it is my understanding of the bill that there will be a change from twenty-nine mills to thirty-five mills, a difference of six mills. Is that correct?

The PRESIDING OFFICER. I would like to caution the gentlemen. We have granted some leeway here but I believe I have reached the point where we must return to limiting the argument to the motion to rerefer.

Senator DOUGHERTY. Yes, Mr. President.

The PRESIDING OFFICER. I sense that we are getting into the merits of the bill and I caution you to limit your debate and interrogation to the motion to rerefer and the reasons for rereferral.

You obviously have a difference of opinion. Senator Smith thinks there is a potential cost factor and you do not.

Senator DOUGHERTY. Mr. President, I believe I have a right to answer the question and comment of the gentleman from Philadelphia, Senator Smith.

The other point I would like to make is: The line of discussion is on the motion to rerefer the bill and the reasons for the rereferral. We have not gone into the substance of the bill.

The PRESIDING OFFICER. I think you are precariously close to it, Senator Dougherty. You may state your question and I will rule on your question.

Senator DOUGHERTY. Mr. President, in response to the question of the gentleman from Philadelphia, Senator Smith, to me: The proposed movement of funds from twenty-nine mills to thirty-five mills involves local funds, funds of the City of Philadelphia, not funds of the Commonwealth of Pennsylvania. There is no expenditure of State funds here.

This bill mandates that the Philadelphia city government assume an additional six-mill contribution to the school district.

That is local money, Mr. President. This is a bill which properly belonged in the Senate Committee on Education and was reported from that committee.

In response to the gentleman's question, the six-mill increase does not involve State money. Therefore, I ask again: Where, in the bill, is there an expenditure of State funds which justifies a rereferral to the Committee on Appropriations?

POINT OF PERSONAL PRIVILEGE

Senator DOUGHERTY. Mr. President, I rise to a point of personal privilege.

The PRESIDING OFFICER. The gentleman from Philadelphia, Senator Dougherty, will state it.

Senator DOUGHERTY. Mr. President, is the Chair cutting off discussion on a motion to rerefer?

The PRESIDING OFFICER. I am submitting that the question has already been answered.

Senator DOUGHERTY. I would submit it has not, Mr. President.

The PRESIDING OFFICER. Would Senator Smith consent to answer the question again?

Senator SMITH. I would, Mr. President.

Let me see if I understand this correctly. When the local effort changes its direction by increasing millage, under the superdensity clause we match them. That is my point. I have tried to make this point continuously. When the local effort has changed, then we, the State, under the superdensity clause must match their efforts.

Therefore, I say there is a cost factor and I believe the gentleman from Philadelphia, Senator Dougherty, has just proven that point when he stated there is a change in the local effort.

Senator DOUGHERTY. Mr. President, I desire to interrogate the gentleman from Philadelphia, Senator Smith.

The PRESIDING OFFICER. Will the gentleman from Philadelphia, Senator Smith, permit himself to be interrogated?

Senator SMITH. I will, Mr. President.

Senator DOUGHERTY. Mr. President, perhaps the gentleman can enlighten us. How does the density factor relate to the local effort?

Senator SMITH. Mr. President, I think I have answered the question three times. There is a change on the part of the local entity, the Philadelphia School District, to change the millage from twenty-nine mills to thirty-five mills. Therefore, there is a change in that the State must meet that change, probably on a fifty-fifty basis. I am not quite sure it is fifty-fifty, but as Chairman of the Committee on Appropriations, I want that right. Put the bill in my committee so that when we rereport it we can say to the Senate that there is no cost factor; there is a small cost factor; there is quite a difference in what we will do under the superdensity clause.

Senator DOUGHERTY. Mr. President, the Chairman of the Committee on Appropriations is saying, in effect, that any time there is a bill he particularly wants in his committee, as long as he can create an unfounded impression that there is an expenditure of State dollars, he claims the right to have the bill rereferred to his committee. It would seem to me, Mr. President, that a motion to rerefer should only be considered by the Chair

where there is sufficient evidence to warrant the appropriateness of the rereferral to the Committee on Appropriations. Therefore, I would ask the Chair for a ruling on the motion to rerefer this bill to the Committee on Appropriations.

The PRESIDING OFFICER. It is not the function of the Chair to agree to rerefer any matter. It is the function of the Senate.

Senator DOUGHERTY. Mr. President, I request a roll call.

And the question recurring,

Will the Senate agree to the motion?

The yeas and nays were required by Senator DOUGHERTY and were as follows, viz:

YEAS—24

Arlene,	Kelley,	Messinger,	Romanelli,
Coppersmith,	Lewis,	Murray,	Ross,
Duffield,	Lynch,	Nolan,	Scanlon,
Fumo,	McCormack,	Noszka,	Smith,
Gurzenda,	McKinney,	O'Pake,	Stout,
Hankins,	Mellow,	Orlando,	Zemprelli,

NAYS—21

Andrews,	Gekas,	Howard,	Reibman,
Bell,	Hager,	Jubelirer,	Snyder,
Corman,	Hess,	Kusse,	Stapleton,
Dougherty,	Holl,	Manbeck,	Stauffer,
Dwyer,	Hopper,	Moore,	Tilghman,
Early,			

So the question was determined in the affirmative, and the motion was agreed to.

The PRESIDENT. Senate Bill No. 992 is rereferred to the Committee on Appropriations.

SB 585 CALLED UP

SB 585 (Pr. No. 2032) — Without objection, the bill, which previously went over in its order temporarily, was called up, from page 3 of the Third Consideration Calendar by Senator MESSINGER.

BILL OVER IN ORDER TEMPORARILY

SB 585 (Pr. No. 2032) — Considered the third time,

On the question,

Will the Senate agree to the bill on third consideration?

REQUEST FOR BILL OVER IN ORDER

Senator MESSINGER. Mr. President, I request that Senate Bill No. 585 go over in its order.

Senator SNYDER. Mr. President, I ask for a roll call vote on Senate Bill No. 585 going over in order. I believe the business community is entitled to have a clear cut vote on the bill.

MOTION FOR BILL OVER IN ORDER

Senator MESSINGER. Mr. President, I move that Senate Bill No. 585 go over in its order.

On the question,

Will the Senate agree to the motion?

Senator ZEMPRELLI. Mr. President, I believe it is important for the Senate to understand that I requested that the bill go over in its order; the reason for it is that the bill has been amended since last week and the amendments which I had submitted to both caucuses related to the wrong printer's number.

There was no intent on my part not to debate the amendments today and I regret very much the fact that I had to request that the bill go over. There was no way for me to even take the amendments and redraft them in the form that would make any sense.

The Legislative Reference Bureau, immediately upon finding out that I had the wrong printer's number, inasmuch as the amendments were agreed to last week, agreed to have them out tomorrow morning. That is as much as I can say unless someone would like to ask some questions. The first I became aware I had amendments to the wrong printer's number was when I was starting to prepare myself for debate on the matter earlier this afternoon.

PARLIAMENTARY INQUIRY

Senator HAGER. Mr. President, I rise to a question of parliamentary inquiry.

The PRESIDING OFFICER. The gentleman from Lycoming, Senator Hager, will state it.

Senator HAGER. Mr. President, if we were to move to revert to the prior printer's number, all the amendments of the gentleman from Allegheny, Senator Zempirelli, would be in order, to the preceding number, and we could get the other amendments, which were agreed to, prepared for this. We could do the work tonight, vote on the amendments, and then vote the bill tomorrow. Would that not be correct?

Senator ZEMPRELLI. Mr. President, I have no problem with that if the Senate wishes to consider it in that fashion. I do not know about the rest of the Members but I have no problem with that.

Senator HAGER. Mr. President, does a motion that a bill go over or a motion that a bill revert to a prior printer's number take precedence?

The PRESIDING OFFICER. It is the ruling of the Chair that a motion to go over a bill would take precedence over a motion to revert to a prior printer's number.

Senator HAGER. Thank you, Mr. President.

I then request a roll call vote on the motion. The bill being nondebatable, I merely suggest the Members vote "no."

And the question recurring,

Will the Senate agree to the motion?

(During the calling of the roll, the following occurred:)

Senator MELLOW. Mr. President, I thought the motion which had been made was a motion to recommit the bill, which I would oppose.

It is my understanding now that I was in error and that the motion is to put the bill over. In that case, I would like to change my vote from "no" to "aye."

The PRESIDING OFFICER. The gentleman will be so recorded.

Senator McCORMACK. Mr. President, not for the same rea-

sons, but I wish to change my vote from "no" to "aye."

The PRESIDING OFFICER. The gentleman will be so recorded.

Senator O'PAKE. Mr. President, I wish to change my vote from "no" to "aye."

The PRESIDING OFFICER. The gentleman will be so recorded.

The yeas and nays were required by Senators SNYDER and HAGER and were as follows, viz:

YEAS—22

Arlene, Bell, Duffield, Fumo, Hankins, Kelley,	Lynch, McCormack, McKinney, Mellow, Messinger, Murray,	Nolan, Noszka, O'Pake, Orlando, Romanelli,	Ross, Scanlon, Schaefer, Smith, Zempirelli,
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NAYS—24

Andrews, Coppersmith, Corman, Dougherty, Dwyer, Early,	Gekas, Gurzenda, Hager, Hess, Holl, Hopper,	Howard, Jubelirer, Kusse, Lewis, Manbeck, Moore,	Reibman, Snyder, Stapleton, Stauffer, Stout, Tilghman,
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So the question was determined in the negative, and the motion was defeated.

And the question recurring,

Will the Senate agree to the bill on third consideration?

MOTION TO ADJOURN

Senator NOLAN. Mr. President, I move that we adjourn until tomorrow, Tuesday, June 27, 1978, at 1:00 p.m.

On the question,

Will the Senate agree to the motion?

Senator HAGER. Mr. President, I object to the motion to adjourn and ask for a roll call vote.

REQUEST FOR RECESS

Senator MESSINGER. Mr. President, I request a recess of the Senate for the purpose of a Democratic caucus which will be held in the Rules room and should take approximately ten minutes.

The CHAIR. The Senate will be at ease.

(The Senate was at ease.)

The PRESIDING OFFICER. Senator Messinger, do you wish to withdraw the request for a recess?

REQUEST FOR RECESS WITHDRAWN TEMPORARILY

Senator MESSINGER. Mr. President, I withdraw the request for a recess temporarily.

And the question recurring,

Will the Senate agree to the motion to adjourn?

The yeas and nays were required by Senator HAGER and were as follows, viz:

YEAS—21

Arlene,	McCormack,	Nolan,	Scanlon,
Duffield,	McKinney,	Noszka,	Schaefer,
Fumo,	Mellow,	Orlando,	Smith,
Hankins,	Messinger,	Romanelli,	Stout,
Kelley,	Murray,	Ross,	Zemprelli,
Lynch,			

NAYS—25

Andrews,	Gekas,	Howard,	O'Pake,
Bell,	Gurzenda,	Jubelirer,	Reibman,
Coppersmith,	Hager,	Kusse,	Snyder,
Corman,	Hess,	Lewis,	Stapleton,
Dougherty,	Holl,	Manbeck,	Stauffer,
Dwyer,	Hopper,	Moore,	Tilghman,
Early,			

So the question was determined in the negative, and the motion was defeated.

And the question recurring,

Will the Senate agree to the bill on third consideration?

REPORTS FROM COMMITTEE

Senator ROMANELLI, by unanimous consent, from the Committee on Urban Affairs and Housing, reported, as amended, **HB 1937** and **2343**.

RECESS

Senator MESSINGER. Mr. President, I repeat my request for a brief recess of the Senate for the purpose of a Democratic caucus to be held in the Rules room.

The PRESIDING OFFICER. It has been requested by Senator Messinger that the Senate stand in recess for a brief caucus at the rear of the Senate Chamber.

This Senate will stand in recess until 8:00 p.m.

AFTER RECESS

The PRESIDING OFFICER. The time of recess having elapsed, the Senate will be in order.

And the question recurring,

Will the Senate agree to the bill on third consideration?

POINT OF INFORMATION

Senator ZEMPRELLI. Mr. President, I rise to a point of information.

The PRESIDING OFFICER. The gentleman from Allegheny, Senator Zemprelli, will state it.

Senator ZEMPRELLI. Mr. President, if the Senate were to stand in recess by its own authority, would we lose a day as far as the Senate is concerned, or would it be considered part of the same day?

The PRESIDING OFFICER. It would be considered part of

the same day, Senator.

Senator ZEMPRELLI. Based on that consideration, Mr. President, and based on the discussion in our caucus which I do not think is any secret, there is at least one Member who represents or does not wish to revert to the prior printer's number on Senate Bill No. 585. We then have the physical problem of having the amendments before us as they are now being prepared by the Legislative Reference Bureau.

RECESS

Senator ZEMPRELLI. Mr. President, as I see no prejudice to anybody's desire to have Senate Bill No. 585 voted upon, I would move at this time that the Senate stand in recess until 11:00 o'clock tomorrow morning for the purpose of having the amendments prepared in order that they may be argued with respect to the bill before us.

The PRESIDING OFFICER. Senator, we may not recess until a time certain, but we could recess pending the call of the Chair.

Senator ZEMPRELLI. Mr. President, I would then revise my motion to be a recess pending the call of the Chair.

The PRESIDING OFFICER. It has been moved by Senator Zemprelli that the Senate recess until the call of the Chair for the purpose of having amendments prepared to Senate Bill No. 585.

On the question,

Will the Senate agree to the motion?

Senator ZEMPRELLI. At that time, Mr. President, I wish to advise, upon discovery of the fact, that these amendments were not germane to the bill on the Calendar, there was an immediate request of the Legislative Reference Bureau to have the new amendments prepared. I understand that I am not the only party who proposes to present amendments and I ran into the same difficulty.

I do not know of any time in my fifteen years in the Legislature where a Member has been denied this particular request based on similar circumstances.

Senator HAGER. Mr. President, I understand that we may not recess to a time certain, that being the same as an adjournment. However, are the Members of the Senate to have some assurance that we will be called back? There has been recent history where we recessed to the call of the Chair which call of the Chair did not come for some great period of time. I refer to the budget battle of last year when that happened on at least two occasions.

My question is: Do we have the assurance of someone that we will be returning to deal with this so that there will be a second Calendar upon which this bill, either amended or unamended, will be available for final vote before this Senate adjourns for the summer?

Senator MURRAY. Mr. President, I would like to assure the Minority Leader that he has my word. We will be returning to the floor for the purpose of a vote on the bill.

Senator HAGER. Mr. President, is there a motion? I have been asked by certain Members on this side of the aisle to ask for a roll call vote on that motion in that they wish to oppose

the motion.

Senator SCHAEFER. Mr. President, I want to join in the request of the gentleman from Allegheny, Senator Zemprelli, because I, too, discovered that the one amendment which I had planned to offer to Senate Bill No. 585 appears to be an amendment to the wrong printer's number.

If we do revert, I also have the problem in that I lose my two amendments which were put in the bill last week. I, too, would join in the request to recess until the call of the Chair.

Senator HOWARD. Mr. President, I recall in this Chamber when, in the past, there has been a question of printer's numbers. If it is only a case of changing that number on the documents, can we not do that and save ourselves all of this or, are there draftsmanship issues as well?

Senator ZEMPRELLI. Mr. President, I think it is important to answer the question of the gentleman from Bucks, Senator Howard.

The fact is that with the amendments which were placed in the bill, all the amendments but one—if not all—do not make sense because they refer to the wrong sections, wrong page numbers. There is just no way but to correct the printer's number. I would have done as the gentleman suggested had it been possible.

Senator HAGER. Mr. President, I intend to vote "no" on this motion. However, I want it understood for myself and for others that this is not a vote against allowing a Member to offer amendments. It is merely our feeling that if we defeat the recess motion, we can then revert and do everything necessary to save both the gentleman from Allegheny, Senator Zemprelli, and the gentleman from Allegheny, Senator Schaefer, from problems which I will explain to them if they would like.

And the question recurring,
Will the Senate agree to the motion?

The yeas and nays were required by Senator HAGER and were as follows, viz:

YEAS—26

Arlene,	Lynch,	Noszka,	Scanlon,
Duffield,	McCormack,	O'Pake,	Schaefer,
Early,	McKinney,	Orlando,	Smith,
Fumo,	Mellow,	Reibman,	Stapleton,
Gurzenda,	Messinger,	Romanelli,	Stout,
Hankins,	Murray,	Ross,	Zemprelli,
Kelley,	Nolan,		

NAYS—20

Andrews,	Dwyer,	Hopper,	Manbeck,
Bell,	Gekas,	Howard,	Moore,
Coppersmith,	Hager,	Jubelirer,	Snyder,
Corman,	Hess,	Kusse,	Stauffer,
Dougherty,	Holl,	Lewis,	Tilghman,

So the question was determined in the affirmative, and the motion was agreed to.

The PRESIDING OFFICER. This Senate will stand in recess until the call of the Chair.

AFTER RECESS

The PRESIDING OFFICER. The time of recess having elapsed, the Senate will be in order.

And the question recurring,
Will the Senate agree to the bill on third consideration?

SENATOR MESSINGER TO VOTE FOR SENATOR ORLANDO

Senator MESSINGER. Mr. President, I request a legislative leave of absence for the remainder of Monday's Session and for all of Tuesday's Session for Senator Orlando.

The PRESIDING OFFICER. Senator Messinger has requested a legislative leave of absence for Senator Orlando. The Chair hears no objection and the leave is granted.

GUESTS OF SENATOR RICHARD A. SNYDER PRESENTED TO SENATE

Senator SNYDER. Mr. President, in the gallery there is a group of senior citizens from Lancaster, Pennsylvania, many of whom I know personally. I know they are good citizens and I am sure if you added up the number of years they paid taxes, it would add up to thousands.

I would appreciate it if the Senate would give them its usual warm welcome.

The PRESIDING OFFICER. The Chair is very pleased to welcome the group of elderly citizens from Lancaster County. If they will all rise, we will extend to them our usual warm welcome.

(Applause.)

The PRESIDING OFFICER. We hope you enjoy your day in Harrisburg and many, many more days.

SENATOR HAGER TO VOTE FOR SENATOR DWYER

Senator HAGER. Mr. President, for some unspecified period I would like to have a legislative leave of absence for today's Session for Senator Dwyer, who, along with Senator Murray, is attending the Pennsylvania Higher Education Facilities Authority meeting.

The PRESIDING OFFICER. Senator Hager has requested a legislative leave of absence for an unspecified period of time for Senator Dwyer. The Chair hears no objection and the leave is granted.

The PRESIDING OFFICER. The Senate has before it Senate Bill No. 585, Printer's No. 2032.

And the question recurring,
Will the Senate agree to the bill on third consideration?

SCHAEFER AMENDMENTS I

Senator SCHAEFER, by unanimous consent, offered the following amendments:

Amend Sec. 5, page 5, line 1, by striking out "or"

Amend Sec. 5, page 5, line 4, by removing the period after "commenced" and inserting: ; or

(3) any action brought on the theory of negligence of such action is timely commenced within the limitation prescribed by the applicable statute of limitations for a negligence action.

On the question,

Will the Senate agree to the amendments?

Senator SCHAEFER. Mr. President, these amendments, I suppose, will begin the so-called "amendment battle" on Senate Bill No. 585.

In order to understand these amendments I believe the total picture surrounding Senate Bill No. 585 should be briefly discussed.

Senate Bill No. 585 is an attempt to change the theories of liability insofar as recovery of damages is concerned for injuries sustained by reason of a defective product.

My amendments do not touch the statute of limitations insofar as the theory—

POINT OF ORDER

Senator KELLEY. Mr. President, I rise to a point of order.

The PRESIDING OFFICER. The gentleman from Westmoreland, Senator Kelley, will state it.

Senator KELLEY. Mr. President, in the absence of a quorum, I ask for a recess at this time because of this very important piece of legislation.

Mr. President, as a point of order, since a quorum is not present, I ask for a quorum call.

The PRESIDING OFFICER. The Senate will be at ease.

(The Senate was at ease.)

The PRESIDING OFFICER. The Chair has determined that a quorum is present.

Senator SCHAEFER. Mr. President, as I had indicated during my comments, one of the major changes that Senate Bill No. 585 works on is the theory of liability, insofar as the strict liability concept is concerned, to impose a statute of limitations of twelve years. Briefly, in layman's language, as I understand it, this means that no action for damages, injuries or losses may be brought on a strict liability theory after twelve years. The bill, as presently drafted, also puts an absolute bar, i.e., a statute of limitations, on theories of recovery that are based upon negligence.

The PRESIDING OFFICER. Will the Senate please come to order? This is a very important bill. This is a very important argument. Will the gentlemen please take their seats? You may proceed, Senator.

Senator SCHAEFER. Mr. President, it is important to understand the difference between a theory of recovery based upon negligence on the one hand and a theory of recovery based upon strict liability. As I understand it, strict liability is a sort of no-fault concept that a manufacturer is liable for the production of a defective product without any regard to fault. Negligence, on the other hand, interjects, in a theory of recovery, a fault concept. That is to say that based upon this man's negligence, his fault, another person has sustained damages to himself—in some instances to his family—wherein the person who committed the fault should be found liable for those damages.

My amendments seek to treat recoveries or actions where a person is alleged to be at fault differently from an action where there is no fault involved, i.e., an attempt is made to recover based upon a theory of strict liability.

I fully anticipate there will be people who say, in essence, these amendments could be conceived as "gutting" the bill. In anticipation of that I would just like to comment that during the whole time this bill was considered by the Senate Committee on Judiciary and the public hearings held on it, I attended those hearings and spent some time on this issue. I have concluded that none of the evidence that I have seen through hearings, through correspondence or reports I have received, has indicated to my satisfaction that Senate Bill No. 585 will really have any significant effect on the cost of premiums that all businessmen have to pay, nor will it have any significant effect on the availability of products liability insurance. I say that is important in understanding these amendments because there will be people who say that these amendments do away with the bill. I disagree because we are keeping in the statute of limitations for strict liability theories.

If people have evidence contrary to the fact that Senate Bill No. 585 will reduce the premiums, even put a cap on the increase or put a cap on the availability, I will sit and listen and maybe my mind will be changed about this issue. But today, based upon what I have seen, I do not see that.

Mr. President, the point I am making is this: When we have an attempt to recover damages, losses, based upon a man's fault, it should be treated separately and very carefully analyzed whether or not we want to change the present law.

In essence, my amendments keep the present law insofar as negligence theories of recovery are concerned.

Mr. President, I ask for a roll call vote on these amendments.

Senator HAGER. Mr. President, I desire to interrogate the gentleman from Allegheny, Senator Schaefer.

The PRESIDING OFFICER. Will the gentleman from Allegheny, Senator Schaefer, permit himself to be interrogated?

Senator SCHAEFER. I will, Mr. President.

Senator HAGER. Mr. President, being an attorney myself I understand the distinction being made by the Senator, but I wonder if the gentleman could tell us whether that distinction is going to be understood by the rate-making authorities and by those who are reserving?

Is it not a fact that if you preserve some right of action beyond the twelve-year period, the insurance companies will be faced with the same kind of reserving problems they have today and this will, in effect, wipe out any gains against the high cost of this kind of insurance because of the inclusion of this provision in the bill?

Senator SCHAEFER. Mr. President, in response thereto I think it is very interesting that the distinguished Minority Leader's question basically is: Will this difference be understood by the rate-making authority?

Mr. President, I think that question zeroes in on what I feel to be one of the more significant aspects of this so-called product liability crisis. It is my opinion, based upon present law, that the rate-making authority in most of the instances is the insurance company. Number one, in essence, in many respects

this is an unregulated type of insurance premium inasmuch as the premium is based upon whatever the market will bear.

Number two, the rate-making decision is based upon, according to my understanding, a national experience in the area of product liability. From that I conclude that, no matter what we do in Pennsylvania, it will have no effect on the insurance rates because of this national experience being the basis for insurance rates.

In answer to the gentleman's question, then, Mr. President—and this refers to my earlier point—this will not, in my opinion, affect the insurance rates either way.

Senator HAGER. Mr. President, would it be the gentleman's opinion then that whatever action we take or do not take on Senate Bill No. 585 it will have no effect upon the insurance market as to premiums in the products liability field?

Senator SCHAEFER. Mr. President, in answer to that I can only cite my previous comments. Throughout the entire time this bill was being considered by the Senate Committee on Judiciary, in discussions among colleagues and by the full Senate since it has been on the Calendar—and I am willing to change my opinion if someone can show me evidence to this effect—this bill is not being represented, by the people who are advocating the bill, as having any effect upon the insurance rates in Pennsylvania. They are saying that this bill represents a first step, somewhat. Therefore in answer to the gentleman's question, directly based upon information I have received during my participation, I would conclude that this bill will not have a significant effect on the insurance rates currently charged. I might add as a corollary, one of the amendments proposed by me earlier on this bill was an attempt to give the Insurance Commissioner authority to begin to gather evidence with which to analyze the current products liability situation.

It is my understanding, based upon information I have received from the Insurance Commission and from representatives of the Chamber, that this authority does not currently exist and many of the decisions which are made, regarding products liability rates, are really being made without this information.

Therefore, Mr. President, the simple answer to the gentleman's question, on the condition as aforesaid, is "no."

Senator HAGER. Mr. President, is it not the gentleman's understanding that a number of manufacturers in this State are finding it difficult or impossible to find insurance at any rate?

Is it not further the gentleman's understanding that one of the reasons for this, perhaps the most important reason is, the long time which, under present law, might elapse between the manufacture of a piece of machinery and the first incident leading to a lawsuit; and is it not the purpose of the section which this gentleman is seeking to amend to limit that period of time to a time certain rather than thirty, forty, fifty or sixty years; and will these amendments not have a negative effect, not only upon the rate-making situation but also upon the security and the ability of small companies to continue manufacturing lines which are of great importance to the consumers of this Commonwealth?

Senator SCHAEFER. In response, Mr. President, my amend-

ments do not change the statute of limitations of twelve years insofar as theories of recovery based upon strict liability are concerned. This is the so-called "Products Liability Theory."

Therefore, Mr. President, I would say, no, it would not have an effect of changing the rates or the rate-making structure or the future availability of this insurance.

Let me say this: The distinguished Minority Leader has indicated that he is an attorney and is somewhat familiar with the concepts I am discussing from a lawyer's point of view.

Mr. President, I desire to interrogate the gentleman from Lycoming, Senator Hager.

The PRESIDING OFFICER. Will the gentleman from Lycoming, Senator Hager, permit himself to be interrogated?

Senator HAGER. Mr. President, I will submit to interrogation as soon as I have completed my interrogation of the gentleman from Allegheny, Senator Schaefer.

Senator SCHAEFER. Mr. President, I apologize. I thought the gentleman was finished and withdraw my request.

Senator HAGER. Mr. President, I would like the gentleman, if he will, to answer this question from the standpoint of a manufacturer. If he were a manufacturer, does he feel it would matter to him whether or not the possibility of being sued, under a theory of strict liability or ordinary negligence was the issue?

Is it not a fact, if he is a manufacturer, and the possibility of being sued exists twenty-five years from now, would the gentleman care very much about the legalism of whether or not the suit was brought under a theory of strict liability or ordinary negligence and would he, because of these amendments, be able to change his future plans as to the availability of insurance?

To simplify the question, Mr. President, would it make much difference to the gentleman, as a manufacturer, in determining whether or not he will stay in business and continue to manufacture a line of products, that he could not be sued under strict liability but might be sued twenty-five years from now on a theory of negligence in the event that, twenty-five years from now, some jury might find that an act of the gentleman, twenty-five years earlier, was in fact negligent?

Senator SCHAEFER. Mr. President, I am not sure I understand the question correctly. The Minority Leader is asking me to put myself in the position of a manufacturer, first. Secondly, to ignore what he and I know to be valid legal distinctions between the theories. Third, to ignore the fact that, in my opinion, this bill would have little or no effect upon the rates or availability of insurance. Finally, assume that that manufacturer will not have insurance at that time. I think that is important in the gentleman's question.

Mr. President, I do not feel that any manufacturer will forego insurance in the area of products liability under any circumstances. I believe that is a necessary aspect of the business. Assuming the man is insured, I do not feel the question posed by the gentleman would be a portion of the business decision. If he had the insurance applicable at that time would be the primary consideration, which goes back to my earlier point that this bill will not have any effect on that aspect of the problem which I feel is the crucial part. I will listen if anyone can tell me differently.

Senator HAGER. Mr. President, I am now ready to be interrogated by the gentleman from Allegheny, Senator Schaefer.

Senator SCHAEFER. Mr. President, does the Minority Leader understand the basic differences between a theory of liability based upon negligence and that based upon strict liability?

Senator HAGER. Yes, Mr. President.

Senator SCHAEFER. With that understanding, Mr. President, how would the distinguished Minority Leader characterize the differences in burdens of proof in those two theories of liability?

Senator HAGER. Mr. President, I would characterize them as follows: In the area of strict liability it becomes the burden of the defendant virtually to pay without proof of fault while, in the latter, the case of negligence, it requires the plaintiff to prove, before he can hope for recovery, that there was negligence on the part of the manufacturer of the product.

I might go on to point out, however, that from the standpoint of the manufacturer who is trying to figure out what is going to happen twenty-five years down the road, that is of absolutely no importance at all.

Senator SCHAEFER. Mr. President, would the gentleman agree that the burden of proof in a negligence action as compared to a strict liability action is significantly greater?

Senator HAGER. Absolutely, Mr. President.

Senator SCHAEFER. Mr. President, would the gentleman agree that the negligence theory, as opposed to a strict liability, involves a theory or a concept of fault?

Senator HAGER. Absolutely, Mr. President.

Senator SCHAEFER. Mr. President, would the gentleman agree that, regardless of what the manufacturer feels about what he calls legalisms, the significant aspect of this problem is what the insuring company or the rate-monitoring authority believes?

Senator HAGER. Just partially, Mr. President. I believe the decision that really matters to the manufacturer at this point is, does he or does he not continue to manufacture. It matters only partially to the person who is making the reserving requirement decision in the insurance companies because he is still concerned about that unknown response to this law which may lie after twelve years down the road, whereas, the bill in its present form gives them a date certain beyond which they need not be concerned.

Senator SCHAEFER. Mr. President, is the Minority Leader representing to this Body that Senate Bill No. 585 will have an effect on insurance rates in Pennsylvania?

Senator HAGER. Mr. President, I suppose my answer to that would have to be to take a look backwards at the medical malpractice situation and point out to the gentleman that insurance companies and actuaries make their decisions retrospectively and not prospectively. I believe that a change in the law today, no matter what it is, will have no immediate effect upon rates.

I think that if the experience generated by that change shows a difference from the present experience, it will have an eventual effect upon insurance rates, either up or down.

Senator SCHAEFER. Mr. President, is the Minority Leader

saying that the rate is based exclusively upon the Pennsylvania experience?

Senator HAGER. No, Mr. President.

Senator SCHAEFER. Mr. President, is the Minority Leader saying that the rate is based really upon the national experience in this area?

Senator HAGER. Yes, Mr. President, and I have as my only source the insurance companies which make that assertion.

Senator SCHAEFER. Therefore, Mr. President, the gentleman is saying, in essence—as I understand it and correct me if I am wrong—that the national experience really forms the basis for the products liability rate.

Senator HAGER. That is correct, Mr. President, of which Pennsylvania experience is a rather significant part because this is one of the more important industrial and manufacturing states in the Nation.

Senator SCHAEFER. Mr. President, has the gentleman received any evidence, testimony, opinions, reports, studies, et cetera, that satisfactorily demonstrate to him that the insurance rates will be changed by reason of Senate Bill No. 585? If he has, could he please tell us what these reports, opinions, conclusions or studies are?

Senator HAGER. No, Mr. President. Therefore, the second part of the gentleman's question is unanswerable except to say that in this area, as well as in medical malpractice, we are dealing with the issue of reserving, reserving not only for known losses but for incurred but not reported losses which, in my opinion, make up a very large part of the premium base.

Senator SCHAEFER. Mr. President, is the gentleman attempting to say that the Medical Malpractice Act, which was passed prior to my coming here, has had a significant effect on insurance rates or availability in Pennsylvania?

Senator HAGER. No, Mr. President. I am saying it will.

Senator SCHAEFER. Mr. President, on what reports, studies, correspondence, testimony or opinions is the gentleman basing that conclusion?

Senator HAGER. Mr. President, I am coming to that conclusion based upon the report of the Administrator of the Medical Malpractice Arbitration System. I am making it on informal reports given to me by the executives of insurance companies. I am making that based upon reports to me of the Pennsylvania Hospital Insurance Company from the experience which has been taking place since the implementation of the provisions of that law.

Senator SCHAEFER. Mr. President, would the Minority Leader share these reports with me before we vote on the amendments?

Senator HAGER. Mr. President, the only way I can do that is to tell the gentleman that I am told by all of those persons of experience that there are less claims and the verdicts, in fact, are much smaller. More cases are being settled at the prearbitration level and that the experience of this has got to be salutary and will have to be reflected in rates as that experience builds. Remember, insurance companies do rate retrospectively, not prospectively.

Senator SCHAEFER. I have one last question, Mr. President. Is the Minority Leader saying that insurance rates in the area

of medical malpractice are based upon Pennsylvania experiences or national experiences and, if he answers that question, what is the source of his conclusion in that regard?

Senator HAGER. Mr. President, my source would be all the insurance companies which were party to the draftsmanship of that Act, that Pennsylvania experience was going to form a large portion of the base.

But, Mr. President, the gentleman is really talking about only one aspect of the purpose of this bill and that is insurance rates. A much larger and, perhaps, more important aspect of it is the degree of security manufacturers feel in the products which they are making available to the public and the very fact that there may be a shrinking of the products available to consumers within this Commonwealth and this Nation due to the problem of products liability.

Senator SCHAEFER. Mr. President, I really do not think we can respond to that because it basically is speculation on both our parts. I am basically concerned with the cold, hard facts of the matter. This whole crisis reflects itself in two areas, availability of insurance and rates of premiums. I am, like the gentleman, quite anxious to deal with that problem. My only concern is, I have some very grave reservations as to whether or not Senate Bill No. 585 adequately does that.

Mr. President, I would again ask for a roll call vote on my amendments.

Senator BELL. Mr. President, before the Senate got lost in this discussion, we were talking about simple amendments submitted by the gentleman from Allegheny, Senator Schaefer. The gentleman stated that he wanted to restore, in some way, the fault statute of limitation. Then, by play of words somehow or another, the gentleman got into negligence. I wonder if he would care to tell the Senate why he intentionally omitted "willful fault." Fault is not only negligence, it is also willful, but he has, by these amendments, omitted willful fault. I am fearful that the court, at sometime in the future, will deny some of my constituents recovery on the grounds of willful fault. That is why I am against these amendments. I do not believe they are properly drawn.

Senator SCHAEFER. Mr. President, I respect what the gentleman from Delaware, Senator Bell, has said. I do not, however, agree with what I understand to be an insinuation that I purposely overlooked that. That was not the case.

My amendments seek to allow, in all theories of negligence, the current statute of limitation to prevail. It is my understanding that, under the current theories of negligence, one of the things which may be alleged is that the action was willful. My experience, when I was practicing, was that most people do that as a matter of course. I suppose my answer to the gentleman is this: Yes, he cites a very good point. In my opinion, the present amendments, as drafted, do take care of that problem.

Senator BELL. Mr. President, apparently the law schools have changed since I was in school. When I went to law school, tort consisted of negligence actions and willful actions. At no time was negligence a willful action.

The yeas and nays were required by Senator SCHAEFER and were as follows, viz:

YEAS—10

Andrews, Fumo, Hankins,	Jubelirer, Kelley, Reibman,	Romanelli, Scanlon,	Schaefer, Zemprelli,
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NAYS—31

Arlene, Bell, Coppersmith, Corman, Dougherty, Dwyer, Early, Gekas,	Gurzenda, Hager, Hess, Holl, Hopper, Howard, Kusse, Lewis,	Manbeck, Mellow, Messinger, Moore, Murray, Noszka, O'Pake, Orlando,	Ross, Smith, Snyder, Stapleton, Stauffer, Stout, Tilghman,
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So the question was determined in the negative, and the amendments were defeated.

And the question recurring,
Will the Senate agree to the bill on third consideration?

ZEMPRELLI AMENDMENT I

Senator ZEMPRELLI, by unanimous consent, offered the following amendment:

Amend Sec. 3, page 3, line 4, by striking out "unreasonably"

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

Senator ZEMPRELLI. Mr. President, as I alluded to earlier, I believe there is a fundamental need to understand what we are attempting to do here.

The concept of a bill dealing with products liability sets forth a basic standard for determining the rights and liabilities of manufacturers, sellers and consumers as they would deal with products that are manufactured and from the resultant damages occasioned by someone suffering injury as a result of a product.

The bill endeavors to place certain limitations on those products which are manufactured both as to the manufacturer, he, who produces a product, and the seller, he, who eventually is in privity with a consumer. It goes one step further; it attempts to establish a relationship on rights and liabilities between manufacturer and seller and that is to suggest there are provisions in the bill which state that, under certain circumstances, a seller is entitled to be reimbursed from a manufacturer, as I said, under certain circumstances.

The basic concept here—and let us not kid one another—is one of consumerism. Because, as the law stands today, we are dealing with the basic court decisions which deal with liability on a manufactured product. I can state, unequivocally, that we would not be here discussing this subject this morning if the manufacturers of this State and this Nation were more careful in the production of the products they offer to consumers. That is how simple it is. When we digress from that, somebody is not the benefactor. That is the subject matter of the amendment.

And the question recurring,
Will the Senate agree to the amendments?

When you favor the manufacturer and you favor the seller and do it unjustly you harm the consumer. What we seek to do here is to arrive at balance. What is fair and what is right and what is the standard by which we should determine the rights and liabilities of all parties, manufacturers, sellers and consumers, in the future.

Conceivably, we have before us the greatest anti-consumer bill that has ever been before this Body in this Session.

Mr. President, those are the preliminary remarks that I would make. At the same time, I regret that the burden falls upon me to make these amendments because I know, from the rumblings which have taken place in this Chamber, the fact that I am a practicing attorney, that I come here with a special interest when the fact is that nothing could be further from the truth.

In the twenty-six years that I have been practicing law I have not had a products liability case. I do not know how to try one. But I believe I understand how to read Senate Bill No. 585 and I do believe there are fundamentals in this bill that—if we are going to have a products liability bill—should make it a fair bill. It is on that preamble and on that suggestion that I offer the amendment and ask the Clerk to read the first amendment, if he has not already, so that I may discuss it.

The PRESIDING OFFICER. Senator Zemprelli, the Clerk has read the amendment and I assumed you were discussing it.

Senator ZEMPRELLI. Having set the background, Mr. President, the first amendment deals with the deletion of the word "unreasonable" from Section 3 of the bill dealing with strict liability.

Mr. President, I ask my colleagues to consider the language of the act. It reads: "One who manufactures any product in a defective condition unreasonably dangerous . . ." That is like suggesting, Mr. President, that you are part pregnant. It is either dangerous or it is not dangerous. There is nothing in between. To suggest we are talking about the Mickey Mouse language of "unreasonably dangerous" sets up another problem and that is, in that determination, it will be made by a jury in some jurisdictions. Assuming we are dealing with a product such as any manufactured product—let us just assume that it is a baby carriage, or, maybe it would not be of that classification, let us say it would be an explosive of some kind—under the facts and circumstances it is conceivable that a jury in Philadelphia might determine, on the basis of the language in the bill now, that it was unreasonably dangerous; while a jury in Pittsburgh, with the identical same facts, would conclude that it was not.

Again, by the very language, it deviates from the standard we are attempting to make here in the determination of these liabilities.

Therefore, Mr. President, I suggest to the Members of the Senate that the word "unreasonable" should be deleted so the language would read "a defective condition, dangerous." That is the thrust of the amendment.

Mr. President, I ask for a roll call vote.

Senator HAGER. Mr. President, I desire to interrogate the gentleman from Allegheny, Senator Zemprelli.

The PRESIDING OFFICER. Will the gentleman from Alle-

gheny, Senator Zemprelli, permit himself to be interrogated?

Senator ZEMPRELLI. I will, Mr. President.

Senator HAGER. Mr. President, might the gentleman tell us what is the difference between a product which is dangerous and one which is unreasonably dangerous in light of the Berkebile versus Brantly Helicopter case?

Senator ZEMPRELLI. Mr. President, I am not familiar with the case the gentleman is referring to. Unfortunately, I have not read it.

However, if I may proceed, my gut reaction is that one case may be determined on one fact and another may be determined on another fact. The fact that we are using a word such as "unreasonably" is a qualification to a condition. It is conceivable to me that every fact situation would be dependent upon its own merits and that is the matter being submitted. It is conceivable that a jury could determine that a product—that particular product before it for consideration—is dangerous but not unreasonably dangerous. I am suggesting that the key word in the turning point should be whether a product is inherently dangerous or not dangerous and not the degree to which it is dangerous.

Senator HAGER. I thank the gentleman, Mr. President, and point out that that is exactly the concern that exists in this case because the operative words are "defective condition" and "unreasonably."

The Berkebile case was a case in which an engine stopped in a helicopter. There is a large button in the middle of the control panel which says, "Push for autorotation in the event of engine failure," which the pilot had never read and did not bother to push. The helicopter then, of course, did not go into autorotation; it crashed and the pilot was injured. The court held that the machine was dangerous simply because of the kind of instrument it was, such as an automobile or an airplane. The fact he did not read and did not push the autorotation button did not keep him from recovering. This leads people to be very concerned about the manufacturer of a knife for carving; it is sharp and it is dangerous. If a court could find that a machine is inherently dangerous, regardless of the failure of somebody to follow the directions, it is the fear of those who will oppose the amendment that any advancement in technology at all is liable to be considered dangerous, although not unreasonably so.

Mr. President, this could lead to all kinds of suits. This could change the substantive law of Pennsylvania and this could lead to the unavailability of products liability insurance for the most basic of manufactured products.

Senator ZEMPRELLI. Mr. President, in reply to the gentleman, if I were to analyze the case that he has presented, I would have given great weight to the action or failure of action on behalf of the user of the instrumentality and not the condition of the instrumentality, per se. The turning point on recovery would have been based upon the degree of negligence on the part of the operator, who should have observed the conditions under which the button was used and not the nature of the instrumentality of that which was manufactured. I do not believe that bears upon the issue at all.

Senator COPPERSMITH, Mr. President, the gentleman's amendment, instead of narrowing to any degree the law con-

cerning product liability, would broaden the basis of recovery.

Any press, any blast furnace, any piece of heavy machinery has to be dangerous, regardless of the safeguards, regardless of the safety devices put on it. No matter how many safety devices you put on it, it is still dangerous if people will not use the safety devices. If a person puts his head underneath a press, the press is a dangerous instrument even though it has every safety device thought of by man. This is really the basic inconsistency of the amendment because anything can be dangerous and the law concerning product liability is being widened rather than having some rational restrictions put on it.

Senator ZEMPRELLI. Mr. President, I would only call to the gentleman's attention that the language refers to a product, in a defective condition, dangerous to the user. That is the basis on which the argument is made. I do not believe it broadens it at all. It just eliminates the question as to what would constitute a dangerous product, not simply one that is dangerous by its nature, but affecting its being defective in the first instance.

Senator GEKAS. Mr. President, as I understood the stirring preamble of the gentleman from Allegheny, Senator Zemprelli, to the offering of his amendment, he was concerned about changing the law, or straying from the concepts which have so long protected the "consumer."

Does the gentleman realize that his amendment changes the present law with regard to the definition of what is dangerous? The unreasonably dangerous concept is the state of the law at the moment so that remains untouched in this whole field and untouched in this bill. For that reason alone we should oppose the amendment. The only concepts being changed, really changed in this bill, are elimination of the middleman with respect to strict liability and the twelve-year statute. Those are the two ingredients different from the original products liability field. The definition of unreasonably dangerous is the present law. Why the gentleman wishes to embark on this now is not understood.

Senator ZEMPRELLI. It is understood by me, Mr. President.

I would simply say this: First of all, I am not one who is locked in to precedent. As a matter of fact, I think, in a changing world, anything which has been regarded the same for the last five years is probably in error and, since we are embarking on a major piece of legislation, we are not going to be concerned about what the precedent is, we are going to be concerned about what is right under all the circumstances as they are here and now. There is nothing unilateral about change. Certainly Senate Bill No. 585 is not my idea. But, while we have it and inasmuch as it embarks upon great change, let us change it so that is right. That is the basis upon which I would deviate from any precedent.

And the question recurring,

Will the Senate agree to the amendment?

The yeas and nays were required by Senator ZEMPRELLI and were as follows, viz:

YEAS—7

Bell,	Hankins,	Romanelli,	Zemprelli,
Fumo,	Jubelirer,	Scanlon,	

NAYS—34

Andrews,	Hager,	Mellow,	Ross,
Arlene,	Hess,	Messinger,	Schaefer,
Coppersmith,	Holl,	Moore,	Smith,
Corman,	Hopper,	Murray,	Snyder,
Dougherty,	Howard,	Noszka,	Stapleton,
Dwyer,	Kelley,	O'Pake,	Stauffer,
Early,	Kusse,	Orlando,	Stout,
Gekas,	Lewis,	Reibman,	Tilghman,
Guizenda,	Manbeck,		

So the question was determined in the negative, and the amendment was defeated.

And the question recurring,

Will the Senate agree to the bill on third consideration?

RECESS

Senator MESSINGER. Mr. President, at this time I request a recess of the Senate for the purpose of a meeting of the Committee on Rules and Executive Nominations and a meeting of the Committee on Business and Commerce, with the expectation of returning to the floor at 1:00 o'clock.

The PRESIDING OFFICER. It has been requested by Senator Messinger that the Senate recess for the purpose of meetings of the Committee on Rules and Executive Nominations and the Committee on Business and Commerce with the intention of returning to the floor at 1:00 o'clock.

This Senate will stand in recess until 1:00 o'clock.

AFTER RECESS

The PRESIDENT pro tempore (Martin L. Murray) in the Chair.

The PRESIDENT pro tempore. The time of recess having elapsed, the Senate will be in order.

And the question recurring,

Will the Senate agree to the bill on third consideration?

HOUSE MESSAGES

HOUSE ADOPTS REPORT OF COMMITTEE OF CONFERENCE

The Clerk of the House of Representatives being introduced, informed the Senate that the House has adopted Report of Committee of Conference on **HB 993**, which was placed on the Calendar.

HOUSE NONCONCURS IN SENATE AMENDMENTS TO HOUSE BILLS

He also informed the Senate that the House has nonconcurring in amendments made by the Senate to **HB 792**, **1731** and **1841**.

The PRESIDENT pro tempore. The bills will be placed on the Calendar.

SENATE BILLS RETURNED WITH AMENDMENTS

He also returned to the Senate **SB 578** and **677**, with the in-

formation that the House has passed the same with amendments in which the concurrence of the Senate is requested.

The PRESIDENT pro tempore. The bills, as amended, will be placed on the Calendar.

**HOUSE INSISTS UPON ITS NONCONCURRENCE
IN AMENDMENTS TO HB 1860, AND APPOINTS
COMMITTEE OF CONFERENCE**

He also informed the Senate that the House insists upon its nonconcurrence in Senate amendments to **HB 1860**, and has appointed Messrs. A. K. HUTCHINSON, ZELLER and DeVERTER as a Committee of Conference to confer with a similar Committee of the Senate (already appointed) to consider the differences existing between the two houses in relation to said bill.

**HOUSE CONCURS IN SENATE AMENDMENTS
TO HOUSE BILLS**

He also informed the Senate that the House has concurred in amendments made by the Senate to **HB 239, 711, 1528 and 2301**.

HOUSE CONCURS IN SENATE BILLS

He also returned to the Senate **SB 7, 553, 1239, 1268, 1312 and 1340**, with the information that the House has passed the same without amendments.

**HOUSE CONCURS IN SENATE CONCURRENT
RESOLUTION**

He also informed the Senate that the House has concurred in resolution from the Senate, entitled:

Recess Adjournment.

BILLS SIGNED

The President pro tempore (Martin L. Murray) in the presence of the Senate signed the following bills:

SB 7, 553, 976, 1042, 1239, 1268, 1312, 1340, HB 239, 711, 1528 and 2301.

HOUSE MESSAGE

**RESOLUTION RECALLING FROM THE GOVERNOR
HB 2462**

The Clerk of the House of Representatives being introduced, presented extract from the Journal of the House of Representatives which was read, considered and concurred in:

In the House of Representatives,

Resolved (the Senate concurring), That House Bill No. 2462, Printer's No. 3196, be recalled from the Governor for the purpose of further consideration.

Ordered, That the Clerk inform the House of Representatives accordingly.

**CHANGE IN COMMITTEE OF CONFERENCE
ON SB 522**

The PRESIDENT pro tempore. Due to the resignation of

Senator Joseph F. Smith, I am hereby appointing Senator Edward P. Zemprelli to serve as Chairman of the Committee of Conference on Senate Bill No. 522, Printer's No. 2035.

**REPORT OF COMMITTEE OF CONFERENCE
SUBMITTED AND LAID ON THE TABLE**

Senator LEWIS submitted the Report of Committee of Conference on **HB 1860**, which was laid on the table.

And the question recurring,

Will the Senate agree to the bill on third consideration?

REQUEST FOR BILL OVER IN ORDER TEMPORARILY

Senator MESSINGER. Mr. President, I request that Senate Bill No. 585 go over in its order temporarily.

The PRESIDENT pro tempore. The Chair hears no objection. Senate Bill No. 585 will go over temporarily.

**SENATE RESOLUTION,
SERIAL NO. 109, CALLED UP**

Senator MESSINGER, without objection, called up from page 10 of the Calendar, Senate Resolution, Serial No. 109, entitled:

Senate Committee on Education instructed to investigate purchase of school buses by school districts.

On the question,

Will the Senate adopt the resolution?

SENATE RESOLUTION, SERIAL NO. 109, ADOPTED

Senator MESSINGER. Mr. President, I move that the Senate do adopt Senate Resolution, Serial No. 109.

On the question,

Will the Senate agree to the motion?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—48

Andrews,	Hager,	McCormack,	Ross,
Arlene,	Hankins,	McKinney,	Scanlon,
Bell,	Hess,	Mellow,	Schaefer,
Coppersmith,	Holl,	Messinger,	Smith,
Corman,	Hopper,	Moore,	Snyder,
Dougherty,	Howard,	Murray,	Stapleton,
Duffield,	Jubelirer,	Nolan,	Stauffer,
Dwyer,	Kelley,	Noszka,	Stout,
Early,	Kusse,	O'Pake,	Sweeney,
Fumo,	Lewis,	Orlando,	Tilghman,
Gekas,	Lynch,	Reibman,	Wood,
Gurzenda,	Manbeck,	Romanelli,	Zemprelli,

NAYS—0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

**SENATE RESOLUTION,
SERIAL NO. 111, CALLED UP**

Senator MESSINGER, without objection, called up from page 11 of the Calendar, Senate Resolution, Serial No. 111, entitled:

Directing the President of the Senate to take necessary steps to recover certain sum of money from former Senator Cianfrani.

On the question,
Will the Senate adopt the resolution?

SENATE RESOLUTION, SERIAL NO. 111, ADOPTED

Senator MESSINGER. Mr. President, I move that the Senate do adopt Senate Resolution, Serial No. 111.

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

Senator FUMO. Mr. President, I rise to speak against this resolution. I know full well that I may incur the wrath of the media and a number of other people, however, I cannot stand idly by and watch this Body extract a pound of flesh from Senator Cianfrani.

I want to remind my colleagues that I am not here today to defend what he did for certainly the uniqueness of his crimes cannot be defended. I am here, basically, to ask for mercy on his behalf.

Senator Cianfrani plead guilty to the charges with dignity. He did not pervert the judicial process by fighting it and fighting it and fighting it, causing much expense to taxpayers who would have had to pay the costs of that trial. Rather, he took his consequences.

The judge in that case did not deal with Senator Cianfrani lightly. He sentenced him to five years in prison with a five-year probationary term to run after that. That, I might remind you, is more than the sentences received by Mr. Haldeman, Mr. Ehrlichman, Mr. Colson, Attorney General Mitchell, Vice President Agnew and President Nixon, men whose infamous crimes almost brought down this Nation. Senator Cianfrani received a sentence longer than theirs.

After receiving that sentence he did, in fact, go to prison, where he is today. The judge who imposed that sentence had, under the law, the right to certainly demand restitution if he felt that were appropriate. But, in this case I can only assume that he felt the long period of incarceration which he imposed was enough punishment for that crime. Murderers in this Commonwealth receive less sentences and we stand here and watch it happen.

We are talking about a sum of money in the amount of \$30,000, approximately, which was received by individuals. There was no mention in this resolution of going after the individuals, just the Senator. We, in this Chamber, appropriate millions of dollars for the rehabilitation of criminals and murderers. How will we rehabilitate Senator Cianfrani in five years? What will he do when he is released? Will he be able to get a job; will he be eligible for any of those programs for which we appropriate millions of dollars? I think not. Will he be able to get a job in State government like the convicted felons we un-

derstand are presently being trained by the Pennsylvania State Police? I think not. What is his status today?

I have heard much talk. "Do not be concerned. The amount of money is not that great and it can come from the proceeds of the sale of the home which was discussed in Cherry Hill." That money has already been taken by the Internal Revenue Service for the huge amount of tax consequence which Senator Cianfrani has suffered.

I have also heard—and I cannot verify this today—that his pension has already been attached by the IRS for taxes. We have a man who is penniless and destitute, in prison and who will remain there for a number of years to come. The only thing he has left in life is the meager pension which has been blown out of proportion.

Granted, what he has done is wrong and it is a crime and he has plead guilty to it. I ask, when does it end? When does he make restitution; when does he pay his debt to society? All the news accounts I read seem to dictate that the answer is never. Some of them might even have us bring him into this Chamber and electrocute him. Perhaps that will take care of some of their anger. We are participating in that type of illogical feeling by this resolution. He is not a murderer. He has done wrong. He has suffered for it and he is paying for it today. Now we want the pound of flesh.

A long time ago Shakespeare wrote about another Senate in Rome where the august members of that body chose to rid themselves of controversy and so-called evil by killing one of their own. In this case Senator Cianfrani is already dead and now we want to go further. Well, I shall not participate in the mutilation of his remains but rather I shall let others, who feel compelled to do so, cast the first stone.

Mr. President I urge a "no" vote on this resolution and ask for a roll call vote.

And the question recurring.
Will the Senate agree to the motion?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—35

Andrews,	Hager,	Messinger,	Schaefer,
Bell,	Hess,	Moore,	Smith,
Coppersmith,	Holl,	Murray,	Snyder,
Corman,	Hopper,	Noszka,	Stapleton,
Dougherty,	Kusse,	O'Pake,	Stauffer,
Dwyer,	Lewis,	Reibman,	Stout,
Early,	Manbeck,	Romanelli,	Sweeney,
Gekas,	McCormack,	Ross,	Tilghman,
Gurzenda,	Mellow,	Scanlon,	

NAYS—2

Duffield,	Fumo,
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A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

**SENATE RESOLUTION,
SERIAL NO. 107, CALLED UP**

Senator MESSINGER, without objection, called up from page

10 of the Calendar, Senate Resolution, Serial No. 107, entitled:

Senate Committee to investigate feasibility of dog racing in Pennsylvania.

On the question,
Will the Senate adopt the resolution?

SENATE RESOLUTION, SERIAL NO. 107, ADOPTED

Senator MESSINGER. Mr. President, I move that the Senate do adopt Senate Resolution, Serial No. 107.

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

Senator TILGHMAN. Mr. President, I request a roll call on the resolution.

Senator McCORMACK. Mr. President, if and when this resolution is adopted I have been asked by a constituent, who is concerned about the treatment of dogs, to consider the fact that the dogs may be treated inhumanely. She requested the members of the committee, if they are appointed, to investigate that aspect of it because she is concerned about inhumane treatment of these animals.

Senator ROMANELLI. Mr. President, the purpose of this resolution is not to legalize dog racing as a lot of people seem to think. There is an industry in Pennsylvania which is fearful that this is a move to legalize dog racing. As the prime sponsor of the resolution, I have never been to a dog track. I do not know what dog racing is, but I feel we owe it to our constituents to find out what it is.

There are three or four such bills in the House and two or three bills in the Senate. The purpose of this resolution is to investigate dog racing and the legalizing of it. The feasibility of dog racing in Pennsylvania, like any other state, should be taken to the public and I believe the public should have that opportunity. There are people in certain industries, I understand, who have put a move afoot to block this. I have just found out about that.

Let me assure everyone that I have no feelings one way or another about dog racing. But if it is a source of revenue for this Commonwealth, if it will promote tourism in this Commonwealth, then I believe it should be investigated.

Senator TILGHMAN. Mr. President, as I read the title of the resolution, it is to study the feasibility of dog racing in Pennsylvania. If the Senator from Pittsburgh does not know about dog racing he can easily look at pictures. Most of us know exactly what we are talking about when we are talking about greyhound racing.

I might add that a couple of years ago I had a call from a constituent, who had a call from a friend, who had a call from some fellow mixed up with dog racing in Florida, who wanted me to sponsor a bill for dog racing in Pennsylvania. I refused to do it then and I refuse to vote for this resolution now. I urge my colleagues to vote in the negative.

The PRESIDING OFFICER (Eugene F. Scanlon) in the Chair.

And the question recurring,
Will the Senate agree to the motion?

(During the calling of the roll, the following occurred:
Senator NOLAN. Mr. President, I would like to change my vote from "no" to "aye."

The PRESIDING OFFICER. The gentleman will be so recorded.

Senator COPPERSMITH. Mr. President, I would like to change my vote from "no" to "aye."

The PRESIDING OFFICER. The gentleman will be so recorded.

The PRESIDENT (Lieutenant Governor Ernest P. Kline) in the Chair.

Senator McCORMACK. Mr. President, I would like to change my vote from "no" to "aye."

The PRESIDENT. The gentleman will be so recorded.

The yeas and nays were required by Senator TILGHMAN and were as follows, viz:

YEAS—23

Arlene,	Lewis,	Murray,	Scanlon,
Coppersmith,	Lynch,	Nolan,	Schaefer,
Duffield,	Manbeck,	Noszka,	Smith,
Fumo,	McCormack,	O'Pake,	Sweeney,
Gurzenda,	McKinney,	Romanelli,	Zemprelli,
Hankins,	Mellow,	Ross,	

NAYS—21

Andrews,	Gekas,	Jubelirer,	Snyder,
Bell,	Hager,	Kusse,	Stapleton,
Corman,	Hess,	Messinger,	Stauffer,
Dougherty,	Holl,	Moore,	Stout,
Dwyer,	Hopper,	Reibman,	Tilghman,
Early,			

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

**GUESTS OF SENATOR THOMAS J. McCORMACK
PRESENTED TO SENATE**

Senator McCORMACK. Mr. President, it is a distinct pleasure to introduce to the Senate today a young man, together with his parents, from the County of Montgomery, who is a constituent of the gentleman from Montgomery, Senator Holl. He is a senior at Whitmarsh-Plymouth High School in Montgomery County. He is a member of the Junior Achievement of Pennsylvania. The Junior Achievement is a high school group from various high schools throughout the United States who, voluntarily, form corporations—manufacturing and different types of corporations—structured entirely from the student body and they complete the entire process.

During the past year this young man was the vice-president of manufacturing and the project his group chose was "auto trouble lights." This group competed with other students throughout Pennsylvania and were judged by private industry. I believe the Budd Manufacturing Company was one of the

judges. As a result of the competition, this young man was chosen number one in the entire Delaware Valley and is to compete in a nationwide contest in Indiana in August.

I would ask the Senate to wish him well and to recognize his tremendous achievement. He is a golfer in his own right, an outstanding student, and it is a pleasure for me to introduce to the Senate at this time, Carl Shorley.

The PRESIDENT. If the guests of Senator McCormack would please stand in the gallery we would like to welcome them to the Senate of Pennsylvania.

(Applause.)

GUESTS OF SENATOR HERBERT ARLENE PRESENTED TO SENATE

Senator ARLENE. Mr. President, it is a distinct pleasure for me to stand here this afternoon to introduce some distinguished people from Philadelphia and vicinity who are in the gallery.

We have with us Miss Robin A. Black, Prince Hall Shrine Queen for the State of Pennsylvania.

We also have with us Noble Herbert L. Chisholm, Potentate of Pyramid Temple No. 1 of Philadelphia; Noble Herman C. Smith, Thirty-third Degree; Noble Phelmon Johnson, Thirty third Degree; Noble Robert N. Davis, Thirty-third Degree, Grand Junior Warden, Prince Hall Masons of Pennsylvania; Noble William Cash, Thirty-third Degree, Deputy of Chester, Pennsylvania; Noble Rupert Irwin, Deputy of Philadelphia; Daughter Druretta B. Carey, Deputy of Chester, Pennsylvania; Daughter Bessie F. Burton, Imperial Auditor of Pennsylvania; Daughter Norma Hughes, Deputy Desert of Pennsylvania; Mrs. Robert Black, mother of the Queen and other Nobles and Daughters of the State of Pennsylvania.

Mr. President, I ask that the Senate give them its usual warm welcome.

The PRESIDENT. If the distinguished guests of Senator Arlene, who were just introduced, would be kind enough to stand in the gallery, we would like to recognize them and welcome them to the Senate of Pennsylvania.

(Applause.)

PERMISSION TO ADDRESS SENATE

Senator JUBELIRER asked and obtained unanimous consent to address the Senate.

Senator JUBELIRER. Mr. President, because of being unavoidably detained outside the Capitol for the first several moments of this Session, I was unable to be here for the vote on Senate Resolution, Serial No. 109 and Senate Resolution, Serial No. 111.

Had I been here, Mr. President, I would have voted to adopt Senate Resolution, Serial No. 109 and I would have voted to adopt Senate Resolution, Serial No. 111.

CONSIDERATION OF CALENDAR RESUMED SB 585 CALLED UP

SB 585 (Pr. No. 2032) — Without objection, the bill, which

previously went over in its order temporarily, was called up, from page 3 of the Third Consideration Calendar by Senator MESSINGER.

BILL ON THIRD CONSIDERATION AMENDED

SB 585 (Pr. No. 2032) — And the question recurring, Will the Senate agree to the bill on third consideration?

ZEMPRELLI AMENDMENT II

Senator ZEMPRELLI, by unanimous consent, offered the following amendment:

Amend Sec. 4, page 3, line 27, by removing the period after "manufacturer" and inserting: unless said seller knew or reasonably should have known that the product was defective at the time it was sold.

On the question,

Will the Senate agree to the amendment?

Senator ZEMPRELLI. Mr. President, what Senate Bill No. 585 does in one particular is, where a product is the subject of a lawsuit brought on the theory of strict liability, such an action cannot be maintained as against the seller. This is, of course, of benefit to the seller. It means that it is now necessary to chase the manufacturer where he is.

What the amendment would do, which would be consistent with the existing law, would be to simply say that the seller would also be the subject matter of being made a defendant if, in fact, the seller knew that the product he sold was defective. That is to suggest that there is no reason to excuse the seller when, in fact, he is aware of the fact that the product which he has sold, and which has been manufactured, was defective.

Senator GEKAS. Mr. President, the amendment goes directly to the core of the original formulation of this legislation. When we, in the Committee on Judiciary, first sat in on the hearings where we heard from people who were interested in various facets of this legislation, the one thing which struck us universally here was that there were several innocent parties to this entire products liability issue. Those innocent parties were the middleman, the distributors, the sellers—if you please, to use the words of the proposed statute itself—who had nothing to do with the manufacturing of the product, had nothing to do with the labeling of the product, had nothing to do with anything except, literally, putting the product on the shelf.

After the product travels into the hands of the user, the potential plaintiff, and when the plaintiff is injured the seller in no way can be held responsible morally for the defect that results in the injury to the plaintiff. This came out very strongly in the testimony presented to the Committee on Judiciary and it is that testimony which compelled me, personally, to draft the amendments which form the basic part of the bill with respect to the exemption of the seller.

It may be recalled, Mr. President, that the original Senate Bill No. 585 took away products liability across the board, eliminated it as a possible recovery theme for any consumer, on any level, against the manufacturer, against the seller, against the distributor. I felt I could not go so far as to say that a plaintiff could not recover under strict liability from a manufacturer, but when I heard the testimony of the distributors and the sell-

ers, who had nothing to do with the preparation or the production of the product that eventually led to the injuries, I concluded that we must try to do something to lift the burden of responsibility from the seller.

The seller and the distributor, Mr. President, pay tremendous amounts for products liability insurance. They must enter the fray in products liability cases. Many times they are absolved in the end because no direct responsibility can be laid to them for the manufacturing of the product, yet, they had to undergo the defense, they have had to lay out these gigantic premium sums.

I should like to repeat, Mr. President, that the two main stems of this piece of legislation, the only two departures from the present law, in which we are engaging in order to help the small businessman, are, one, that we have taken the restatement strict liability provisions and removed them from applicability to the seller, to the middleman. We have not touched the responsibility of the manufacturer. There is no way anyone in Pennsylvania can complain that if we pass this legislation that someone hurt as a result of the defective product has no recourse in court, has no recourse against a deep pocket corporation or producer, or manufacturer, for eventual resolution of his money damage problem.

What we did in committee, which is now part of this bill, is simply to say that where we are piling products liability burdens on the manufacturer, on the distributor, on the seller, or the several sellers that could appear in the line of commerce that eventually reaches the plaintiff, it is time to stabilize this, remove the sellers, the middlemen, from responsibility, still allow the plaintiff to go against the manufacturer but to bring some kind of predictability into this entire range of problems having to do with product liability. Let us remove the seller. It is a very fair proposition. I oppose the amendment and ask my colleagues to vote against it.

If the Senate accepts the amendment to this piece of legislation, it is, in effect, opposed to any products liability reform altogether. It ruins the bill.

Senator ZEMPRELLI. Mr. President, with all due deference to my colleague, I do not think he understands the amendment. The amendment relates to instances of strict liability. The amendment very clearly states "where the seller knows or should have known that the product is defective." He is suggesting that we should permit any seller who is not a manufacturer to pass on any product to any consumer regardless of its condition.

Now that he has alluded to the fact that he wants to protect the seller, let me remind the gentleman in the hard core of the practice of law that it is the seller who is accessible to the consumer in these actions. He has been taken out of the picture here. It has now been forced upon the consumer—and I am not concerned about this. I am really not that concerned, but he alludes to it. That is, there is a manufacturer in California and no one has the right to sue the seller in any instance except where there is strict liability on a product known to be defective. That is not having a remedy as a consumer because the practical answer is, he cannot pursue a lawsuit in California unless he goes through Federal court or unless he removes himself physically to the State of California to pursue it where he has jurisdiction by service.

I know that any action I have instituted against any contract involving a manufacturer and a seller, I have used the seller as the vehicle to get to the manufacturer because he is in proximity. That, however, is still not the thrust of this legislation. The Senator is suggesting to this Senate that, in any instance where the seller knows a product to be defective, he would have the right without fear of being sued to submit that product to the person and let the consumer be damned because he now has to look to the manufacturer of that product.

That is as simple as it is. If he says that is what the guts of this bill is, then I stand on the proposition which I stated as being the rationale for adopting this serious legislation.

Senator SCHAEFER. Mr. President, I desire to interrogate the gentleman from Allegheny, Senator Zemprelli.

The PRESIDENT. Will the gentleman from Allegheny, Senator Zemprelli, permit himself to be interrogated?

Senator ZEMPRELLI. I will, Mr. President.

Senator SCHAEFER. Mr. President, under the present theory of strict liability, is it necessary to prove knowledge in order to secure liability against the seller?

Senator ZEMPRELLI. I do not believe so, Mr. President, not under the present law.

Senator SCHAEFER. Mr. President, what the gentleman is asking to put in this bill is basically an additional requirement to impose liability on the seller, that is, that he did so knowingly.

Senator ZEMPRELLI. He did so knowingly, Mr. President. That is precisely the point, knowingly.

Senator SCHAEFER. Mr. President, I would join in support of the gentleman's amendment. I think what we are talking about again is a situation where, with full knowledge or circumstances which should have told him, the seller of the goods goes ahead and passes on to the consumer a knowingly defective product. I do not see how we can vote against something like that.

Senator HAGER. Mr. President, if the gentleman from Allegheny, Senator Zemprelli, and the gentleman from Allegheny, Senator Schaefer, would look at page 1, lines 18, 19 and 20 of the bill, they would find that the amendment is superfluous because it very clearly states included within the term "manufacturer" who is therefore liable for the product is any seller who sells with any actual knowledge of a defect in the product.

Mr. President, I would ask for a "no" vote on the amendment, because it is superfluous.

Senator GEKAS. Mr. President, that is what I was going to point out. I did not have the amendment before me. When the gentleman from Allegheny, Senator Zemprelli, presented the amendment, it seemed as if he was offering an amendment which would put the seller back into the bill as was originally contemplated.

It is true that the gentleman's amendment is already taken care of by language already in the bill. It has never been contemplated to take the seller out who knows of any defect or who is negligent in any way. He would be exempted only if he were passing the product along in its original state.

Senator McCORMACK. Mr. President, I disagree with the distinguished Minority Leader. The definition in the bill, as I read it, includes a seller who has actual knowledge. As I under-

stand the amendment of the gentleman from Allegheny, Senator Zemprelli, the seller either has knowledge or should have knowledge. There is a very important distinction between the two concepts, actual knowledge and imputed knowledge.

Mr. President, I desire to interrogate the gentleman from Allegheny, Senator Zemprelli.

The PRESIDENT. Will the gentleman from Allegheny, Senator Zemprelli, permit himself to be interrogated?

Senator ZEMPRELLI. I will, Mr. President.

Senator McCORMACK. Mr. President, could the gentleman please explain that language?

Senator ZEMPRELLI. Mr. President, the clear language of the proposed amendment is, a seller knew or reasonably should have known that the product was defective at the time it was sold.

To address myself to the Minority Leader's suggestion that it is taken care of on page 1 of the bill, is to say that at most there would be a complete ambiguity in rationalizing the language of the bill. Under the rules of legislative construction, the last provision provided for in the bill supersedes that which appears on page 1. So, if, in fact, we are saying, ". . . has actual knowledge of a defect in a product;" on page 1, the clear language on page 3 is, "No product liability action based on the theory of strict liability in tort shall be commenced or maintained against any seller of a product who is not otherwise a manufacturer," with the emphasis on "any seller." Those two statements cannot stand in harmony with one another. Therefore, Mr. President, I would suggest that the language—if there is no problem and if that is what the Minority Leader says, the amendment is repetitive—then reduces the ambiguity to a nullity.

Senator McCORMACK. Mr. President, I merely want to point out to the Members that there is a substantial difference in proof. To prove actual knowledge one must actually show that this particular manufacturer or seller had knowledge of the defect. There is no question of the reasonable person test whereas, if he reasonably should have known, then you apply the reasonable man standard. I submit that that is an important distinction.

Senator HAGER. Mr. President, I would like to make two points.

I listened very carefully to both the gentleman from Allegheny, Senator Schaefer, and the gentleman from Allegheny, Senator Zemprelli. They were both saying that, under the present bill, a seller with actual knowledge of a defect could go ahead and sell it with impunity. I think they misread the bill; I believe it is very clear.

While we are discussing that, it seems to me that the ambiguity which the gentleman from Allegheny, Senator Zemprelli, sees really exists in his own mind because, on page 3, it says, "was not otherwise a manufacturer," and on page 1, it says that a manufacturer is a seller with actual knowledge of a defect. Therefore, there is no ambiguity. Such a seller is included as a manufacturer.

The second point is the one raised by the gentleman from Philadelphia, Senator McCormack. There is all the difference in the world between actual knowledge and reasonably should have known. All the difference in the world is thousands and

thousands of lawsuits based upon the very fuzzy, the very misty difference between "reasonably should have known" and one "who should have known."

Therefore, it seems to me that if the Members are, in fact, interested in seeing that these needless lawsuits not be brought against everybody in the chain, from the manufacturer who really caused the harm to the person who was injured by that cause, then we should vote for this bill in its present form and reject the amendment.

And the question recurring,
Will the Senate agree to the amendment?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—18

Arlene, Duffield Early, Fumo, Hankins,	Jubelirer, Lynch, McCormack, Noszka, O'Pake,	Orlando, Reibman, Romanelli, Scanlon,	Schaefer, Smith, Sweeney, Zemprelli,
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NAYS—26

Andrews, Bell, Coppersmith, Corman, Dougherty, Dwyer, Gekas,	Gurzenda, Hager, Hess, Holl, Hopper, Howard, Kusse,	Lewis, Manbeck, Mellow, Messinger, Moore, Murray,	Ross, Snyder, Stapleton, Stauffer, Stout, Tilghman,
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So the question was determined in the negative, and the amendment was defeated.

And the question recurring,
Will the Senate agree to the bill on third consideration?

ZEMPRELLI AMENDMENT III

Senator ZEMPRELLI, by unanimous consent, offered the following amendment:

Amend Sec. 4, page 3, lines 15 through 29, by striking out all of said lines and inserting:

Section 4. Indemnification.

In any case in which the seller of a product other than a manufacturer is held liable in strict liability and tort, he shall be entitled to complete indemnity from the manufacturer, including counsel fees and expenses, except in those circumstances in which the seller knew or had reason to know of the defect.

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

Senator ZEMPRELLI. Mr. President, the present amendment is a corollary to the previous amendment. It would suggest, in the case of indemnification, and that is where the seller is entitled to indemnification as against the manufacturer, that that indemnification for the expenses which the seller has incurred would not be reimbursable to the seller from the manufacturer in the event that the seller knew or had reason to know that the product was defective.

I will accept the same roll call, Mr. President.

And the question recurring,
Will the Senate agree to the amendment?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—18

Arlene,	Jubelirer,	Orlando,	Schaefer,
Duffield,	Lynch,	Reibman,	Smith,
Early,	McCormack,	Romanelli,	Sweeney,
Fumo,	Noszka,	Scanlon,	Zemprelli,
Hankins,	O'Pake,		

NAYS—26

Andrews,	Gurzenda,	Lewis,	Ross,
Bell,	Hager,	Manbeck,	Snyder,
Coppersmith,	Hess,	Mellow,	Stapleton,
Corman,	Holl,	Messinger,	Stauffer,
Dougherty,	Hopper,	Moore,	Stout,
Dwyer,	Howard,	Murray,	Tilghman,
Gekas,	Kusse,		

So the question was determined in the negative, and the amendment was defeated.

And the question recurring,
Will the Senate agree to the bill on third consideration?

ZEMPRELLI AMENDMENT IV

Senator ZEMPRELLI, by unanimous consent, offered the following amendment:

Amend Sec. 5, page 4, line 4, by removing the period after "last" and inserting: unless it can be established that the product is one which would have an anticipated useful life in excess of 12 years.

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

Senator ZEMPRELLI. Mr. President, in spite of the information which the Pennsylvania Chamber of Commerce related to constituents in my area, at no time did I represent that I wanted the statute of limitations to be lifted from this type of lawsuit as compared to any other lawsuit.

However, the thrust of the amendment before us, inasmuch as we are dealing with products which have been manufactured, would suggest that a twelve-year statute of limitations on that product where the time in which it was manufactured or sold does not prevail where it can be shown that the anticipated useful life of the product exceeds twelve years.

Let me draw an analogy which I think is pertinent to the rationale of the amendment. If you have a lawsuit that develops as a result of an automobile accident, it is clear that the time the damage was sustained was the date on which the automobile accident took place. To suggest that the suit should be brought within two years is a reasonable concept and, if you do not bring it within two years, the theory is that you have anticipated that you do not intend to bring the suit and that is good public policy.

Now, let us talk about the relationship between that type of situation and product liability. Product liability relates somewhat to the nature of the product. A toothbrush is a heck of a lot different than an oxygen furnace. A toothbrush is some-

thing which is produced and is the subject matter of a liability suit just as much as an oxygen furnace, but we certainly would not suggest that a toothbrush had a twelve-year useful life. However, we might suggest that an oxygen furnace in Duquesne, McKeesport or Clairton—if they had one in Clairton—might be as much as ninety years. So, why should we artificially structure a statute of limitations as we would use in any other field of law in the fiction that they are things which are comparable; they are not. They are different.

A second relationship in this particular type of situation is: Suppose we had a product which was manufactured and sent to somebody's warehouse for a period of fourteen and fifteen years and then offered out. Of course, I believe the present bill would take care of that situation, but the point I am making, and the analogy which I am drawing, is that produced products and the date of their sale are significantly different than the concept of the statute of limitations as we would relate to almost any other type of lawsuit, whether it be contractual or whether it be in tort.

That is the thrust of the amendment, recognizing a twelve-year statute and also recognizing that there are products which have a useful life beyond that period of time.

And the question recurring,
Will the Senate agree to the amendment?

(During the calling of the roll, the following occurred:)

Senator ARLENE. Mr. President, I would like to change my vote from "no" to "aye."

The PRESIDENT. The gentleman will be so recorded.

Senator SMITH. Mr. President, I would like to change my vote from "no" to "aye."

The PRESIDENT. The gentleman will be so recorded.

Senator MURRAY. Mr. President, I would like to change my vote from "no" to "aye."

The PRESIDENT. The gentleman will be so recorded.

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—24

Andrews,	Hankins,	Messinger,	Romanelli,
Arlene,	Holl,	Murray,	Scanlon,
Bell,	Jubelirer,	Nolan,	Schaefer,
Duffield,	Lynch,	Noszka,	Smith,
Dwyer,	McCormack,	O'Pake,	Sweeney,
Fumo,	McKinney,	Reibman,	Zemprelli,

NAYS—22

Coppersmith,	Hager,	Manbeck,	Snyder,
Corman,	Hess,	Mellow,	Stapleton,
Dougherty,	Hopper,	Moore,	Stauffer,
Early,	Howard,	Orlando,	Stout,
Gekas,	Kusse,	Ross,	Tilghman,
Gurzenda,	Lewis,		

So the question was determined in the affirmative, and the amendment was agreed to.

On the question,

Will the Senate agree to the bill on third consideration, as amended?

ZEMPRELLI AMENDMENTS V

Senator ZEMPRELLI, by unanimous consent, offered the following amendments:

Amend Sec. 7, page 5, lines 29 and 30; page 6, lines 1 through 6, by striking out all of said lines

Amend Sec. 8, page 6, line 7, by striking out "8." and inserting: 7.

Amend Sec. 9, page 6, line 20, by striking out "9." and inserting: 8.

Amend Sec. 10, page 7, line 10, by striking out "10." and inserting: 9.

Amend Sec. 11, page 7, line 24, by striking out "11." and inserting: 10.

Amend Sec. 12, page 8, line 21, by striking out "12." and inserting: 11.

Amend Sec. 13, page 9, line 2, by striking out "13." and inserting: 12.

Amend Sec. 14, page 9, line 19, by striking out "14." and inserting: 13.

Amend Sec. 15, page 9, line 24, by striking out "15." and inserting: 14.

Amend Sec. 16, page 9, line 28, by striking out "16." and inserting: 15.

On the question,

Will the Senate agree to the amendments?

Senator ZEMPRELLI. Mr. President, there is a provision in Senate Bill No. 585 that deals with words of art which are called "state of the art."

Basically speaking, as I understand the phrase "state of the art," it means if a manufacturer would be permitted to manufacture a product if, in fact, it is recognized that the product he is manufacturing and the way he is manufacturing it is accepted within the industry of manufacture, within those confines and specifications. That is an oversimplification. That means precisely this: If an automobile has a gasoline tank hanging on the outside of the bumper and all the automobile manufacturers manufacture it that way, conceivably, that is permissible manufacturing because it falls within the state of the art. That is an exaggeration, of course.

Mr. President, these amendments would delete the section dealing with the state of the art, which then transfers the presumptions of whose responsibility it is to prove negligence. Basically, it is a shifting of the burden. I am asking that the provision allowing manufacturers to pass the burden onto the plaintiff where they can show that they manufacture as everybody else manufactures, within that class of manufacturing, be deleted. That is an oversimplification but, in fact, how it operates under the state of the art provision.

And the question recurring,

Will the Senate agree to the amendments?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—18

Duffield,	McCormack,	Noszka,	Schaefer,
Fumo,	McKinney,	O'Pake,	Smith,
Hankins,	Messinger,	Romanelli,	Sweeney,
Jubelirer,	Murray,	Scanlon,	Zemprelli,
Lynch,	Nolan,		

NAYS—26

Andrews,	Gekas,	Kusse,	Ross,
Bell,	Guزندا,	Lewis,	Snyder,
Coppersmith,	Hager,	Manbeck,	Stapleton,
Corman,	Hess,	Mellow,	Stauffer,
Dougherty,	Holl,	Moore,	Stout,
Dwyer,	Hopper,	Reibman,	Tilghman,
Early,	Howard,		

So the question was determined in the negative, and the amendments were defeated.

And the question recurring,

Will the Senate agree to the bill on third consideration, as amended?

ZEMPRELLI AMENDMENT VI

Senator ZEMPRELLI, by unanimous consent, offered the following amendment:

Amend Sec. 6, page 5, by inserting between lines 28 and 29:

(c) The foregoing defenses shall not apply if it is established that such evidence is relevant to a determination as to whether the product was defective at the time of sale.

On the question,

Will the Senate agree to the amendment?

Senator ZEMPRELLI. Mr. President, the amendment submitted is rather simple to understand. The bill provides, quite properly, that in any product liability action it shall be a defense to the action that the damages arose from alterations or modification of the product.

This amendment only suggests that if the manufacturer knew that the product was defective at the time it was manufactured, it would not be a defense even though the product had been altered or modified at a later time. It is to suggest again that, going back to the inception at the time of manufacture, if that product was defective at that time, regardless of its modification thereafter or its alteration, the manufacturer should not be able to defend strictly on the basis of the fact that it had been altered. The evidence would be admissible to go to the merit of whether or not the product was defective at the time of manufacture, regardless of its modification thereafter.

Senator HAGER. Mr. President, I suggest the explanation is a lot clearer than the amendment. In reading the amendment, it does not say that at all. What the amendment says, as closely as I can put it, is that the defenses shall not apply if it can be proved that any evidence might be in the least manner relevant to the issue which he raises.

I would recommend the Body vote against this amendment. It would seem to me that the amendment should be worded, if that is what the gentleman intends to do, "The foregoing defenses shall not apply if it is established that the product was defective at the time of the sale." Instead, he has put in words that if it is established that such evidence is relevant to a determination as to whether the product was defective at the time of the sale. What that really means is, closely read, that none of those defenses shall ever apply.

Mr. President, I would ask for a "no" vote on the amendment.

Senator ZEMPRELLI. Mr. President, I would just simply say that I would read the exact language of the amendment, although in context, it is necessary to understand that the bill provides, at the bottom of page 6, that in any product liability action, it shall be a defense to the action that the damages arose from alterations or modification of the product by the plaintiff or third party, if—and then it suggests several provisos.

Added to this provision would be this section, and this is the exact language—and I differ with the esteemed Minority Leader in his interpretation—it says "(c) The foregoing defenses shall not apply if it is established that such evidence is relevant to a determination as to whether the product was defective at the time of sale." That is pristine, clear language in my judgment and says precisely what I related that it says.

Senator HAGER. Mr. President, the way the gentleman from Allegheny, Senator Zemprelli, explains this, he suggests if this amendment is in, none of those defenses are relevant if it is determined that the product was defective at the time of the sale. However, that is not what the amendment says. The amendment says that none of those defenses shall apply if it is established that such evidence is relevant to a determination as to whether the product was defective at the time of the sale. What that really means is, so long as anything can be offered which may be relevant, none of the defenses apply.

Mr. President, I do not see how anybody can support that amendment. In other words, anything that can be put in, which is obfuscation or anything else, would keep those defenses from being relevant.

Mr. President, I would ask for a "no" vote.

And the question recurring,

Will the Senate agree to the amendment?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—15

Duffield,	Lynch,	Nolan,	Smith,
Fumo,	McKinney,	Noszka,	Sweeney,
Hankins,	Messinger,	Romanelli,	Zemprelli,
Jubelirer,	Murray,	Scanlon,	

NAYS—29

Andrews,	Gurzenda,	Lewis,	Ross,
Bell,	Hager,	Manbeck,	Schaefer,
Coppersmith,	Hess,	McCormack,	Snyder,
Corman,	Holl,	Mellow,	Stapleton,
Dougherty,	Hopper,	Moore,	Stauffer,
Dwyer,	Howard,	O'Pake,	Stout,
Early,	Kusse,	Reibman,	Tilghman,
Gekas,			

So the question was determined in the negative, and the amendment was defeated.

And the question recurring,

Will the Senate agree to the bill on third consideration, as amended?

ZEMPRELLI AMENDMENTS VII

Senator ZEMPRELLI, by unanimous consent, offered the fol-

lowing amendments:

Amend Title, page 1, lines 3 and 4, by striking out "limiting the awarding of punitive damages;"

Amend Sec. 10, page 7, lines 10 through 23, by striking out all of said lines

Amend Sec. 11, page 7, line 24, by striking out "11." and inserting: 10.

Amend Sec. 12, page 8, line 21, by striking out "12." and inserting: 11.

Amend Sec. 13, page 9, line 2, by striking out "13." and inserting: 12.

Amend Sec. 14, page 9, line 19, by striking out "14." and inserting: 13.

Amend Sec. 15, page 9, line 24, by striking out "15." and inserting: 14.

Amend Sec. 16, page 9, line 28, by striking out "16." and inserting: 15.

On the question,

Will the Senate agree to the amendments?

Senator ZEMPRELLI. Mr. President, the impact of the amendments before the Senate now would be to simply remove the section which would limit punitive damages.

For the nonlawyer Members of the Senate, punitive damages are those damages which might be regarded as punishing damages, where the conduct of a manufacturer is so wanton and so gross that the party injured is entitled to receive more than what he might prove by way of out-of-pocket expenses and the customary expenses for pain and suffering and inconvenience.

I think a very classic case illustrating the meaning of punitive damages was recently found in California where the Ford Motor Company was sued and a jury awarded \$125 million to a party who had been virtually rendered a vegetable. The conscience of that jury was so absolutely offended that it wanted to send a clairvoyant, clear, pristine message to the world that one cannot go around putting gas tanks in the back of an automobile, that cost the manufacturer \$10, without concern about the damage that will result.

That was what the gentleman from Delaware, Senator Bell, alluded to earlier as an intentional tort because, within the records of the Ford Motor Company was an engineer's report and other reports which indicated that there was a lousy, stinking \$10 involved in the design and manufacture of that Ford motor vehicle, "But, be damned to the consumer, do it anyway, we will suffer the consequences of what has happened."

These amendments, by removing the limitation of punitive damages, might be the subject matter of an award of a jury that might be so offended in the gross case.

Let me say what I believe is the main thrust of a products liability bill which has not been said here before and I believe it needs to be said.

Quite frankly, once you try a products liability case, knowledge comes to the world as to what a manufacturer is doing and, if it is a case in Florida, that information circulates by the media through every part of the Nation, to put them on guard as to a product of a particular manufacturer.

If we have these star chamber procedures and if we get away from the aspect of punitive damages, if this case were rendered in California, as was advertised all over the country and it was simply a case without punitive damages, none of us would have known about it, but we were shocked in our conscience to know

about it because of the huge amount of the award and the fact that there was a punitive aspect to it.

Punitive damages are rare. The party must be so offended and the conduct so wanton and gross that a jury of twelve people wants a message to go out from that chamber to the world. That is what this is all about and I ask that the Senate adopt these amendments.

Senator MOORE. Mr. President, I desire to interrogate the gentleman from Allegheny, Senator Zemprelli.

The PRESIDENT. Will the gentleman from Allegheny, Senator Zemprelli, permit himself to be interrogated?

Senator ZEMPRELLI. I will, Mr. President.

Senator MOORE. Mr. President, most liability policy contracts now contain a specific endorsement eliminating coverage for punitive damages. If the gentleman's amendments were to pass, would the effect be to eliminate this specific endorsement on these contracts?

Senator ZEMPRELLI. Mr. President, I do not believe it would. However, the modification might be such that the manufacturer would have to pick up part of the award because there might be some clause in the contract which does not give coverage where punitive damages are awarded. I am not sure of that, though.

Senator DUFFIELD. Mr. President, I desire to interrogate the gentleman from Allegheny, Senator Zemprelli.

The PRESIDENT. Will the gentleman from Allegheny, Senator Zemprelli, permit himself to be interrogated?

Senator ZEMPRELLI. I will, Mr. President.

Senator DUFFIELD. Mr. President, I would like to ask the gentleman: Is it not true, for the benefit of those among us who are not accustomed to negligence law, that punitive damages are a part of our negligence law today and, if you are sued in a civil suit, you can also be sued for punitive damages?

Senator ZEMPRELLI. That is true, Mr. President, where the burden of proof is, as I recall, so wanton and gross that the conscience of the jury would be so shocked at the outrage of that particular instance that they would be inclined to award punitive damages.

Senator DUFFIELD. Mr. President, I might also ask this of the gentleman: Is it not so that if these amendments do not pass, this will be the only exception that he or I might know of in the law which does away with the possibility of punitive damages?

Senator ZEMPRELLI. That is my understanding, Mr. President. That is to say that the bill before us does have a serious limitation on the award of punitive damages. My amendments would do nothing more than keep the law the way it is.

Senator DUFFIELD. Mr. President, that is the reason I am voting for the amendments. I do not believe we should exempt this type of negligence liability from the chance of being found liable for punitive damages when, if I commit a tort myself and I am sued in almost any action I might think of, I can be charged with punitive damages. Anybody else can under their automobile policy or under their lawyer's liability policy or under their doctor's negligence policy. I think it is going a bit too far to just wipe away the long-established idea in our law of punitive damages when it comes to product liability cases.

Therefore, I am going to support these amendments.

Senator McCORMACK. Mr. President, I desire to interrogate the gentleman from Allegheny, Senator Zemprelli.

The PRESIDENT. Will the gentleman from Allegheny, Senator Zemprelli, permit himself to be interrogated?

Senator ZEMPRELLI. I will, Mr. President.

Senator McCORMACK. Mr. President, would the gentleman explain the difference between exemplary and punitive damages?

Senator ZEMPRELLI. Mr. President, I think by the terms of the definition, it is just as I stated, the trumpeting of the fact, the world should know about the party involved in this action.

I frankly cannot answer. I think that punitive in and of itself is a broad enough definition to include all kinds of damages that would be awarded as a punishment aspect.

Senator McCORMACK. Mr. President, I desire to interrogate the gentleman from Cambria, Senator Coppersmith.

The PRESIDENT. Will the gentleman from Cambria, Senator Coppersmith, permit himself to be interrogated?

Senator COPPERSMITH. I will, Mr. President.

Senator McCORMACK. Mr. President, the bill refers to punitive or exemplary damages. Is the gentleman suggesting that those terms are synonymous.

Senator COPPERSMITH. Yes, Mr. President. I understand "punitive" refers to punishment and "exemplary" means making an example.

Senator McCORMACK. Mr. President, I desire to interrogate the gentleman from Allegheny, Senator Zemprelli.

The PRESIDENT. Will the gentleman from Allegheny, Senator Zemprelli, permit himself to be interrogated?

Senator ZEMPRELLI. I will, Mr. President.

Senator McCORMACK. Mr. President, the gentleman's amendments then will return the law of Pennsylvania to what it was prior to this bill?

Senator ZEMPRELLI. Yes, Mr. President. These amendments remove the limitation on punitive damages in the bill and restores the law to what it is at this moment.

Senator McCORMACK. Mr. President, from the questioning of the gentleman from Fayette, Senator Duffield, it appears there is no provision in the bill for punitive damages. There is a section on punitive or exemplary damages, is there not?

Senator ZEMPRELLI. Mr. President, it is a limitation. If we read the language, it is restricted.

Senator McCORMACK. Mr. President, will the gentleman read the exact language of his amendments?

Senator ZEMPRELLI. Mr. President, my amendments would delete the section.

Senator McCORMACK. Mr. President, would the section be deleted entirely?

Senator ZEMPRELLI. Yes, Mr. President.

Senator McCORMACK. Mr. President, the amendments do not add any words to the bill?

Senator ZEMPRELLI. The amendments add nothing, Mr. President.

Senator HAGER. Mr. President, it would appear to me in reading the bill that the very example given by the gentleman from Allegheny, Senator Zemprelli, is already covered in the

bill. He spoke about the gas tank case of Ford Motor Company.

On page 7 of the bill, lines 11 through 15, it states, "In any product liability action no punitive or exemplary damages shall be awarded except upon a finding by the trier of fact that the defendant personally acted out of hatred or spite directed toward the plaintiff," and here are the operative words, "or knowingly acted in flagrant and gross disregard of public health and safety." Exemplary or punitive damages are never offered and never recoverable under the law except in the case of that kind of conduct. It takes more than ordinary negligence.

Therefore, Mr. President, it would seem to me that the very example given by the gentleman from Allegheny, Senator Zemprelli, is already covered by the law and these amendments are unnecessary.

Senator ZEMPRELLI. Mr. President, if the gentleman will read the entire section in context, it speaks in the negative. It states, "... no punitive or exemplary damages shall be awarded except upon a finding by the trier of the fact that the defendant personally acted out of hatred or spite directed toward the plaintiff, or knowingly acted in flagrant and gross disregard of public health and safety." There the burden of proof is upon the plaintiff to establish these matters.

"Proof of gross negligence shall not create a presumption either rebuttable or conclusive that punitive or exemplary damages are awardable." These are all limitations upon the law as it now exists. They are unnecessary; they are not needed.

And the question recurring

Will the Senate agree to the amendments?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—13

Duffield,	Messinger,	Noszka,	Scanlon,
Fumo,	Murray,	Orlando,	Sweeney,
Hankins,	Nolan,	Romanelli,	Zemprelli,
Lynch,			

NAYS—30

Andrews,	Gurzenda,	Lewis,	Ross,
Bell,	Hager,	Manbeck,	Schaefer,
Coppersmith,	Hess,	McCormack,	Smith,
Corman,	Holl,	Mellow,	Snyder,
Dougherty,	Hopper,	Moore,	Stauffer,
Dwyer,	Howard,	O'Pake,	Stout,
Early,	Jubelirer,	Reibman,	Wood,
Gekas,	Kusse,		

So the question was determined in the negative, and the amendments were defeated.

And the question recurring,

Will the Senate agree to the bill on third consideration, as amended?

ZEMPRELLI AMENDMENTS VIII

Senator ZEMPRELLI, by unanimous consent, offered the following amendments:

Amend Bill, page 6, by inserting between lines 19 and 20:
Section 9. Conduct of consumer.

(a) In any products liability action, evidence that the conduct in the use of the product of the person suffering the harm conformed to generally recognized conduct of consumers of said product shall create a rebuttable inference that the person suffering the harm did not assume the risk of harm.

(b) Notwithstanding any other provision, the fact that a party injured as a result of a defective product did not discover, know or seek out the defect, shall not defeat recovery.

Amend Sec. 9, page 6, line 20, by striking out "9" and inserting: 10

Amend Sec. 10, page 7, line 10, by striking out "10" and inserting 11

Amend Sec. 11, page 7, line 24, by striking out "11" and inserting: 12

Amend Sec. 12, page 8, line 21, by striking out "12" and inserting: 13

Amend Sec. 13, page 9, line 2, by striking out "13" and inserting: 14

Amend Sec. 14, page 9, line 19, by striking out "14" and inserting: 15

Amend Sec. 15, page 9, line 24, by striking out "15" and inserting: 16

Amend Sec. 16, page 9, line 28, by striking out "16" and inserting 17

On the question,

Will the Senate agree to the amendments?

Senator ZEMPRELLI. Mr. President, the products liability case goes into so much detail as to the conduct of the manufacturer and the conduct of the seller that I thought it would be innovative if we introduced a section that dealt with the conduct of the consumer. It seemed only fair that if we were regulating everybody's conduct, we should also set standards for the consumer.

The significance of this, of course, is more legalistic than anything else. It sort of transfers the burden of proof. Therefore, I have added a new section which states, "In any products liability action, evidence that the conduct in the use of the product of the person suffering the harm conformed to generally recognized conduct of consumers of said product shall create a rebuttable inference that the person suffering the harm did not assume the risk of harm."

It simply means this, Mr. President: If I use a product the way that product is customarily used by other people, there is an inference of regularity. I did not assume the risk of being harmed by the use of that product.

I feel these are fair amendments; I feel they are very just amendments and I ask the Senate to adopt them. This is called the "state-of-the-art offense."

Senator SCHAEFER. Mr. President, I would like to speak in support of the amendments. I do not know whether the gentleman from Allegheny, Senator Zemprelli, stated it, but we give, more or less, that same option to the defendant in the matter. As the gentleman stated, this is the state-of-the-art offense. I think it allows for a balanced presentation on that issue. I would consider these amendments eminently pro-consumer.

And the question recurring,

Will the Senate agree to the amendments?

(During the calling of the roll, the following occurred:)

Senator SMITH. Mr. President, I would like to change my vote from "no" to "aye."

The PRESIDENT. The gentleman will be so recorded.
 Senator CORMAN. Mr. President, I would like to change my vote from "aye" to "no."

The PRESIDENT. The gentleman will be so recorded.
 Senator McKINNEY. Mr. President, I would like to change my vote from "no" to "aye."

The PRESIDENT. The gentleman will be so recorded.
 The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—22

Andrews,	Lynch,	Noszka,	Schaefer,
Bell,	McCormack,	O'Pake,	Smith,
Duffield,	McKinney,	Orlando,	Sweeney,
Fumo,	Messinger,	Romanelli,	Wood,
Hankins,	Murray,	Scanlon,	Zemprelli,
Jubelirer,	Nolan,		

NAYS—24

Coppersmith,	Gurzenda,	Kusse,	Ross,
Corman,	Hager,	Lewis,	Snyder,
Dougherty,	Hess,	Manbeck,	Stapleton,
Dwyer,	Holl,	Mellow,	Stauffer,
Early,	Hopper,	Moore,	Stout,
Gekas,	Howard,	Reibman,	Tilghman,

So the question was determined in the negative, and the amendments were defeated.

And the question recurring,
 Will the Senate agree to the bill on third consideration, as amended?

SCHAEFER AMENDMENT II

Senator SCHAEFER, by unanimous consent, offered the following amendment:

Amend Sec. 4, page 3, line 23, by inserting after "act.": Nothing in this subsection shall be construed to bar or limit an action against a manufacturer or seller of a product on the theory of intentional conduct.

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

Senator SCHAEFER. Mr. President, the aim and intent of the amendment is to clarify what I feel to be an ambiguity in the bill. It is my feeling that—

The PRESIDENT. Will the gentleman yield for just a minute. It is obvious that some persons are not too interested in what is going on here. If the Members cannot hear Senator Schaefer, I can turn up the loudspeaker.

Senator SCHAEFER. Mr. President, it appears to me that the bill could conceivably be construed to bar absolutely an action by an injured or aggrieved person that is predicated upon an intentional tort. In other words, I think it could be argued quite successfully, in interpreting this act, that a manufacturer who goes out of his way and intentionally injures somebody through the sale, manufacture or production of a product, would escape any liability.

I would ask for a roll call vote on this amendment, Mr. President.

And the question recurring,
 Will the Senate agree to the amendment?

(During the calling of the roll, the following occurred:)
 Senator DWYER. Mr. President, I would like to change my vote from "no" to "aye."

The PRESIDENT. The gentleman will be so recorded.
 Senator CORMAN. Mr. President, I would like to change my vote from "no" to "aye."

The PRESIDENT. The gentleman will be so recorded.
 Senator STAPLETON. Mr. President, I would like to change my vote from "no" to "aye."

The PRESIDENT. The gentleman will be so recorded.
 Senator ROSS. Mr. President, I would like to change my vote from "no" to "aye."

The PRESIDENT. The gentleman will be so recorded.
 The yeas and nays were required by Senator SCHAEFER and were as follows, viz:

YEAS—30

Andrews,	Hankins,	Nolan,	Schaefer,
Coppersmith,	Jubelirer,	Noszka,	Smith,
Corman,	Lynch,	O'Pake,	Stapleton,
Dougherty,	McCormack,	Orlando,	Stauffer,
Duffield,	McKinney,	Reibman,	Sweeney,
Dwyer,	Mellow,	Ross,	Wood,
Fumo,	Messinger,	Scanlon,	Zemprelli,
Hager,	Murray,		

NAYS—15

Bell,	Hess,	Kusse,	Snyder,
Early,	Holl,	Lewis,	Stout,
Gekas,	Hopper,	Manbeck,	Tilghman,
Gurzenda,	Howard,	Moore,	

So the question was determined in the affirmative, and the amendment was agreed to.

And the question recurring,
 Will the Senate agree to the bill on third consideration, as amended?

SCHAEFER AMENDMENTS III

Senator SCHAEFER, by unanimous consent, offered the following amendments:

Amend Sec. 5, page 5, line 1, by striking out "or" where it appears the last time
 Amend Sec. 5, page 5, line 4, by removing the period after "commenced" and inserting: ; or
 (3) any action based upon the intentional conduct of the defendant.

On the question,
 Will the Senate agree to the amendments?

Senator SCHAEFER. Mr. President, in line with the previous amendment I offered wherein I discussed what I felt to be a problem with the current bill insofar as intentional torts are concerned, these amendments are aimed at the same subject area of my initial amendment but confines itself to the—

The PRESIDENT. Will the gentleman yield. We will be at ease for just a minute.

(The Senate was at ease.)

The PRESIDENT. I am sorry, Senator. You may proceed.

Senator SCHAEFER. Mr. President, the aim and intent of these amendments is to exempt an action based upon intentional conduct of a defendant from the twelve-year bar and, in essence, reinstitute the two-year after the date of the injury statute of limitations.

Again, we are aiming at a situation where a person intentionally injures another through the production of a defective product. Intent must be proven.

Mr. President, I ask for a "yes" vote on these amendments.

Senator COPPERSMITH. Mr. President, I strongly oppose these amendments. In effect, they say that twelve or fifteen years after the product is manufactured a hearing can be held in regard to the intent of the people at the time the product was manufactured. It brings to bear the very same problem we discussed before when we dealt with the problem of the statute of limitations. For that reason, I oppose these amendments.

Senator SCHAEFER. Mr. President, the amendments are aimed at those situations where a manufacturer makes a decision that perhaps it is cheaper to incur the losses sustained through a lawsuit than it is to correct the defect. In essence, it is making an intentional decision to go ahead and continue this possibility of harm when it knows that the cost factor involved mitigates against correction of that particular defect.

I think the gentleman from Delaware, Senator Bell, was quite right in his earlier comments in response to my first amendment when he said that we have a different type of situation when talking about intentional conduct.

And the question recurring,

Will the Senate agree to the amendments?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—16

Andrews,	Hankins,	Messinger,	Schaefer,
Bell,	Jubelirer,	Murray,	Sweeney,
Duffield,	Lynch,	Nolan,	Wood,
Fumo,	McKinney,	Scanlon,	Zemprelli,

NAYS—28

Coppersmith,	Hager,	Manbeck,	Ross,
Corman,	Hess,	McCormack,	Smith,
Dougherty,	Holl,	Mellow,	Snyder,
Dwyer,	Hopper,	Moore,	Stapleton,
Early,	Howard,	O'Pake,	Stauffer,
Gekas,	Kusse,	Orlando,	Stout,
Gurzenda,	Lewis,	Reibman,	Tilghman,

So the question was determined in the negative, and the amendments were defeated.

And the question recurring,

Will the Senate agree to the bill on third consideration, as amended?

DOUGHERTY AMENDMENTS

Senator DOUGHERTY, by unanimous consent, offered the following amendments:

Amend Sec. 5, page 5, line 1, by striking out "or"
Amend Sec. 5, page 5, line 4, by removing the period after "commenced" and inserting: ; or

(3) any action for damages to the person caused by the use of or exposure to any product or substance which causes injury of a latent or incremental nature which was not manifested or reasonably detectable prior to the expiration of the period set out in subsection (a).

On the question,

Will the Senate agree to the amendments?

Senator DOUGHERTY. Mr. President, I offer these amendments to address what I consider to be a very serious problem and that is, where an industrial worker or, perhaps, a woman, is exposed to a drug or a substance, the impact of which will not emerge within the twelve-year period but which would cause cancer in many cases. For example, I am sure many of the people here are familiar with the problems the workers in naval shipyards are experiencing now because of their exposure to asbestos twenty years ago.

What happens is, of course, that exposure to asbestos has brought about cancer but the time period has been such that it is well beyond the twelve-year limit.

All my amendments would do, Mr. President, is exclude from the twelve-year period the use of or exposure to any product or substance which causes injury of a latent or incremental nature. That is, say, a woman took a drug, DES, which is something we are experiencing today, and her child, who is a female, reaches the age of eighteen; that child would, at the age of eighteen, develop cervical cancer because her mother took the drug fifteen or twenty years ago.

What we are trying to say here in the amendments, Mr. President, is that the twelve-year limit would not apply where an individual was exposed to a substance or used a product when the end result would not become known until well beyond the twelve-year limit.

Mr. President, I ask support for the amendments.

Senator KUSSE. Mr. President, I desire to interrogate the gentleman from Philadelphia, Senator Dougherty.

The PRESIDENT. Will the gentleman from Philadelphia, Senator Dougherty, permit himself to be interrogated?

Senator DOUGHERTY. I will, Mr. President.

Senator KUSSE. Mr. President, what would the impact of these amendments be on people who smoke cigarettes and some day it is proven they caused cancer?

Senator DOUGHERTY. In my opinion, Mr. President, with the warning that is available on every pack of cigarettes which points out that the Surgeon General has already determined that cigarette smoking causes cancer, this would not have an impact because the amendments clearly state, which was not manifested nor reasonably detectable prior to the expiration of the period. The report of the Surgeon General on cigarette smoking and cancer was reasonably detectable and was known prior to the expiration of the twelve years.

Senator KUSSE. What about alcohol, Mr. President? Bottles of alcohol do not contain such warnings. Supposing, in the future, it was proven that that had created some harmful effect on an unborn child?

Senator DOUGHERTY. In that case, Mr. President, if it

could be proven, the right to sue would be there. What we are addressing is, if someone would be exposed to or uses a substance or product and has no knowledge, or does not see the implications of that beyond the twelve year limit. Again, we are addressing the case of, primarily, asbestos and the drug DES.

And the question recurring,
Will the Senate agree to the amendments?

(During the calling of the roll, the following occurred:)

Senator GURZENDA. Mr. President, I would like to change my vote from "no" to "aye."

The PRESIDENT. The gentleman will be so recorded.

Senator ROSS. Mr. President, I would like to change my vote from "no" to "aye."

The PRESIDENT. The gentleman will be so recorded.

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—24

Bell,	Hager,	Noszka,	Smith,
Coppersmith,	Jubelirer,	O'Pake,	Stapleton,
Dougherty,	Lewis,	Reibman,	Stout,
Dwyer,	McCormack,	Ross,	Sweeney,
Fumo,	Messinger,	Scanlon,	Wood,
Gurzenda,	Murray,	Schaefer,	Zemprelli,

NAYS—22

Andrews,	Hankins,	Lynch,	Nolan,
Arlene,	Hess,	Manbeck,	Orlando,
Corman,	Holl,	McKinney,	Snyder,
Duffield,	Hopper,	Mellow,	Stauffer,
Early,	Howard,	Moore,	Tilghman,
Gekas,	Kusse,		

So the question was determined in the affirmative, and the amendments were agreed to.

The PRESIDENT. Senate Bill No. 585 will go over, as amended.

PARLIAMENTARY INQUIRY

Senator SNYDER. Mr. President, I rise to a question of parliamentary inquiry.

The PRESIDENT. The gentleman from Lancaster, Senator Snyder, will state it.

Senator SNYDER. Mr. President, is not the bill on third consideration?

The PRESIDENT. It is on third consideration, as amended, Senator. What we are about to do, for the information of the Members, is to conclude consideration of today's Calendar, keeping in mind that today is Monday, proceed to adjourn until tomorrow, Tuesday, which will probably be about an hour and a half from now when we will have this bill and all the others reprinted and begin a brand new, fresh day. When the bill comes before us for final passage, you may then speak on the bill, Senator.

Senator SNYDER. Mr. President, I desire to interrogate the gentleman from Lehigh, Senator Messinger.

The PRESIDENT. Will the gentleman from Lehigh, Senator Messinger, permit himself to be interrogated?

Senator MESSINGER. I will, Mr. President.

Senator SNYDER. Mr. President, will the Majority Leader assure us that there will be a Session on Tuesday, June 27, 1978?

Senator MESSINGER. Absolutely, Mr. President.

Senator SNYDER. Mr. President, will the Majority Leader also assure us that Senate Bill No. 585 will be before us in its amended form at that Session?

Senator MESSINGER. It will be, Mr. President.

GUESTS OF SENATOR CHARLES F. DOUGHERTY PRESENTED TO SENATE

Senator DOUGHERTY. Mr. President, I would like the Chair to recognize two guests who are in the gallery today. Al Tautenberger and Mark Dussing are two Republican committeemen in my home ward in Philadelphia. Believe it or not, they have a winning Republican division in Philadelphia. I would appreciate it if you would extend the welcome of the Senate to them.

The PRESIDENT. Would these two extraordinary political allies of Senator Dougherty please stand? We would like to welcome them to the Senate of Pennsylvania.

(Applause.)

UNFINISHED BUSINESS

SENATE RESOLUTION

POSTPONING ENFORCEMENT OF CERTAIN PROVISIONS OF TITLE 75 (VEHICLES) OF THE PENNSYLVANIA CONSOLIDATED STATUTES BY LAW ENFORCEMENT AGENCIES

Senators MESSINGER and HAGER offered the following resolution (Serial No. 113), which was read as follows:

In the Senate, June 26, 1978.

WHEREAS, The passage of Title 75 of the Pennsylvania Consolidated Statutes, known as the "Vehicle Code" which took effect July 1, 1977, has resulted in various impossible and impractical problems of enforcement. The General Assembly recognized these serious problems and is in the process of amending the law with House Bill 1171, which has passed the House of Representatives and is being considered by the Senate. However, it appears that final passage of House Bill 1171 will be delayed at least until the fall of this year. There are several critical provisions that either cannot be effectively enforced or the enforcement of which will cause undue hardship to the citizens of the Commonwealth, therefore be it

RESOLVED, That the Senate of the Commonwealth of Pennsylvania declares that it is the sense of such body that the following provisions of Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes not be enforced by the Department of Transportation, the Pennsylvania State Police and all other law enforcement agencies until such time as the General Assembly makes a final determination on these matters:

Section 1307(a) insofar as it requires the implementation of a staggered registration renewal system by July 1, 1978.

Section 1504(d)(6) insofar as such provision requires a Class 6 license for the operation of motorized pedalcycles.

Section 1510 insofar as it requires a color photograph on driver's license by July 1, 1978.

Section 3525(b) insofar as such provision requires the operators of pedalcycles to wear eye protective devices.

Section 4571(b)(2) whenever it is determined by the depart-

ment that the vehicle using a spotlight is of an authorized type. Chapters 13, 41, 43 and 45, insofar as they relate to special mobile equipment as determined by the department.

Chapter 47 insofar as such chapter requires the inspection of motorized pedalcycles and the inspection of trailers with a gross weight of 3000 pounds or less; and be it further

RESOLVED, That copies of this resolution be transmitted to the Secretary of Transportation and the Commissioner of the Pennsylvania State Police and that a copy be published in the Pennsylvania Bulletin.

Senator MESSINGER asked and obtained unanimous consent for the immediate consideration of this resolution.

On the question,

Will the Senate adopt the resolution?

Senator MESSINGER. Mr. President, the Department of Transportation, due to the fact that the new Vehicle Code has not been enacted but contains amendments which would greatly affect them, they are legally being pushed to require the inspection of Mopeds or motorized pedalcycles, as they are called, and requiring a color photograph on a driver's license by July 1, 1978; also, as far as the provision requires the operators of pedalcycles to wear eye protective devices and a number of chapters in the Vehicle Code, they would use this resolution as a method of delaying the implementation of this provision until we act on the Vehicle Code. Otherwise, they may, by regulation, enforce some of these for a period of one, two or three months and then, in September, discover that they are not the intent of the Legislature.

Senator HAGER. Mr. President, I would urge the Members to vote in favor of this resolution. At present PennDOT finds itself willingly and wilfully not enforcing certain sections of the law because they expect them to be amended by the Vehicle Code. They really have to do with the onset of Mopeds and some other things which were not viewed as being on the horizon at the time we passed the last Vehicle Code.

They are only asking us, rather than go through a complete amendment of the Vehicle Code at this time, to give them the sense of the Senate and the House of Representatives that they not enforce these provisions until the new Vehicle Code has been given to them in amended form.

Mr. President, I would urge a "yes" vote on the resolution.

Senator ZEMPRELLI. Mr. President, I want to be absolutely sure about what we are voting on here. I am a Moped operator and have been for the past twenty-five years. I believe I had the first Moped in the United States. There were certain suggestions being made relative to regulations which would affect Mopeds to which I am opposed.

Mr. President, I desire to interrogate the gentleman from Lehigh, Senator Messinger.

The PRESIDENT. Will the gentleman from Lehigh, Senator Messinger, permit himself to be interrogated?

Senator MESSINGER. I will, Mr. President.

Senator ZEMPRELLI. Mr. President, does the resolution have any substantive matters that would deal with the use of Mopeds?

Senator MESSINGER. Mr. President, under the present regulations, according to their legal authorities, they must require the inspection of Mopeds. They must require a special license

for them. They do not want to do this; they have been disregarding that. They want to disregard it until we have House Bill No. 1171 enacted. The present provision of that Code would not require the inspection of Mopeds.

Senator ZEMPRELLI. Mr. President, I understood from some scuttlebutt around that there were going to be amendments offered which would put Mopeds in the same classification as motorcycles. I wanted to address myself to that if that was the thrust of any part of this resolution. Apparently it is not.

And the question recurring,

Will the Senate adopt the resolution?

The resolution was adopted.

PERMISSION TO ADDRESS SENATE

Senator HOWARD asked and obtained unanimous consent to address the Senate.

Senator HOWARD. Mr. President, I was absent from the floor while the Members were voting on the resolutions. I would like the record to show, had I been here, I would have voted against Senate Resolution, Serial No. 107 and Senate Resolution, Serial No. 109. I would have voted in favor of Senate Resolution, Serial No. 111.

The PRESIDENT. The remarks of the gentleman will be noted in the record.

CONGRATULATORY RESOLUTIONS

The PRESIDENT laid before the Senate the following resolutions, which were read, considered and adopted:

Congratulations of the Senate were extended to the National Railroad Passenger Corporation, Northeast Corridor, by Senator Smith.

Congratulations of the Senate were extended to the Reading High School Girls Softball Team by Senator O'Pake.

Congratulations of the Senate were extended to Lilly Silverberg by Senator Fumo.

Congratulations of the Senate were extended to St. Nicholas Serbian Orthodox Church by Senators Romanelli and Gekas.

Congratulations of the Senate were extended to Mr. and Mrs. Joseph A. Maniet by Senator Early.

Congratulations of the Senate were extended to Miss E. Grace Grove by Senator Hager.

Congratulations of the Senate were extended to the Honorable Joseph V. Grieco by Senators Hager and Kusse.

Congratulations of the Senate were extended to George Strohl and to the Valley View High School Cougars by Senator Mellow.

Congratulations of the Senate were extended to Matthew J. Hrebar by Senator Coppersmith.

Congratulations of the Senate were extended to Mr. and Mrs. Frank Guyton, Mr. and Mrs. J. Ralph Miller, Mr. and Mrs. Logan E. Stiffler, and Mr. and Mrs. Royal H. Musgrove, Mr. and Mrs. John Moses, Mr. and Mrs. Foster McCreary and to Mr. and Mrs. Antonio Bianconi by Senator Jubelirer.

Congratulations of the Senate were extended to the Vaux Junior High School Chess Team by Senator Arlene.

Congratulations of the Senate were extended to Charmaine Kowalski by Senators Corman and Jubelirer.

HOUSE MESSAGE

SENATE BILL RETURNED WITH AMENDMENTS

The Clerk of the House of Representatives being introduced, returned to the Senate **SB 292**, with the information that the House has passed the same with amendments in which the concurrence of the Senate is requested.

The PRESIDENT. The bill, as amended, will be placed on the Calendar.

BILLS ON FIRST CONSIDERATION

Senator EARLY. Mr. President, I move that the Senate do now proceed to consideration of all bills reported from commit-

tees for the first time at today's Session.

The motion was agreed to.

The bills were as follows:

HB 1937 and 2343.

And said bills having been considered for the first time, Ordered, To be laid aside for second consideration.

ADJOURNMENT

Senator MESSINGER. Mr. President, I move that the Senate do now adjourn until Tuesday, June 27, 1978, at 3:40 p.m., Eastern Daylight Saving Time.

The motion was agreed to.

The Senate adjourned at 11:59 p.m., Eastern Daylight Saving Time.