COMMONWEALTH OF PENNSYLVANIA

LEGISLATIVE JOURNAL

TUESDAY, JUNE 30, 1992

SESSION OF 1992 176TH OF THE GENERAL ASSEMBLY No. 49

SENATE

TUESDAY, June 30, 1992.

The Senate met at 11:24 a.m., Eastern Daylight Saving Time.

The PRESIDENT (Lieutenant Governor Mark S. Singel) in the Chair.

PRAYER

The Chaplain, Reverend KAREN LAYMAN, Pastor of Hope United Methodist Church, Carlisle, offered the following prayer:

Will you join me in prayer.

O God, You are our sustainer and restorer. You have given us the day for work and the night for rest, and You know the importance of both. Yet, O Lord, our days are never long enough for the work that seems before us, and we grow weary and lack rest. These are tiring times for all Your people.

Grant to us, we pray, the strength to meet all the challenges which still lie before us. Grant energy and vitality to this Senate as it finishes its course, and might all of its work be done with the same vigor, enthusiasm, and excellence which was evident at the beginning of the year, and may Your good be realized in this place for all Your people in this great Commonwealth.

For we pray it in Your powerful name. Amen.

The PRESIDENT. Once again, the Chair thanks Reverend Layman, the guest of Senator Hopper.

JOURNAL APPROVED

The PRESIDENT. A quorum of the Senate being present, the Clerk will read the Journal of the preceding Session of June 29, 1992.

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

HOUSE MESSAGES

HOUSE CONCURS IN SENATE AMENDMENTS BY AMENDING SAID AMENDMENTS TO HOUSE BILL

The CLERK. The Clerk of the House of Representatives being introduced, informed that the House has concurred in the amendments made by the Senate by amending said amendments to House bill numbered and entitled as follows: House Bill No. 734. Said bill having been recalled from the Governor for amendment, the vote on concurrence was reconsidered in the House, whereby the House amended the Senate amendments and ordered that the Clerk present the same to the Senate requesting concurrence.

The PRESIDENT. Pursuant to Senate Rule XV, Section 5, this bill will be referred to the Committee on Rules and Executive Nominations.

HOUSE CONCURS IN SENATE AMENDMENTS TO HOUSE AMENDMENTS

The CLERK. The Clerk of the House of Representatives being introduced, informed that the House has concurred in the amendments made by the Senate to the House amendments by further amending the Senate amendments to House amendments to Senate Bill numbered and entitled as follows: Senate Bill No. 6.

Ordered, that the Clerk present the same to the Senate for its concurrence.

The PRESIDENT. Pursuant to Senate Rule XV, Section 5, this bill will be referred to the Committee on Rules and Executive Nominations.

HOUSE ADOPTS REPORT OF COMMITTEE OF CONFERENCE

The Clerk of the House of Representatives informed the Senate that the House has adopted Report of Committee of Conference on **SB 727**.

HOUSE CONCURS IN SENATE AMENDMENTS TO HOUSE BILLS

The Clerk of the House of Representatives informed the Senate that the House has concurred in amendments made by the Senate to **HB 960, 1028, 1302, 1323, 2467, 2521** and **2801**.

HOUSE CONCURS IN SENATE AMENDMENTS TO HOUSE AMENDMENTS

The Clerk of the House of Representatives informed the Senate that the House has concurred in amendments made by the Senate to House amendments to **SB 1436**.

HOUSE CONCURS IN SENATE BILLS

The Clerk of the House of Representatives returned to the Senate **SB 1625** and **1812**, with the information the House has passed the same without amendments.

SENATE BILLS RETURNED WITH AMENDMENTS

The Clerk of the House of Representatives returned to the Senate **SB 1110, 1324, 1379, 1393** and **1536**, with the information the House has passed the same with amendments in which the concurrence of the Senate is requested.

The PRESIDENT. Pursuant to Senate Rule XV, Section 5, this bill will be referred to the Committee on Rules and Executive Nominations.

HOUSE CONCURS IN SENATE CONCURRENT RESOLUTION

The Clerk of the House of Representatives informed the Senate that the House has concurred in resolution from the Senate, entitled:

Senate Concurrent Resolution No. 142.

BILLS SIGNED

The PRESIDENT (Lieutenant Governor Mark S. Singel) in the presence of the Senate signed the following bills:

SB 727, 1436, 1625, 1812, HB 960, 1028, 1323, 2467, 2508, 2521 and **2801**.

LEGISLATIVE LEAVES

Senator LOEPER. Mr. President, I would request legislative leaves for Senator Punt and Senator Jubelirer.

Senator LINCOLN. Mr. President, I would request a temporary Capitol leave for Senator Williams.

The PRESIDENT. Senator Loeper requests legislative leaves for Senator Punt and Senator Jubelirer.

Senator Lincoln requests a temporary Capitol leave for Senator Williams.

The Chair hears no objection. The leaves will be granted.

LEAVE OF ABSENCE

Senator LOEPER asked and obtained leave of absence for Senator SALVATORE, for today's Session, for personal reasons.

CALENDAR

BILL WHICH HOUSE HAS NONCONCURRED IN SENATE AMENDMENTS

HB 2140 (Pr. No. 3636) — The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of June 2, 1915 (P. L. 736, No. 338), known as "The Pennsylvania Workmen's Compensation Act," adding and amending certain definitions; redesignating referees as workers' compensation judges; further providing for contractors, for insurance and self-insurance, for compensation and for payments for medical services; providing for coordinated care organizations; further providing for procedures for the payment of compensation and for medical services and for procedures of the department, referees and the board; adding provisions relating to insurance, self-insurance pooling, self-insurance guaranty fund, health and safety, the prevention of insurance fraud; further providing for certain penalties; making repeals; and making editorial changes.

MOTION TO RECEDE FROM AMENDMENTS

Senator LOEPER. Mr. President, I would move that the Senate recede from its amendments to House Bill No. 2140.

The PRESIDENT. Senator Loeper moves that the Senate recede from amendments placed in House Bill No. 2140.

On the question,

Will the Senate agree to the motion to recede?

The PRESIDENT. On the motion, the Chair recognizes the gentleman from Fayette, Senator Lincoln.

Senator LINCOLN. Mr. President, would the Chair explain to me and the rest of the Members just what that means?

The PRESIDENT. What it means is that if the motion carries, all of the amendments that have been placed by the Senate in this House bill will be removed from the bill.

Senator LINCOLN. Mr. President, and then what position would the bill be in?

The PRESIDENT. The bill would be ready for passage by the Senate.

Senator LINCOLN. Mr. President, and if the motion fails, does that mean that a conference committee would be formed?

The PRESIDENT. If it is the will of the Senate to establish a conference committee, that is possible, but technically what you would be dealing with would be the prior printer's number to House Bill No. 2140 before it arrived in the Senate.

Senator LINCOLN. Mr. President, I do not think the Chair understood my question.

If the motion by the Majority Leader to recede from our amendments fails, then would it take another motion from someone here to insist on our amendments and then we would come—

The PRESIDENT. The gentleman is correct.

Senator LINCOLN. Okay, Mr. President.

I would ask for a negative vote on the motion to recede from the amendments.

Senator MELLOW. Mr. President.

The PRESIDENT. For what purpose does the gentleman from Lackawanna rise?

Senator MELLOW. Mr. President, I would simply request an affirmative vote on the motion.

Prior to taking a vote on the motion, I would request that we revert to leaves of absence.

The PRESIDENT. Without objection, let us handle that detail, leaves of absence.

LEGISLATIVE LEAVE

Senator MELLOW. Mr. President, I request a temporary Capitol leave for Senator Bodack.

The PRESIDENT. Senator Mellow requests a temporary Capitol leave for Senator Bodack. The Chair hears no objection. The leave will be granted.

LEAVE OF ABSENCE

Senator MELLOW asked and obtained leave of absence for Senator LYNCH, for today's Session, for personal reasons.

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

The PRESIDENT. This is a debatable motion.

The Chair would recognize the gentleman from Fayette, Senator Lincoln.

Senator LINCOLN. Mr. President, I have no objection to the motion and would not oppose it at this point in time.

Senator LOEPER. Mr. President, maybe just as a point of information, what my intent is in making this motion and a couple of motions to follow is to have House Bill No. 2140 back in a position where amendments can be offered to that here in the Senate, debated, and voted on again to send to the House of Representatives, and that is the procedural motion that we are going through at this point in time.

The PRESIDENT. The Chair thanks the gentleman.

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

The PRESIDENT. On the motion to recede, All those in favor, signify by saying "aye"; all those opposed, "no."

The "ayes" have it, and the motion is carried.

MOTION TO RECONSIDER BILL

The PRESIDENT. The Chair recognizes the gentleman from Delaware, Senator Loeper.

Senator LOEPER. Mr. President, I move that the Senate reconsider the vote by which House Bill No. 2140 passed finally.

The PRESIDENT. Senator Loeper moves that the Senate do reconsider the vote by which House Bill No. 2140 passed the Senate on final passage.

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

The PRESIDENT. On the motion, the Chair recognizes the gentleman from Fayette, Senator Lincoln.

PARLIAMENTARY INQUIRY

Senator LINCOLN. Mr. President, point of parliamentary inquiry.

The PRESIDENT. The gentleman from Fayette, Senator Lincoln, will state his point.

Senator LINCOLN. Mr. President, are there not rules that determine how many days can pass before a bill can be reconsidered? I would like to have a clarification on that particular rule of the Senate as to how many days have passed and how many days are allowed to pass prior to this being done procedurally.

The PRESIDENT. The Chair thanks the gentleman for his inquiry, and if he will bear with us for just a moment, we will have the answer to that question.

According to Senate Rule XIII, Motions, subsection 12 regarding Reconsideration, "...no motion for reconsideration shall be in order unless made on the same day on which the vote was taken, or within the next five days of actual session of the Senate thereafter."

Senator LINCOLN. Mr. President, I would think that there have been five days which have passed since this bill passed with the amendments.

The PRESIDENT. The Chair would restate the rule to the gentleman that "actual session" is the operating phrase here.

Senator LINCOLN. Well, I think it would be very easy to determine whether that five days has passed, but I think it has.

The PRESIDENT. We have the Clerk checking on that as we speak.

In checking over the legislative history of this particular bill, the fact is that House Bill No. 2140 passed the body finally on May 19, and since more than five days of actual session of the Senate have transpired, the Chair finds that the gentleman's point is well-taken, and the Chair would rule at this point that reconsideration of House Bill No. 2140 is out of order.

Senator LINCOLN. And, Mr. President, a further inquiry.

The PRESIDENT. The gentleman from Fayette, Senator Lincoln, will state it.

Senator LINCOLN. Mr. President, does that mean that the bill now is sent to the Governor for his signature?

The PRESIDENT. The Chair thanks the gentleman for this interesting parliamentary inquiry.

In fact, since the Senate has receded from its amendments, the bill is in position to go to the Governor. The only problem is that final action in the body requires a roll-call vote, and since we receded from the amendments by a voice vote, it will be necessary to have a roll-call vote, and should the motion to recede pass by roll-call vote, then the bill would go directly to the Governor.

MOTION TO SUSPEND RULE NO. XIII

Senator LOEPER. Mr. President, I move to suspend Rule No. XIII.

The PRESIDENT. Senator Loeper moves that Rule No. XIII be suspended.

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

The PRESIDENT. This is a nondebatable motion. The Chair, however, sees Senator Lincoln at the microphone and would ask for what purpose does the gentleman rise?

PARLIAMENTARY INQUIRY

Senator LINCOLN. Mr. President, for two purposes. One is a point of parliamentary inquiry.

The PRESIDENT. The gentleman from Fayette, Senator Lincoln, will state it.

Senator LINCOLN. Mr. President, what are the number of votes required on this vote to successfully suspend the rule?

The PRESIDENT. A constitutional majority is required to suspend. That number is 26.

Senator LINCOLN. Thank you, Mr. President.

I would ask for a negative vote on the effort to suspend the rule.

And the question recurring,

Will the Senate agree to the motion to suspend?

The PRESIDENT. On the motion to suspend Rule No. XIII, the Chair would recognize the gentleman from Bucks, Senator Lewis.

PARLIAMENTARY INQUIRY

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

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

Senator LEWIS. Mr. President, before the gentleman from Delaware, Senator Loeper, moved to suspend Rule No. XIII, if I followed the proceedings correctly, it seems that a motion to recede had been made and was in order, and the Chair proceeded to conduct a voice vote on that motion. After the parliamentary inquiries from the gentleman from Fayette, it was the Chair's conclusion that because of the unavailability of a motion to reconsider and the consequences of a motion to recede being that the bill would be immediately sent to the Governor, that, in fact, rather than a voice vote, a roll-call vote should have been conducted. If that was the posture of this Senate at the time, my point of parliamentary inquiry then is whether a motion to suspend Rule No. XIII was in order or out of order, in view of the fact that the next item of business should have been the calling of the roll on the motion to recede.

The PRESIDENT. The Chair, upon consideration of the gentleman's remarks, must agree that, in fact, the immediate action that should have been taken was a roll-call vote, and the Chair admits to conducting the voice vote erroneously. The Chair operated under the supposition that there was further action to be taken on this bill, and a roll-call vote would have been more appropriate.

The Chair thinks that the gentleman's point is well-taken that prior to any other motion, the vote on the motion to recede in the form of a roll-call vote should have been taken.

The Chair would also note that the Chair is subject to the constraints of the Majority on this position, and the Chair would suggest to all of the Members that what is really in order at this time is a roll-call vote on the motion to recede.

Senator LOEPER. Mr. President, may we be at ease for a moment?

The PRESIDENT. The Senate will be at ease.

(The Senate was at ease.)

The PRESIDENT. The Chair has now found in favor of the gentleman from Fayette, Senator Lincoln, and also the gentleman from Bucks, Senator Lewis. The Chair would rule that the next immediate item of business must be a roll-call vote on the motion to recede.

And the question recurring,

Will the Senate agree to the motion to recede?

The PRESIDENT. On the motion to recede, the Chair recognizes the gentleman from Delaware, Senator Loeper.

RULING OF THE CHAIR APPEALED

Senator LOEPER. Mr. President, I would appeal the ruling of the Chair.

The PRESIDENT. Senator Loeper appeals the ruling of the Chair.

On the question,

Shall the ruling of the Chair be sustained?

The PRESIDENT. The question is debatable, and the Chair is looking around for any intrepid souls who want to venture into this parliamentary debate.

The Chair does recognize the gentleman from Fayette, Senator Lincoln. For what purpose does the gentleman rise?

Senator LINCOLN. Mr. President, I thought we approved the motion to recede by a voice vote. Now you are saying that that was an improper vote?

The PRESIDENT. The Chair would admit to improper procedure. In order to pass finally out of this body, the action—

Senator LINCOLN. Mr. President, we are now back to the very beginning of this debate where the only thing that we have considered, or will consider right now, is the motion to recede, and that decision by the Chair has been appealed by the Majority Leader, and the vote we are now going to take, if you vote "yes," you are upholding the Chair; if you vote "no," you are voting to overrule?

The PRESIDENT. In order to keep this as uncomplicated as possible, an "aye" vote upholds the ruling of the Chair, thereby allowing us to move directly to a roll-call vote on receding. A "no" vote would overrule the ruling of the Chair, thereby allowing Senator Loeper to reconsider and to proceed with whatever action he wants to take on this bill.

Senator LINCOLN. Mr. President, well, I have one problem with that explanation. If the ruling of the Chair is overruled, then we would be back to the motion on suspension of Rule No. XIII.

The PRESIDENT. That is correct.

Senator LINCOLN. Okay. I would ask for a "yes" vote in support of the Chair.

The PRESIDENT. The Chair thanks the gentleman for his help. I mean, seriously, in understanding all of this.

On the appeal of the ruling of the Chair, an "aye" vote upholds the ruling of the Chair; a "no" vote overturns.

The Chair recognizes Senator Mellow.

Senator MELLOW. Mr. President, I would simply request a "no" vote.

The PRESIDENT. On the ruling of the Chair, Senator Loeper.

Senator LOEPER. Mr. President, just for the point of clarity, for most of my Members, I would request a "no" vote.

The PRESIDENT. The Clerk will call the roll, quickly.

And the question recurring,
Shall the ruling of the Chair be sustained?

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

YEAS—20

Afflerbach	Bortner	Lewis	Rhoades
Andrezeski	Dawida	Lincoln	Scanlon
Belan	Fattah	O'Pake	Schwartz
Bell	Jones	Pecora	Stapleton
Bodack	LaValle	Porterfield	Stewart

NAYS—28

Armstrong	Greenwood	Loeper	Robbins
Baker	Hart	Madigan	Shaffer
Brightbill	Helfrick	Mellow	Shumaker
Corman	Holl	Musto	Stout
Fisher	Hopper	Peterson	Tilghman
Fumo	Jubelirer	Punt	Wenger
Greenleaf	Lemmond	Reibman	Williams

The PRESIDENT. On the appeal of the Chair's ruling, the vote is "ayes," 20; "nays," 28. The appeal is sustained.

RULE XIII SUSPENDED

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

Senator LINCOLN. Mr. President, just so I can keep in my own mind the clarity of what we are doing, we have now receded from the amendments that we put into this bill on May 19.

The PRESIDENT. The gentleman is correct.

Senator LINCOLN. And we are now at the point where no action but a final passage vote can be taken on this bill, unless Senator Loeper's motion to suspend Rule XIII is successful, and we need 26 votes to suspend the rules.

The PRESIDENT. The gentleman is correct.

Senator LINCOLN. Mr. President, I would ask for a negative vote on the motion to suspend the rules.

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

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

YEAS—28

Armstrong	Greenwood	Loeper	Robbins
Baker	Hart	Madigan	Shaffer
Brightbill	Helfrick	Mellow	Shumaker
Corman	Holl	Musto	Stout
Fisher	Hopper	Peterson	Tilghman
Fumo	Jubelirer	Punt	Wenger
Greenleaf	Lemmond	Reibman	Williams

NAYS—20

Afflerbach	Bortner	Lewis	Rhoades
Andrezeski	Dawida	Lincoln	Scanlon
Belan	Fattah	O'Pake	Schwartz
Bell	Jones	Pecora	Stapleton
Bodack	LaValle	Porterfield	Stewart

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

BILL ON FINAL PASSAGE RECONSIDERED

The PRESIDENT. The next item before us is a motion made by Senator Loeper to reconsider the vote by which House Bill No. 2140 finally passed the Senate.

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

The PRESIDENT. All in favor of the motion to reconsider the vote signify by saying "aye"; all those opposed, "no." The "ayes" have it, and the motion is carried.

On the question,
Shall the bill pass finally?

BILL ON THIRD CONSIDERATION RECONSIDERED

Senator LOEPER. Mr. President, I would move that the Senate reconsider the vote by which House Bill No. 2140 passed on third consideration.

The PRESIDENT. The Chair thanks the gentleman. That is the proper sequence.

Senator Loeper moves that the Senate do reconsider the vote by which House Bill No. 2140 passed on third consideration.

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

The PRESIDENT. All those in favor of the motion signify by saying "aye"; all those opposed, "no." The "ayes" have it. The motion is carried.

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

BILL ON THIRD CONSIDERATION AMENDED

Senator MELLOW, on behalf of himself and Senator MADIGAN, by unanimous consent, offered the following amendment No. A3117:

Amend Bill, page 2, lines 20 through 36; pages 3 and 4, lines 1 through 30; page 5, lines 1 through 22, by striking out all of said lines on said pages and inserting:

Amending the act of June 2, 1915 (P.L.736, No.338), entitled, as reenacted and amended, "An act defining the liability of an employer to pay damages for injuries received by an employe in the course of employment; establishing an elective schedule of compensation; providing procedure for the determination of liability and compensation thereunder; and prescribing penalties," adding and amending certain definitions; redesignating referees as workers' compensation judges; further providing for contractors, for insurance and self-insurance, for compensation and for payments for medical services; providing for coordinated care organizations; further providing for procedures for the payment of compensation and for medical services and for procedures of the department, referees and the board; adding provisions relating to insurance, self-insurance pooling, self-insurance guaranty fund, health and safety, the prevention of insurance fraud; further providing for certain penalties; making repeals; and making editorial changes.

Amend Bill, page 26, line 30; pages 27 through 98, lines 1 through 30; page 99, lines 1 through 20, by striking out all of said lines on said pages and inserting:

Section 1. Section 101 of the act of June 2, 1915 (P.L.736, No.338), known as The Pennsylvania Workmen's Compensation Act, reenacted and amended June 21, 1939 (P.L.520, No.281) and amended December 5, 1974 (P.L.782, No.263), is amended to read:

Section 101. That this act shall be called and cited as [The Pennsylvania Workmen's] the Workers' Compensation Act, and shall apply to all injuries occurring within this Commonwealth, irrespective of the place where the contract of hiring was made, renewed, or extended, and extraterritorially as provided by section 305.2.

Section 2. Section 104 of the act, amended March 29, 1972 (P.L.159, No.61), is amended to read:

Section 104. The term "employe," as used in this act is declared to be synonymous with servant, and includes—

All natural persons who perform services for another for a valuable consideration, exclusive of persons whose employment is casual in character and not in the regular course of the business of the employer, and exclusive of persons to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished or repaired, or adapted for sale in the worker's own home, or on other premises, not under the control or management of the employer. [Every] Except as hereinafter provided in clause (c) of section 302 and sections 305 and 321 of this act, every executive officer of a corporation elected or appointed in accordance with the charter and by-laws of the corporation, except elected officers of the Commonwealth or any of its political subdivisions, shall be an employe of the corporation [except as hereinafter provided in sections 302 (c), 305 and 321]. An executive officer of a corporation may, however, elect not to be an "employe" of the corporation for the purposes of this act. For purposes of this section, an executive officer is an individual who has the power to direct and cause the direction of the management and policies of the business and to make the day-to-day as well as major decisions in matters of policy, management and operations.

Section 3. The act is amended by adding sections to read:

Section 105.3. The term "construction design professional," as used in this act, means a professional engineer or land surveyor licensed by the State Registration Board for Professional Engineers and Professional Land Surveyors under the act of May 23, 1945 (P.L.913, No.367), known as the "Professional Engineers and Professional Land Surveyors Registration Law," a landscape architect who is licensed by the State Board of Landscape Architects under the act of January 24, 1966 (1965 P.L.1527, No.535), known as the "Landscape Architects' Registration Law," an architect who is licensed by the Architects Licensure Board under the act of December 14, 1982 (P.L.1227, No.281), known as the "Architects Licensure Law," or any corporation or association (including professional corporations) organized or registered under the act of December 21, 1988 (P.L.1444, No.177), known as the "General Association Act of 1988," practicing engineering, architecture, landscape architecture or surveying in this Commonwealth.

Section 109. The term "sufficient, competent and substantial evidence," as used in this act, shall mean the aggregate of the terms, "sufficient evidence," "competent evidence" and "substantial evidence." The term "sufficient evidence," as used in this act, shall mean more than a scintilla but somewhat less than a preponderance. The term "competent evidence," as used in this act, shall mean evidence which is legally admissible. A technical or scientific opinion given in evidence by an expert must be based upon facts or data of a type reasonably relied upon by experts in the particular field and be logically derived by standard methodological principles. The term "substantial evidence," as used in this act, shall mean such relevant evidence as a reasonable mind might accept to support a decision upon a review of the record as a whole.

Section 110. In addition to the definitions set forth in this Article, the following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Bill" means a statement or invoice for payment of services under clause (f) of section 306 of this act which identifies the claimant, the date of injury, the payment codes referred to in clause (f) of section 306 of this act and a description of the services provided on or in standard form prescribed by the Department of Labor and Industry.

"Burn facility" means a facility which meets the service standards of the American Burn Association.

"Commissioner" means the Insurance Commissioner of the Commonwealth.

"Coordinated care organization" or "CCO" means an organization licensed in Pennsylvania and certified by the Secretary of Labor and Industry on a basis of established criteria possessing the capacity to provide primary medical services to an injured worker.

"DRG" means diagnosis related groups.

"HCFA" means the Health Care Financing Administration.

"Health maintenance organization" means an entity defined in and subject to the act of December 29, 1972 (P.L.1701, No.364), known as the "Health Maintenance Organization Act."

"Hospital plan corporation" means an entity defined in and subject to Chapter 61 (relating to hospital plan corporations) of Title 40 (relating to insurance) of the Pennsylvania Consolidated Statutes.

"Insurance Company Law of 1921" means the act of May 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law of 1921."

"Insurer" means an entity subject to the act of May 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law of 1921," including the State Workmen's Insurance Fund, with which an employer has insured liability under this act pursuant to section 305 or a self-insured employer or fund exempted by the Department of Labor and Industry pursuant to section 305 of this act.

"Intermediary" means an organization with a contractual relationship with the Health Care Financing Administration to process Medicare Part A or Part B claims.

"Life-threatening injury" shall be as defined by the American College of Surgeons' triage guidelines regarding use of trauma centers for the region where the services are provided.

"Occupational Disease Act" means the act of June 21, 1939 (P.L.566, No.284), known as "The Pennsylvania Occupational Disease Act."

"Pass-through costs" means Medicare reimbursed costs to a hospital that "pass through" the prospective payment system and are not included in the diagnosis related group payments. The term includes medical education, capital expenditures, insurance and interest expense on fixed assets.

"Peer review," for the purpose of undertaking reviews and reports pursuant to section 420, means review by:

(1) an impartial physician, surgeon or other duly licensed practitioner of the healing arts selected by the Secretary of Labor and Industry upon recommendation of the deans of the medical colleges located in this Commonwealth;

(2) a panel of such professionals and practitioners selected by the Secretary of Labor and Industry upon recommendation of the deans of the medical colleges located in this Commonwealth; or

(3) a Peer Review Organization approved by the Insurance Commissioner and selected by the Secretary of Labor and Industry.

"Professional health service corporation" means an entity defined in and subject to Chapter 63 (relating to professional health services plan corporations) of Title 40 (relating to insurance) of the Pennsylvania Consolidated Statutes.

"Provider" means a health care provider licensed by the Commonwealth, including a person or institution providing treatment, accommodations, products or services to a person under clause (f) of section 306 of this act.

"Referee" means a workers' compensation judge, as designated under section 401.

"Secretary" means the Secretary of Labor and Industry of the Commonwealth.

"Trauma center" means a facility accredited by the Pennsylvania Trauma Systems Foundation under the act of July 3, 1985 (P.L.164, No.45), known as the "Emergency Medical Services Act."

"Urgent injury" shall be as defined by the American College of Surgeons' triage guidelines regarding use of trauma centers for the region where the services are provided.

"Usual, customary and reasonable charge" means the charge most often made by providers of similar training, experience and licensure for a specific treatment, accommodation, product or service in the geographic area where the treatment, accommodation, product or service is provided.

"Utilization review organizations" shall be those organizations consisting of an impartial physician, surgeon or other duly licensed practitioner of the healing arts or a panel of such professionals and practitioners as authorized by the Department of Labor and Industry and published as a list in the form of a notice in the Pennsylvania Bulletin, for the purpose of reviewing the reasonableness and necessity of medical treatment pursuant to section 306(f.1)(6).

Section 4. Section 204 of the act, amended December 5, 1974 (P.L.782, No.263), is amended to read:

Section 204. No agreement, composition, or release of damages made before the date of any injury shall be valid or shall bar a claim for damages resulting therefrom; and any such agreement is declared to be against the public policy of this Commonwealth. The receipt of benefits from any association, society, or fund shall not bar the recovery of damages by action at law, nor the recovery of compensation under article three hereof; and any release executed in consideration of such benefits shall be void: Provided, however, That if the employe receives unemployment compensation benefits, such amount or amounts so received shall be credited as against the amount of the award made under the provisions of [section 108.] sections 108 and 306, except for benefits payable under section 306(c).

Section 5. Section 301(a) and (c)(1) of the act, amended October 17, 1972 (P.L.930, No.223) and December 5, 1974 (P.L.782, No.263), are amended to read:

Section 301. (a) Every employer shall be liable for compensation for personal injury to, or for the death of each employe, by an injury in the course of his employment, and such compensation shall be paid in all cases by the employer, without regard to negligence, according to the schedule contained in sections three hundred and six and three hundred and seven of this article: Provided, That no compensation shall be paid when the injury or death is intentionally self inflicted, or is caused by the employe's violation of law, or is caused by the employe's intoxication or illegal use of drugs, but the burden of proof of such fact shall be upon the employer, and no compensation shall be paid if, during hostile attacks on the United States, injury or death of employes results solely from military activities of the armed forces of the United States or from military activities or enemy sabotage of a foreign power.

* * *

(c) (1) The terms "injury" and "personal injury," as used in this act, shall be construed to mean an injury to an employe, regardless of his previous physical condition, arising in the course of his employment and related thereto, and such disease or infection as naturally results from the injury or is aggravated, reactivated or accelerated by the injury; and wherever death is mentioned as a cause for compensation under this act, it shall mean only death resulting from such injury and its resultant effects, and occurring within three hundred weeks after the injury. The term "injury arising in the course of his employment," as used in this article, shall not include an injury caused by an act of a third person intended to injure the employe because of reasons personal to him, and not directed against him as an employe or because of his employment; nor shall it include injuries sustained while the employe is operating a motor vehicle provided by the employer if the employe is not otherwise in the course of employment at the time of injury; but shall include all other injuries sustained while the employe is actually engaged in the furtherance of the business or affairs of the employer, whether upon the employer's premises or elsewhere, and shall include all injuries caused by the condition of the premises or by the operation of the employer's business or affairs thereon, sustained by the employe, who, though not so engaged, is injured upon the premises occupied by or under the control of the employer, or upon which the employer's business or affairs are being carried on, the employe's presence thereon being required by the nature of his employment.

* * *

Section 6. Section 302 of the act, amended December 5, 1974 (P.L.782, No.263), is amended to read:

Section 302. (a) A contractor who subcontracts all or any part of a contract and his insurer shall be liable for the payment of compensation to the employes of the subcontractor unless the subcontractor primarily liable for the payment of such compensation has secured its payment as provided for in this act. Any contractor or his insurer who shall become liable hereunder for such compensation may recover the amount thereof paid and any necessary expenses from the subcontractor primarily liable therefor.

For purposes of this subsection, a person who contracts with another (1) to have work performed consisting of (i) the removal, excavation or drilling of soil, rock or minerals, or (ii) the cutting or removal of timber from lands, or (2) to have work performed of a kind which is a regular or recurrent part of the business, occupation, profession or trade of such person shall be deemed a contractor, and such other person a subcontractor. This subsection shall not apply, however, to an owner or lessee of land principally used for agriculture who is not a covered employer under this act and who contracts for the removal of timber from such land.

(b) Any employer who permits the entry upon premises occupied by him or under his control of a laborer or an assistant hired by an employe or contractor, for the performance upon such premises of a part of such employer's regular business entrusted to that employe or contractor, shall be liable for the payment of compensation to such laborer or assistant unless such hiring employe or contractor, if primarily liable for the payment of such compensation, has secured the payment thereof as provided for in this act. Any employer or his insurer who shall become liable hereunder for such compensation may recover the amount thereof paid and any necessary expenses from another person if the latter is primarily liable therefor.

For purposes of this subsection (b), the term "contractor" shall have the meaning ascribed in section 105 of this act.

(c) Any employer employing persons in agricultural labor shall be required to provide workmen's compensation coverage for such employes according to the provisions of this act, if such employer is otherwise covered by the provisions of this act or if during the calendar year such employer pays wages to one employe for agricultural labor totaling one hundred fifty dollars ($150) or more or furnishes employment to one employe in agricultural labor on twenty or more days in any of which events the employer shall be required to provide coverage for all employes.

(d) A contractor shall not subcontract all or any part of a contract unless the subcontractor has presented proof of insurance under this act.

(e) (1) Prior to issuing a building permit to a contractor, a municipality shall require the contractor to present proof of workers' compensation insurance for the duration of the work or an affidavit that the contractor is the sole proprietor, principal shareholder of a corporation or a partner in a partnership which does not employ other individuals to perform the work pursuant to the building permit.

(2) Every building permit issued by a municipality to a contractor shall clearly set forth the name and workers' compensation policy and the contractor's Federal or State Employer Identification Number. This information shall be in addition to any information required by municipal ordinance. If the building permit is issued to a sole proprietor, principal shareholder of a corporation or a partnership which does not employ other individuals to perform the work pursuant to the building permit, and is not otherwise obligated to maintain workers' compensation insurance under this act, the permit shall clearly set forth the contractor's Federal or State Employer Identification Number and state that the sole proprietor, principal shareholder or partner is not required to carry workers' compensation insurance and that the sole proprietor, principal shareholder or partner is not permitted to employ any individual to perform work pursuant to the building permit.

(3) Every municipality issuing a building permit shall be named as a workers' compensation policy certificate holder of a contractor-issued building permit. This certificate shall be filed with the municipality's copy of the building permit.

(4) A municipality shall issue a stop-work order to a contractor who is performing work pursuant to a building permit, in the event his workers' compensation insurance or self-insured status is cancelled. If the municipality determines that a sole proprietor, partner or shareholder who is performing work pursuant to a building permit does not maintain required workers' compensation insurance, the municipality may issue a stop-work order. This order shall remain in effect until proper workers' compensation coverage is obtained for all work performed pursuant to the building permit.

(f) Where a contractor is performing work for a public body or political subdivision, all contractors and subcontractors shall provide proof of workers' compensation insurance to the public body or political subdivision effective for the duration of the work.

(g) Should such policy of workers' compensation insurance be cancelled or expire during the duration of the work or should the workers' compensation self-insurance status change during the said period, the contractor shall immediately notify, in writing, the municipality, public body or political subdivision of such cancellation, expiration or change in status.

(h) Nothing in this act shall be the basis of any liability on part of the municipality.

(i) For purposes of clauses (d), (e) and (f) of this section, "proof of insurance" shall include a certificate of insurance or self-insurance, demonstrating current coverage and compliance with the requirements of this act, the "Occupational Disease Act" and the "Longshore and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. § 901 et seq.), its amendments and supplements, where applicable.

(j) For purposes of clauses (d), (e) and (f), "proof of insurance" shall not be required when the employer has been exempted pursuant to section 304.2 of this act.

Section 7. Section 305 of the act, amended December 5, 1974 (P.L.782, No.263) and repealed in part April 28, 1978 (P.L.202, No.53), is amended to read:

Section 305. (a) (1) Every employer liable under this act to pay compensation shall insure the payment of compensation in the State Workmen's Insurance Fund, or in any insurance company, or mutual association or company, authorized to insure such liability in this Commonwealth, unless such employer shall be exempted by the department from such insurance. Such insurer shall assume the employer's liability hereunder and shall be entitled to all of the employer's immunities and protection hereunder except, that whenever any employer shall have purchased insurance to provide benefits under this act to persons engaged in domestic service, neither the employer nor the insurer may invoke the provisions of section 321 as a defense. An employer desiring to be exempt from insuring the whole or any part of his liability for compensation shall make application to the department, showing his financial ability to pay such compensation, whereupon the department, if satisfied of the applicant's financial ability, shall, upon the payment of a fee of [one hundred dollars ($100.00)] five hundred dollars ($500), issue to the applicant a permit authorizing such exemption.

(2) In securing the payment of benefits, the department shall require an employer wishing to self-insure its liability to establish sufficient security by posting a bond or other security, including letters of credit drawn on commercial banks with a Thompson Bank Credit Service rating of C or better or a CD rating of BB/A2 or better by Standard and Poor's. This paragraph shall not apply to municipalities.

(3) The department shall establish a period of twelve (12) calendar months, to begin and end at such times as the department shall prescribe, which shall be known as the annual exemption period. Unless previously revoked, all permits issued under this section shall expire and terminate on the last day of the annual exemption period for which they were issued. Permits issued under this act shall be renewed upon the filing of an application, and the payment of a renewal fee of one hundred dollars ($100.00). The department may, from time to time, require further statements of the financial ability of such employer, and, if at any time such employer appear no longer able to pay compensation, shall revoke its permit granting exemption, in which case the employer shall immediately subscribe to the State Workmen's Insurance Fund, or insure his liability in any insurance company or mutual association or company, as aforesaid.

(b) Any employer who fails to comply with the provisions of this section for every such failure, shall, upon [summary conviction before any official of competent jurisdiction, be sentenced to pay a fine of not less than five hundred dollars ($500) nor more than two thousand dollars ($2,000), and costs of prosecution, or imprisonment for a period of not more than one (1) year, or both.] conviction in the court of common pleas, be guilty of a misdemeanor of the third degree. Every day's violation shall constitute a separate offense. A judge of the court of common pleas may, in addition to imposing fines and imprisonment, include restitution in his order: Provided, That there is an injured employe who has obtained an award of compensation. The amount of restitution shall be limited to that specified in the award of compensation. It shall be the duty of the department to enforce the provisions of this section; and it shall investigate all violations that are brought to its notice and shall institute prosecutions for violations thereof. All fines recovered under the provisions of this section shall be paid to the department, and by it paid into the State Treasury.

(c) In any proceeding against an employer under this section, a certificate of non-insurance issued by the official Workmen's Compensation Rating and Inspection Bureau and a certificate of the department showing that the defendant has not been exempted from obtaining insurance under this section, shall be prima facie evidence of the facts therein stated.

(d) When any employer fails to secure the payment of compensation under this act as provided in sections 305 and 305.2, the injured employe or his dependents may proceed either under this act or in a suit for damages at law as provided by article II.

(e) Every employer shall post a notice at its primary place of business and at its sites of employment in a prominent and easily accessible place, including, without limitation, areas used for the

treatment of injured employes or for the administration of first aid, containing:

(1) Either the name of the employer's carrier and the address and telephone number of such carrier or insurer or, if the employer is self-insured, the name, address and telephone number of the person to whom claims or requests for information are to be addressed.

(2) The following statement: "Remember, it is important to tell your employer about your injury."

The notice shall be posted in prominent and easily accessible places at the site of employment, including such places as are used for treatment and first aid of injured employes. Such a listing shall contain the information as specified in this section, typed or printed on eight and one-half inch by eleven inch or eight and one-half inch by thirteen inch paper in standard size type or larger.

Section 8. Section 306(a) and (f) of the act, amended December 5, 1974 (P.L.782, No.263) and July 1, 1978 (P.L.692, No.119), are amended and the section is amended by adding clauses to read:

Section 306. The following schedule of compensation is hereby established:

(a) For total disability, sixty-six and two-thirds per centum of the wages of the injured employe as defined in section three hundred and nine beginning after the seventh day of total disability, and payable for the duration of total disability, but the compensation shall not be more than the maximum compensation payable [nor less than fifty per centum of the Statewide average weekly wage. If at the time of injury, the employe receives wages equal to or less than fifty per centum of the Statewide average weekly wage, then he shall receive ninety per centum of his average weekly wage as compensation, but in no event less than thirty-three and one-third per centum of the maximum weekly compensation payable] as defined in section 105.2. Nothing in this clause shall require payment of compensation after disability shall cease. Nothing in this act shall require payment of compensation for any period during which the employe is incarcerated.

* * *

[(f) (1) The employer shall provide payment for reasonable surgical and medical services, services rendered by duly licensed practitioners of the healing arts, medicines, and supplies, as and when needed: Provided, That if a list of at least five designated physicians or other duly licensed practitioners of the healing arts or a combination thereof is provided by the employer, the employe shall be required to visit one of the physicians or other practitioners so designated and shall continue to visit the same or another physician or practitioner for a period of fourteen days from the date of the first visit. Subsequent treatment may be provided by any physician or any other duly licensed practitioner of the healing arts or a combination thereof, of the employes own choice, and such treatment shall be paid for by the employer. Any employe who next following the termination of the fourteen-day period is provided treatment from a physician or other duly licensed practitioner of the healing arts who is not one of the physicians or practitioners designated by the employer, shall notify the employer within five days of the first visit to said physician or practitioner. However, if the employe fails to so notify the employer, the employe shall suffer no loss of rights or benefits to which he is otherwise entitled under the act.

(2) If and only if the employer has designated at least five physicians or other duly licensed practitioners of the healing arts or a combination thereof as permitted by the preceding paragraph, the following reporting provisions shall apply. Nothing in the following paragraphs shall eliminate rights of the employer to obtain all records and data as permitted under any other sections of this act.

(i) The physician or other duly licensed practitioner of the healing arts shall be required to file periodic reports with the employer on a form prescribed by the department which shall include, where pertinent, history, diagnosis, treatment, prognosis and physical findings. The report shall be filed within twenty-one days of commencing treatment and at least once a month thereafter, as long as treatment continues. The employer shall not be liable to pay for such treatment until a report has been filed.

(ii) The employer shall have the right to petition the department for review of the necessity or frequency of treatment or reasonableness of fees for services provided by a physician or other duly licensed practitioner of the healing arts. Such a petition shall in no event act as a supersedeas, and during the pendency of any such petition the employer shall pay all medical bills if the physician or other practitioner of the healing arts files a report or reports as required by subparagraph (i) of paragraph (2) of this subsection.

(3) After an employe has elected to be treated by a physician or other duly licensed practitioner of the healing arts who is not one of the physicians or practitioners designated by the employer, he may thereafter elect to be treated by another physician or other duly licensed practitioner of the healing arts upon notice to his employer: Provided, however, That no such notice shall be required in emergencies, or in cases of referrals by one physician or practitioner to another physician or practitioner or if the new physician or practitioner makes a timely report to the employer within twenty-one days after commencing treatment.

(4) In addition to the above service, the employer shall provide payment for medicines and supplies, hospital treatment, services and supplies and orthopedic appliances, and prostheses. The cost for such hospital treatment, service and supplies shall not in any case exceed the prevailing charge in the hospital for like services to other individuals. If the employe shall refuse reasonable services of duly licensed practitioners of the healing arts, surgical, medical and hospital services, treatment, medicines and supplies, he shall forfeit all rights to compensation for any injury or any increase in his incapacity shown to have resulted from such refusal. Whenever an employe shall have suffered the loss of a limb, part of a limb, or an eye, the employer shall also provide payment for an artificial limb or eye or other prostheses of a type and kind recommended by the doctor attending such employe in connection with such injury and any replacements for an artificial limb or eye which the employe may require at any time thereafter, together with such continued medical care as may be prescribed by the doctor attending such employe in connection with such injury as well as such training as may be required in the proper use of such prostheses. The provisions of this section shall apply in injuries whether or not loss of earning power occurs. If hospital confinement is required, the employe shall be entitled to semi-private accommodations but if no such facilities are available, regardless of the patient's condition, the employer, not the patient, shall be liable for the additional costs for the facilities in a private room.

(5) The payment by an insurer for any medical, surgical or hospital services or supplies after any statute of limitations provided for in this act shall have expired shall not act to reopen or review the compensation rights for purposes of such limitations.]

(f.1) (1) Provided an employer establishes a list of at least five designated physicians, one or more of whom may be a coordinated care organization, or other duly licensed practitioners of the healing arts, the employe shall be required to visit one of the physicians or other practitioners so designated and shall continue to visit the same or another designated physician or practitioner for a period of forty-five days from the date of the first visit. Should the employe not comply with the foregoing, the employer will be relieved from liability for the payment for the services rendered during such forty-five-day period. Subsequent treatment may be provided by any physician or practitioner of the employe's own choice. Any employe who, next following termination of the forty-five-day period, is provided treatment from a

nondesignated physician shall notify the employer within five days of the first visit to said physician or practitioner. Failure to so notify the employer will relieve the employer from liability for the payment for the services rendered prior to appropriate notice.

(2) Any provider who treats an injured employe shall provide treatment notes, records and progress reports periodically to the employer on the employe's condition and capacity to work as circumstances warrant or on the request of the employer, or at a minimum once a month during such treatment, without charge. The employer shall not be liable to pay for such treatment until a report has been filed.

(3) (i) For purposes of this clause, a provider shall not require, request or accept payment for the treatment, accommodations, products or services in excess of one hundred twenty per centum of the prevailing charge at the seventy-fifth percentile; one hundred twenty per centum of the applicable fee schedule, the recommended fee or the inflation index charge; one hundred twenty per centum of the DRG payment, plus pass-through costs and applicable cost or day outliers; or one hundred twenty per centum of any other Medicare reimbursement mechanism, as determined by the Medicare carrier or intermediary, whichever pertains to the specialty service involved, determined to be applicable in this Commonwealth under the Medicare program for comparable services rendered as of the effective date of this act, or the provider's usual, customary and reasonable charge, whichever is less. Future changes or additions to Medicare allowances are not applicable under this section. If the commissioner determines that an allowance for a particular provider group or service under the Medicare program is not reasonable, it may adopt, by regulation, a new percentage allowance. If the prevailing charge, fee schedule, recommended fee, inflation index charge, DRG payment or any other reimbursement has not been calculated under the Medicare program for a particular treatment, accommodation, product or service, the amount of the payment may not exceed eighty per centum of the charge most often made by providers of similar training, experience and licensure for a specific treatment, accommodation, product or service in the geographic area where the treatment, accommodation, product or service is provided.

(ii) The maximum allowance for a health care service covered by subparagraph (i) of this paragraph shall be updated as of the first day of January of each year. The update shall be equal to the percentage change in the Statewide average weekly wage.

(iii) The secretary shall retain the services of an independent consulting firm to perform an annual accessibility study of medical care provided under this act. The study will review and provide information as to whether there is adequate access to quality health care and products for injured workers. If the secretary determines based on this study that as a result of the medical care fee schedule there is not sufficient access to quality health care or products for persons suffering injuries covered by this act, the secretary may recommend to the commissioner the adoption of regulations providing for a new allowance to be applied against the percentage limitation in this subsection.

(iv) An allowance shall be reviewed for reasonableness where the commissioner determines that the use of the allowance would result in payments more than ten per centum lower than the average level of reimbursement the provider would receive from coordinated care insurers, including those entities subject to the act of December 29, 1972 (P.L.1701, No.364), known as the "Health Maintenance Organization Act," and those entities known as preferred provider organizations which are subject to section 630 of the act of May 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law of 1921," for like treatments, accommodations, products or services. In making this determination, the commissioner shall consider the extent to which allowances applicable to other providers under this section deviate from the reimbursement such providers would receive from coordinated care insurers. Any information received as a result of this subparagraph shall be confidential.

(v) The reimbursement for prescription drugs and professional pharmaceutical services shall be limited to one hundred ten per centum of the average wholesale price of the product: Provided, That a separate charge may be used if a pharmacy provides drug use evaluation or utilization review.

(vi) The applicable Medicare fee schedule shall include fees associated with all permissible procedure codes. If the Medicare fee schedule also includes a larger grouping of procedure codes and corresponding charges than are specifically reimbursed by Medicare, a provider may use these codes, and corresponding charges shall be paid by insurers or employers. If a Medicare code exists for application to a specific provider specialty, that code shall be used.

(vii) A provider shall not fragment or unbundle charges imposed for specific care except as consistent with Medicare. Changes to a provider's codes by an insurer shall be made only as consistent with Medicare and when the insurer has sufficient information to make the changes and following consultation with the provider.

(4) Nothing in this act shall prohibit the provider, self-insured employer, employer or insurer from contracting with a coordinated care organization for reimbursement levels different from those identified above.

(5) The employer or insurer shall make payment, and providers shall submit bills and records, in accordance with the provisions of this section. All payments to providers for treatment provided pursuant to this act shall be made within thirty days of receipt of such bills and records, unless the employer or insurer disputes the reasonableness or necessity of treatment provided. A provider who has submitted the reports and bills required by this section and who disputes the amount or timeliness of the payment from the employer or insurer, except in those situations where the reasonableness or necessity of treatment is disputed, shall file an application for fee review with the department. Within thirty days of the filing of such an application, the department shall render an administrative decision.

(6) All disputes as to reasonableness or necessity of medical treatment shall be resolved in accordance with the following provisions:

(i) The reasonableness or necessity of all medical treatment provided under this act may be subject to prospective, concurrent or retrospective utilization review at the request of an employer or insurer. The department shall authorize utilization review organizations to perform utilization review under this act. Organizations not authorized by the department may not engage in such utilization review.

(ii) The utilization review organization shall issue a written report of its findings and conclusions within thirty days of a request. If the provider, employer or insurer disagrees with the finding of the utilization review organization, a request for reconsideration must be filed no later than thirty days after receipt of the utilization review report. The request for reconsideration must be in writing and must contain medical evidence not available at the time of the initial review.

(iii) The employer shall pay the cost of the initial utilization review. The party requesting reconsideration of an initial review shall bear the advance costs of such reconsideration where required, which cost shall be recoverable if the party requesting reconsideration prevails.

(iv) If the provider, employer or insurer disagrees with the finding of the utilization review organization on reconsideration, a petition for review by the department must be filed within thirty days after receipt of the reconsideration report. The department shall hold an informal hearing on the matter within thirty days of the filing of the petition. The department's decision shall be issued within thirty days of the conclusion of such hearing and

shall be based on any and all records and reports from the utilization review organization.

(7) A provider shall not hold an employe liable for costs related to care or service rendered in connection with a compensable injury under this act unless the employe has failed to comply with this clause.

(8) If the employe shall refuse reasonable services of duly licensed practitioners of the healing arts, surgical, medical and hospital services, treatment, medicines and supplies, he shall forfeit all rights to compensation for any injury or increase or continuation in his incapacity shown to have resulted from such refusal.

(9) The payment by an insurer or employer for any medical, surgical or hospital services or supplies after any statute of limitations provided for in this act shall have expired shall not act to reopen or revive the compensation rights for purposes of such limitations.

(10) If acute care is provided in an acute care facility to a patient with an immediately life threatening or urgent injury by a Level I or Level II trauma center accredited by the Pennsylvania Trauma Systems Foundation under the act of July 3, 1985 (P.L.164, No.45), known as the "Emergency Medical Services Act," or to a major burn injury patient by a burn facility which meets all the service standards of the American Burn Association, or if basic or advanced life support services, as defined and licensed under the "Emergency Medical Services Act," are provided the amount of payment shall be the usual, customary and reasonable charge.

(g) (1) Medical services required by the act may be provided through a coordinated care organization which is certified by the Department of Labor and Industry subject to the following:

(i) Each application for certification shall be accompanied by a reasonable fee prescribed by the department. A certificate is valid for such period as the department may prescribe unless sooner revoked or suspended.

(ii) Application for certification shall be made in such form and manner as the department shall require and shall set forth information regarding the proposed plan for providing services.

(2) The coordinated care organization must include an adequate number and specialty distribution of licensed health care providers in order to assure appropriate and timely delivery of services required under the act and an appropriate flexibility to workers in selecting providers. Services may be provided directly, through affiliates or through contractual referral arrangements with other health care providers.

(3) The secretary shall certify an entity as a coordinated care organization if the secretary finds that the entity:

(i) Possesses the capacity to provide all primary medical services as designated by the secretary in a manner that is timely and effective.

(ii) Maintains a referral capacity to treat other injuries and illnesses not covered by primary services but which are covered by this act.

(iii) Provides a case management and evaluation system which includes continuous monitoring of treatment from onset of injury or illness until final resolution.

(iv) Provides a case communication system which relates necessary and appropriate information among the employe, employer, health care providers and insurer.

(v) Provides appropriate peer and utilization review and a care dispute resolution system.

(vi) Complies with any other requirements of law regarding delivery of medical care services.

(4) The secretary shall refuse to certify or may revoke or suspend certification of any coordinated care organization if the director finds that:

(i) the plan for providing medical or health care services fails to meet the requirements of this section; or

(ii) service under the plan is not being provided in accordance with terms of the plan as certified.

(5) A person participating in utilization review, quality assurance or peer review activities pursuant to this section shall not be examined as to any communication made in the course of such activities or the findings thereof, nor shall any person be subject to an action for civil damages for actions taken or statements made in good faith.

(6) Health care providers designated as rural by HCFA or located in a county with a rural Health Professional Shortage Area, who are attempting to form or operate a coordinated care organization, shall be excluded from meeting all minimum requirements set forth in paragraphs (2) and (3) of this clause, as shall be determined in rules or regulations promulgated by the department.

(7) The department shall have the power and authority to promulgate, adopt, publish and use regulations for the implementation of this section.

Section 9. Section 307 of the act, amended December 5, 1974 (P.L.782, No.263), is amended to read:

Section 307. In case of death, compensation shall be computed on the following basis, and distributed to the following persons: Provided, That in no case shall the wages of the deceased be taken to be less than fifty per centum of the Statewide average weekly wage for purposes of this section:

1. If there be no widow nor widower entitled to compensation, compensation shall be paid to the guardian of the child or children, or, if there be no guardian, to such other persons as may be designated by the board as hereinafter provided as follows:

(a) If there be one child, thirty-two per centum of wages of deceased, but not in excess of the Statewide average weekly wage.

(b) If there be two children, forty-two per centum of wages of deceased, but not in excess of the Statewide average weekly wage.

(c) If there be three children, fifty-two per centum of wages of deceased, but not in excess of the Statewide average weekly wage.

(d) If there be four children, sixty-two per centum of wages of deceased, but not in excess of the Statewide average weekly wage.

(e) If there be five children, sixty-four per centum of wages of deceased, but not in excess of the Statewide average weekly wage.

(f) If there be six or more children, sixty-six and two-thirds per centum of wages of deceased, but not in excess of the Statewide average weekly wage.

2. To the widow or widower, if there be no children, fifty-one per centum of wages, but not in excess of the Statewide average weekly wage.

3. To the widow or widower, if there be one child, sixty per centum of wages, but not in excess of the Statewide average weekly wage.

4. To the widow or widower, if there be two children, sixty-six and two-thirds per centum of wages but not in excess of the Statewide average weekly wage.

4 1/2. To the widow or widower, if there be three or more children, sixty-six and two thirds per centum of wages, but not in excess of the Statewide average weekly wage.

5. If there be neither widow, widower, nor children entitled to compensation, then to the father or mother, if dependent to any extent upon the employe at the time of the injury, thirty-two per centum of wages but not in excess of the Statewide average weekly wage: Provided, however, That in the case of a minor child who has been contributing to his parents, the dependency of said parents shall be presumed: And provided further, That if the father or mother was totally dependent upon the deceased employe at the time of the injury, the compensation payable to such father or mother shall be fifty-two per centum of wages, but not in excess of the Statewide average weekly wage.

6. If there be neither widow, widower, children, nor dependent parent, entitled to compensation, then to the brothers and sisters, if actually dependent upon the decedent for support at the time of his death, twenty-two per centum of wages for one brother or sister, and five per centum additional for each additional brother or sister, with a maximum of thirty-two per centum of wages of deceased, but not in excess of the Statewide average wage, such compensation to be paid to their guardian, or if there be no guardian, to such other person as may be designated by the board, as hereinafter provided.

7. Whether or not there be dependents as aforesaid, the reasonable expense of burial, not exceeding [one thousand five hundred dollars] three thousand dollars ($3,000), which shall be paid by the employer or insurer directly to the undertaker (without deduction of any amounts theretofore paid for compensation or for medical expenses).

Compensation shall be payable under this section to or on account of any child, brother, or sister, only if and while such child, brother, or sister, is under the age of eighteen unless such child, brother or sister is dependent because of disability when compensation shall continue or be paid during such disability of a child, brother or sister over eighteen years of age or unless such child is enrolled as a full-time student in any accredited educational institution when compensation shall continue until such student becomes twenty-three. No compensation shall be payable under this section to a widow, unless she was living with her deceased husband at the time of his death, or was then actually dependent upon him and receiving from him a substantial portion of her support. No compensation shall be payable under this section to a widower, unless he be incapable of self-support at the time of his wife's death and be at such time dependent upon her for support. If members of decedent's household at the time of his death, the terms "child" and "children" shall include stepchildren, adopted children and children to whom he stood in loco parentis, and children of the deceased and shall include posthumous children. Should any dependent of a deceased employe die or remarry, or should the widower become capable of self-support, the right of such dependent or widower to compensation under this section shall cease except that if a widow remarries, she shall receive one hundred four weeks compensation at a rate computed in accordance with clause 2. of section 307 in a lump sum after which compensation shall cease: Provided, however, That if, upon investigation and hearing, it shall be ascertained that the widow or widower is living with a man or woman, as the case may be, in meretricious relationship and not married, or the widow living a life of prostitution, the board may order the termination of compensation payable to such widow or widower. If the compensation payable under this section to any person shall, for any cause, cease, the compensation to the remaining persons entitled thereunder shall thereafter be the same as would have been payable to them had they been the only persons entitled to compensation at the time of the death of the deceased.

The board may, if the best interest of a child or children shall so require, at any time order and direct the compensation payable to a child or children, or to a widow or widower on account of any child or children, to be paid to the guardian of such child or children, or, if there be no guardian, to such other person as the board as hereinafter provided may direct. If there be no guardian or committee of any minor, dependent, or insane employe, or dependent, on whose account compensation is payable, the amount payable on account of such minor, dependent, or insane employe, or dependent may be paid to any surviving parent, or such other person as the board may order and direct, and the board may require any person, other than a guardian or committee, to whom it has directed compensation for a minor, dependent, or insane employe, or dependent to be paid, to render, as and when it shall so order, accounts of the receipts and disbursements of such person, and to file with it a satisfactory bond in a sum sufficient to secure the proper application of the moneys received by such person.

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

Section 308.1. (a) The eligibility of professional athletes for compensation under this act shall be limited as provided in this section.

(b) The term "professional athlete," as used in this section, shall mean a natural person employed as a professional athlete by a franchise of the National Football League, the National Basketball Association, the National Hockey League, the National League of Professional Baseball Clubs or the American League of Professional Baseball Clubs, under a contract for hire or a collective bargaining agreement, whose wages as defined in section 309 are more than six times the Statewide average weekly wage.

(c) In the case of a professional athlete, any compensation payable under this act with respect to total disability, partial disability, permanent injury or death shall be reduced by the after-tax amount of any:

(1) Wages payable by the employer during the period of disability under a contract for hire or collective bargaining agreement.

(2) Severance benefits payable by the employer.

(3) Payments under a self-insurance, wage continuation, annuity, disability or life insurance or similar plan funded by the employer.

(4) Injury or death benefits payable by the employer under a contract for hire or collective bargaining agreement.

(d) In the case of a professional athlete, the term "wages of the injured employe" as used in section 306(b) for the purpose of computing compensation for partial disability shall mean two times the Statewide average weekly wage.

Section 11. Section 314 of the act, amended February 28, 1956 (1955 P.L.1120, No.356), is amended to read:

Section 314. (a) At any time after an injury the employe, if so requested by his employer, must submit himself for examination, at some reasonable time and place, to a physician or physicians legally authorized to practice under the laws of such place, who shall be selected and paid by the employer. If the employe shall refuse upon the request of the employer, to submit to the examination by the physician or physicians selected by the employer, [the board] a referee assigned by the department may, upon petition of the employer, order the employe to submit to an examination at a time and place set by [it] the referee, and by the physician or physicians selected and paid by the employer, or by a physician or physicians designated by [it] the referee and paid by the employer. The [board] referee may at any time after such first examination, upon petition of the employer, order the employe to submit himself to such further examinations as [it] the referee shall deem reasonable and necessary, at such times and places and by such physicians as [it] the referee may designate; and in such case, the employer shall pay the fees and expenses of the examining physician or physicians, and the reasonable traveling expenses and loss of wages incurred by the employe in order to submit himself to such examination. The refusal or neglect, without reasonable cause or excuse, of the employe to submit to such examination ordered by the [board] referee, either before or after an agreement or award, shall deprive him of the right to compensation, under this article, during the continuance of such refusal or neglect, and the period of such neglect or refusal shall be deducted from the period during which compensation would otherwise be payable.

(b) The employe shall be entitled to have a physician or physicians of his own selection, to be paid by him, participate in any examination requested by his employer or ordered by the [board] referee.

Section 12. Section 321 of the act, added March 29, 1972 (P.L.159, No.61), is amended to read:

Section 321. [Nothing contained in this act shall apply to or in any way affect any person who at the time of injury is engaged in domestic service: Provided, however, That in cases where the employer of any such person shall have, prior to such injury, by application to the Workmen's Compensation Board, approved by the board, elected to come within the provisions of the act, such exemption shall not apply.] Nothing contained in this act shall apply to or in any way affect:

(1) Any person who at the time of injury is engaged in domestic service: Provided, however, That in cases where the employer of any such person shall have, prior to such injury, by application to the department, and approved by the department, elected to come within the provisions of the act, such exemption shall not apply.

(2) Any person who is a licensed real estate salesperson or an associate real estate broker, affiliated with a licensed real estate broker, under a written agreement, remunerated on a commission only basis and who qualifies as an independent contractor for Federal tax purposes.

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

Section 322. It shall be unlawful for any employe to receive compensation under this act and at the same time receive workers' compensation under the laws of the Federal Government or any other state for the same injury. Further, it shall be unlawful for an employe to receive compensation under this act simultaneously from two or more employers or insurers during the same period of disability.

Section 323. (a) No construction design professional who is retained to perform professional services on a construction project, or any employe of a construction design professional who is assisting or representing the construction design professional in the performance of professional services on the site of the construction project, shall be liable for any injury or death of a worker not an employe of such design professional on the construction project for which compensation is payable under the provisions of this act.

(b) The immunity from liability provided by the above subsection shall not apply if:

(1) the injury or death is caused by the negligent preparation of design plans or specifications by the construction design professional;

(2) the construction design professional assumes responsibility for safety practices at the construction project by written contract; or

(3) the construction design professional actually exercises control over the portion of the construction site where the worker is injured or killed.

(c) Notwithstanding any provisions to the contrary, this section shall apply to claims for compensation based on injuries or death which incurred after the effective date of this act.

Section 14. The first paragraph of section 401, and section 402 of the act, amended February 8, 1972 (P.L.25, No.12), are amended to read:

Section 401. The term "referee," when used in this [article] act, shall mean [Workmen's Compensation Referee] a Worker's Compensation Judge of the Department of Labor and Industry, appointed by and subject to the general supervision of the Secretary of Labor and Industry for the purpose of conducting departmental hearings under this act. The secretary may establish different classes of [referees.] these judges. Any reference in any statute to a workmen's compensation referee shall be deemed to be a reference to a workers' compensation judge.

* * *

Section 402. All proceedings before any referee, except those for which an informal conference has been applied for as provided by section 402.1 of this act, shall be instituted by claim petition or other petition as the case may be or on the department's own motion, and all appeals to the board, shall be instituted by appeal addressed to the board. All claim petitions, requests for informal conferences and other petitions and appeals shall be in writing and in the form prescribed by the department.

Section 15. The act is amended by adding a section to read:

Section 402.1. (a) In any action for which a petition is required to be filed under this act or in any claim for compensation under sections 406.1, 410 or 411 of this act or where the right to compensation or medical services, or the amount thereof, is in dispute, any party may file a notice of request with the department for an informal conference prior to filing any petition pursuant to this act. The department shall assign the matter to a referee for an informal conference and shall stay any proceedings pending receipt of a petition.

(b) At any informal conference held pursuant to this section:

(i) the referee may accept the statements of both parties, together with any medical reports, witnesses' statements or other documents which the parties would like to present;

(ii) all communications, verbal or written, from the parties to the referee and any information and evidence presented to the referee during the proceedings are confidential; and

(iii) each party may be represented, but the employer may only be represented by an attorney at the informal conference if the employe is also represented by an attorney at the informal conference.

(c) The referee shall attempt to resolve the issues in dispute between the parties, but in no event shall any recommendations or findings made by the referee be binding upon the parties unless accepted in writing by both parties. If the parties come to agreement, the referee shall reduce such agreement to writing, which shall be signed by all parties and the referee, and such summary report shall be filed with the department.

(d) In the event that the parties cannot resolve their dispute, either party may file a petition with the department requesting a hearing on the matter. Such petition will be assigned to a referee for a hearing pursuant to section 414 of this act.

(e) The results of the informal conference, as well as the testimony, witnesses and evidence presented at the informal conference, shall not be admissible at any subsequent proceeding on the claim.

(f) No referee who participates in an informal conference conducted pursuant to this section shall be compelled or permitted to testify about any matter discussed or revealed during such proceedings in any other proceeding pursuant to this act, except matters involving fraud.

Section 16. Sections 406.1 and 420 of the act, amended or added February 8, 1972 (P.L.25, No.12), are amended to read:

Section 406.1. (a) The employer and insurer shall promptly investigate each injury reported or known to the employer and shall proceed promptly to commence the payment of compensation due either pursuant to an agreement upon the compensation payable or a notice of compensation payable as provided in section 407 or pursuant to a notice of temporary compensation payable as set forth in clause (d) of this section, on forms prescribed by the department and furnished by the insurer. The first installment of compensation shall be paid not later than the twenty-first day after the employer has notice or knowledge of the employe's disability. Interest shall accrue on all due and unpaid compensation at the rate of ten per centum per annum. Any payment of compensation prior or subsequent to an agreement or notice of compensation payable or a temporary notice of compensation payable or greater in amount than provided therein shall, to the extent of the amount of such payment or payments, discharge the liability of the employer with respect to such case.

(b) Payments of compensation pursuant to an agreement or notice of compensation payable may be suspended, terminated, reduced or otherwise modified by petition and subject to right of hearing as provided in section 413.

(c) If the insurer controverts the right to compensation it shall promptly notify the employe or his dependent, on a form prescribed by the department, stating the grounds upon which the right to compensation is controverted and shall forthwith furnish a copy or copies to the department.

(d) (1) In any instance where an employer is uncertain whether a claim is compensable under this act or is uncertain of the extent of its liability under this act, the employer may initiate compensation payments without prejudice and without admitting liability pursuant to a notice of temporary compensation payable as prescribed by the department.

(2) The notice of temporary compensation payable shall be sent to the claimant and a copy filed with the department and shall notify the claimant that the payment of temporary compensation is not an admission of liability of the employer with respect to the injury subject to the notice of temporary compensation payable. The department shall, upon receipt of a notice of temporary compensation payable, send a notice to the claimant informing the claimant that:

(i) the payment of temporary compensation and the claimant's acceptance of that compensation does not mean the claimant's employer is accepting responsibility for the injury or that a compensation claim has been filed or commenced;

(ii) the payment of temporary compensation entitles the claimant to a maximum of six weeks of compensation; and

(iii) the claimant must file a claim petition in a timely fashion under section 315 of this act, enter into an agreement with his employer or receive a notice of compensation payable from his employer to ensure continuation of compensation payments.

(3) Payments of temporary compensation shall commence, and the notice of temporary compensation payable shall be sent within the time set forth in clause (a) of this section.

(4) Payments of temporary compensation may continue until such time as the employer decides to controvert the claim or six weeks from the date the employer has notice or knowledge of the employe's disability, whichever shall first occur.

(5) (i) If the employer ceases making payments pursuant to a notice of temporary compensation payable, a notice in the form prescribed by the department shall be sent to the claimant and a copy filed with the department, but in no event shall this notice be sent or filed later than five days after the last payment.

(ii) This notice shall advise the claimant that if the employer is ceasing payment of temporary compensation that the payment of temporary compensation was not an admission of liability of the employer with respect to the injury subject to the notice of temporary compensation payable, and the employe must file a claim to establish the liability of the employer.

(iii) If the employer ceases making payments pursuant to a notice of temporary compensation payable, after complying with this clause, the employer and employe retain all the rights, defenses and obligations with regard to the claim subject to the notice of temporary compensation payable, and the payment of temporary compensation may not be used to support a claim for compensation.

(iv) Payment of temporary compensation shall be considered compensation for purposes of tolling the statute of limitations under section 315 of this act.

(6) If the employer does not file a notice under paragraph (5) of clause (d) of this section within the six-week period during which temporary compensation is paid or payable, the employer shall be deemed to have admitted liability and the notice of temporary compensation payable shall be converted to a notice of compensation payable.

Section 420. (a) The board, the department or a referee, if it or he deem it necessary, may, of its or his own motion, either before, during, or after any hearing, make or cause to be made an investigation of the facts set forth in the petition or answer or facts pertinent in any injury under this act. The board, department or referee may appoint one or more impartial physicians or surgeons to examine the injuries of the plaintiff and report thereon, or may employ the services of such other experts as shall appear necessary to ascertain the facts. The referee when necessary or appropriate or upon request of a party in order to rule on petitions filed under clause (f.1) of section 306 of this act, or under other provisions of this act, may ask for an opinion from peer review about the necessity or frequency of treatment under clause (f.1) of section 306 of this act to peer review. The peer review report or the peer report of any physician, surgeon, or expert appointed by the department or by a referee, including the report of a peer review organization, shall be filed with the board or referee, as the case may be, and shall be a part of the record and open to inspection as such.

(b) The board or referee, as the case may be, shall fix the compensation of such physicians, surgeons, and experts, and other peer review organizations which, when so fixed, shall be paid out of the sum appropriated to the Department of Labor and Industry for such purpose.

Section 17. Section 422 of the act, amended February 8, 1972 (P.L.25, No.12) and March 29, 1972 (P.L.159, No.61), is amended to read:

Section 422. (a) Neither the board nor any of its members nor any referee shall be bound by the common law or statutory rules of evidence in conducting any hearing or investigation, but all findings of fact shall be based upon sufficient, competent and substantial evidence to justify same. The justification for each disputed finding shall be reasonably explained, and the explanation shall include a cogent written statement of the reasons for acceptance and rejection of evidence.

(b) If any party or witness resides outside of the Commonwealth, or through illness or other cause is unable to testify before the board or a referee, his or her testimony or deposition may be taken, within or without this Commonwealth, in such manner and in such form as the department may, by special order or general rule, prescribe. The records kept by a hospital of the medical or surgical treatment given to an employe in such hospital shall be admissible as evidence of the medical and surgical matters stated therein.

(c) Where any claim for compensation is at issue before a referee [involves twenty-five weeks or less of disability], either the employe or the employer may submit a certificate by any qualified physician as to the history, examination, treatment, diagnosis and cause of the condition, and sworn reports by other witnesses as to any other facts and such statements shall be admissible as evidence of medical and surgical or other matters therein stated and findings of fact may be based upon such certificates or such reports[.]: Provided, That, any party shall be allowed the opportunity to take a deposition for purposes of cross-examination, upon the tendering to the party offering said report reasonable expenses, including the fee for such deposition: And further provided, That the use of a deposition shall not preclude introduction of a medical report. Should a dispute arise as to the reasonableness of the amounts demanded or tendered, the referee hearing the petition shall issue an order relating to the assessment of costs.

(d) Where an employer shall have furnished surgical and medical services or hospitalization in accordance with the provisions of [subsection (f) of] section 306(f.1), or where the employe has himself procured them, the employer or employe shall, upon request, in any pending proceeding, be furnished with, or have made available, a true and complete record of the medical and surgical services and hospital treatment, including X rays, laboratory tests, and all other medical and surgical data in the possession or under the control of the party requested to furnish or make available such data.

(e) The department may adopt rules and regulations governing the conduct of all hearings held pursuant to any provisions of

this act, and hearings shall be conducted in accordance therewith, and in such manner as best to ascertain the substantial rights of the parties.

Section 18. Section 423 of the act, amended March 29, 1972 (P.L.159, No.61), is amended to read:

Section 423. (a) Any party in interest may, within twenty days after notice of a referee's [award or disallowance of compensation] adjudication shall have been served upon him, take an appeal to the board on the ground: (1) that the [award or disallowance of compensation] adjudication is not in conformity with the terms of this act, or that the referee committed any other error of law; (2) that the findings of fact and [award or disallowance of compensation] adjudication was unwarranted by sufficient, competent and substantial evidence or was procured by fraud, coercion, or other improper conduct of any party in interest. The board may, upon cause shown, extend the time provided in this article for taking such appeal or for the filing of an answer or other pleading.

(b) In any such appeal the board may disregard the findings of fact of the referee if not supported by sufficient, competent and substantial evidence and if it deem proper may hear other evidence, and may substitute for the findings of the referee such findings of fact as the sufficient, competent and substantial evidence taken before the referee and the board, as hereinbefore provided, may, in the judgment of the board, require, and may make such [disallowance or award of compensation or other order] adjudication as the facts so [founded] found by it may require.

Section 19. Sections 438 and 440 of the act, added February 8, 1972 (P.L.25, No.12), are amended to read:

Section 438. (a) An employer shall report all injuries received by employes in the course of or resulting from their employment immediately to the employer's insurer. If the employer is self-insured such injuries shall be reported to the person responsible for management of the employer's compensation program.

(b) An employer shall report such injuries to the Department of Labor and Industry by filing directly with the department on the form it prescribes a report of injury within forty-eight hours for every injury resulting in death, and mailing within [three] ten days after the date of injury for all other injuries except those resulting in disability continuing less than the day, shift, or turn in which the injury was received. A copy of this report to the department shall be mailed to the employer's insurer forthwith.

(c) Reports of injuries filed with the department under this section shall not be evidence against the employer or the employer's insurer in any proceeding either under this act or otherwise. Such reports may be made available by the department to other State or Federal agencies for study or informational purposes.

Section 440. (a) In any contested case where the insurer has contested liability in whole or in part, including contested cases involving petitions to terminate, reinstate, increase, reduce or otherwise modify compensation awards, agreements or other payment arrangements or to set aside final receipts, the employe or his dependent, as the case may be, in whose favor the matter at issue has been finally determined shall be awarded, in addition to the award for compensation, a reasonable sum for costs incurred for attorney's fee, witnesses, necessary medical examination, and the value of unreimbursed lost time to attend the proceedings: Provided, That cost for attorney fees may be excluded when a reasonable basis for the contest has been established[: And provided further, That if].

(b) If counsel fees are awarded and assessed against the insurer or employer, then the referee must make a finding as to the amount and the length of time for which such counsel fee is payable, based upon the complexity of the factual and legal issues involved, the skill required, the duration of the proceedings and the time and effort required and actually expended: If the insurer has paid or tendered payment of compensation and the controversy relates to the amount of compensation due, costs for attorney's fee shall be based only on the difference between the final award of compensation and the compensation paid or tendered by the insurer.

[In contested cases involving petitions to terminate, reinstate, increase, reduce or otherwise modify compensation awards, agreements or other payment arrangements or to set aside final receipts, where the contested issue, in whole or part, is resolved in favor of the claimant, the claimant shall be entitled to an award of reasonable costs as hereinabove set forth.]

Section 20. Section 447 of the act, added May 20, 1976 (P.L.135, No.61), is amended to read:

Section 447. (a) [There is hereby created an advisory council, to be known as the Pennsylvania Workmen's Compensation Advisory Council, and to be composed of men and women with an equal number of employer, employe, and public representatives who may fairly be representative because of their vocation, employment, or affiliations. The council shall consist of a maximum of seven members including the Secretary of the Department of Labor and Industry, who shall be an ex officio member. The members of such council shall be appointed by the secretary within thirty days of the effective date of this amendatory act and shall serve a term of two years and until their successors have been appointed and qualified. The members of the council shall select one of their number to be chairman. Such council shall consider and advise the department upon all matters related to the administration of The Pennsylvania Workmen's Compensation Act and The Pennsylvania Occupational Disease Act. Such council may recommend to the secretary upon its own initiative such changes in the provisions of these acts and the administration thereof as it deems necessary and shall make periodic reports to the secretary regarding the performance of its duties and functions.] There is hereby created an advisory council, to be known as the Pennsylvania Workers' Compensation Advisory Council. The council shall be comprised of no fewer than seven members with at least two members being employe representatives, two members being employer representatives and two members representing insurers. The Secretary of Labor and Industry shall be an ex officio member. Members shall be appointed by the secretary to serve terms of two years and until their successors have been appointed. The members shall elect one of their number to be chairman. The council shall report to the Governor, the General Assembly and the secretary at least on an annual basis on matters relevant to the administration of this act, and may recommend within the report such changes in the provisions of these acts and the administration thereof as the council sees fit.

(b) In the performance of its duties, the council may hold hearings, receive testimony, solicit and receive comments and information from interested parties and the general public and shall have full access to information relating to the purpose of these acts. The council shall not have access to confidential medical information pertaining to individual claimants, but may develop statistical studies and surveys concerning the incidence of occupational injuries and diseases generally.

(c) [The members of the advisory council shall serve without compensation, but shall be entitled to be reimbursed for all necessary expenses incurred in the discharge of their duties. The secretary shall appoint an executive secretary and such other personnel as he shall deem necessary to aid the council in the performance of its functions. The compensation of such employes and the amounts allowed them and to members of the council for traveling and other council expenses shall be deemed part of the expenses incurred in connection with the administration of The Pennsylvania Workmen's Compensation and The Pennsylvania Occupational Disease Acts.] The members of the advisory council

shall serve without compensation but shall be entitled to be reimbursed for all necessary expenses incurred in the discharge of their duties. The secretary shall provide facility, clerical and professional support as needed by the council to perform their duties. The compensation of such staff and the amounts allowed them and to members of the council for travel and expenses shall be deemed part of the expenses incurred in connection with the administration of this act.

Section 21. The act is amended by adding a section to read:

Section 449. (a) An insurer issuing a workers' compensation and employers' liability insurance policy shall offer, upon request, as part of the policy or by endorsement, deductibles optional to the policyholder for benefits payable under the policy, subject to approval by the Insurance Commissioner and subject to underwriting by the insurer consistent with the principles in clause (b). The commissioner shall promulgate at least three plans with varying deductible options, the least amount of which shall be no less than one thousand dollars ($1,000), nor more than two thousand five hundred dollars ($2,500). The commissioner's authority to promulgate any such plans shall not preclude an insurer from negotiating a deductible in excess of the largest deductible plan herein authorized.

(b) The following standards shall govern the commissioner's promulgation, and an insurer's offer, of deductible plans:

(1) Claimants' rights are properly protected and claimants' benefits are paid without regard to any such deductible.

(2) Appropriate premium reductions reflect the type and level of any deductible approved by the commissioner and selected by the policyholder.

(3) Premium reductions for deductibles are determined before application of any experience modification, premium surcharge or premium discount.

(4) Recognition is given to policyholder characteristics, including size, financial capabilities, nature of activities and number of employes.

(5) If the policyholder selects a deductible, the policyholder is liable to the insurer for the deductible amount in regard to benefits paid for compensable claims.

(6) The insurer pays all of the deductible amount, applicable to a compensable claim, to the person or provider entitled to benefits and then seeks reimbursement from the policyholder for the applicable deductible amount.

(7) Failure to reimburse deductible amounts by the policyholder to the insurer is treated under the policy in the same manner as non-payment of premiums.

Section 22. The act is amended by adding articles to read:

ARTICLE VII
LOSS COSTS RATING

Section 701. It is the intent of the General Assembly:

(1) To protect policyholders and the public against the adverse effect of excessive, inadequate or unfairly discriminatory rates.

(2) To encourage, as the most effective way to produce rates that conform to the standards of paragraph (1) of this section, independent action by and reasonable price competition among insurers.

(3) To provide formal regulatory controls for use if price competition fails.

(4) To authorize cooperative action among insurers in the ratemaking process, and to regulate such cooperation in order to prevent practices that tend to bring about monopoly or to lessen or destroy competition.

(5) To provide rates that are responsive to competitive market conditions and to improve the availability of insurance in this Commonwealth.

Section 702. This article applies to workers' compensation and employer's liability insurance incidental thereto and written in connection therewith but shall not apply to reinsurance thereon.

Section 703. As used in this article:

"Classification system" or "classification" means the plan, system or arrangement for recognizing differences in exposure to hazards among industries, occupations or operations of insurance policyholders.

"Competitive market" means a market, except when found to be noncompetitive under the standards of section 710 of this article.

"Department" means the Insurance Department of the Commonwealth.

"Experience rating" means a rating procedure utilizing past insurance experience of the individual policyholder to forecast future losses by measuring the policyholder's loss experience against the loss experience of policyholders in the same classification to produce a prospective premium credit, debit or unity modification.

"Market" means the interaction in this State, between buyers and sellers of workers' compensation and employers' liability insurance within this Commonwealth pursuant to the provisions of this article.

"Provision for claim payment" means historical aggregate losses projected through development to their ultimate value and through tending to a future point in time, but excluding all loss adjustment or claim management expenses, other operating expenses, assessments, taxes, and profit or contingency allowances.

"Rate" or "rates" means rate of premium, policy and membership fee, or any other charge made by an insurer for or in connection with a contract or policy of insurance of the kind to which this article applies.

"Rating organization" means one or more organizations situate within this Commonwealth, subject to supervision and to examination by the Insurance Commissioner and approved by the Insurance Commissioner as adequately equipped to perform the functions specified in this article on an equitable and impartial basis.

"Statistical plan" means the plan, system or arrangement used in collecting data.

"Supporting information" means the experience and judgment of the filer and the experience or data of other insurers or organizations relied on by the filer, the interpretation of any statistical data relied on by the filer, description or methods used in making the rates, and any other similar information required to be filed by the Insurance Commissioner.

"Supplementary rate information" means any manual or plan of rates, statistical plan, classification system, rating schedule, minimum premium policy fee, rating rule, rate-related underwriting rule, and any other information, not otherwise inconsistent with the purposes of this article, prescribed by rule of the Insurance Commissioner.

Section 704. (a) The following standards shall apply to the making and use of rates under this article:

(1) Rates may not be:

(i) excessive or inadequate, as defined under this article; or

(ii) unfairly discriminatory.

(2) Rates in a competitive market are not excessive. Rates in a market as to which the Insurance Commissioner has issued a ruling under section 710, that a reasonable degree of competition does not exist, are excessive if they are likely to produce a long run profit that is unreasonably high in relation to the risk undertaken and the services to be rendered.

(3) A rate may not be held to be inadequate unless:

(i) it is unreasonably low for the insurance provided and continued use of it would endanger solvency of the insurer; or

(ii) the rate is unreasonably low for the insurance provided and the use of the rate by the insurer has had or, if continued, will have the effect of destroying competition or of creating monopoly.

(b) In determining whether rates comply with standards under clause (a), due consideration shall be given to:

(1) Past and prospective loss experience within and outside this Commonwealth in accordance with sound actuarial principles.

(2) Conflagration or catastrophe hazards.

(3) A reasonable margin for underwriting profit and contingencies.

(4) Dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders or members or subscribers.

(5) Past and prospective expenses, both countrywide and those specially applicable to this Commonwealth.

(6) Investment income earned or realized by insurers both from their unearned premium and from their loss reserve funds.

(7) All relevant factors within and outside this Commonwealth.

(c) As to the kinds of insurance to which this article applies, the systems of expense provisions included in the rates for use by an insurer or group of insurers may differ from those of any other insurers or groups of insurers to reflect the requirements of the operating methods of the insurer or group of insurers.

Section 705. (a) Each authorized insurer shall file with the Insurance Commissioner all rates and supplementary rate information and all changes and amendments thereof made by it for use in this Commonwealth by the date they become effective. Each rating organization shall file with the Insurance Commissioner a filing for the provision for claim payment and such other filings as are authorized pursuant to this article. The Secretary of Labor and Industry shall be a member of the board of directors or governing body of any rating organization.

(b) An insurer may not make or issue a contract or policy of insurance of the kind to which this article applies, except in accordance with the filings which are in effect for the insurer as provided in this article.

Section 706. Each filing and any supporting information filed under this article shall, as soon as filed, be open to public inspection. Copies may be obtained by any person on request and upon payment of a reasonable charge.

Section 707. (a) Each workers' compensation insurer shall be a member of a rating organization. Each workers' compensation insurer shall adhere to the policy forms filed by the rating organization.

(b) (1) Every workers' compensation insurer shall adhere to the uniform classification system and uniform experience rating plan filed with the Insurance Commissioner by the rating organization to which it belongs.

(2) (i) Subject to the conditions of this paragraph, an insurer may develop subclassifications of the uniform classification system upon which a rate may be made.

(ii) Any subclassification developed under subparagraph (i) shall be filed with the rating organization and the Insurance Commissioner thirty days prior to its use.

(iii) If the insurer fails to demonstrate that the data produced under a subclassification can be reported in a manner consistent with the rating organization's uniform statistical plan and classification system, the Insurance Commissioner shall disapprove the subclassification.

(c) Every workers' compensation insurer shall record and report its workers' compensation experience to a rating organization as set forth in the rating organization's uniform statistical plan approved by the Insurance Commissioner.

(d) (1) Subject to the approval of the Insurance Commissioner, a rating organization shall develop and file rules reasonably related to the recording and reporting of data pursuant to the uniform statistical plan, uniform experience rating plan, and the uniform classification system.

(2) Every workers' compensation insurer shall adhere to the approved rules and experience rating plan in writing and reporting its business.

(3) An insurer may not agree with any other insurer or with a rating organization to adhere to rules which are not reasonably related to the recording and reporting of data pursuant to the uniform classification system or the uniform statistical plan.

(e) The experience rating plan shall have as a basis:

(1) reasonable eligibility standards;

(2) adequate incentives for loss prevention; and

(3) sufficient premium differential so as to encourage safety.

(f) (1) The uniform experience rating plan shall be the exclusive means of providing prospective premium adjustment based upon measurement of the loss producing characteristics of an individual insured.

(2) An insurer may file a rating plan that provides for retrospective premium adjustments based upon an insured's past experience.

Section 708. (a) The Insurance Commissioner may investigate and determine whether or not rates in this Commonwealth under this article are excessive, inadequate or unfairly discriminatory.

(b) In any such investigation and determination the Insurance Commissioner shall give due consideration to those factors specified in section 710.

Section 709. (a) Except as provided in clause (d), the Insurance Commissioner shall review each workers' compensation insurance filing made by a rating organization or an insurer as soon as reasonably possible after the filing has been made in order to determine whether it meets the requirements of this article.

(b) (1) The effective date of each filing under this article shall be the date specified in the filing. The effective date of the filing may not be earlier than thirty days after the date the filing is received by the Insurance Commissioner or the date of receipt of the information furnished in support of the filing if such supporting information is required by the Insurance Commissioner.

(2) The period during which the filing may not become effective may be extended by the Insurance Commissioner for an additional period not to exceed thirty days if the Insurance Commissioner gives written notice within the period described in paragraph (1) to the insurer or rating organization which made the filing that the Insurance Commissioner needs additional time for the consideration of the filing.

(3) Upon written application by an insurer or rating organization, the Insurance Commissioner may authorize a filing which the Insurance Commissioner has reviewed to become effective before the expiration of the period described in paragraph (1).

(4) A filing shall be deemed to meet the requirements of this article unless disapproved by the Insurance Commissioner within the period described in paragraph (1) or any extension thereof.

(c) (1) Subject to approval or disapproval under clause (b), a rating organization shall file with the Insurance Commissioner:

(i) On an annual basis, workers' compensation rates and rating plans that are limited to provision for claim payment.

(ii) Each workers' compensation policy form to be used by its members.

(iii) The uniform classification system.

(iv) The uniform experience rating plan and related rules.

(v) Any other information that the Insurance Commissioner requests relevant to the foregoing and is otherwise entitled to receive under this article.

(2) Notwithstanding any other provisions of this article, the Insurance Commissioner may approve or disapprove any filing by a rating organization without determining whether a reasonable degree of competition exists within the market.

(d) If each rate in a schedule of workers' compensation rates for specific classifications of risks filed by an insurer is not lower

than the provision for claim payment contained in the schedule of workers' compensation rates for those classifications filed by a rating organization under clause (c) and approved pursuant to the provisions of this article, then the schedule of rates filed by the insurer shall not be subject to clause (b) but shall become effective for the purposes of section 705.

(e) Notwithstanding clause (d), the Insurance Commissioner may investigate and evaluate all workers' compensation filings to determine whether the filings meet the requirements of this article.

(f) Notwithstanding the provisions of section 705, the Insurance Commissioner may require any insurer or rating organization to comply with the requirements of clause (b) if the Insurance Commissioner has found pursuant to section 710, that a reasonable degree of competition does not exist within the workers' compensation insurance market.

Section 710. (a) If the Insurance Commissioner finds after a hearing that a rate is not in compliance with section 704 or that a rate had been set in violation of section 714, the Insurance Commissioner shall order that its use be discontinued for any policy issued or renewed after a date specified in the order and the order may prospectively provide for premium adjustment of any policy then in force. Except as provided in clause (b), the order shall be issued within thirty days after the close of the hearing or within a reasonable time extension as fixed by the Insurance Commissioner. The order shall expire one year after its effective date unless rescinded earlier by the Insurance Commissioner.

(b) (1) Pending a hearing, the Insurance Commissioner may order the suspension prospectively of a rate filed by an insurer and reimpose the last previous rate in effect if the Insurance Commissioner has reasonable cause to believe that:

(i) an insurer is in violation of section 704;

(ii) unless the order of suspension is issued, certain insureds will suffer irreparable harm;

(iii) the hardship insureds will suffer absent the order if suspension outweighs any hardship the insurer would suffer if the order of suspension were to issue; and

(iv) the order of suspension will cause no substantial harm to the public.

(2) In the event the Insurance Commissioner suspends a rate under this clause, the Insurance Commissioner must, unless waived by the insurer, hold a hearing within fifteen working days after issuing the order suspending the rate. In addition, the Insurance Commissioner must make a determination and issue the order as to whether or not the rate should be disapproved within fifteen working days after the close of the hearing.

(c) (1) At any hearing to determine compliance with section 704, pursuant to clause (a), the Insurance Commissioner shall first determine whether a reasonable degree of competition exists within the market, and shall give a ruling to that effect. All insurers operating within such market shall have the burden of establishing that a reasonable degree of competition exists within that market. The Insurance Commissioner shall consider all relevant factors in determining the competitiveness of the market, including:

(i) the number of insurers actively engaged in providing coverage;

(ii) market shares;

(iii) changes in market shares; and

(iv) ease of entry.

(2) If the Insurance Commissioner determines that a reasonable degree of competition does not exist in the market, any insurer designated by the Insurance Commissioner shall have the burden of justifying its rate in such market.

(3) All determinations made by the Insurance Commissioner shall be on the basis of findings of fact and conclusions of law.

(4) If the Insurance Commissioner disapproves a rate, the disapproval shall take effect not less than fifteen days after his order and the last previous rate in effect for the insurer shall be reimposed for a period of one year unless the Insurance Commissioner approves a rate under clause (d) or (e).

(d) Within one year after the effective date of a disapproval order pursuant to paragraph (4) of clause (a), no rate adopted to replace one disapproved under such order may be used until it has been filed with the Insurance Commissioner and not disapproved within thirty days thereafter.

(e) Whenever an insurer has no legally effective rates as a result of the Insurance Commissioner's disapproval of rates, the Insurance Commissioner shall, on the insurer's request, specify interim rates for the insurer that are high enough to protect the interests of all parties and may order that a specified portion of the premiums be placed in a special reserve established by the insurer. When new rates become legally effective, the Insurance Commissioner shall order the specially reserved funds or any overcharge, in the interim rates to be distributed appropriately to the insureds or insurer as the case may be, except that refunds to policyholders that are minimal may not be required.

Section 711. (a) The Insurance Commissioner may by order require that a particular insurer file any or all of the insurer's rates and supplementary rate information thirty days prior to their effective date, if the Insurance Commissioner finds after a hearing that the protection of the interests of its insureds and the public in this Commonwealth requires closer supervision of its rates because of the insurer's financial condition or repetitive filing of rates which are not in compliance with section 704.

(b) In the event that the waiting period is imposed pursuant to clause (a), the Insurance Commissioner may extend the waiting period for any filing for a period not exceeding thirty additional days by written notice to the insurer before the first thirty-day period expires.

(c) The filing shall be approved or disapproved during the waiting period, and if not disapproved before the expiration of the waiting period, shall be deemed to meet the requirements of this article, subject to the possibility of subsequent disapproval under section 710.

(d) Any insurer affected by the Insurance Commissioner's actions may request a rehearing by the Insurance Commissioner after the expiration of twelve months from the date of the Insurance Commissioner's former order.

Section 712. (a) (1) If the Insurance Commissioner finds after hearing that competition is not an effective regulator of the rates charged or that a substantial number of companies are competing irresponsibly through the rates charged, or that there are widespread violations of this article, the Insurance Commissioner may adopt a rule requiring that any subsequent changes in the rates or supplementary rate information be filed with the Insurance Commissioner at least thirty working days before they become effective.

(2) In the event that the waiting period is imposed pursuant to paragraph (1), the Insurance Commissioner may extend the waiting period for a period not to exceed thirty additional working days by written notice to the filer before the first thirty-day period expires.

(b) In the event that the Insurance Commissioner has entered an order pursuant to paragraph (1) of clause (a), the Insurance Commissioner may require the filing of supporting data as the Insurance Commissioner deems necessary for the proper functioning of the rate monitoring and regulating process. The supporting data shall include:

(1) the experience and judgment of the filer, and to the extent the filer wishes or the Insurance Commissioner requires, the experience and judgment of other insurers or rate service organizations;

(2) the filer's interpretation of any statistical data relied upon;

(3) a description of the actuarial and statistical methods employed in setting the rate; and

(4) any other relevant matters required by the Insurance Commissioner.

(c) A rule adopted under this section shall expire not more than one year after issue. The Insurance Commissioner may renew it for an additional one year period after a hearing and appropriate findings under this section.

(d) Whenever a filing is not accompanied by the information as the Insurance Commissioner has required under clause (a), the Insurance Commissioner may so inform the insurer and the filing shall be deemed to be made when the information is furnished.

Section 713. (a) No rating organization shall provide any service relating to the rates of any insurance subject to this article, and no insurer shall utilize the service of such organization for those purposes unless the organization has obtained a license pursuant to this article.

(b) No rating organization shall refuse to supply services for which it is licensed in this Commonwealth to any insurer authorized to do business in this Commonwealth and offering to pay the fair and usual compensation for the services.

Section 714. (a) As used in this section, the word "insurer" includes two or more affiliated insurers:

(1) under common management; or

(2) under common controlling ownership or under other common effective legal control and in fact engaged in joint or cooperative underwriting, investment management, marketing, servicing or administration of their business and affairs as insurers.

(b) An insurer or rating organization may not:

(1) monopolize or attempt to monopolize, or combine or conspire with any other person or persons, or monopolize the business of insurance of any kind, subdivision, or class thereof;

(2) agree with any other insurer or rating organization to charge or adhere to any rate, although insurers and rating organizations may continue to exchange statistical information;

(3) make any agreement with any other insurer, rating organization or other person to unreasonably restrain trade;

(4) make any agreement with any other insurer, rating organization, or other person where the effect of the agreement may be substantially to lessen competition in the business of insurance of any kind, subdivision, or class; or

(5) make any agreement with any other insurer or rating organization to refuse to deal with any person in connection with the sale of insurance.

(c) An insurer may not acquire or retain any capital stock or assets of, or have any common management with, any other insurer if such acquisition, retention, or common management substantially lessens competition in the business of insurance of any kind, subdivision, or class.

(d) A rating organization or member or subscriber thereof may not interfere with the right of any insurer to make its rates independently of that rating organization or to charge rates different from the rates made by that rating organization.

(e) Except as required under section 707, a rating organization may not have or adopt any rule or exact any agreement, formulate or engage in any program which would require any member, subscriber or other insurer to:

(1) utilize some or all of its services;

(2) adhere to its rates, rating plan, rating systems, underwriting rules; or

(3) prevent any insurer from acting independently.

Section 715. Any rate in violation of section 714 shall be disapproved by the Insurance Commissioner in accordance with the procedures prescribed in section 710, and each violator shall be subject to the penalties provided in section 721.

Section 716. The Insurance Commissioner may maintain an action to enjoin any violation of section 714.

Section 717. Notwithstanding any other provision of this article, upon written application of an insurer stating its reasons therefor, accompanied by the written consent of the insured or prospective insured, filed with and approved by the Insurance Commissioner, a rate in excess of that provided by a filing otherwise applicable may be used as to any specific risk.

Section 718. (a) Each rating organization and every insurer to which this article applies which makes its own rates shall provide within this Commonwealth reasonable means whereby any person aggrieved by the application of its rating system may be heard in person or by the person's authorized representative on the person's written request to review the manner in which such rating system has been applied in connection with the insurance afforded the aggrieved person.

(b) If the rating organization or insurer fails to grant or reject the aggrieved person's request within thirty days after it is made, the applicant may proceed in the same manner as if the application had been rejected.

(c) Any party affected by the action of that rating organization or insurer on the request may, within thirty days after written notice of that action, make application, in writing, for an appeal to the Insurance Commissioner, setting forth the basis for the appeal and the grounds to be relied upon by the applicant.

(d) The Insurance Commissioner shall review the application, and if the Insurance Commissioner finds that the application is made in good faith, and that it sets forth on its face grounds which reasonably justify holding a hearing, the Insurance Commissioner shall conduct a hearing held on not less than ten days' written notice to the applicant and to the rating organization or insurer. The Insurance Commissioner, after hearing, shall affirm or reverse the action.

Section 719. (a) Cooperation among rating organizations or among rating organizations and insurers in ratemaking or in other matters within the scope of this article is authorized, if the filings resulting from that cooperation are subject to all the provisions of this article which are applicable to filings generally.

(b) The Insurance Commissioner may review these cooperative activities and practices, and if, after hearing, the Insurance Commissioner finds that any activity or practice is unfair, unreasonable, or otherwise inconsistent with this article, the Insurance Commissioner may issue a written order specifying in what respects that activity or practice is unfair, unreasonable, or otherwise inconsistent with this article, and requiring the discontinuance of that activity or practice.

Section 720. (a) A person or organization may not wilfully withhold information from or knowingly give false or misleading information which will affect the rates or premiums chargeable under this article to:

(1) the Insurance Commissioner; or

(2) any rating organization or any insurer.

(b) A violation of this section shall subject the one who commits that violation to the penalties provided in section 721, and anyone who violates this section with intent to deceive commits perjury, and is subject to prosecution therefor in a court of competent jurisdiction.

Section 721. (a) Any person, organization, or insurer found by the Insurance Commissioner after notice and hearing to be guilty of a violation of any provision of this article, including a regulation of the Insurance Commissioner adopted under this article may be ordered to pay a penalty of five hundred dollars ($500) for each violation. Upon finding such violation to be wilful, the Insurance Commissioner may impose a penalty of not more than one thousand dollars ($1,000) for each such violation in addition to any other penalty provided by law. The Insurance Commissioner has the right to suspend or revoke or refuse to renew the license of any person, organization, or insurer for violation of any of the provisions of this article.

(b) The Insurance Commissioner may determine when a suspension or revocation of license will become effective, and the suspension or revocation shall remain in effect for the period fixed by the Insurance Commissioner unless the Insurance Commissioner modifies or rescinds the suspension or revocation, or until the order upon which the suspension or revocation is based is modified or reversed as the result of an appeal therefrom.

(c) A fine may not be imposed nor a license suspended or revoked by the Insurance Commissioner except upon written order stating the Insurance Commissioner's findings, made after a hearing held on not less than ten days' written notice to the person, organization, or insurer specifying the alleged violation.

Section 722. All decisions and findings of the Insurance Commissioner under this article shall be subject to judicial review in accordance with 2 Pa.C.S. (relating to administrative law and procedure).

Section 723. Insurers and the rating organization are not required to immediately refile rates implemented before the effective date of this article. Any member of a rating organization is authorized to continue to use all rates and deviations filed or approved for its use until the insurer makes its own filing to change its rates in accordance with this article, provided however that such filing shall be made no later than one hundred twenty days after the effective date of the first filing by the applicable rating organization pursuant to this article. The rating organization shall make its first filing for provision for claim payment pursuant to the provisions of this article on or before thirty days after the effective date of this article.

ARTICLE VIII
SELF-INSURANCE POOLING

Section 801. The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Actuarially appropriate loss reserves" shall mean those reserves needed to pay known claims for compensation and expenses associated therewith and claims for compensation incurred but not reported and expenses associated therewith.

"Administrator" means an individual, partnership or corporation engaged by a fund's plan committee to carry out the policies established by the plan committee and to provide day-to-day management of the fund.

"Commissioner" means the Insurance Commissioner.

"Compensation" includes compensation paid under this act or the Occupational Disease Act.

"Department" means the Department of Labor and Industry of the Commonwealth.

"Employer" means an employer as defined in section 103 of this act or as defined in section 103 of the Occupational Disease Act, where applicable.

"Excess insurance" means insurance, purchased from an insurance company appropriately approved or authorized or licensed in this Commonwealth covering losses in excess of an amount established between the group and the insurer up to the limits of coverage set forth in the insurance contract on a specific per occurrence or per accident or annual aggregate basis.

"Fund" means a group self-insurance fund organized by employers to pool workers' compensation liabilities and approved by the department under the authority of this act. A fund shall not be deemed to be an insurer or insurance company and shall not be subject to the provisions of the insurance laws and regulations, except as specifically otherwise provided herein.

"Homogeneous employer" means employers who have been assigned to the same classification series for at least one year or are engaged in the same or similar types of business, including political subdivisions.

"Independent actuary" means a member in good standing of the Casualty Actuarial Society and a member in good standing of the American Academy of Actuaries who has been identified by the Academy as meeting its qualification standards for signing casualty loss reserve opinions. Said actuary must not be an officer, director or employe of the fund or a member of the fund for which he or she is providing reports, certifications or services.

"Insolvent fund" means the inability of a fund to pay its outstanding liabilities as they mature, as may be shown either by an excess of its required reserves and other liabilities over its assets or by not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims owed by it.

"Permit" means the document issued by the department to a fund which authorizes the fund to operate as a fund under the provisions of this act.

"Plan committee" means a committee composed of representatives of each employer participating in a fund.

"Political subdivision" means any county, city, borough, incorporated town, township, school district, vocational school district and county institution district, municipal authority or other entity created by a political subdivision pursuant to law.

"Security" means surety bonds, cash, negotiable securities of the United States Government or the Commonwealth or other negotiable securities, such as letters of credit, acceptable to the Insurance Department which are posted by the fund to guaranty the payment of compensation.

"Surplus" means that amount of moneys found in the trust to be in excess of all fixed costs and incurred losses attributed to the pool net any occurrence or aggregate excess insurance.

"Trust" means a written contract signed by the members of the fund which separates the legal and equitable rights to the moneys held by an independent trustee as a fiduciary for the benefit of employes of employers participating in the fund.

Section 802. (a) Employers shall be permitted to pool their liabilities under this act and the Occupational Disease Act and their employers' liability through participation in a fund approved by the department.

(b) A group of homogeneous employers may be approved by the department to act as a fund if the proposed group:

(1) Includes five or more homogeneous employers.

(2) Is comprised of at least five members of which each have been employers for at least three each years prior to the filing of the group's application.

(3) Has been created in good faith for the purpose of becoming a fund.

(4) Has, except for political subdivisions, an aggregate net worth of the employers participating calculated according to generally accepted accounting principles which equals or exceeds one million dollars or such amount as may be adjusted and promulgated annually by the department and published in the Pennsylvania Bulletin to take effect January 1 of each year.

(5) Has a combined annual payroll of fund members multiplied by the rate utilized by the State Workmen's Insurance Fund which is equal to or greater than $500,000 as adjusted annually by the percentage increase in the Statewide average weekly wage or such amount as may be adjusted and promulgated annually by the department and published in the Pennsylvania Bulletin to take effect January 1 of each year.

(6) Guarantees benefit levels equal to those required by this act and the Occupational Disease Act.

(7) Demonstrates sufficient aggregate financial strength and liquidity to assure that all obligations under this act and the Occupational Disease Act will be met as required by that act and proposes a plan for the prompt payment of such benefits. Information documenting an individual member's financial strength and liquidity shall be presented to the department upon the department's request or with the application as required by the department.

(8) Executes a trust agreement under which each member agrees to jointly and severally assume and discharge the liabilities arising under this act and the Occupational Disease Act of each and every party to such agreement.

(9) Files with the department the proposed trust agreement.

(10) Provides for excess insurance with retention amounts in such amount as the department deems acceptable on a single accident (single occurrence) and aggregate excess basis. The department may waive the requirement for one or both types of excess insurance if convinced that the fund's financial strength is sufficient to assure payment of its obligations under this act and the Occupational Disease Act.

(11) Provides security in a form and amount prescribed by the department.

(12) Provides letters of intent from prospective fund members and evidence that each prospective member:

(i) Has never defaulted on compensation due under this act or the Occupational Disease Act as an individual self-insurer.

(ii) Has not been delinquent in payment of or canceled for nonpayment of workers' compensation premiums for a period of at least two years prior to application.

(iii) Has not been found to have violated section 305 or section 435 of this act or the Occupational Disease Act as an individual self-insurer.

(iv) Has not been and is not in default on or owes money assessed under this act or the Occupational Disease Act.

(13) Provides that the fund will initiate and maintain a loss prevention and safety program of the nature and extent that would be required of members under the provisions of this act, the Occupational Disease Act or regulations promulgated hereunder.

(14) Provides for assessment upon employers participating in the fund to establish and maintain actuarially appropriate loss reserves and a plan for payment of such assessments.

(15) Provides proof of competent personnel and ample facilities within its own organization with respect to claims administration, underwriting matters, loss prevention and safety engineering or presents a contract with a reputable service company to provide such assistance.

(16) Meets the other criteria established by this act or by the department pursuant to regulations promulgated under this act or the Occupational Disease Act.

(c) Each application for approval of a fund shall be accompanied by a nonrefundable fee of one thousand dollars, payable to the department which shall be deposited in the Workmen's Compensation Administration Fund.

Section 803. (a) (1) The department shall, in accordance with section 802, review, approve or disapprove fund applications under such rules and requirements relating to applications under section 305 of this act and the Occupational Disease Act as may be applicable and such rules and regulations as are specifically adopted with regard to fund applications.

(2) During the pendency of the processing of any fund application, the group of employers shall not operate as a fund.

(b) Permits shall identify an annual reporting period for the fund as established by the department.

Section 804. All permits issued under this article shall remain in effect unless terminated at the request of the fund or revoked by the department.

Section 805. (a) If at any time the fund is found to be insolvent, fails to pay any required assessments under this act or the Occupational Disease Act, or fails to comply with any provision of this act or the Occupational Disease Act or with any rules promulgated thereunder, the department may revoke its permit after notice and opportunity for a hearing.

(b) In the case of revocation of a permit, the department may require the fund to insure or reinsure all incurred liability with an authorized insurer. All fund members shall immediately obtain coverage required by this act.

Section 806. (a) Members of said fund shall pay a minimum of twenty-five per centum of their annual assessment into the fund on or before the inception of the fund. The balance of the annual assessments shall be paid to the fund on a monthly, quarterly or semiannual basis as required by the fund's bylaws and approved by the department.

(b) Each member's annual assessment to the fund shall equal such member's annual payroll times the applicable rates utilized by the State Workmen's Insurance Fund minus the premium discount specified in Schedule Y as approved by the commissioner. Dividends may be returned to members in accordance with section 809.

(c) Nothing contained in this section shall preclude the assessment and payment of supplemental assessments as provided in section 810.

Section 807. After the final permit approval date of the fund, prospective new members of the fund shall submit an application for membership to the fund's plan committee or administrator in a form approved by the department. This application shall include an agreement of joint and several liability as required in section 803. The administrator or plan committee may approve the application for membership pursuant to the bylaws of the fund. The application approved by the fund shall be filed with the department. The fund shall retain the authority to reject any applicant.

Section 808. (a) Individual members may elect to terminate their participation in a fund or be subject to cancellation by the fund pursuant to the bylaws of the fund for nonpayment of premium or other violations. Any member withdrawing from a fund or member terminated by the fund for nonpayment of assessments shall remain fully obligated for claims incurred during the period of its membership in accord with fund bylaws, including, but not limited to, amounts owed as annual or supplemental assessments. Notice of termination of any participant shall be filed with the fund. The fund shall attach any such notices of termination to the renewal application filed with the department.

(b) The fund shall notify the department immediately if termination of a member causes the fund to fail to meet the requirements of clause (b) of section 802. Within fifteen days of the notice of withdrawal or decision to expel, the fund shall advise the department of its plan to bring the fund into compliance with clause (b) of section 802. If the plan does not bring the fund into compliance with the requirements, the department shall immediately review and revoke its permit.

(c) The department shall not grant the request of any fund to terminate its permit unless the fund has insured or reinsured all incurred workers' compensation obligations with an authorized insurer under an agreement filed with and approved in writing by the department. These obligations shall include both known claims and expenses associated therewith and claims incurred but not reported and expenses associated therewith. These same requirements shall apply where the department revokes a permit.

Section 809. Any fund may return to its members dividends based upon the recommendation of an independent actuary. Dividends shall not be returned if the payment of such dividends would impair the fund's ability to meet its obligations under this act or the Occupational Disease Act, nor shall dividends be returned prior to the beginning of the thirteenth month following the expiration of the preceding annual reporting period. The initial dividend payment for any annual reporting period shall not exceed thirty per centum of the surplus available for the applicable annual reporting period. The fund may, however, seek annual approval for payment of dividends from the surplus remaining from any annual reporting period which has been completed for at least twenty-five months or longer and may include such dividend payments with initial dividend payments from the subsequent annual reporting period.

Section 810. (a) If the assets of a fund are at any time insufficient to enable the fund to discharge its legal liabilities and other obligations and to maintain the actuarially appropriate loss

reserves required of it under paragraph (14) of clause (b) of section 802, the fund shall forthwith make up the deficiency or levy an assessment upon the fund members for the amount needed to make up the deficiency.

(b) In the event of a deficiency in any annual reporting period, such deficiency shall be made up immediately, either from surplus from a year other than the current year, assessment of the fund members if ordered by the fund or such alternate method as the department may approve or direct.

(c) If the fund fails to assess its members or to otherwise make up such deficit within thirty days the department shall order it to do so.

(d) If the fund fails to make the required assessment of its members within thirty days after the department orders it to do so, or if the deficiency is not fully made up within sixty days after the date on which such assessment is made or within such longer period of time as may be specified by the department, the fund shall be deemed to be insolvent.

(e) The department shall proceed against an insolvent fund in the same manner as the department would proceed against an insurer under Article IX.

(f) In addition, in the event of the liquidation or default of a fund, the department may levy an assessment upon the fund members for such an amount as the department determines to be necessary to discharge all liabilities of the fund including the reasonable cost of liquidation and shall deposit such assessments into the Self-insurance Guaranty Fund for distribution and payment by the Guaranty Fund as provided for in Article IX.

Section 811. The annual assessment of each fund member shall be based upon the annual payroll of fund members multiplied by the rates as utilized by the State Workmen's Insurance Fund for members minus any premium discounts. A fund may deviate from these rates and establish its own rates with the approval of an independent actuary and the department.

Section 812. Each fund shall request classifications for its participants from the bureau or bureaus approved by the commissioner and shall utilize those classifications making assessments based upon rates as utilized by the State Workmen's Insurance Fund for such classification except as provided in section 811. The fund shall pay the appropriate bureau a reasonable charge, approved by the department, for this service. The fund may appeal classifications as provided in the applicable sections of the Insurance Company Law of 1921, for other employers.

Section 813. Each fund may invest any surplus moneys not needed for current obligations in United States Government obligations, United States Treasury Notes, investment share accounts in any savings and loan association whose deposits are insured by a Federal agency and certificates of deposit issued by a duly chartered commercial bank. Deposits in savings and loan associations and commercial banks shall be limited to institutions in this Commonwealth and shall not exceed the federally insured amount in any one account. Investments may also be made in any permitted investments of capital or surplus of stock casualty insurance companies set forth in section 602 or 603 of the Insurance Company Law of 1921, as may be authorized by regulation approved by the commissioner.

Section 814. (a) Funds approved under this article shall purchase excess insurance by reason of any single accident or any single occurrence as provided in section 653 of the Insurance Company Law of 1921, and aggregate excess insurance. The department may waive the requirement for either single accident (single occurrence) or aggregate excess insurance or the requirement for both single accident (single occurrence) and aggregate excess insurance.

(b) A policy of insurance by an insurance carrier may include provisions for aggregate excess insurance in addition to the single accident (single occurrence) excess insurance which is authorized under section 653 of the Insurance Company Law of 1921.

Section 815. (a) A report shall be prepared by each fund for each annual reporting period and shall be filed with the department and made available to each fund member.

(b) The information contained in the annual report shall include, for each member of the fund and the fund itself:

(1) Summary loss reports.

(2) An annual statement of the financial condition of the fund prepared by a certified public accountant and performed in accordance with generally accepted accounting principles.

(3) Reports of outstanding liabilities showing the number of claims, amounts paid to date and current reserves as certified by an independent actuary.

(4) Such other information as required by regulation of the department as may be applicable to applicants for self-insurance under section 305 of this act and the Occupational Disease Act or regulations in regard to fund applications.

(c) The annual report shall be accompanied by a one thousand dollar evaluation fee.

(d) The department may, at any time, examine the affairs, transactions, accounts, records and assets of a fund and the fund shall make all such items as are needed for such examination available to the department. The department shall bill the fund for the reasonable costs associated with such examinations.

(e) If at any time there is a change in the fund, during an annual reporting period other than as set forth in section 808, that affects the ability of the fund to comply with the requirements of clause (b) of section 802, the fund shall notify the department of the change within thirty days after such change.

Section 816. Each fund shall be assessed annually by the department in a like manner and amount as other insurers or self-insurers are now or hereafter assessed under this act and the Occupational Disease Act and shall pay such assessment in accordance with this act and the Occupational Disease Act. All contributions received in accordance with this section shall be deposited into the appropriate fund as required by the applicable provision of law.

Section 817. Any group of five homogeneous employers who will provide to the fund an annual volume of premium of at least five hundred thousand dollars ($500,000) may become subscribers as a group to the State Workmen's Insurance Fund for the purpose of insuring therein their liability to those of their employes and any group of employers who shall desire to become subscribers as a group to the said fund for the purpose of insuring therein their liability for all sums. Such group shall become legally obligated to pay any employe damages because of bodily injury by accident or disease, including death at any time resulting therefrom, sustained by such employe arising out of and in the course of his employment. Such group shall make a written application for subscription for group insurance to the said board. Such application shall designate the name of the group subscriber and shall include such information as determined by the board as will allow the board to identify the employers and to adequately assess risks and premiums to be charged to employers to be insured by the fund under the group subscription.

Section 818. The department is authorized to promulgate rules and regulations for the administration and enforcement of this article.

ARTICLE IX
SELF-INSURANCE GUARANTY FUND

Section 901. The following words and phrases when used in this article shall have the meanings given to them in the section unless the context clearly indicates otherwise:

"Compensation" means benefits paid pursuant to sections 306 and 307.

"Employer" means a self-insured employer or the employer as defined in this act.

"Guaranty Fund" or "fund" means the Self-Insurance Guaranty Fund established in section 902 for injuries and exposures occurring on or after July 1, 1992.

"Security" means surety bonds, cash, negotiable securities of the United States Government or the Commonwealth or other negotiable securities, such as letter of credit, acceptable to the Insurance Department which are posted by the fund to guaranty the payment of workers' compensation benefits.

"Self-insurer" means an employer exempted under section 305 or a group self-insurance fund permitted to operate under Article VIII.

Section 902. (a) (1) There is hereby established a special fund to be known as the Self-Insurance Guaranty Fund.

(2) The fund shall be maintained as two distinct custodial accounts in the State Treasury as separate and distinct accounts subject to the procedures and provisions set forth in this article.

(b) The moneys in each custodial account shall consist of security and assessments, as defined in section 907 and interest accumulated thereon.

(c) The administrator shall establish and maintain the following two distinct and separate custodial accounts. The moneys and other assets in each account are not to be commingled or used to pay claims from the other account.

(1) Custodial account for self-insured employers for the exclusive benefit of claims arising from defaulting individual self-insured employers.

(2) Custodial account for self-insurance pooling as defined under section 801 for the exclusive benefit of claims arising from defaulting members of pooling arrangements.

(d) The secretary shall be the administrator of the fund and shall have the power to collect, dispense and disperse money from the fund.

Section 903. The fund shall be maintained to make payments to any claimant or his dependents upon the default of the self-insurer liable to pay compensation due under this act and the Occupational Disease Act or costs associated therewith and shall be maintained in an amount sufficient to pay such compensation and costs or reasonably anticipated to be needed by virtue of default by self-insurers.

Section 904. (a) When a self-insurer fails to pay compensation when due, the department shall determine the reasons for such failure.

(b) If the department determines that the failure to pay compensation is due to the self-insurer's financial inability to pay compensation, the department shall notify the self-insurer of same and direct compensation to be paid within fifteen days of such notice.

(c) If the self-insurer fails to pay the compensation as directed and within the time set forth in this section, the department shall declare the self-insurer in default.

(d) Whenever the department determines that a default has occurred it shall:

(1) Investigate the circumstances surrounding the default, the amount of security available and the ability of the self-insured to cure the default.

(2) Determine whether the liabilities of the self-insurer for compensation exceed or are less than the security:

(i) If the liabilities are less than the security, the department shall demand the custodian of the security utilize the security to cure the default and the department shall monitor the situation to insure that compensation is paid as due under this act or the Occupational Disease Act.

(ii) If at any time the liabilities exceed or can reasonably be expected to exceed the security, in the opinion of the department, the department may order payment of the security into the fund's appropriate custodial account, and shall order payment from the Guaranty Fund, as appropriate, to cure the default and insure that compensation is paid as due under this act or the Occupational Disease Act.

Section 905. (a) When payments are ordered from the Guaranty Fund's appropriate custodial account, the fund assumes the rights and obligations of the self-insurer under this act or the Occupational Disease Act with regard to the payment of compensation and shall have and may exercise the rights set forth in this section.

(b) The Guaranty Fund shall have the right to:

(1) Institute and prosecute legal action against any self-insurer and each and every member of a fund, jointly and severally, on behalf of the employees of the self-insured employer or fund members' employees and their dependents to require the payment of compensation and the performance of any other obligations of the self-insurer under this act or the Occupational Disease Act.

(2) Appear and represent the Guaranty Fund in any proceedings in bankruptcy involving the self-insurer on whose behalf payments were made, including the ability to appear and move to lift any stay orders affecting payment of compensation.

(3) Obtain, in any manner or by the use of any process or procedure, including, but not limited to, the commencement and prosecution of legal action, reimbursement from a self-insurer and its successors, assigns and estate all moneys paid on account of the self-insurer's obligation assumed by the fund, including, but not limited to, reimbursement for all compensation paid as well as reasonable administrative and legal costs associated with such payment.

(4) Purchase reinsurance and take any and all other action which effects the purpose of the Guaranty Fund.

Section 906. (a) (1) Security or funds from security demanded and paid to the department under section 904 shall be deposited into the Guaranty Fund.

(2) These funds and interest thereon shall be segregated in individual custodial accounts within the Guaranty Fund by the custodian and maintained solely for the payment of compensation or costs associated therewith upon order of the department to the employes of the defaulting self-insurer providing the security from the appropriate custodial account.

(3) If there are funds from security or interest thereon remaining in the individual account after all outstanding obligations of the insolvent self-insurer have been satisfied and the costs of administration and defense have been paid, such amount as remains shall be returned upon order of the department from the Guaranty Fund individual account to the self-insurer.

(b) Assessments made under section 907 and interest thereon shall be deposited into the Guaranty Fund's appropriate custodial account.

Section 907. (a) On a date to be determined by the department following the effective date of this article, employers who are self-insurers as of that effective date shall pay an initial assessment of one-half per centum of the compensation paid by each self-insurer in the year preceding the assessment. Self-insurers who, prior to such effective date, were not self-insurers, shall pay an assessment based on one-half per centum of their modified manual premium for the twelve months immediately prior to becoming self-insurers.

(b) (1) The department may, in addition to the initial assessment, from time to time, assess each self-insurer a pro rata share of the amounts needed for the fund to carry out the requirements of this article.

(2) Such assessments shall be based on the ratio that each private self-insurer's payments of compensation bears to the total compensation paid by all self-insurers in the year preceding the year of assessment.

(3) In no event shall a self-insurer be assessed in any one calendar year more than one per centum of the compensation paid by that self-insurer during the previous calendar year.

(c) A self-insurer which ceases to be a self-insurer shall be liable for any and all assessments made pursuant to this section during the period following the date its authority to self-insure is withdrawn, revoked or surrendered until such time as it has dis-

charged all obligations to pay compensation which arose during the period of time said former self-insurer was self-insured. Assessments of such a former self-insurer shall be based on the compensation paid by the former self-insurer during the preceding calendar year on claims that arose during the period of time said former self-insurer was self-insured.

Section 908. The department may promulgate rules and regulations for the administration and enforcement of this article.

ARTICLE X
HEALTH AND SAFETY

Section 1001. (a) All workers' compensation insurance carriers shall provide safety consultations to each of their policyholders requesting such consultations.

(b) This article shall not diminish or replace the employer's responsibility to provide employes a safe place to work.

(c) Neither the insurance carrier nor any of its agents or employes shall incur any liability for illness or injury that may result from any of their activities, including any breaches of duty or failure to act, as a result of this section.

Section 1002. (a) A safety consultation shall mean a service rendered or being rendered by an insurance carrier to advise and assist a policyholder, management or an established safety consultant of an employer in the identification, evaluation and control of existing and potential accident and occupational health problems. This service may be delivered in person, by mail or by telephone, commensurate with the nature of the risk.

(b) Safety consultive services may include the following:

(1) On-site surveys and subsequent evaluation of exposures relative to employes, material, equipment, processes and facilities.

(2) Recommendations to policyholders with reference to the control of exposures to occupational accident, injury and/or illness.

(3) Training aids, programs and materials made available when these assist in the control of exposures.

(4) Consultations and advice relative to risk, exposures and experience in the policyholder's business.

(5) Accident analysis to include a review of reported accidents to determine causes and trends.

(6) Industrial hygiene service for the recognition and evaluation of chemical, physical, biological and ergonomic exposures.

Section 1003. (a) (1) A safety consultant shall be a graduate of a four-year accredited degree program, but experience in safety engineering or occupational health may be substituted on a year-for-year basis for the required college training.

(2) Persons who do not meet the qualifications set forth in paragraph (1) may perform safety consultative services when working under the supervision of a qualified safety consultant.

(b) A consultant shall stay current with the advances in the occupational safety and health field and in government regulations, and is encouraged to attend, either in-house training and education programs or outside conferences, seminars or education courses.

Section 1004. (a) The insurance carrier shall notify each policyholder or employer of the type of safety consultive services available and the address of the location where these services can be requested. The notice shall also remind management of their responsibility under applicable Federal and State law to assure safe and healthful working conditions for all employes.

(b) The specific services to be utilized shall be within the discretion of the insurer, but shall include consideration of hazard, loss experience and size of policyholder operations.

Section 1005. The insurer shall establish a system of priorities to use in responding to requests for work-site consultive services, giving first priority to employers that have an unreasonably high actual or potential loss experience. Within thirty days of receipt of a request, contact should be made with management to arrange for provision of needed services.

Section 1006. (a) Following completion of a requested on-site consultive visit, a report should be furnished to the policyholder or employer. The report should indicate the purpose of the visit, a summary of the findings, recommendations developed and reaction of management.

(b) A record of all requests for consultive service and action taken in response thereto should be maintained at the carrier office for a minimum of eighteen months.

Section 1007. (a) An insurance carrier shall have available adequate facilities and field representatives to provide safety consultive services. The number of consultants should be commensurate to the hazards, loss experience and size of the policyholder's business.

(b) Private consultants may be used by insurance carriers who do not have in their employ consultants to provide the required safety consultive services. The insurance carriers shall duly inform their policyholders of available services in the same manner as if the consultants are in their employ. All rules for consultant qualifications, available services, response and reporting shall apply.

Section 1008. The insurer shall submit to the department the following:

(1) The name of insurer.

(2) The business address and telephone number in the state where consultive service may be required.

(3) A description of the consultive services to be available.

(4) The method to be used to deliver the consultive service.

(5) The qualifications of the consultive staff including staff training programs.

(6) The specialized technical and professional services that will be available for use in the consultive program.

(7) The name and business address of any private consultants or independent contractors who will provide the required service for the insurer.

(8) The method of the timetable for notification of available services to policyholders.

ARTICLE XI
INSURANCE FRAUD

Section 1101. The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Attorney" means an individual admitted by the Pennsylvania Supreme Court to practice law in this Commonwealth.

"Health care professional" means a person licensed or certified pursuant to law to perform health care activities.

"Insurance claim" means a claim for payment or other benefits pursuant to an insurance policy or agreement for coverage of health or hospital services.

"Insurance policy" means a document setting forth the terms and conditions of a contract of insurance or agreement for the coverage of health or hospital services.

"Insurer" means a company, association or exchange defined by section 101 of the Insurance Company Law of 1921; an unincorporated association of underwriting members; a hospital plan corporation; a professional health services plan corporation; a health maintenance organization; a fraternal benefit society; and a self-insured health care entity under the act of October 15, 1975 (P.L.390, No.111), known as the "Health Care Services Malpractice Act."

"Person" means an individual, corporation, partnership, association, joint-stock company, trust or unincorporated organization. The term includes any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, beneficial association and any other legal entity engaged or proposing to become engaged, either directly or indirectly, in the business of insurance, including agents, brokers, adjusters and health care plans as defined in 40 Pa.C.S. Chs. 61 (relating to hospital plan corporations), 63

(relating to professional health services plan corporations), 65 (relating to fraternal benefit societies) and 67 (relating to beneficial societies) and the act of December 29, 1972 (P.L.1701, No.364), known as the "Health Maintenance Organization Act." For purposes of this article, health care plans, fraternal benefit societies and beneficial societies shall be deemed to be engaged in the business of insurance.

"Statement" means any oral or written presentation or other evidence of loss, injury or expense, including, but not limited to, any notice, statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or doctor records, X-ray, test result or computer-generated documents.

Section 1102. A person commits an offense if the person does any of the following:

(1) Knowingly and with the intent to defraud a State or local government agency files, presents or causes to be filed with or presented to the government agency a document that contains false, incomplete or misleading information concerning any fact or thing material to the agency's determination in approving or disapproving a workers' compensation insurance rate filing, a workers' compensation transaction or other workers' compensation insurance action which is required or filed in response to an agency's request.

(2) Knowingly and with the intent to defraud any insurer, presents or causes to be presented to any insurer any statement forming a part of, or in support of, a workers' compensation insurance claim that contains any false, incomplete or misleading information concerning any fact or thing material to the workers' compensation insurance claim.

(3) Knowingly and with the intent to defraud any insurer, assists, abets, solicits or conspires with another to prepare or make any statement that is intended to be presented to any insurer in connection with, or in support of, a workers' compensation insurance claim that contains any false, incomplete or misleading information concerning any fact or thing material to the workers' compensation insurance claim.

(4) Engages in unlicensed agent or broker activity as defined by the act of May 17, 1921 (P.L.789, No.285), known as "The Insurance Department Act of one thousand nine hundred and twenty-one," knowingly and with the intent to defraud an insurer or the public.

(5) Knowingly benefits, directly or indirectly, from the proceeds derived from a violation of this section due to the assistance, conspiracy or urging of any person.

(6) Is the owner, administrator or employe of any health care facility and knowingly allows the use of such facility by any person in furtherance of a scheme or conspiracy to violate any of the provisions of this article.

(7) Knowingly assists, abets, solicits or conspires with any person who engages in an unlawful act under this section.

(8) Makes or causes to be made any knowingly false or fraudulent statement with regard to entitlement to benefits with the intent to discourage an injured worker from claiming benefits or pursuing a claim.

Section 1103. (a) A lawyer may not compensate or give anything of value to a nonlawyer to recommend or secure employment by a client or as a reward for having made a recommendation resulting in employment by a client; except that the lawyer may pay:

(1) the reasonable cost of advertising or written communication as permitted by the rules of professional conduct; or

(2) the usual charges of a not-for-profit lawyer referral service or other legal service organization.

Upon a conviction of an offense under this clause, the prosecutor shall certify the conviction to the disciplinary board of the Supreme Court for appropriate action, including suspension or disbarment.

(b) With respect to an insurance benefit or claim, a health care provider may not compensate or give anything of value to a person to recommend or secure the provider's service to or employment by a patient or as a reward for having made a recommendation resulting in the provider's service to or employment by a patient; except that the provider may pay the reasonable cost of advertising or written communication as permitted by rules of professional conduct. Upon a conviction of an offense under this clause, the prosecutor shall certify the conviction to the appropriate licensing board in the Department of State which shall suspend or revoke the health care provider's license.

(c) A lawyer or health care provider may not compensate or give anything of value to a person for providing names, addresses, telephone numbers or other identifying information of individuals seeking or receiving medical or rehabilitative care for accident, sickness or disease, except to the extent a referral and receipt of compensation is permitted under applicable professional rules of conduct. A person may not knowingly transmit such referral information to a lawyer or health care professional for the purpose of receiving compensation or anything of value. Attempts to circumvent this clause through use of any other person, including, but not limited to, employes, agents or servants, shall also be prohibited.

Section 1104. If an insurance claim is made by means of computer billing tapes or other electronic means, it shall be a rebuttable presumption that the person knowingly made the claim if the person has advised the insurer in writing that claims will be submitted by use of computer billing tapes or other electronic means.

Section 1105. (a) A person who violates section 1102 shall be guilty of a felony of the third degree, and, upon conviction thereof, shall be sentenced to pay a fine of not more than fifty thousand dollars or double the value of the fraud, or to undergo imprisonment for a period of not more than seven years, or both.

(b) A person who violates section 1103 shall be guilty of a misdemeanor of the first degree, and, upon conviction thereof, shall be sentenced to pay a fine of not more than twenty thousand dollars ($20,000) or double the amount of the fraud, or both.

(c) A health care professional or lawyer who is guilty of an offense under section 1102 while acting on behalf of others shall be subject to disciplinary action, including suspension or revocation of a license or certificate or recommendation for disbarment to the Supreme Court.

Section 1106. The court may, in addition to any other sentence authorized by law, sentence a person convicted of violating this section to make restitution under 18 Pa.C.S § 1106 (relating to restitution for injuries to person or property).

Section 1107. An insurer and any agent, servant or employe thereof acting in the course and scope of his employment, and the division, acting pursuant to section 1206, shall be immune from civil or criminal liability arising from the supply or release of written or oral information to any entity duly authorized to receive such information by Federal or State law, or by Insurance Department regulations, only if the information is supplied to the agency in connection with an allegation of fraudulent conduct on the part of any person relating to a violation of this article.

Section 1108. Nothing in this article shall be construed to prohibit any conduct by an attorney or law firm which is expressly permitted by the Rules of Professional Conduct of the Supreme Court or prohibit any conduct by a health care professional which is expressly permitted by law or regulation.

Section 1109. (a) The district attorneys of the several counties shall have authority to investigate and to institute criminal proceedings for any violation of this article.

(b) In addition to the authority conferred upon the Attorney General by the act of October 15, 1980 (P.L.950, No.164), known as the "Commonwealth Attorneys Act," the Attorney General shall have the authority to investigate and to institute criminal

proceedings for any violation of this section or any series of such violations involving more than one county of this Commonwealth or involving any county of this Commonwealth and another state. No person charged with a violation of this article by the Attorney General shall have standing to challenge the authority of the Attorney General to investigate or prosecute the case, and, if any such challenge is made, the challenge shall be dismissed and no relief shall be available in the courts of the Commonwealth to the person making the challenge.

Section 1110. Nothing contained in this article shall be construed to limit the regulatory or investigative authority of any department or agency of the Commonwealth whose functions might relate to persons, enterprises or matters falling within the scope of this article.

ARTICLE XII
FRAUD ENFORCEMENT

Section 1201. The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Commissioner" means the Insurance Commissioner of the Commonwealth.

"Department" means the Insurance Department of the Commonwealth.

"Division" means the Workers' Compensation Fraud Enforcement Division established in section 1202.

Section 1202. (a) There is established within the department a Workers' Compensation Fraud Enforcement Division to enforce the provisions of Article XI and to administer the provisions of this article.

(b) If, by its own inquiries or as a result of complaints, the division has reason to believe that a person has engaged in or is engaging in an act or practice that violates Article XI, the division may make those investigations within or outside this Commonwealth that it deems necessary to determine whether any person has violated or is about to violate any provision of Article XI, or to aid in the enforcement of this article, and may publish information concerning any violation of either article.

(c) For the purposes of an investigation under this article, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the commissioner deems relevant or material to the inquiry.

(d) If any matter which the division seeks to obtain by request is located outside this Commonwealth, the person so requested may make it available to the division or its representative to be examined at the place where it is located. The division may designate representatives, including officials of the state in which the matter is located, to inspect the matter on its behalf, and the division may respond to similar requests from officials of other states.

(e) Except as provided in clause (f), the department's papers, documents, reports or evidence relative to the subject of investigation under this section shall not be subject to public inspection for as long a period as the commissioner deems reasonably necessary to complete the investigation, to protect the person investigated from unwarranted injury or to serve the public interest. Such papers, documents, reports or evidence shall not be subject to subpoena or subpoena duces tecum until opened for public inspection by the commissioner and a hearing, unless the commissioner otherwise consents or, after notice to the commissioner and a hearing, the Commonwealth Court determines that the public interest and any ongoing investigation by the commissioner would not be unnecessarily jeopardized by compliance with the subpoena duces tecum.

(f) The division shall furnish all papers, documents, reports, complaints or other facts or evidence to any police, sheriff or other law enforcement agency or governmental entity duly authorized to receive such information, when so requested, and shall assist and cooperate with those agencies.

(g) The commissioner shall ensure that the division aggressively pursues all reported incidents of probable workers' compensation fraud, as defined in Article XI, and forward to the appropriate disciplinary body the names, along with all supporting evidence, of individuals licensed under the laws of this Commonwealth suspected of actively engaging in fraudulent activity. The division shall report to the commissioner any insurer suspected of actively engaging in the fraudulent denial of claims.

Section 1203. (a) To fund the investigation and prosecution of workers' compensation fraud there shall be an annual assessment, payable in each fiscal year in which the assessment is made, on insurers and self-insurers under this act. The commissioner shall make the assessment and collect moneys based on the ratio that such insurer's or self-insurer's payments of compensation bear to the total compensation paid in the preceding calendar year in which the assessment is made. The assessment shall be made in accordance with the following provisions:

(1) The aggregate amount of the assessment shall be determined by the commissioner or his designees, pursuant to paragraphs (3), (4) and (5).

(2) The amount collected, together with the fines collected for violations of the unlawful acts enumerated in Article XI shall be deposited in the Workers' Compensation Fraud Enforcement Account, which is hereby created as a restricted account, separate and apart from all other public moneys or funds of the Commonwealth, for use in carrying out the provisions of this act.

(3) Any funds not expended in the fiscal year for which they have been assessed shall be applied to satisfy, for the immediately following fiscal year, the minimum total amount required by paragraph (4) and thereby reduce the annual assessment by the commissioner.

(4) For the 1992-1993 fiscal year the total amount of revenue derived from the annual assessment pursuant to this clause shall, together with the total funds collected pursuant to fines imposed for unlawful acts enumerated in Article XI, not be less than two million dollars and not more than three million dollars.

(5) In subsequent fiscal years the total revenue derived from the assessments shall not increase by a greater percentage than the annual percentage increase in the Consumer Price Index for all Urban Wage Earners during the prior calendar year, as certified by the commissioner as of June 30 of the fiscal year in which the new assessment is to be made.

(6) After incidental expenses, sixty per centum of the funds to be used for the purposes of this section shall be provided to the division for investigative work, and forty per centum of the funds shall be distributed to district attorneys, pursuant to a determination by the commissioner as to the most effective distribution of moneys for purposes of the investigation and prosecution of workers' compensation insurance fraud cases. The commissioner shall consider population and historical incident of insurance fraud when awarding money to district attorneys.

(b) Each district attorney desiring a portion of the funds shall submit to the division a plan detailing his projected use of any moneys which may be provided. The plan shall include a detailed accounting of assessed funds received and expended in prior years, including at a minimum:

(1) the amount of funds received and expended;

(2) the uses to which those funds were put, including payment of salaries and expenses, purchase of equipment and supplies and other expenditures by type;

(3) result achieved as a consequence of expenditures made, including the number of investigations, arrests, indictments, convictions and the amounts originally claimed in cases prosecuted compared to payment actually made in those cases; and

(4) other relevant information which the division may reasonably require. The plan shall be submitted within ninety days of the deadline established by the division.

(c) Any district attorney receiving funds under this section shall submit an annual report to the division regarding the success of their efforts.

(d) Documents required under this section shall be public records.

Section 1204. The commissioner shall annually compile and report to the General Assembly on or before March 1 the following information for the previous fiscal year:

(1) The number of cases reported to the division.

(2) The number of cases rejected for which an investigation was not initiated by the division due to insufficient evidence to proceed, and the number of reported cases rejected for which an investigation was not initiated by the division due to any other reason.

(3) The number of cases that were prosecuted in cooperation with Commonwealth licensing agencies.

(4) The number of cases prosecuted using funds received under Article XI.

(5) An estimate of the economic value of insurance fraud by type of insurance fraud.

(6) Recommendations on ways insurance fraud may be reduced.

(7) A summary of the division's activities aimed at reducing fraud in conjunction with other law enforcement agencies.

(8) A summary of the division's activities with respect to the reduction of fraudulent denials and payment of compensation.

Section 1205. Within existing resources, insurers licensed to sell workers' compensation insurance in this Commonwealth and self-insured employers and professional associations shall designate employes to investigate and report to the division regarding possible fraudulent activities relating to workers' compensation insurance. The employes shall actively cooperate with the division in its investigations.

Section 1206. (a) The division shall maintain and operate a depository data base containing concluded and current fraudulent claims investigations. The data contained shall be limited to information which the commissioner determines is necessary for the aggressive and effective investigation and monitoring of workers' compensation insurance fraud claims.

(b) Upon written request to an insurer by an authorized governmental agency, an insurer or agent authorized by the insurer to act on its behalf shall release to the division all relevant information deemed important to the division by the commissioner relating to any specific workers' compensation fraud investigation.

(c) (1) When an insurer knows or reasonably knows the identity of a person who it has reason to believe committed a fraudulent act relating to a workers' compensation insurance claim or has knowledge of a fraudulent act which is reasonably believed not to have been reported to an authorized agency, the insurer or its agent shall notify the local district attorney and the division. The insurer shall state in its notice the basis of its knowledge or reasonable belief.

(2) (i) The division shall provide written notification that the notice has been filed to all persons who are implicated in the notice.

(ii) The notification shall include the basis of the notice.

(iii) The division shall provide all persons who are implicated in the notice with an opportunity to present exculpatory evidence.

(d) An insurer providing information to an authorized governmental agency pursuant to this section shall provide the information within a reasonable time, but no later than thirty days after the date on which the duty to report arose.

(e) (1) Any information acquired pursuant to this article shall not be part of the public record. Except as otherwise provided by law, any authorized governmental agency, insurer or agent which receives any information furnished pursuant to this article shall not release that information to any person not authorized to receive the information under this article. A person who violates this clause is guilty of a misdemeanor of the third degree.

(2) The evidence or information described in this section shall be privileged and shall not be subject to subpoena or subpoena duces tecum in a civil or criminal proceeding, unless, after reasonable notice to any insurer, an agent or authorized governmental agency which has an interest in the information, and a hearing, the court determines that the public interest and any ongoing investigation by the authorized governmental agency, insurer or agent, will not be jeopardized by its disclosure or by the issuance of and compliance with a subpoena or subpoena duces tecum.

(3) No insurer, or agent authorized by an insurer to act on its behalf, who furnishes information, written or oral, pursuant to this article, and no authorized governmental agency or its employes who furnish or receive information, written or oral, pursuant to this article or assists in any investigation of a suspected violation of Article XI conducted by an authorized governmental agency shall be subject to any civil liability in a cause or action of any kind arising from the submission of information pursuant to this article where the insurer, authorized agent or authorized governmental agency acts in good faith, without malice, and reasonably believes that the action taken was warranted by the then-known facts, obtained by reasonable efforts. Nothing in this article is intended to, nor does in any way or manner, abrogate or lessen the existing common law or statutory privileges and immunities of an insurer or agent authorized by the insurer to act on its behalf, or any authorized governmental agency or its employes.

(4) The department shall provide access for the Majority Chairmen and the Minority Chairmen of the Appropriations Committee and the Banking and Insurance Committee of the Senate and the Majority Chairmen and the Minority Chairmen of the Appropriations Committee and the Insurance Committee of the House of Representatives to the depository data base for purposes consistent with this article.

Section 1207. This article shall expire on January 31, 1995, unless extended by the General Assembly.

Section 23. Notwithstanding any other provision of law to the contrary, regulations promulgated under the authority of section 306(f.1)(3)(ii) of the act, as amended by this act, shall not be subject to the provisions of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, or the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

Section 24. In order to provide an efficient implementation of this act and to assure fair and equitable treatment of insurers and insureds, any rate requests filed with the Insurance Department and pending as of the effective date of Article VII of this act are hereby disapproved as being in conflict with this act. Each rating organization shall, within 30 days of the effective date of Article VII of this act, refile rates to be used for new and renewal policies for workers' compensation insurance with effective dates after January 1, 1992 and prior to 60 days after the effective date of Article VII of this act. Such filings shall be subject to approval or disapproval by the Insurance Commissioner pursuant to section 654 of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921. Each rating organization shall also file, within 30 days of the effective date of Article VII of this act, a loss cost filing pursuant to section 709(c) of Article VII of this act for new and renewal policies for workers' compensation insurance, with effective dates on and after 60 days after the effective date of Article VII of this act. The hearing record and briefs of any rate filings disapproved pursuant to this section shall be part of the record of any rate filing required by this section.

Section 25. (a) The following act and parts of acts are repealed:

Section 654 of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921.

75 Pa.C.S. §§ 1735 and 1737.

(b) The provisions of 75 Pa.C.S. §§ 1720 and 1722 are repealed insofar as they relate to workers' compensation payments or other benefits under the Workers' Compensation Act.

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

Section 26. This act shall take effect as follows:

(1) Articles VIII and IX of the act shall take effect in 120 days.

(2) Article VII of the act shall take effect immediately.

(3) Section 25(a) of this act shall take effect January 1, 1993.

(4) This section shall take effect immediately.

(5) The remainder of this act shall take effect in 60 days.

On the question,

Will the Senate agree to the amendment?

Senator MELLOW. Mr. President, I offer the amendment on behalf of myself and the gentleman from Bradford, Senator Madigan. It is a compilation of a number of different ideas, Mr. President, that we have been dealing with since December of last year. It is an amendment that takes into consideration the very strong debate that took place on the floor of this Senate back in May when we finally passed House Bill No. 2140 with a bipartisan vote and sent it on to the House for their continued discussion. It is a blueprint, Mr. President, of what many people in this great State of ours think will be good for not only the working men and women of Pennsylvania but will be equally as good, Mr. President, for those companies for which the men and women in Pennsylvania work.

Mr. President, it is the end result of a discussion that we have had with Members on both sides of the aisle, both House Members and Members in the Senate, both Democrat and Republican. And also, Mr. President, it deals with a discussion that we have had with the administration.

Also, to the surprise of a lot of people, Mr. President, it deals with discussions that I know I have personally had, and I think Senator Madigan has had the same, with individuals who represent organized labor in this great State of ours, because there are many people who are in that position, not only rank and file but many of the officers who represent organized labor, who have told us over and over and over again that if we in Pennsylvania are going to go ahead and we are going to try to maintain a competitive edge, if we are going to go ahead, Mr. President, and deal with our competition, which is not only the States of New York and New Jersey and Ohio and Delaware but also the States of North Carolina and South Carolina and Florida and the Sunbelt and, Mr. President, the West, then we have to do something. We have to take a look at our workmen's compensation cost, how we can better write the law, how we can better go ahead and protect the worker but at the same time keep Pennsylvania as a very competitive State.

Mr. President, I listened last week with much interest and concern to the debate that took place in the House of Representatives. I am kind of sorry that it took almost five weeks before the House decided to take up House Bill No. 2140 as it had passed the Senate, but, thank God, on Tuesday of last week they did take up the proposal, and I listened to the discussion.

Mr. President, the discussion of those people who asked for a negative vote was basically established in several different areas. First of all, Mr. President, there was some concern about the very tough fraud provision that is in the proposal in the establishment of a department of fraud, and at least on one occasion I heard one member of the administration say that this particular proposal would come at the worst time because it was an additional cost to the taxpayer of Pennsylvania by having to appropriate money.

Mr. President, the fraud provision that we had in the proposal was a cost to the people of Pennsylvania who pay insurance costs because, in fact, what it was was a credit that would have to be given to the Commonwealth to go ahead and run the fraud division, the bureau, Mr. President, based on a surcharge to insurance companies.

Secondly, Mr. President, we were told, and we were also told on the floor of the Senate, that there was some clarification that was needed as to did this proposal deny a 52-percent rate increase that is currently before the State Insurance Commissioner for her consideration? And we said over and over and over on the floor of this Senate that it did. The same questions, Mr. President, were raised in the debate that took place in the House of Representatives, so we thought it was important in amendment form to address that concern.

Mr. President, there was also some concern that we heard not only in the debate in the Senate but through the administration and in the House of Representatives that dealt with how future rate increases would, in fact, take place. And we continue to say, Mr. President, that once this particular proposal would pass, that the insurance cartel as we currently know it would no longer exist, and that prior approval would be needed before any rate increase could be approved by the Insurance Commissioner, and, Mr. President, all we did in our amendment here was clarify, to go ahead and to specifically spell out in a little further detail how that would happen.

And, finally, Mr. President, we were asked—and we heard the criticism from the administration—to remove language that would stipulate ownership of a coordinated care organization and who, in fact, could organize and could own coordinated care organizations. Mr. President, the amendment that is before you, the comprehensive amendment, includes that particular language that would do it.

Mr. President, there was one other criticism that was given over and over, at least that we have heard, by the opponents of the proposal and some of the debate that took place on the House floor, and that is, there was a feeling that there should be some form of a reinstatement of the minimum benefit that would be paid to a worker. And I, once again, state on the

floor of the Senate today that I think it is unfortunate that in Pennsylvania you can collect more in workers' comp if you are injured on the job than you are collecting in your take-home pay while you are working.

I have had the opportunity over the last five weeks since we passed it in the Senate to talk to a lot of people in my district about this type of proposal. Not one individual with whom I talked could understand how it was possible, how it was conceivably possible that a person who was injured at the workplace could collect more in workers' comp and stay home than they could while they were working. And they asked me, what is the incentive to go back to work?

And further, when I told them one of the areas of objection was that in our proposal you also would eliminate the double-dipping provision, and you would only eliminate it in one particular area, the double-dipping provision as it would deal with unemployment compensation vis-a-vis workers' compensation. Because, Mr. President, I have always been told that in order for you to qualify for unemployment compensation, you have to be available for work and unable to find a job, and therefore you could collect a benefit on your previous employer. In order for you to qualify for workers' compensation, Mr. President, you have to be injured at the workplace, and, therefore, you are not available to go ahead and secure a position because of an injury. And with the exception of a dismemberment of a part of the body, Mr. President, where an award was given to an individual who may have lost a limb, a finger, or what have you, that is the only case in fact where a person would be able to collect both unemployment compensation and workmen's compensation.

I also, just recently, had the opportunity of discussing it with some members of the news media. A member of the news media said to me, well, is it not unfortunate and is it not true that you have taken away from the working men and women in Pennsylvania a benefit by saying you cannot collect workers' compensation and Social Security and a pension? Nothing, Mr. President, could be further from the truth. That was never part of any of the proposals that we put out. It is only rhetoric, Mr. President, that has been presented by those individuals who would not like to see this particular proposal pass.

Mr. President, there is also a pretty good article that appears in a publication that recently came out, and in that publication, Mr. President, it talks about workers' compensation and the experience and how it varies by States. And it talks about, Mr. President, the average weekly premium cost per worker, and it compares all 50 States in the United States. It also talks, Mr. President, about the maximum weekly benefit and it compares all States, and talks about the average insurer profit per premium dollar and it once again goes ahead and compares the States against Pennsylvania. Mr. President, it is really very unfortunate for us to note that when we look at the States that give us competition to attract jobs in Pennsylvania - the State of New York, the State of New Jersey, the States of South Carolina, North Carolina, and Delaware - we find that the cost to the employer to deliver a workmen's compensation benefit is much greater in Pennsylvania than it is in any of these other States.

What we have tried to do with our proposal, Mr. President, we have tried to do in a bipartisan way, we have tried to do with the understanding and the consultation and the respect for the position of each and every individual.

Contrary to what was said, Mr. President, this proposal has not been written with the blood of the working men and women in Pennsylvania, it has been written by the sweat of the working men and women in Pennsylvania who work for a living, by the employer in Pennsylvania and the sweat of the employer, Mr. President, who wants to provide a good workplace in Pennsylvania, and by the individuals in this Chamber and in the House of Representatives who think it is extremely important to try to make Pennsylvania a good place in which we can do business for both the working men and women and the employer in Pennsylvania.

This, Mr. President, is a composite of ideas; a meeting of the minds, if you will. It is a matter of people coming together and compromising on a number of very difficult and very important issues. And if we are going to go ahead and we are going to give the right message to the 12 million people who live in Pennsylvania, if we are going to give the proper message to the employer of Pennsylvania who makes it possible for those men and women to work, and if we are going to go ahead especially to small business and tell small business that we want to keep you in this State, that we want to make you as competitive in this State as any other State and offer you a competitive atmosphere, then, Mr. President, this is an extremely viable and very important piece of legislation whose time has come.

It has been 20 years since we have had any type of reform taking place in workers' compensation. I venture to say it will be another 15 years, Mr. President, before we will consider another workers' compensation proposal as comprehensive as this proposal is, and this, my good friends and my dear Members and colleagues, is a blueprint for what we can do in Pennsylvania to protect and to guarantee the needs of the working men and women and to also guarantee that there will be jobs in Pennsylvania so those working men and women can support their families and can give our people in Pennsylvania what, in fact, our people want.

I would ask for an affirmative vote on the amendment.

PARLIAMENTARY INQUIRY

Senator LINCOLN. Mr. President, I rise to a point of information or a parliamentary inquiry.

The PRESIDENT. The gentleman from Fayette, Senator Lincoln, will state it.

Senator LINCOLN. Mr. President, we have before us House Bill No. 2140, to which an amendment is being offered by the gentleman from Lackawanna, Senator Mellow, and the gentleman from Bradford, Senator Madigan. My question is, House Bill No. 2140 in the form that is before us now, is that exactly and precisely the form in which it came to us from the House?

The PRESIDENT. The gentleman is correct.

Senator LINCOLN. Mr. President, there have been no amendments, and when we receded from our amendments we receded from all the amendments, even the ones that may have been offered in committee. We are back to what we got from the House, is that the printer's number we are dealing with? Because it is very important to my debate that I have that established.

The PRESIDENT. The gentleman is correct.

Senator LINCOLN. Thank you very much.

The reason I established that point is because it is important. One, I am not sure why we receded from our amendments and did not go to a conference committee, aside from my belief that this amendment would probably not be accepted by the conferees, where you could get three signatures, of which you need at least two from each body. I believe that this amendment would not be accepted at the conference committee, and I would conclude from that then, extending that logic another step, that the House is not going to accept this amendment if it is sent back to them.

Now, what does that bring us to? That brings us to a point on June 30 where the House of Representatives last night adjourned until September 21, I believe, which means that nothing that we do here today, if we do pass this amendment, is going to happen with respect to particularly one aspect of this, and that is the 52-percent increase which is pending before the Insurance Department. The only way that that particular aspect of this issue can be dealt with is, one, the Insurance Department rules that they feel 12.1 percent is justified rather than 52 percent, and this issue then would go away or would be appealed to the courts by the insurance cartel.

The second thing that we can do, and the most important thing I think right now, is to reject this amendment and pass House Bill No. 2140 in its current form, because that is the only way that anything that we are going to do legislatively will get before the Governor for his signature. It is impossible for this to happen in any other way other than rejecting this amendment and passing House Bill No. 2140 in its current form, which was acceptable to the House and is acceptable to the Governor.

Now, the other thing that I want to try to stress here very briefly is when we hear the conversation about this amendment and the four changes, or whatever, I mean, this is what we are dealing with. I have no idea, to be quite honest with you, what is in this amendment, and I would guess that no one here could tell me with certainty what is in there. They hope, I guess, that it would be right. But there was a problem, evidently, with the amendment that we receded from that was passed here with the four areas where there had to be further clarification, and I am not so certain whether we might not see that happen again with some other things.

And, once again, this amendment does not deal just with those four clarifications. It deals with the objectionable part of this that we debated to a great extent back on May 19, and that would be that we would be removing from the lowest earners in this Commonwealth, men and women who are basically working for $4.25 an hour with no health care benefits, we would be removing from them the opportunity to have workers' compensation coverage.

Now, I hear people talk about my good friends in labor who are saying, well, they really do not have an objection to this and they think it is a great idea to promote business. I have been involved in this as deeply as anyone else, and I can stand before you and tell you that no one from labor has come to me and said, you made a mistake in opposing the Mellow-Madigan amendment.

It is not good for working men and women. It really is not going to make a great deal of difference in the atmosphere of the business climate in Pennsylvania because if anybody can tell me that there is going to be a great deal of savings from removing the lowest earners from the commitment that business has to workers' comp, then I have missed the point somewhere along the line as to how many people are actually out there working for $4.25 an hour.

I believe that we are shifting from one area to another. We are going to take people out of this stream and put them on welfare, and that is what we have been hearing, the debate about that being such a tremendous problem to begin with.

What we have before us in House Bill No. 2140 does solve the immediate problem for taking care of the so-called crisis in workers' comp. I am not going to get into any further debate on it. I can just say to you that labor does not support this amendment. They did not support the past amendment. I have no letters, I have no communications whatsoever from anyone from labor telling me that they think this is important to the future. In fact, one of the things that I want you to think about is that we were talking about making determinations on how people are treated in the workplace, and the only people whom we are ignoring in this whole process are the men and women who go to work. They are the only ones who are not supportive of this amendment. They are the only ones throughout this whole century who have fought both for unionized and nonunionized workers to have workplace safety, to have coverage, to have the safety net in case somebody gets hurt, and if they fall through the cracks, there is somebody there to catch them if they lose an arm, a leg, or an eye, or lose their capability of working for the rest of their lives. What they receive from workers' comp is the most vital and important thing that we could do for them if they are going to live anywhere near a meaningful life.

So just remember when you read the report that Senator Mellow talked about, it came from a business magazine, and I can tell you that this debate is one that is cut very clearly on the backs of the workers. If you are going to reduce the costs of workers' compensation and you are not going to make the major changes that have been talked about by the Governor, then I suspect that the only place you have to get those savings is from the people who go to work, and they are men and women like you and I who go into the workplace and try to earn a living and try to be helpful, try to be safety conscious, and try to do all the things that they have to do, and I do not believe that we are helping them in any way at all, and I do not think we are helping the business community.

I would ask for a "no" vote on this particular amendment.

Senator AFFLERBACH. Mr. President, I had originally not intended to speak on this bill or on this amendment, but several things have disturbed me about it. The first is that when we ran this particular bill a few weeks ago, it was scheduled as the first roll call of the day, thereby precluding any meaningful debate on the bill at that time, and today I cannot permit the proponent's glamorous description of this amendment to go unchallenged.

I think it is truly unfortunate that the Democratic Floor Leader, the Democratic Chairman of the Committee on Appropriations, and the Democratic Caucus Administrator have all deserted the vast majority of this Caucus to put forth this amendment and to argue for its approval. I know these Senators take that action with a heavy heart. I know that they genuinely believe that this is the correct thing to do, but their belief does not make it the correct thing to do.

What we are dealing with in this amendment are perceptions, and nothing more than perceptions; certainly not reality. There is the perception of a health care cost containment provision in this amendment, but even the proponents admit that this is a snapshot, and I suggest to the Members of this Chamber that a snapshot is not true health care cost containment, it is only the perception of health care cost containment.

We have the perception of workplace safety contained in this amendment through the establishment of an advisory panel. Again, I suggest to the Members of this body that an advisory panel that has no mandate is certainly not anything more than a perception of workplace safety.

We have the perception that in some way or another insurance premiums are going to be at least depressed, if not reduced. But, again, without anything more than perceptions to back up that perception, we simply have a perception built upon a perception built upon a perception, without reality. And perhaps the worst of all perceptions is the idea that we should eliminate the guaranteed weekly minimum benefit because somehow that is debilitating the system.

I happened to have been involved in State government in this legislature in the 1970s when we debated that provision at length. I, as a staff member at that time, did a tremendous amount of research on that particular measure, and I recall that the reason we guaranteed a weekly minimum was to do away with a practice that had become prevalent in Pennsylvania in certain industries known as the economics of expendability, where we had employers in this Commonwealth deliberately hiring untrained individuals off the sidewalk at a very small wage to do a particularly dangerous task that might be completed in a very short period of time. They hired these individuals as part-timers, and if this individual was injured and lost to the employer, at least the employer did not lose a so-called, quote, "valuable," unquote, employee. Furthermore, the employer was not burdened with any minimum weekly benefit to that injured employee.

The economics of expendability is probably one of the greatest travesties perpetrated upon working people in this Commonwealth. We did away with it by establishing a minimum weekly guarantee, because that is one case where a perception worked. Employers quite accurately perceived that they would pay that minimum, whether they hired an untrained, low-wage employee or whether they used a skilled employee who knew what they were doing to perform that dangerous task. And to now suggest that we are going to go back to the economics of expendability and we are now going to provide a window once again for the unscrupulous employer to put at undue risk untrained individuals in this Commonwealth turns my stomach, Mr. President, to think that this Senate would go back into history and re-create that kind of a situation. But that is what this amendment does, because it is all perception. There is a perception that a minimum weekly guarantee is debilitating the system.

I have asked my staff to gather data on that, and no matter where they inquired in this Commonwealth, no matter what agency, what office or what bureau, we have not been able to obtain data on exactly how many claimants are receiving a weekly minimum that exceeds what they were entitled to through their employment, because the problem is so negligible that no one has even kept track of it to provide the data. But, yet, we sell this perception that it is somehow debilitating the system, and we are willing to reestablish the economics of expendability for working people to satisfy that perception.

Mr. President, the appropriate place for this bill was in a conference committee, but it is obvious that the proponents of the bill are intent on having their way, even to the point of manipulating the parliamentary procedure, as had to be done today to do that. I think that is a travesty on Pennsylvania.

I urge a "no" vote on the amendment.

Senator LEWIS. Mr. President, I think there is one additional area that needs to be discussed, hopefully briefly, on top of those that my colleague from Lehigh County, Senator Afflerbach, has just pointed out, and I want to discuss it in the context of the two issues that I think are most unfair to working people in Pennsylvania - the proposed elimination of the minimum benefit, and the extension of the required treatment period with identified physicians from 14 days to 45 days.

In the debate which I heard in support of these proposals, there seems to be a recurring theme that somehow or another these are sensible recommendations because the concept of benefit has taken on an air of a social program. It seems to me that there is a suggestion that we have to do these things because it is the way we would handle any other governmental program which was being made available to people throughout this Commonwealth. And that has concerned me because if we stop for just a moment and think about the root derivations, the bases under which workers' comp has come into existence, we have to be confronted clearly and inescapably with the recognition that workers' compensation is not a social program. In fact, what it is is a contract between workers and employers. It is an agreement that has been reached, a meeting of the minds in which both sides have given up something in order to achieve something else.

And I mention that because in workers' compensation the employees have given up a very, very important and significant common law right, and that is the right to sue for the financial consequences of injuries which may have been the result of the actions of an employer, of someone else, in this case. Let us never forget that under the workers' compensation program in Pennsylvania an employee cannot sue an employer, and the value of that to employers is beyond calculation in terms of its millions, possibly billions, of dollars of savings.

Now, in return, of course, employees have received something as their part of the benefit of that bargain. What they have gained is the right to receive defined benefits without the need to prove fault under a presumably predictable system. Part of what they have obtained, as well, is the right to be assured that there will be a minimum benefit. Some of it has taken on the derivations as explained by the gentleman from Lehigh, Senator Afflerbach. But, most importantly, we need to understand that it was part of the meeting of the minds in which something was given up on one side in return for something to be achieved on the other. And so to now suggest that we are going to take away one of the benefits without in any way restoring some of those important rights that have been given up seems to me to be at the crux of what is wrong with this proposal.

Well, let me view it another way. If there seems to be a compelling reason to eliminate minimum benefits, why do we not apply the same theory and eliminate maximum benefits? If benefits should be related to what your actual income is, on what basis can we conceivably justify a maximum benefit which will fall enormously short in many instances of making an injured employee financially whole? This is particularly egregious, in my opinion, when you realize the financial facts again as described by the two previous speakers with respect to the de minimus amount of savings which will be realized by an elimination of the minimum benefit.

There is another aspect of this, too, which I think has gone unspoken. In most of these instances, if not all of them, where someone is in a minimum benefit context, we are dealing with a part-time employee who is earning minimum wages. It is probably a parent, a spouse who is holding a second job away from the home and who spends some substantial amount of his or her time also providing services in the home for a family. And so an injury which occurs in the workplace, while compensated now under a minimum benefit, which may exceed the actual dollar value that was being earned by that employee, may not even begin to compensate for the inability to perform the other vital functions which were being counted upon by this family back in the home. And so I think for yet a second clear and explicit reason, the attempt to analyze the elimination of a minimum benefit purely in the context of wages earned at the workplace just does not stack up to what the real situation is for those few people who find themselves in this position.

I am struck, additionally, by the fact that, as we talk about the concerns for benefits to the employees, we have failed to tackle what I think is one of the most egregious areas at this time, and that is the area of intentional tort. There was a comment made that we have not attempted to reform workers' comp in nearly 15 years and may not turn our attention to it again for at least that long into the future. There are circumstances occurring in the Commonwealth of Pennsylvania in which employees have been severely injured because of the intentional misconduct of employers. Cases have been taken to the courts, and the Pennsylvania Supreme Court has said clearly and unequivocally that this is a problem which has to be remedied by the legislature of Pennsylvania.

To the best of my knowledge, the amendment that is before us now does not address that subject. And if that is the case, we are continuing, then, to condemn workers all across Pennsylvania to a situation in which they can achieve no financial remuneration for their injuries caused because of the intentional misconduct of employers, and it will occur only because of the failure of this legislature to directly address an issue which has been put squarely in our laps.

Mr. President, there are a number of areas in which this legislature has made progress and which I think the Mellow-Madigan amendment has addressed, including health care cost containment, including some of the practices with regard to the insurance procedures that are currently in place, but to fall victim to what seems to be a common attitude that if changes are going to be made in those areas, then employees also have to give up something, I think, is really in error. This is a contract in which employees have given away too much already, and to ask them, for whatever purpose, to yet take further reductions in their anticipated benefit levels or to not deal with intentional injuries, I think, is misplacing our priorities.

And for those reasons, I would encourage a negative vote.

Senator MELLOW. Mr. President, I guess I kind of find myself in the uncomfortable position of having to debate on the floor two Members of my Caucus for whom I have a tremendous amount of respect and know that the knowledge they have in not only this issue but all the other issues with which we deal is of a high level. However, Mr. President, I think there are areas where we have to point out additional clarification.

First of all, Mr. President, it has been suggested here on the floor that if we go ahead and if we touch the minimum benefit on workers' comp that we will be establishing a program where people will go from workers' comp to public welfare. I never believed, Mr. President, when I voted to reform workers' comp in 1972, and when I cast a vote on May 19 to once again reform what I thought was badly needed work in workers' comp, that I was voting not necessarily to reform workers' comp but, in fact, was voting for a social welfare program, because as people would not receive their minimum that they are getting today, which in this case is more than they were making when they were working, then we would ask that workers' comp would take over where perhaps State government, through a social welfare program, should have, and I question the fact and the possibility of having workers' com-

pensation in Pennsylvania or the employer going ahead and subsidizing some social welfare programs.

I also think, Mr. President, it is extremely important to point out some of the real facts, and some of these facts were pointed out very, very clearly in the debate that took place back in May.

First of all, Mr. President, there is only one other State in the United States that has a higher percentage of individuals who are receiving more than 100 percent of what their pay actually would be, and that is the State of Minnesota. It was suggested by one of the earlier speakers that they have requested information about the number of Pennsylvania employees who are on workers' comp and what percentage were receiving a higher benefit. We can share that with you. In the State of Pennsylvania, 32 percent of the individuals who receive workers' comp receive more than 100 percent of what they were getting when they, in fact, were working. The State of Minnesota has more than that, at 38 percent.

But the important thing when you look at all these, Mr. President, is to go ahead and to compare. Just recently, BMW decided to locate a plant in South Carolina. We are a large manufacturing State, Pennsylvania. It would have been very important to the people in this great State of ours, to the working people in Pennsylvania, and especially to the taxpayer in Pennsylvania, if we could have gone ahead and if we could have recruited that BMW plant to not go to South Carolina but, in fact, to come to this great State of Pennsylvania.

Mr. President, when you look at the workers' compensation wage loss percentage, in not one place do you find the State of South Carolina ranked in the top 20 of any of the issues that we are talking about. Mr. President, there is nobody in the State of South Carolina who, in fact, can receive more in workers' compensation than they could when they were working. Obviously, it is a disincentive. There is no reason to go back to work if you can stay out of work and collect more than when you were working.

Mr. President, I had, within the last several months, a company which came to see me on a referral. The company is from Worthington, Pennsylvania, Mr. President, and from 1985 through 1991 the highest number of employees that they had was 1,104 in 1991. The lowest that they have had, Mr. President, in 1988 was 947. But the figures that they shared with me go back to 1985, so it is the period of time from 1985 to 1991, and you can easily find what the rate increases were in Pennsylvania's workers' compensation during that period of time.

Mr. President, in 1985 this particular company had 1,046 workers. Their cost of workmen's compensation per hour was less than $.50 per person. Their total cost of workmen's compensation was $684,364. Their cost per worker was $654, and the number of injuries that they had, based on 1,046 coworkers or employees, was 244.

Mr. President, in 1991 this same company had 1,104 workers. Their cost per hour was $1.18. Their total cost of workers' compensation in Pennsylvania of payroll was $2,169,053, up $1.5 million since 1985. The cost per worker, Mr. President, was $1,965, up from $654 in 1985. And the number of injuries in that same period of time had decreased from 244 in 1985 to 219 in 1991. Mr. President, I tell you, there is something wrong with the system when a company that is experienced and is rated has to receive such a tremendous increase in their workers' compensation premium in a six-year period of time when the number of incidents of injuries has decreased from 244 injuries to 219 injuries.

Also, Mr. President, I heard expressed on the floor the concern about workplace safety, and, Mr. President, I have as much of a concern about workplace safety as anyone, because if you want to do any type of investigation as to what has taken place on the floor of this Senate and who have been the supporters of organized labor, you are going to find out that the individual who is a comaker of this amendment has had a voting record in 22 years, Mr. President, of 88 percent in favor of the working men and women, as evaluated by the Pennsylvania AFL-CIO. So, no one is more sensitive to the needs of the worker than I am, Mr. President. My family, my grandparents, have been coal miners. My family, in most cases, passed away because of black lung, because of pneumoconiosis, Mr. President, because of problems within the workplace, and there is no one who would want to be and is a better supporter of the working men and women in Pennsylvania than I am. But I think I am a realist, Mr. President, when I understand that maybe the time has come when we have to take a look at some other facts.

It was also suggested on the floor, what would be the rating experience or what guarantee is there that we would have a reduction in insurance premiums if this bill, in fact, is enacted? I had the same question, so what I did was I went ahead through our investigation, and since the rating part of this proposal is modeled after the State of Maryland, I thought where is the best place to go other than the State of Maryland to find out what the experience factor has been in that State? Mr. President, we wrote to the State of Maryland. We wrote to the Department of Licensing and Regulation, the insurance division. They responded back to our request when we asked them if they could tell us what the effect was on their new rating and how it was reflected in workers' comp premiums.

Mr. President, for the effective date of July 1st of 1989, the overall effect was a reduction, if you will, of 7.6 percent to the worker, to the workplace, and to the employer in Maryland. In January of 1989, there was an additional reduction, Mr. President, of 6.2 percent. On January 1st of 1990, the reduction was 8.4 percent, based on the rating mechanism, based on the capping of medical expenses and medical reimbursements. On the effective date of January 1st of 1991, the overall effect of reduction was 5 percent in the State of Maryland. We do not have the figures yet as of January of 1992, but when we get those figures, we will be only too happy to share them with each and every Member of the Senate.

But it was presented, Mr. President, yesterday in a discussion and in debate that there were proponents of this proposal who were prepared to totally do away with workplace safety if

we would agree to one thing - in lieu of workplace safety, there is no law in Pennsylvania on workplace safety, but the amendment that is before us guarantees workplace safety, Mr. President, if we would go ahead and we would reduce premiums by a fixed percentage to the employer in Pennsylvania and do away with workplace safety, that would be something that was acceptable because it would show that those employers in Pennsylvania would be able to receive a reduction, and we categorically said, no, we do not think that is proper. We think that we should maintain a workplace safety provision in the law, and we think that the competitive market is the one that should dictate the reduction in premiums, because we know what the experience has been in the State of Maryland.

Mr. President, this is an extremely emotional debate, and we could go on and on and on. And unfortunately, it is the kind of debate that goes ahead and divides across party lines, and, in fact, even divides Members of this body with the same philosophy on the same political side who have great differences of opinion. But I think it is time that we must do something to restore our faith and to show that, yes, we, the elected officials in Pennsylvania, understand what the problems are of the working men and women, and, yes, we understand what the problems are of the employer in Pennsylvania.

My background is in accounting. I know what has taken place over the last year with small business. I know how small businesses have paid, in my opinion, a disproportionate share of the tax increase that we imposed on them last year, but we had no choice. I do not stand before you saying that I made the wrong vote, because at that point in time we had no choice but to make the right vote. But we now have the opportunity to show small business especially, those businesses that are not rated by the Compensation Rating Bureau, that we can do things to help you out, that we can establish a new form of rating, that we can go ahead and we can cap costs, and we can also do things that will make Pennsylvania more competitive.

I think it is incumbent upon each and every one of us in a bipartisan basis that we do the best that we can to pass this type of proposal and give a positive signal to the people of this State.

Senator BORTNER. Mr. President, I did not intend to speak on this issue, but as the debate has developed, I think it is important to clarify my position on this issue and I hope, perhaps, even the position of some other Members of my Caucus.

Several weeks ago, I joined the majority of the Members of this body of my colleagues in supporting an amendment offered by the gentleman from Lackawanna, Senator Mellow, and the gentleman from Bradford, Senator Madigan, and then a bill dealing with workers' compensation reform. I did it at that time not thinking that it was a perfect solution or a perfect bill, but I felt it was the right thing to do at that time, the right thing to do if we are to advance the cause of workers' compensation reform. I do not think that is the right thing to do today, and I do not intend to do that. And that may be viewed by some as a change in position, and it may be viewed as inconsistent. I happen to think that it is consistent.

When I supported that amendment and legislation several weeks ago, I did it because I felt that we had to move along the process to deal with workers' compensation reform. We had a bill in this Chamber for about six months. There had been ongoing negotiations, I believe, involving the interest groups, as well as the Governor's Office, both sides of this aisle, and I felt that we had the best that we could do. And I believed that as part of this legislative process that the best thing we could do was to send a bill to the House. That is the legislative process. That is the way it works. And so, with some reservations, I voted with the majority of the Members here to do that. And at the time I expected when that bill went to the House that if a consensus could be developed around that legislation, we would have passed some workers' compensation reform, and if it did not, as is also part of the process, this would eventually go into a conference committee where we deal with these important and controversial issues where there are serious differences of opinion.

What we are doing today, in my opinion, is not advancing that process. In fact, I believe we are subverting the process. What can we expect to accomplish today? The House is gone. Most of those Members are either back home or on their way back home. We are sending them a piece of legislation that is very similar, I will admit different, but very similar in important aspects to a bill that we sent them and with which they nonconcurred. All we are doing today is satisfying, in my opinion, a few egos and a few lobbyists who can claim a victory.

If we want to deal with the issue of workers' comp, we should do what we did with another important and controversial issue that has been kicked around this legislature the past few months. Earlier this week, Senate Bill No. 727 came out of a conference committee. When it went to a conference committee, many people predicted that would be the end of the issue of school strikes. I had hoped that was not the case. I was not entirely satisfied with the product of that conference committee, but I believe that the Members of that committee did the best thing they could.

I commend the Members of this body, Senator Madigan and Senator Mellow, for working very, very hard to try to reach some agreement on workers' compensation reform. We did the best thing that we could here. I believe that the time is now to do what we did with that other controversial issue - send it to a conference committee. I do not believe it is too late to do that. I believe that we can vote "no" on this amendment and vote "no" on this bill and still send that other bill to a conference committee. The House is still technically in Session, I believe. They can appoint conferees. We can appoint conferees. I do not know how long it would take to reach an agreement. I will be available this summer. I suspect other Members of this body would, too.

Let us try to do the right thing. Let us try to pass a good bill. Let us work through the legislative process and give the workers and business something that they deserve, some true workers' compensation reform.

Thank you.

Senator PECORA. Mr. President, I would appreciate it if the gentleman from Lackawanna, Senator Mellow, would stand for interrogation.

The PRESIDENT. Will the gentleman from Lackawanna, Senator Mellow, permit himself to be interrogated?

Senator MELLOW. I will, Mr. President.

Senator PECORA. Mr. President, does the gentleman realize that the working people of Pennsylvania have given up their rights to sue in a negotiated agreement set forth by this body to receive the benefits that they are receiving today that he is attempting to eliminate from them?

Senator MELLOW. First of all, Mr. President, we are not attempting to eliminate any benefits from the working men and women, and I do realize that many, many years ago when the Workers' Compensation Law was passed in this State that the worker gave up his or her right to sue, thereby establishing the workers' compensation program. I concur with that. I think the workers' compensation program is a good program. It has worked to the benefit of the employee in Pennsylvania. It has worked, to a certain extent, to the benefit of the employer, but now is the time that something has to be done to change it.

If the gentleman is advocating that perhaps we should do away with workers' compensation and allow the worker the right to sue, then perhaps he should offer that amendment on the floor of the Senate and see what would take place. But I do not concur at all with his statement that we are going ahead and we are depriving the working men and women of their compensation rights and benefits.

Senator PECORA. Mr. President, somehow he misunderstood my question. He got into eliminating workmen's compensation and other proposals. I asked him a simple question, Mr. President, not for a speech.

Mr. President, blaming the people of Pennsylvania, the 15 percent of the work force who receive minimum wage, to eliminate their benefits to an extent there that is unbelievable, Mr. President, I do not understand how he is helping the 15 percent of Pennsylvanians who are on minimum wage. Can he please explain it to me?

Senator MELLOW. Mr. President, I was called to the phone, and if the gentleman would restate his question, I would be only too happy to try to answer it.

Senator PECORA. Mr. President, 15 percent of the work force in Pennsylvania have minimum wage jobs. It is $4.25, average. How does this amendment help them when you are lowering their benefit or eliminating it?

Senator MELLOW. Mr. President, I believe that the gentleman voted against the minimum wage more than once on the floor of this Senate and therefore does not really have much consideration for what the minimum salary is that is paid to an individual, and it is kind of hard for me to understand how he was opposed to minimum wage before and is now talking about minimum wage. But this bill does not deal with people who are earning minimum wage, because a person, Mr. President, who is earning minimum wage and who is working full-time, working 40 hours a week, basically would not come under this proposal. We are really dealing here with individuals, Mr. President, who are working part-time, and, in fact, by working a part-time position may, in fact, be earning less than what they would have been paid at a minimum benefit. But, for the most part, most people who are being paid minimum wage would, in fact, not come under the minimum benefit of this proposal.

Senator PECORA. Mr. President, somehow or another he goes into a long, lengthy speech about my vote on minimum wage. It was a negotiated vote, and I voted "yes" for the minimum wage.

Now, this is not a political event. I am serious. I am concerned about the people of Pennsylvania. Industry usually hires part-time employees to avoid these benefits, but they have more people working 20, 30, or 36 hours a week and they evade the need to give them benefits, so we are not getting into that. I asked the gentleman to explain how they would benefit, Mr. President, not to give me a speech on my previous votes.

Now, if the gentleman will please explain how they benefit and how he protects them from the injustices or negligence of their employers who provide for them if they get injured on the job. They cannot sue, but he is guaranteeing that they would never have any coverage through this amendment.

Senator MELLOW. Mr. President, I really do not know what the gentleman's question is, except that he tried to justify why he voted against minimum wage, and I do not think there is any justification to vote against minimum wage on behalf of anyone. I mean, you talk about the ultimate insult to the working men and women, it is a vote not to pay them a minimum wage which is less than $5 per hour. I think that is really unfortunate.

When you talk about a negotiated compromise, that is exactly what this is, Mr. President, it is a negotiated compromise. The negotiated compromise states that you shall be eligible for 66 2/3 percent of what your wage is, and it has been done through negotiation. People who basically—and I will repeat it in case he does not understand it—have earned a minimum wage and are working full-time at that particular position would receive 66 2/3 percent of what their salary is. In most cases, that would be extremely close to what the minimum is today. So, I really do not know what the gentleman's question is. If he wants to be more specific, I will try to answer his questions.

The PRESIDENT. Senator Pecora, have you completed your interrogation?

Senator PECORA. Thank you, Mr. President. I have not completed it yet.

It seems that the gentleman on the other side of the aisle is incapable of understanding a question. He keeps referring to a vote that I made against his minimum wage bill, but he does not bring to your attention my "yes" vote for the minimum wage for our people of Pennsylvania. He keeps evading the question that they will only receive 66-point-some percent of their income if the negligence is on the employer, where he has

no right to sue but only receives 66 percent of his income. Why should he not receive his full income? He does not lose his obligation to pay his bills. He does not lose his obligation to feed his family. This gentleman on the other side of the aisle is diverting from the true question and the facts of what he is doing to the people of our great Commonwealth.

Now, if he can answer that question, how you cut my pay 44 percent and tell me that you are helping me to pay my obligations to my family and other bills that I may have. His figures do not make sense, Mr. President. It gives the impression that he is trying to double-talk the people of Pennsylvania and using his past voting record—

POINT OF ORDER

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

The PRESIDENT. The gentleman from Fayette, Senator Lincoln, will state it.

Senator LINCOLN. Mr. President, I do not believe that simply because the Minority Leader is part of this debate that that type of rhetoric should be allowed to be put into the record. Even though I am arguing this point from a different perspective than the gentleman from Lackawanna, Senator Mellow, I think to question his integrity or his motives is wrong for anybody to do at any time, and I would think that the gentleman from Allegheny should understand that he has gone a little bit out of line.

The PRESIDENT. The gentleman's point is well-taken. In fact, it is inappropriate and is against our rules to attack the personalities or the motives of another Member of the Senate, and the Chair would direct the gentleman from Allegheny to restrain himself.

Senator PECORA. Thank you, Mr. President.

Maybe the gentleman from Fayette, Senator Lincoln, can explain to me, if I cut my pay 66 percent, how am I benefiting when I am on workmen's comp? Could either one answer that question?

Senator MELLOW. Mr. President, I guess since I was the one who was interrogated originally, I will respond.

Since Senator Pecora said that I am incapable of doing the job, I guess that I would have to take that into consideration, but when he talks about double-talking, well, that is kind of a tough thing coming from Senator Pecora that I am the one who is doing the double-talking.

Mr. President, I do not think the gentleman totally understands the concept of workers' compensation. I am sure he does not understand the concept of minimum wage, or he would not have voted against it when he did vote against it. It is obvious that he does not understand the concept of—

Senator PECORA. Mr. President, he is out of order. If I am out of order, he is out of order.

POINT OF ORDER

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

The PRESIDENT. The gentleman from Allegheny, Senator Fisher, will state it.

Senator FISHER. Mr. President, I just want to ask the Chair if, in fact, the comments of the gentleman from Lackawanna, Senator Mellow, are not out of order. And as an additional question, maybe to refocus the debate, are we on interrogation or are we on debate?

The PRESIDENT. To answer his final point, the gentleman from Allegheny, Senator Pecora, has not yet completed his interrogation of Senator Mellow. But in answer to the previous point, the gentleman is correct. Senator Mellow was perhaps a little bit more subtle in his approach but equally incorrect in addressing the motivations of another Member, and the Chair would warn Senator Mellow as well.

Senator MELLOW. Mr. President, I had the floor and I did not question the motivations of a Member, I merely stated fact. The gentleman is the one who accused me of being incapable and accused me of double-talking. I did not question his motives, and it is true. The fact is that he did not support a minimum wage, and we are just kind of presenting those on the floor, since he is the one who brought to the debate the discussion with regard to—

POINT OF ORDER

Senator FISHER. Mr. President, I do not think you answered my second point of order. Are we at the stage which is labeled interrogation, or are we at the stage which is labeled debate? I think if it is interrogation, I would ask the Chair to direct both the speakers to pose questions and answer the questions that are before the floor.

The PRESIDENT. The Chair is under the impression that Senator Mellow is in the process of answering an interrogation from Senator Pecora.

Senator MELLOW. I think I have answered, Mr. President.

The PRESIDENT. The Chair thanks the gentleman.

Does the gentleman have any further questions for Senator Mellow?

Senator PECORA. Mr. President, he did not answer the question. He spoke about previous votes. What I said to him, Mr. President, was if I had a minimum wage job and got injured by negligence of my employer, and if I receive 66-point-some percent of my income under workmen's comp benefits, how am I benefiting if I lose 44 percent of my income, Mr. President, or 34 percent of my income?

The PRESIDENT. The Chair is under the impression that Senator Mellow has attempted to answer that and will assume that the gentleman's question is rhetorical.

Senator PECORA. Yes, but, Mr. President, I never received the answer. We are talking about years ago, votes on workmen's comp benefits, or the amount of the minimum wage, really. He never explained to me how, if I lose 34 percent of my income by negligence of my employer, regardless of my job, how do I benefit?

Senator MELLOW. Mr. President, I will merely try to explain to the gentleman once again that the two-thirds is based on your after-tax income. If you would take an individual who is working full-time making minimum wage and you would take their gross salary and take two-thirds of that, that

is what they would receive in workers' comp. If you would take that same individual and you would take their after-tax income, that income would be relatively the same. There is no 34-percent reduction, or 33-percent, or as you said, Senator, 44-percent loss in salary.

The PRESIDENT. Does the gentleman wish to continue the colloquy or to launch into debate?

Senator PECORA. Well, Mr. President, what if I do not make the income that year to be taxable for that amount? Then would I lose 34 percent of my income?

Senator MELLOW. Mr. President, the gentleman has to try to understand that the two-thirds is on your gross salary. If you take your gross salary and you reflect what your deductions would be through payroll deductions, it would kind of reflect somewhere around the same amount of money, or the same percentage, and, therefore, the two-thirds percent of your gross would reflect the same amount of money you are going to get from workers' comp, but in no event, or in no case in this proposal, could you collect more in the minimum than you are actually making under the two-thirds. I hope the gentleman can understand that.

Senator PECORA. Mr. President, If I am single, working a minimum wage job and my income is $1,500 a year, I pay no taxes, Mr. President, but, yet, you are reducing my salary 34 percent if I am injured on the job. So how do I benefit?

Senator MELLOW. Mr. President, I think what the gentleman said is that if he is working and his salary is $1,500 a year, if you would divide that weekly you would find out that person is making somewhere less than $30 in gross wages a week. That same person, under workers' comp law today, would be eligible to collect, if that person were injured, in excess of $156 a week, or if you look at it, basically, five times plus $6 of what the person was making when they actually worked. I think that is exactly what is wrong with the proposal, the current law the way it is, and I think there is no incentive. What would be the incentive for this person who made $1,500 a year, or $30 a week, and is now staying home collecting $156 on workers' comp, what would be the incentive for them to go back to work?

We are simply saying that you should not be able to collect more when you are at home under workers' comp, you should be able to collect the same as when you were working. That is purely and simply what it says. The example the gentleman gives us is an example of collecting $30 a week in your work, or $1,500 a year, and being able to stay home and collect $156 a week, and I, for one, think that is wrong.

Senator PECORA. Mr. President, somehow or other the gentleman on the other side of the aisle does not realize that most minimum wage jobs today are either college students or high school students who work in the summer. $1,500 or $1,200 a year is a lot of money to them. They do not work 52 weeks a year, Mr. President. These are the people he is depriving in this great State. They have to pay, some of them, for their education. Now, how does he arrive at that amount if they are working 52 weeks? He is trying to divert from the truth of what we are doing here. We are voting to prevent these people from receiving any compensation if they are working to further their education or go back to work again. This is very important to the students of our Commonwealth, Mr. President.

How many part-timers does the State have working for them right now with a minimum wage? The turnpike has thousands of them, too, Mr. President. So either get back to the true facts, Mr. President, that all part-timers or minimum wage employees are not working 52 weeks a year. Most of them are high school or college students. Some are senior citizens who do not pay any taxes but they have their senior citizen benefits to supplement them. So, Mr. President, I cannot understand his logic.

Thank you, Mr. President.

Senator LINCOLN. Mr. President, it is going to be very difficult to follow that, but I will make some effort, okay?

I believe there are certain things about this debate that I could not continue to just ignore, even though I had not planned to get too deeply involved. One is there has been a continuation of the perspective that we have to send a message to the business community in Pennsylvania about what we think about them for the future, and I think that is a very dangerous perspective to deal with because if we were interested only in promoting the business interest in this issue, then we would do away almost entirely, or entirely, with workers' comp. But, clear back in 1915, both the working men and women in this State and the business community realized the importance of people having some protection in the workplace, and at that time the worker gave up the right to sue for the kind of protection that has been granted to them over the years, and in some cases it has been negotiated over the years to become a pretty secure safety net for people who go to work in some dangerous positions.

If we were going to use the North Carolina/South Carolina philosophy about what we should be doing, then I think we also have to take into consideration the 25 people who burned to death in the chicken processing plant, and that is part of the perspective that South Carolina and North Carolina have been sending to the people of this country, that if you move your business down there, they are going to allow you to do things that would jeopardize the safety of the people who work in those industries. And there is no other way of looking at it. That is what happens in North Carolina and South Carolina. People get less coverage, they get less protection and less workplace safety because that is the attitude and that is the mind-set.

The worst thing that could happen in this country would be that we would start thinking about making a dollar bill rather than making it healthy and safe for the people whom we represent, and that is basically what the difference is. You are talking about making it cheaper, and the only way you make it cheaper is by taking away from the person who is going to work. There is no other way of doing it. That is the perspective that we are dealing with today.

I believe that there is a manner and a way in which that can be balanced, where you can protect the men and women who

go to work and you can protect the employer, and I do not ever want Pennsylvania to think and act and do like North and South Carolina. Never, ever, ever, do I want to see that, not only as long as I am in public office but as long as I am living in this beautiful State that we have. We have had a balance over the years of protecting the worker and trying to help promote the business community, and one of the things that is sad is whenever we hit a period of time like we have had for the last 10 or 11 years where we have seen our manufacturing industry shrinking, we have seen a whole multitude of businesses suffer from a national economy, not from something internally in Pennsylvania but from the national economy, plus we also have seen a shrinking of our population of young people, our work force, and an increase in older, senior citizens—we now are, I think, first or second in this country in the number of seniors whom we have living here—our whole structure in Pennsylvania has changed, our whole attitude towards what we are doing is changing, and I really do not think we should be picking on the weakest of our community, the weakest of our workers, to make some changes.

If this is the only way that we can bring about workers' comp, I think it is wrong. The real way that we can do something to protect the business community and project the attitude that there is a Pennsylvania that cares and there is a legislature that cares would be to reject this amendment and pass House Bill No. 2140 in the form that is in front of us now, send it to the Governor and let the Governor sign it, and then you can go home and say that you did something meaningful.

Thank you very much.

Senator MADIGAN. Mr. President, I rise to urge an affirmative vote for this amendment being offered by the gentleman from Lackawanna, Senator Mellow, and myself. I thank him for his bipartisan effort, and I feel strongly that we have sent a ray of hope to our small businesses by showing a bipartisan concern for jobs, a bipartisan concern for employers. And the Members who are listening to the employers in their own districts, if they are really listening to them, can get a sense of their frustration in their attempts to try to meet competition and provide jobs to our communities and to our Commonwealth.

I have a letter I received from one of my employers, and it is a five-page brochure outlining how great the State of New Jersey is as far as taxes. If we fail to adopt this amendment, they can add a sixth page, that workers' comp is another area and another reason to go to another State.

Mr. President, I urge an affirmative vote for the amendment which is before us.

Senator ANDREZESKI. Mr. President, we have before us a series of amendments on workmen's comp. Perhaps more importantly, we have a chance to deal with workmen's comp and deal with the issue that has brought it to this point, and, in my opinion, that issue is rising medical costs. This issue was dealt with in the House of Representatives by putting a cap of about 113 percent of the Medicare reimbursement as a reimbursement for workmen's comp. Furthermore, this was shown to be about 40 percent of the issue that we were dealing with in increased costs.

Now, through the process, we have gone a long way in this Chamber not to deal with that. We have added everything else while increasing that reimbursement, and the fact is, Mr. President, in my opinion, we have gone way out of our way to make sure that we protect the top one-half of 1 percent of the wage earners of this State from any competitiveness in reimbursement. Also, we have gone way out of our way to ensure that the health care delivery system is not touched in any adverse way. And in doing all that, we talk about workers in Pennsylvania and we talk about small businesses in Pennsylvania.

First, we are not going to save small business any money unless we attack the medical costs that they have to pay for in these insurance premiums. We are just not going to do it. It is not going to happen.

Secondly, to imply that the workers of Pennsylvania use this as some sort of social vehicle or early retirement simply is not the case. The fact is, Mr. President, it is not fun to get hurt and it is not fun to get hurt on the job. And for the people here who have not worked in factories or on construction sites, it might be a real revelation to go and work on a job site and get hurt and see what happens to you under the present system, see what happens, see what some of the roadblocks are and see how long it does take to receive any type of compensation.

Second to that statement is the fact that people with any ounce of intelligence, and you have to have an ounce of intelligence just to fill out an application for a job, know that to get on workmen's compensation is probably the death knell to getting a job anywhere else, because an employer who would find out that an applicant was on workmen's comp, by looking at an application, would not be as desirous to employ that person.

So, people who work know this. They know if they get a workmen's comp claim and go somewhere else they are going to have a whole lot of trouble trying to get a job.

Workmen's comp is a necessary evil for all involved. It is necessary to protect the workers. It is necessary to protect the business against a suit. It is necessary to say that we have to have some conditions to protect people when they are injured. We have made that social decision, and we have come that far in our society, and I do not think we should be stepping back on that. And the problem remains, Mr. President, that we end up being maneuvered, we end up being worked over by some special interest groups down here to come up with a pie that is convoluted in its ingredients.

Getting back to what I started this with, Mr. President, we had a real good chance to do something in this Chamber, and that was to put a cap on medical costs. We had a chance to deal with an issue and we responded by adding everybody else's issue or solution to the problem. I am willing to deal with the issue of a medical cap. I am also willing to deal with the other issues. But if we really want to have reform right now, we should add a cost control factor and just say, let us go to 113 percent, as the original bill said.

Secondly, for those who think it is easy if you get hurt, it is not. Right now if you get hurt they can send you to a company doctor, you end up going to your own doctor, they all love you. They all love you because the insurance carrier pays the fee. The insurance carrier pays. Those are some of the best reimbursements you can get, and it has spawned a whole host of auxiliary industries that help people get better faster.

In the 1970s, I was working on a construction site. I injured my back. It was in the State of Ohio. The company sent me to a physician in a small town in Ohio, and after my second visit I noted to the doctor that it was real homey that he still wore his bib overalls, and I mentioned to the doctor, gee, that is kind of different. You are the only doctor I ever went to who still wears his bib overalls. And he said, well, it reminds me of my old days on the railroad. I said, your old days on the railroad, how long ago was that? He said, about two weeks ago. So, he had set himself up in practice. I ended up going to a doctor in Erie, Pennsylvania. He gave me a series of exercises that I did at home, and I recovered. But, I think it would be safe to say if that same thing happened today, I would be in four or five different therapy sessions every week, I would be going for physical therapy, hot baths, whirlpool baths, steam baths, and therapeutic massages.

I think if we are really going to address some of these problems, we ought to just start looking at where our costs have risen. I do not think we should be taking it out on people who work for a living. I do not think we should be passing those costs off on the people who pay for workmen's comp. It is my belief that we could make tremendous strides simply by capping the medical reimbursement.

Based on that, Mr. President, I am not going to vote for a series of amendments, brought about after a rather tremendous show of parliamentary procedure to bring this bill back in place, that will allow us to limit somebody's access to something that we originally agreed on.

Thank you, Mr. President.

Senator FISHER. Mr. President, I, too, rise to urge support for the Mellow-Madigan amendment, and I think what we have before us is another opportunity to address the problem of workers' compensation insurance. We are all aware of it. Virtually every company in our districts has contacted us and advised us of their concerns about the skyrocketing costs. And when we say we have a second opportunity, I recognize that the compromise that had previously been sent over to the House was rejected last week, but I think we do, in fact, have another opportunity to send this bill over to the House of Representatives. Who knows when they are going to be back, but maybe it will be sooner than later. And by showing our support once again for this amendment, we are able to show support for a true compromise.

I think it is important from this side of the aisle to commend the hard work of Senator Madigan, the Chairman of the Committee on Labor and Industry, and, likewise, to commend the bipartisan spirit in which Senator Mellow worked with him in reaching this compromise. I think, as you see from the debate today, and for those in the gallery, this issue is not an issue in which everybody on either side of the aisle is in favor of one side or another. There is bipartisan support, there is bipartisan opposition, but it is an indication, I think, of the work that Senator Madigan and Senator Mellow did, that this Chamber can work together in a bipartisan fashion to try to shape a compromise and try to shape a solution to such an important problem as workers' compensation which is facing this Commonwealth, and I would urge affirmative support for the amendment.

Thank you, Mr. President.

LEGISLATIVE LEAVES

Senator MELLOW. Mr. President, I request temporary Capitol leaves for Senator Jones, Senator Musto, Senator O'Pake and Senator Fumo.

The PRESIDENT. Temporary Capitol leaves will be granted to Senator Jones, Senator Musto, Senator O'Pake and Senator Fumo, without objection.

Senator FISHER. Mr. President, I would request temporary Capitol leaves for Senator Helfrick and Senator Loeper.

The PRESIDENT. Senator Fisher requests temporary Capitol leaves for Senator Helfrick and Senator Loeper. The Chair hears no objection. Those leaves will be granted as well.

And the question recurring,

Will the Senate agree to the amendment?

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

YEAS—30

Armstrong	Hart	Mellow	Shaffer
Baker	Helfrick	Musto	Shumaker
Brightbill	Holl	O'Pake	Stapleton
Corman	Hopper	Peterson	Stout
Fisher	Jubelirer	Punt	Tilghman
Fumo	Lemmond	Reibman	Wenger
Greenleaf	Loeper	Robbins	Williams
Greenwood	Madigan		

NAYS—18

Afflerbach	Bortner	Lewis	Rhoades
Andrezeski	Dawida	Lincoln	Scanlon
Belan	Fattah	Pecora	Schwartz
Bell	Jones	Porterfield	Stewart
Bodack	LaValle		

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

The PRESIDENT. Without objection, House Bill No. 2140 will go over in its order, as amended.

SPECIAL ORDER OF BUSINESS

SUPPLEMENTAL CALENDAR NO. 1

THIRD CONSIDERATION CALENDAR

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

HB 2140 (Pr. No. 3913) — The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of June 2, 1915 (P. L. 736, No. 338), known as "The Pennsylvania Workmen's Compensation Act," adding and amending certain definitions; redesignating referees as workers' compensation judges; further providing for contractors, for insurance and self-insurance, for compensation and for payments for medical services; providing for coordinated care organizations; further providing for procedures for the payment of compensation and for medical services and for procedures of the department, referees and the board; adding provisions relating to insurance, self-insurance pooling, self-insurance guaranty fund, health and safety, the prevention of insurance fraud; further providing for certain penalties; making repeals; and making editorial changes.

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?

Senator LINCOLN. Mr. President, there is no need to debate this. The issue was just debated in the amendment. I think we made a very, very serious error. I believe that all we are doing is delaying the final decision on whether or not we are going to have a 52-percent increase in workers' comp rates, and that is a given because the House of Representatives is not in Session, they will not be in Session, they did not accept this when it was sent to them before, and the changes that were made are not going to satisfy the 116- or 118-odd Members who voted against it. I really believe right now we ought to be talking about passing House Bill No. 2140 as it came to us. I think that would be meaningful, I think it would have some impact, and I have no idea why we are doing this, but I would ask for a negative vote.

And the question recurring,

Shall the bill pass finally?

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

YEAS—30

Armstrong	Hart	Mellow	Shaffer
Baker	Helfrick	Musto	Shumaker
Brightbill	Holl	O'Pake	Stapleton
Corman	Hopper	Peterson	Stout
Fisher	Jubelirer	Punt	Tilghman
Fumo	Lemmond	Reibman	Wenger
Greenleaf	Loeper	Robbins	Williams
Greenwood	Madigan		

NAYS—18

Afflerbach	Bortner	Lewis	Rhoades
Andrezeski	Dawida	Lincoln	Scanlon
Belan	Fattah	Pecora	Schwartz
Bell	Jones	Porterfield	Stewart
Bodack	LaValle		

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

Ordered, That the Secretary of the Senate 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.

CONSIDERATION OF CALENDAR RESUMED

BILL ON CONCURRENCE IN HOUSE AMENDMENTS

SENATE CONCURS IN HOUSE AMENDMENTS

SB 1650 (Pr. No. 2435) — The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of January 8, 1960 (1959 P. L. 2119, No. 787), entitled, as amended, "Air Pollution Control Act," adding and amending certain definitions; further providing for the powers and duties of the Department of Environmental Resources, the Environmental Quality Board and the Environmental Hearing Board; further providing for plans and permits; providing for certain fees and civil penalties, for acid control, for hazardous air pollutants and for control of volatile organic compounds from gasoline dispensing facilities; further providing for certain procedures; providing for compliance; establishing the Compliance Advisory Panel and providing for its powers and duties; further providing for enforcement, for criminal and civil penalties and for the abatement and restraint of violations; and making editorial changes.

Senator FISHER. Mr. President, I move the Senate do concur in the amendments made by the House to Senate Bill No. 1650.

On the question,

Will the Senate agree to the motion?

Senator STOUT. Mr. President, I rise to support concurrence in House amendments to Senate Bill No. 1650, the Clean Air Act. Over the last three hours we have focused much upon the working men and women of Pennsylvania and the economic environment in which they work and the importance of having well-paying jobs. I support the amendments to Senate Bill No. 1650 because before Senate Bill No. 1650 left this Chamber, I inserted on behalf of the gentleman from Allegheny, Senator Belan, and other Members from southwestern Pennsylvania, the so-called coke amendments. These amendments, by going into Senate Bill No. 1650, help preserve nearly 2,000 jobs for coke workers in the Mon Valley of southwestern Pennsylvania and other coke making facilities throughout Pennsylvania. The House made some changes in that amendment, and these amendments that were inserted by the House dealing with the issue of coke making are acceptable, and I urge support by this body on concurring in Senate Bill No. 1650.

Again, this is jobs. These are high-paying jobs of steelworkers, men and women who work in the coke industry, and the thousands of people in the coal mining industry in western Pennsylvania who produce the metallurgical grade coal used in the coke making process which is essential to the economic vitality of Pennsylvania, and I urge support on that. Also included in Senate Bill No. 1650 are stage II clean air amendments that were very important for our area.

So I urge unanimous support for Senate Bill No. 1650.

Thank you, Mr. President.

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—48

Afflerbach	Fisher	Lewis	Rhoades
Andrezeski	Fumo	Lincoln	Robbins
Armstrong	Greenleaf	Loeper	Scanlon
Baker	Greenwood	Madigan	Schwartz
Belan	Hart	Mellow	Shaffer
Bell	Helfrick	Musto	Shumaker
Bodack	Holl	O'Pake	Stapleton
Bortner	Hopper	Pecora	Stewart
Brightbill	Jones	Peterson	Stout
Corman	Jubelirer	Porterfield	Tilghman
Dawida	LaValle	Punt	Wenger
Fattah	Lemmond	Reibman	Williams

NAYS—0

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

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

LEGISLATIVE LEAVES CANCELLED

The PRESIDENT. The Chair recognizes the presence on the floor of Senator Bodack and Senator Musto. Their temporary Capitol leaves will be cancelled.

Senator O'Pake is with us as well, and Senator Loeper, and their temporary Capitol leaves will be cancelled.

RECESS

Senator FISHER. Mr. President, I would ask for a recess of the Senate to the call of the President pro tempore, with the understanding that we will be having a Republican caucus at 2:30 p.m., with the intention to reconvene sometime after that this afternoon.

SPECIAL ORDER OF BUSINESS

ANNOUNCEMENT BY THE SECRETARY

The SECRETARY. During today's Session, consent has been given for the Committee on Appropriations to meet to consider House Bills No. 164, 1959, 2602, and 2791.

Senator MELLOW. Mr. President, could the Republican Whip be more specific about what time we should be expected to come back on the floor?

The PRESIDENT. Senator Fisher, could you help us with the timing question?

Senator FISHER. Mr. President, we would hope it might be by 3:30 p.m., but it could be a little later than that.

The PRESIDENT. That is close enough.

The Chair would indicate that the Republicans have the intention of returning by about 3:30 p.m, Senator Mellow.

For the purpose of a recess to conduct several items of business, with the intention of returning by approximately 3:30, the Senate will stand in recess.

AFTER RECESS

The PRESIDENT. The time of recess having expired, the Senate will come to order.

SPECIAL ORDER OF BUSINESS

ANNOUNCEMENTS BY THE SECRETARY

The SECRETARY. Consent has been given for the Committee on Rules and Executive Nominations to meet during today's Session to consider Senate Bills No. 1000, 1379 and House Bill No. 2442; also, the Committee on Appropriations to then convene to consider Senate Bill No. 1790 and House Bill No. 2442.

CONSIDERATION OF CALENDAR RESUMED

HB 2482 CALLED UP OUT OF ORDER

HB 2482 (Pr. No. 3219) — Without objection, the bill was called up out of order, from page 8 of the Third Consideration Calendar, by Senator LOEPER, as a Special Order of Business.

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

HB 2482 (Pr. No. 3219) — The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of December 18, 1980 (P. L. 1241, No. 224), known as the "Pennsylvania Cancer Control, Prevention and Research Act," further providing for the use of cancer registry information; and extending the expiration date.

Considered the third time and agreed to,

On the question,
Shall the bill pass finally?

LEGISLATIVE LEAVE

Senator LINCOLN. Mr. President, I would request a temporary Capitol leave for Senator Scanlon.

The PRESIDENT. Senator Lincoln asks for a temporary Capitol leave for Senator Scanlon. The Chair hears no objection. That leave will be granted.

LEGISLATIVE LEAVES CANCELLED

The PRESIDENT. The Chair recognizes the presence on the floor of Senator Fumo and Senator Jubelirer. Their temporary Capitol leave and legislative leave respectively will be cancelled.

And the question recurring,
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

Afflerbach	Fisher	Lewis	Rhoades
Andrezeski	Fumo	Lincoln	Robbins
Armstrong	Greenleaf	Loeper	Scanlon
Baker	Greenwood	Madigan	Schwartz
Belan	Hart	Mellow	Shaffer

Bell	Helfrick	Musto	Shumaker
Bodack	Holl	O'Pake	Stapleton
Bortner	Hopper	Pecora	Stewart
Brightbill	Jones	Peterson	Stout
Corman	Jubelirer	Porterfield	Tilghman
Dawida	LaValle	Punt	Wenger
Fattah	Lemmond	Reibman	Williams

NAYS—0

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

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

SPECIAL ORDER OF BUSINESS
SUPPLEMENTAL CALENDAR NO. 2
SECOND CONSIDERATION CALENDAR
BILL ON SECOND CONSIDERATION AND REREFERRED

SB 1790 (Pr. No. 2442) — The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 24 (Education) of the Pennsylvania Consolidated Statutes, further providing for credited school service and for termination of annuities.

Considered the second time and agreed to,

Ordered, To be printed for third consideration.

Upon motion of Senator LOEPER, and agreed to, the bill just considered was rereferred to the Committee on Appropriations.

RECESS

Senator LOEPER. Mr. President, at this time I would ask for a very brief recess of the Senate for the purpose of a meeting of the Committee on Rules and Executive Nominations to take place immediately in the Rules room at the rear of the Senate Chamber.

The PRESIDENT. For the purpose of a meeting of the Committee on Rules and Executive Nominations to begin in the Rules room at the rear of the Senate Chamber immediately, the Senate will stand in brief recess.

AFTER RECESS

The PRESIDENT. The time of recess having expired, the Senate will come to order.

REPORTS FROM COMMITTEE

Senator LOEPER, from the Committee on Rules and Executive Nominations, reported the following bills on concurrence in House amendments:

SB 1000 (Pr. No. 2413)

A Joint Resolution proposing amendments to the Constitution of the Commonwealth of Pennsylvania, changing provisions relating to judicial discipline.

SB 1379 (Pr. No. 2325)

An Act amending the act of July 10, 1987 (P. L. 246, No. 47), entitled "Financially Distressed Municipalities Act," changing the short title of the act; further providing for standing to request a determination, for determination procedure, for contents of the coordinator's plan, for plan implementation, for termination of status, for economic and community development assistance priority and for emergency financial aid for distressed municipalities.

HB 2442 (Pr. No. 3917) (Amended)

An Act amending the act of August 14, 1991 (P. L. 342, No. 36), known as the "Lottery Fund Preservation Act," further providing, relative to pharmaceutical assistance for the elderly, for definitions, for responsibilities of the Department of Aging, for the Pharmaceutical Assistance Review Board and for the prescription drug education program; further providing for prudent pharmaceutical purchasing; and directing the Legislative Budget and Finance Committee to perform a study.

BILL REREFERRED

Senator LOEPER, from the Committee on Rules and Executive Nominations, returned to the Senate **HB 2442**, which was rereferred to the Committee on Appropriations.

LEGISLATIVE LEAVES CANCELLED

The PRESIDENT. The Chair recognizes the presence on the floor of Senator Williams, Senator Jones, and Senator Punt as well. Their temporary Capitol leaves will be cancelled.

CONSIDERATION OF CALENDAR RESUMED
THIRD CONSIDERATION CALENDAR
BILLS OVER IN ORDER

HB 90, 124 and **157** — Without objection, the bills were passed over in their order at the request of Senator LOEPER.

LEGISLATIVE LEAVE

Senator LOEPER. Mr. President, Senator Shumaker has been called to his office, and I would request a temporary Capitol leave on his behalf.

The PRESIDENT. Senator Loeper requests a temporary Capitol leave for Senator Shumaker. The Chair hears no objection. The leave will be granted.

THIRD CONSIDERATION CALENDAR RESUMED
BILL LAID ON THE TABLE

HB 184 (Pr. No. 3649) — The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further providing for definitions, for reduced combustion vehicles and for inspection certificates.

Upon motion of Senator LOEPER, and agreed to, the bill was laid on the table.

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

HB 211 (Pr. No. 3494) — The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, providing for the issuance of special registration plates for veterans of the Korean War and for veterans of the Persian Gulf War.

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

Afflerbach	Fisher	Lewis	Rhoades
Andrezeski	Fumo	Lincoln	Robbins
Armstrong	Greenleaf	Loeper	Scanlon
Baker	Greenwood	Madigan	Schwartz
Belan	Hart	Mellow	Shaffer
Bell	Helfrick	Musto	Shumaker
Bodack	Holl	O'Pake	Stapleton
Bortner	Hopper	Pecora	Stewart
Brightbill	Jones	Peterson	Stout
Corman	Jubelirer	Porterfield	Tilghman
Dawida	LaValle	Punt	Wenger
Fattah	Lemmond	Reibman	Williams

NAYS—0

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

Ordered, That the Secretary of the Senate 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.

BILLS ON THIRD CONSIDERATION AMENDED

HB 301 (Pr. No. 3906) — The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for municipal court jurisdiction over landlord-tenant cases; further providing for the establishment of fees and charges and for constable fees; imposing a criminal laboratory user fee; providing for disposition of revenues generated by the fee; and making repeals.

Considered the third time,

On the question,

Will the Senate agree to the bill on third consideration?

Senator FUMO, by unanimous consent, offered the following amendment No. A3095:

Amend Sec. 2 (Sec. 1725), page 3, by inserting between lines 4 and 5:

(5) The following fees shall be received by the clerks of orphans' courts of counties of the first class:

(i) The following fees shall be charged for the filing of accounts of guardians and trustees based upon the size of the estate:

Estate not exceeding $1,000	$14.00
Each additional $1,000 or fraction thereof over $1,000, but not exceeding $10,000	7.00
Over $10,000, but not exceeding $25,000	140.00
Over $25,000, but not exceeding $100,000	279.00
Over $100,000, but not exceeding $500,000	419.00
Over $500,000, but not exceeding $1,000,000	559.00
Each additional $500,000 or fraction thereof over $1,000,000	300.00

(ii) The following fees shall be charged for the indicated activity or function:

Affidavit	$3.00
Appeal to Supreme Court	35.00
Attachment	3.00
Auditor's report	14.00
Bond	7.00
Bond, refunding	7.00
Claim of creditor	7.00
Copy of any record, per page	3.00
Disclaimer	7.00
Docket entries, per page	8.00
Election to take under or against will	7.00
Exceptions to adjudication, opinion and decree or master's or auditor's report	14.00
Execution of deed by clerk	14.00
Excerpt from schedule and certification	7.00
Exemplification of any record	7.00
Exemption, petition for	7.00
Family settlement:	
not exceeding three pages	25.00
each additional page	6.00
Guardian, appointment of:	
not exceeding $2,500	14.00
exceeding $2,500	35.00
Inventory, guardian's	3.00
Marriage license	5.00
(Plus $10.00 surcharge for Commonwealth ofPennsylvania)	
Consent of parent or guardian	3.00
Appointment of temporary guardian	3.00
Master's report	13.00
Petition and decree	14.00
Petition and decree for citation	28.00
Pleading (other than petition):	
answer to preliminary objections or exceptions	7.00
Preliminary objections	14.00
Satisfaction of award, each	3.00
Short certificate	3.00
Stipulation	14.00
Subpoena	3.00

(6) The clerk of orphans' courts of counties of the first class are authorized to establish fees for services required by statute or rule of court which are not specifically provided for in paragraph (5). Any such additional fees shall be the same as those imposed for similar services. The clerks shall not be required to perform any service until the requisite fee is paid.

Amend Sec. 4, page 9, by inserting between lines 29 and 30:

(b) The following acts or parts of acts are repealed insofar as they relate to fees collected by clerks of orphans' courts of counties of the first class:

42 Pa.C.S. § 1725.

Section 24(a) of the act of July 9, 1976 (P.L.586, No.142), known as the Judiciary Act of 1976.

Amend Sec. 4, page 9, line 30, by striking out "(B)" and inserting: (c)

On the question,

Will the Senate agree to the amendment?

It was agreed to.

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

HB 355 (Pr. No. 3907) — The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, adding a definition of "commercial implement of husbandry" and adding amending provisions relating thereto; and further providing for vehicles exempt from registration and for permits for certain chemical and fertilizer vehicles; further providing for drivers required to be licensed, for restrictions on use of handicapped parking areas and for driving under influence of alcohol or controlled substance; providing for Pennsylvania Turnpike extensions and improvements; and making a repeal.

Considered the third time,

On the question,

Will the Senate agree to the bill on third consideration?

Senator FISHER, by unanimous consent, offered the following amendment No. A3143:

Amend Sec. 11 (Sec. 8912), page 13, line 23, by striking out "ALONG THE WASHINGTON/ALLEGHENY LINE"

On the question,

Will the Senate agree to the amendment?

It was agreed to.

On the question,

Will the Senate agree to the bill on third consideration, as amended?

Senator STOUT, by unanimous consent, offered the following amendment No. A3006:

Amend Sec. 1, page 1, line 12, by striking out "1501(A) AND 3354(D)(3)" and inserting: 1106(c), 1117(a), 1501(a), 3354(d)(3) and 7309(a)

Amend Sec. 1, page 1, by inserting between lines 13 and 14:

§ 1106. Content and effect of certificate of title.

* * *

(c) Certificate as evidence and notice.—A certificate of title issued by the department is prima facie evidence of the facts appearing on the certificate. The certificate shall be adequate notice to the Commonwealth, creditors, subsequent lienholders and purchasers that a lien against the vehicle exists. The printed name of the secretary shall constitute a signature on the certificate.

§ 1117. Vehicle destroyed, dismantled, salvaged or recycled.

(a) Application for certificate of salvage.—Any owner who transfers a vehicle to be destroyed or dismantled, salvaged or recycled shall assign the certificate of title to the person to whom the vehicle is transferred. [The] Except as provided in subsection (e), the transferee shall immediately present the assigned certificate of title to the department or an authorized agent of the department with an application for a certificate of salvage upon a form furnished and prescribed by the department. An insurer, as defined in section 1702 (relating to definitions), to which title to a vehicle is assigned upon payment to the insured of the replacement value of a vehicle, shall be regarded as a transferee under this subsection. If an owner retains possession of a vehicle which is damaged to the extent that it is valueless except for salvage, the owner shall apply for a certificate of salvage immediately. In this case, an insurer shall not pay vehicle replacement value until the owner produces evidence to the insurer that the certificate of salvage has been issued.

* * *

Amend Sec. 1, page 4, by inserting between lines 10 and 11:

§ 7309. Salvaging of vehicles valueless except for salvage.

(a) Application for certificate of salvage.—If an abandoned vehicle is valueless except for salvage, the salvor shall note that fact in the report to the department required in section 7304 (relating to reports to department of possession of abandoned vehicles) and shall apply for issuance of a certificate of [junk] salvage as provided for in section 1117 (relating to vehicle destroyed, dismantled, salvaged or recycled).

* * *

On the question,

Will the Senate agree to the amendment?

It was agreed to.

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

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 712 (Pr. No. 2326) — The Senate proceeded to consideration of the bill, entitled:

An Act providing for cultural facilities; establishing the Cultural Facilities Advisory Board and providing for its powers and duties; providing for a grant program; and providing for additional duties of the Department of Community Affairs.

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?

Senator REIBMAN. Mr. President, this bill is one that many communities and art institutions would like to see enacted, and I ask complete support for this bill because it is also a part of economic development in helping to bring industry into Pennsylvania.

Thank you very much.

And the question recurring,

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

Afflerbach	Fisher	Lewis	Rhoades
Andrezeski	Fumo	Lincoln	Robbins
Armstrong	Greenleaf	Loeper	Scanlon
Baker	Greenwood	Madigan	Schwartz

Belan	Hart	Mellow	Shaffer
Bell	Helfrick	Musto	Shumaker
Bodack	Holl	O'Pake	Stapleton
Bortner	Hopper	Pecora	Stewart
Brightbill	Jones	Peterson	Stout
Corman	Jubelirer	Porterfield	Tilghman
Dawida	LaValle	Punt	Wenger
Fattah	Lemmond	Reibman	Williams

NAYS—0

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

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

BILL OVER IN ORDER

SB 823 (Pr. No. 876) — The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of September 24, 1968 (P. L. 1040, No. 318), entitled, as amended, "Coal Refuse Disposal Control Act," providing for the use of coal refuse material as a fuel source.

Considered the third time,

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

Senator LOEPER. Mr. President, I move that Senate Bill No. 823 go over in its order.

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

Senator STOUT. Mr. President, I would like to know if the Majority Leader, Senator Loeper, would stand for interrogation concerning Senate Bill No. 823.

The PRESIDENT. Will the gentleman from Delaware, Senator Loeper, permit himself to be interrogated?

Senator LOEPER. I will, Mr. President.

Senator STOUT. Mr. President, Senate Bill No. 823 is probably one of the most important environmental pieces of legislation that has come before the body during this Session. It has bipartisan support in this Chamber, and I have been working with Members from both sides of the aisle. This will allow us to address a serious environmental and energy problem in the Commonwealth with the large amounts of coal refuse - gob-piles, slate dumps, and culm banks - throughout the Commonwealth that have not been cleaned up, nor will they be cleaned up under the various State and Federal programs that we have set up over the years and administered to do that. This allows for the use of that material and provides for incentive to do that.

I would ask the Majority Leader what his intention is with this legislation as we wind down here in the post-budget, or maybe we are still in a budget mode, whatever we are at at this time, and if this bill would be called up for consideration on tomorrow's Calendar, Mr. President?

Senator LOEPER. Mr. President, in discussions in our caucus relative to the legislation, it was recommended by a majority of our Members that we not consider this legislation today. We have not discussed the markings tomorrow, but if the discussion is somewhat the same, I would assume the bill would probably be marked over tomorrow also.

Senator STOUT. Mr. President, I would hope during the intervening 24 hours that Members from that side of the aisle would look at this bill more carefully. And while I would not object to it going over in order at this time, hopefully, if there are any unanswered questions concerning this legislation, Members from his side of the aisle would contact my office and I will try to provide them with any necessary information.

So, I do not object to it going over this time, and, hopefully, we can direct our attention to this important piece of legislation before we leave Harrisburg.

Thank you, Mr. President.

And the question recurring,
Will the Senate agree to the motion?
The motion was agreed to.

The PRESIDENT. Without objection, Senate Bill No. 823 will go over in its order.

BILLS OVER IN ORDER

HB 1131, 1136 and **1147** — Without objection, the bills were passed over in their order at the request of Senator LOEPER.

BILL LAID ON THE TABLE

SB 1239 (Pr. No. 2314) — The Senate proceeded to consideration of the bill, entitled:

An Act providing for long-term care insurance, for disclosure and performance standards, for authority to regulate and for administrative procedures.

Upon motion of Senator LOEPER, and agreed to, the bill was laid on the table.

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

HB 1305 (Pr. No. 3909) — The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of June 25, 1895 (P. L. 275, No. 188), referred to as the "City Classification Law," changing the population requirements for cities of the second class, second class A and third class; and regulating home rule charter or optional plan forms of government.

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

Afflerbach	Fisher	Lewis	Rhoades
Andrezeski	Fumo	Lincoln	Robbins
Armstrong	Greenleaf	Loeper	Scanlon
Baker	Greenwood	Madigan	Schwartz
Belan	Hart	Mellow	Shaffer
Bell	Helfrick	Musto	Shumaker
Bodack	Holl	O'Pake	Stapleton
Bortner	Hopper	Pecora	Stewart

Brightbill	Jones	Peterson	Stout
Corman	Jubelirer	Porterfield	Tilghman
Dawida	LaValle	Punt	Wenger
Fattah	Lemmond	Reibman	Williams

NAYS—0

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

Ordered, That the Secretary of the Senate 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 OVER IN ORDER

HB 1318 — Without objection, the bill was passed over in its order at the request of Senator LOEPER.

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 1375 (Pr. No. 1611) — The Senate proceeded to consideration of the bill, entitled:

An Act defining full-service and self-service motor vehicle fuel stations; establishing minimum services; requiring motor vehicle fuel stations to have air pumps for the public; prohibiting certain provisions in agreements; restricting promulgation of certain rules and regulations; and providing penalties.

Considered the third time and agreed to,

On the question,
Shall the bill pass finally?

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

Senator CORMAN. 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—45

Afflerbach	Fumo	Lincoln	Robbins
Andrezeski	Greenleaf	Loeper	Scanlon
Armstrong	Greenwood	Madigan	Schwartz
Baker	Helfrick	Mellow	Shaffer
Belan	Holl	Musto	Shumaker
Bell	Hopper	O'Pake	Stapleton
Bodack	Jones	Pecora	Stewart
Brightbill	Jubelirer	Peterson	Stout
Corman	LaValle	Punt	Tilghman
Dawida	Lemmond	Reibman	Wenger
Fattah	Lewis	Rhoades	Williams
Fisher			

NAYS—3

Bortner	Hart	Porterfield

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

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

BILLS OVER IN ORDER

HB 1387, SB 1504 and **HB 1530** — Without objection, the bills were passed over in their order at the request of Senator LOEPER.

BILLS ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 1592 (Pr. No. 1965) — The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of May 17, 1921 (P. L. 789, No. 285), entitled, as amended, "The Insurance Department Act of one thousand nine hundred and twenty-one," authorizing the licensing of lending institutions and bank holding companies to sell credit unemployment insurance.

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

Afflerbach	Fisher	Lewis	Rhoades
Andrezeski	Fumo	Lincoln	Robbins
Armstrong	Greenleaf	Loeper	Scanlon
Baker	Greenwood	Madigan	Schwartz
Belan	Hart	Mellow	Shaffer
Bell	Helfrick	Musto	Shumaker
Bodack	Holl	O'Pake	Stapleton
Bortner	Hopper	Pecora	Stewart
Brightbill	Jones	Peterson	Stout
Corman	Jubelirer	Porterfield	Tilghman
Dawida	LaValle	Punt	Wenger
Fattah	Lemmond	Reibman	Williams

NAYS—0

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

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

SB 1794 (Pr. No. 2436) — The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of July 17, 1961 (P. L. 776, No. 341), entitled, as amended, "Pennsylvania Fair Educational Opportunities Act," prohibiting discrimination against persons with handicaps or disabilities.

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

Afflerbach	Fisher	Lewis	Rhoades
Andrezeski	Fumo	Lincoln	Robbins
Armstrong	Greenleaf	Loeper	Scanlon
Baker	Greenwood	Madigan	Schwartz
Belan	Hart	Mellow	Shaffer
Bell	Helfrick	Musto	Shumaker
Bodack	Holl	O'Pake	Stapleton
Bortner	Hopper	Pecora	Stewart

Brightbill	Jones	Peterson	Stout
Corman	Jubelirer	Porterfield	Tilghman
Dawida	LaValle	Punt	Wenger
Fattah	Lemmond	Reibman	Williams

NAYS—0

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

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

SB 1847 (Pr. No. 2383) — The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of August 21, 1953 (P. L. 1323, No. 373), entitled "The Notary Public Law," further providing for applications; and validating notarial acts performed by certain notaries public.

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

Afflerbach	Fisher	Lewis	Rhoades
Andrezeski	Fumo	Lincoln	Robbins
Armstrong	Greenleaf	Loeper	Scanlon
Baker	Greenwood	Madigan	Schwartz
Belan	Hart	Mellow	Shaffer
Bell	Helfrick	Musto	Shumaker
Bodack	Holl	O'Pake	Stapleton
Bortner	Hopper	Pecora	Stewart
Brightbill	Jones	Peterson	Stout
Corman	Jubelirer	Porterfield	Tilghman
Dawida	LaValle	Punt	Wenger
Fattah	Lemmond	Reibman	Williams

NAYS—0

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

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

BILL ON THIRD CONSIDERATION AMENDED AND LAID ON THE TABLE

HB 1859 (Pr. No. 2230) — The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of June 2, 1937 (P. L. 1208, No. 310), entitled "An act to describe, define, and officially adopt a system of coordinates for designating the positions of points on the surface of the earth within the Commonwealth of Pennsylvania," further providing for the system of plane rectangular coordinates; providing for the Pennsylvania Coordinate System of 1983; further providing for the establishment of triangulation or traverse stations; further providing for the recording of land records or deeds; and proscribing use of the Pennsylvania Coordinate System of 1927 after a certain date.

Considered the third time,

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

Senator LOEPER, by unanimous consent, offered the following amendment No. A3127:

Amend Sec. 1 (Sec. 3), page 3, line 7, by striking out "SPCS" and inserting: State Plan Coordinate System (SPCS)
Amend Sec. 1 (Sec. 3), page 3, line 11, by striking out "SPCS" and inserting: State Plan Coordinate System (SPCS)
Amend Sec. 1 (Sec. 5), page 3, line 27, by inserting after "System": of 1927
Amend Sec. 1 (Sec. 5), page 4, line 9, by inserting after "System": of 1927
Amend Sec. 1 (Sec. 5), page 5, line 10, by striking out "6,000,000" and inserting: 600,000

On the question,
Will the Senate agree to the amendment?
It was agreed to.

Senator LOEPER. Mr. President, I move that House Bill No. 1859, as amended, be laid on the table.

The motion was agreed to.

The PRESIDENT. House Bill No. 1859 as amended, will be laid on the table.

BILL RECOMMITTED

HB 1930 (Pr. No. 3893) — The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of June 2, 1915 (P. L. 736, No. 338), entitled, as reenacted and amended, "The Pennsylvania Workmen's Compensation Act," adding and amending certain definitions; redesignating referees as workers' compensation judges; further providing for contractors, for insurance and self-insurance, for compensation and for payments for medical services; providing for coordinated care organizations; further providing for procedures for the payment of compensation and for medical services and for procedures of the department, referees and the board; adding provisions relating to insurance, self-insurance pooling, self-insurance guaranty fund, health and safety, the prevention of insurance fraud; further providing for certain penalties; making repeals; and making editorial changes.

Upon motion of Senator LOEPER, and agreed to, the bill was recommitted to the Committee on Labor and Industry.

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

HB 2010 (Pr. No. 2512) — The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of December 7, 1990 (P. L. 667, No. 166), entitled "An act authorizing the Department of General Services, with the approval of the Governor and the Department of Corrections, to convey certain land in the Borough of Huntingdon, Huntingdon County, to the Borough of Huntingdon; authorizing and directing the Department of Transportation, with the approval of the Governor, to convey to Bernard C. Banks, Jr., a tract of land situate in Kingston Township, Luzerne County, Pennsylvania; authorizing and directing the Department of Transportation, with the approval of the Governor, to convey to Frank Jerome an easement over lands belonging to the Commonwealth situate in Indiana Township, Allegheny County, Pennsylvania; authorizing and directing the Department of Transportation, with the approval of the Governor, to convey to the Middletown Fire Department a tract of land situate in Middletown Township, Delaware County, Pennsylvania; authorizing the State Armory Board of the Department of Military Affairs and the Department of General Services, with the

approval of the Governor, to sell and convey a tract of land, together with the building and structures thereto, in the City of Chester, Delaware County, Pennsylvania; authorizing and directing the Department of General Services, with the approval of the Governor and the Department of Education, to lease to Temple University a tract of land with improvements thereon in the City of Philadelphia, Pennsylvania; and authorizing and directing the Department of General Services, with the approval of the Governor and the Secretary of Environmental Resources, to convey to Pavia Cemetery Association a certain tract of land situate in Union Township, Bedford County, in exchange for a certain tract of land," further providing for the sale and conveyance of the Chester National Guard Armory.

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

Afflerbach	Fisher	Lewis	Rhoades
Andrezeski	Fumo	Lincoln	Robbins
Armstrong	Greenleaf	Loeper	Scanlon
Baker	Greenwood	Madigan	Schwartz
Belan	Hart	Mellow	Shaffer
Bell	Helfrick	Musto	Shumaker
Bodack	Holl	O'Pake	Stapleton
Bortner	Hopper	Pecora	Stewart
Brightbill	Jones	Peterson	Stout
Corman	Jubelirer	Porterfield	Tilghman
Dawida	LaValle	Punt	Wenger
Fattah	Lemmond	Reibman	Williams

NAYS—0

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

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

BILL OVER IN ORDER

HB 2216 — Without objection, the bill was passed over in its order at the request of Senator LOEPER.

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

HB 2449 (Pr. No. 3177) — The Senate proceeded to consideration of the bill, entitled:

An Act authorizing and directing the Department of General Services, with the approval of the Department of Corrections and the Governor, to grant and convey to the Township of Cresson land situate in the Township of Cresson, Cambria County, Pennsylvania.

Considered the third time,

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

AMENDMENT OFFERED

Senator BRIGHTBILL, by unanimous consent, offered the following amendment No. A3140:

Amend Title, page 1, lines 4 and 5, by striking out ", Pennsylvania." and inserting: ; and authorizing the conveyance of a tract of land in Berks County to Valley View Mobile Home Park.

Amend Bill, page 4, by inserting between lines 1 and 2:

Section 2. The Department of General Services, with the approval of the Department of Public Welfare and the Governor, is authorized on behalf of the Commonwealth to sell to Valley View Mobile Home Park, for a consideration determined by an independent appraisal obtained by the Department of General Services, the following tract of land:

All that certain parcel or tract of land situate on the northeastern side of Pennsylvania State Highway S.R. 0422, leading from Reading to Harrisburg, between Wernersville and Robesonia, in the Township of Lower Heidelberg, County of Berks and Commonwealth of Pennsylvania, and being more fully bounded and described, as follows, to wit:

Beginning at the corner of the centerline of Pennsylvania State Highway, S.R. 0422, being the southern corner of property belonging to D.A.M. Management Corp., grantee herein, thence along said property north 39 degrees 11 minutes east, a distance of 491.05 feet to a corner marked by a monument, being a corner of property belonging to now or late Maggie Palm, Vincent P. Obold and Karl H. Obold; thence along said property south 47 degrees 54 minutes 19 seconds east, a distance of 501.28 feet to a corner marked by a monument; thence along property now or late of the Commonwealth of Pennsylvania Department of Welfare, of which this was a part, south 42 degrees 38 minutes 41 seconds west, a distance of 534.72 feet to a corner on the centerline of the aforesaid State Highway S.R. 0422; thence along said centerline along a curve deflecting to the right having a delta angle of 02 degrees 21 minutes 59.70 seconds, a radius of 11,459.19 feet, an arc length of 473.32 feet and a chord bearing and distance of north 42 degrees 32 minutes 11.40 seconds west 473.28 feet to the place of beginning.

Containing in area 5.734 acres of land.

Being a portion of the same property which by deed dated and recorded in Deed Book Volume 473, Page 93, Berks County Records at Reading, Pennsylvania granted and conveyed unto the Commonwealth of Pennsylvania.

Amend Sec. 2, page 4, line 2, by striking out "2. The conveyance" and inserting: 3. The conveyances

Amend Sec. 3, page 4, line 9, by striking out "3. The deed" and inserting: 4. The deeds

Amend Sec. 4, page 4, line 13, by striking out "4" and inserting: 5

Amend Sec. 4, page 4, line 13, by striking out "this" and inserting: each

Amend Sec. 5, page 4, line 15, by striking out "5" and inserting: 6

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

Senator STEWART. Mr. President, Senate Bill No. 2449 is a land conveyance in Cambria County that has been requested by the Bureau of Corrections for the Cresson State Prison, which is having a problem with their water supply, both the township and the prison. They are concerned that if they do not get a storage tank constructed on this particular piece of property, if they should have a fire at the prison or if the township should have a fire, there is not going to be sufficient water to handle the situation. The bill, if it is passed with that amendment, will go directly to the Governor, and time is of the essence here, and I would ask the sponsor of the amendment if he would consider withdrawing it since if the bill is

amended we would have to wait until we come back in the fall.

AMENDMENT WITHDRAWN

Senator BRIGHTBILL. Mr. President, I will be happy to withdraw my amendment.

The PRESIDENT. Senator Brightbill withdraws his amendment.

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

Afflerbach	Fisher	Lewis	Rhoades
Andrezeski	Fumo	Lincoln	Robbins
Armstrong	Greenleaf	Loeper	Scanlon
Baker	Greenwood	Madigan	Schwartz
Belan	Hart	Mellow	Shaffer
Bell	Helfrick	Musto	Shumaker
Bodack	Holl	O'Pake	Stapleton
Bortner	Hopper	Pecora	Stewart
Brightbill	Jones	Peterson	Stout
Corman	Jubelirer	Porterfield	Tilghman
Dawida	LaValle	Punt	Wenger
Fattah	Lemmond	Reibman	Williams

NAYS—0

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

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

BILL OVER IN ORDER

HB 2499 — Without objection, the bill was passed over in its order at the request of Senator LOEPER.

LEGISLATIVE LEAVE CANCELLED

The PRESIDENT. The Chair recognizes the presence on the floor of Senator Shumaker. His temporary Capitol leave will be cancelled.

THIRD CONSIDERATION CALENDAR RESUMED

BILL OVER IN ORDER TEMPORARILY

HB 2509 — Without objection, the bill was passed over in its order temporarily at the request of Senator LOEPER.

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

HB 2541 (Pr. No. 3695) — The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of April 27, 1927 (P. L. 465, No. 299), referred to as the "Fire and Panic Act," further providing for classes of buildings; and providing standards for Class VI buildings.

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

Afflerbach	Fisher	Lewis	Rhoades
Andrezeski	Fumo	Lincoln	Robbins
Armstrong	Greenleaf	Loeper	Scanlon
Baker	Greenwood	Madigan	Schwartz
Belan	Hart	Mellow	Shaffer
Bell	Helfrick	Musto	Shumaker
Bodack	Holl	O'Pake	Stapleton
Bortner	Hopper	Pecora	Stewart
Brightbill	Jones	Peterson	Stout
Corman	Jubelirer	Porterfield	Tilghman
Dawida	LaValle	Punt	Wenger
Fattah	Lemmond	Reibman	Williams

NAYS—0

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

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

BILL ON THIRD CONSIDERATION REVERTED TO PRIOR PRINTER'S NUMBER AND FINAL PASSAGE

HB 2595 (Pr. No. 3889) — The Senate proceeded to consideration of the bill, entitled:

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, further providing for absentee voting.

Considered the third time,

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

Senator LOEPER. Mr. President, I would move that we revert to the prior printer's number on House Bill No. 2595. That would be Printer's No. 3395.

The PRESIDENT. Senator Loeper moves that the Senate do revert to the prior printer's number on House Bill No. 2595. That would take us to Printer's No. 3395.

On the motion to revert, all those in favor say "aye"; all those opposed, "no." The "ayes" have it.

The PRESIDENT. The Senate has before it House Bill No. 2595, Printer's No. 3395.

On the question,
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

Afflerbach	Fisher	Lewis	Rhoades
Andrezeski	Fumo	Lincoln	Robbins
Armstrong	Greenleaf	Loeper	Scanlon
Baker	Greenwood	Madigan	Schwartz
Belan	Hart	Mellow	Shaffer
Bell	Helfrick	Musto	Shumaker
Bodack	Holl	O'Pake	Stapleton
Bortner	Hopper	Pecora	Stewart
Brightbill	Jones	Peterson	Stout
Corman	Jubelirer	Porterfield	Tilghman
Dawida	LaValle	Punt	Wenger
Fattah	Lemmond	Reibman	Williams

NAYS—0

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

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

SECOND CONSIDERATION CALENDAR

BILLS OVER IN ORDER

HB 713 and **732** — Without objection, the bills were passed over in their order at the request of Senator LOEPER.

BILL ON SECOND CONSIDERATION

HB 871 (Pr. No. 3125) — The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 13 (Commercial Code) of the Pennsylvania Consolidated Statutes, conforming the text of the title to the current official text of the Uniform Commercial Code relating to leases, negotiable instruments, bank deposits and collections, funds transfers and uncertificated securities; repealing provisions relating to bulk transfers; and making editorial changes.

Considered the second time and agreed to,

Ordered, To be printed on the Calendar for third consideration.

BILL OVER IN ORDER

SB 1268 — Without objection, the bill was passed over in its order at the request of Senator LOEPER.

BILL LAID ON THE TABLE

SB 1486 (Pr. No. 2102) — The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, providing for construction of sewer or water system extensions.

Upon motion of Senator LOEPER, and agreed to, the bill was laid on the table.

BILL ON SECOND CONSIDERATION

SB 1733 (Pr. No. 2223) — The Senate proceeded to consideration of the bill, entitled:

An Act providing for the removal of toxics in packaging; giving the Department of Environmental Resources certain responsibilities; and providing for enforcement and penalties.

Considered the second time and agreed to,

Ordered, To be printed on the Calendar for third consideration.

BILLS OVER IN ORDER

HB 1781 and **SB 1787** — Without objection, the bills were passed over in their order at the request of Senator LOEPER.

SPECIAL ORDER OF BUSINESS

SUPPLEMENTAL CALENDAR NO. 3

THIRD CONSIDERATION CALENDAR

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

HB 301 (Pr. No. 3916) — The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for municipal court jurisdiction over landlord-tenant cases; further providing for the establishment of fees and charges and for constable fees; imposing a criminal laboratory user fee; providing for disposition of revenues generated by the fee; and making repeals.

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

Afflerbach	Fisher	Lewis	Rhoades
Andrezeski	Fumo	Lincoln	Robbins
Armstrong	Greenleaf	Loeper	Scanlon
Baker	Greenwood	Madigan	Schwartz
Belan	Hart	Mellow	Shaffer
Bell	Helfrick	Musto	Shumaker
Bodack	Holl	O'Pake	Stapleton
Bortner	Hopper	Pecora	Stewart
Brightbill	Jones	Peterson	Stout
Corman	Jubelirer	Porterfield	Tilghman
Dawida	LaValle	Punt	Wenger
Fattah	Lemmond	Reibman	Williams

NAYS—0

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

Ordered, That the Secretary of the Senate 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.

SPECIAL ORDER OF BUSINESS

SUPPLEMENTAL CALENDAR NO. 5

BILL ON CONCURRENCE IN HOUSE AMENDMENTS

SENATE CONCURS IN HOUSE AMENDMENTS

SB 1379 (Pr. No. 2325) — The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of July 10, 1987 (P. L. 246, No. 47), entitled "Financially Distressed Municipalities Act," changing the short title of the act; further providing for standing to request a determination, for determination procedure, for contents of the coordinator's plan, for plan implementation, for termination of status, for economic and community development assistance priority and for emergency financial aid for distressed municipalities.

Senator LOEPER. Mr. President, I move the Senate do concur in the amendments made by the House to Senate Bill No. 1379.

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

Afflerbach	Fisher	Lewis	Rhoades
Andrezeski	Fumo	Lincoln	Robbins
Armstrong	Greenleaf	Loeper	Scanlon
Baker	Greenwood	Madigan	Schwartz
Belan	Hart	Mellow	Shaffer
Bell	Helfrick	Musto	Shumaker
Bodack	Holl	O'Pake	Stapleton
Bortner	Hopper	Pecora	Stewart
Brightbill	Jones	Peterson	Stout
Corman	Jubelirer	Porterfield	Tilghman
Dawida	LaValle	Punt	Wenger
Fattah	Lemmond	Reibman	Williams

NAYS—0

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

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

Senator LOEPER. Can we be at ease for a moment, Mr. President?

The PRESIDENT. The Senate will be at ease.

(The Senate was at ease.)

RECESS

Senator LOEPER. Mr. President, at this time I would ask for a brief recess of the Senate for the purpose that we have a number of bills to be signed and transmitted. We are also waiting for a couple amendments from the Reference Bureau, and I would ask the Members if we can just patiently be in recess for a little while.

The PRESIDENT. The Senate will be at ease.

AFTER RECESS

The PRESIDENT. The time of recess having expired, the Senate will come to order.

SPECIAL ORDER OF BUSINESS

ANNOUNCEMENT BY THE SECRETARY

The SECRETARY. Consent has been given for the Committee on Appropriations to meet during today's Session to consider House Bill No. 2751.

HOUSE MESSAGES

HOUSE CONCURS IN SENATE AMENDMENTS TO HOUSE BILL

The Clerk of the House of Representatives informed the Senate that the House has concurred in amendments made by the Senate to **HB 1320**.

HOUSE CONCURS IN SENATE AMENDMENTS TO HOUSE AMENDMENTS

The Clerk of the House of Representatives informed the Senate that the House has concurred in amendments made by the Senate to House amendments to **SB 9**.

HOUSE CONCURS IN SENATE BILLS

The Clerk of the House of Representatives returned to the Senate **SB 1747, 1748, 1749, 1750, 1760, 1761, 1762, 1763, 1766, 1767, 1768, 1769, 1770, 1771, 1772, 1773, 1774, 1775, 1776, 1777, 1778, 1779, 1780, 1781, 1782, 1783, 1784** and **1785**, with the information the House has passed the same without amendments.

COMMUNICATION FROM THE GOVERNOR

NOMINATION BY THE GOVERNOR REFERRED TO COMMITTEE

The PRESIDENT laid before the Senate the following communication in writing from His Excellency, the Governor of the Commonwealth, which was read as follows, and referred to the Committee on Rules and Executive Nominations:

DISTRICT JUSTICE

June 30, 1992.

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, M. Kay DuBree, 1130 Lodi Hill Road, Upper Black Eddy 18972, Bucks County, Tenth Senatorial District, for appointment as District Justice in and for the County of Bucks, Magisterial District 7-3-03, to serve until the first Monday of January, 1994, vice Elizabeth M. Leonard, resigned.

ROBERT P. CASEY.

BILLS SIGNED

The PRESIDENT (Lieutenant Governor Mark S. Singel) in the presence of the Senate signed the following bills:

SB 9, 1379, 1650, 1747, 1748, 1749, 1750, 1760, 1761, 1762, 1763, 1766, 1767, 1768, 1769, 1770, 1771, 1772, 1773, 1774, 1775, 1776, 1777, 1778, 1779, 1780, 1781, 1782, 1783, 1784, 1785 and **HB 1320**.

The PRESIDENT pro tempore (Robert C. Jubelirer) in the Chair.

REPORTS FROM COMMITTEE

Senator TILGHMAN, from the Committee on Appropriations, reported the following bills:

SB 1790 (Pr. No. 2442) (Rereported)

An Act amending Title 24 (Education) of the Pennsylvania Consolidated Statutes, further providing for credited school service and for termination of annuities.

HB 164 (Pr. No. 3919) (Amended) (Rereported)

An Act amending the act of August 26, 1971 (P. L. 351, No. 91), known as the "State Lottery Law," further providing for powers and duties of the Secretary of Revenue; permitting the Secretary of Revenue to enter into contracts for the placement of commercial advertisements on lottery tickets; further providing for disposition of funds from sales; making an appropriation; and making repeals.

HB 1959 (Pr. No. 3921) (Amended) (Rereported)

A Supplement to the act of December 8, 1982 (P. L. 848, No. 235), known as the "Highway-Railroad and Highway Bridge Capital Budget Supplemental Act for 1991-1992," itemizing bridge projects.

HB 2442 (Pr. No. 3917) (Rereported)

An Act amending the act of August 14, 1991 (P. L. 342, No. 36), known as the "Lottery Fund Preservation Act," further providing, relative to pharmaceutical assistance for the elderly, for definitions, for responsibilities of the Department of Aging, for the Pharmaceutical Assistance Review Board and for the prescription drug education program; further providing for prudent pharmaceutical purchasing; and directing the Legislative Budget and Finance Committee to perform a study.

HB 2574 (Pr. No. 3731) (Amended) (Rereported)

An Act amending the act of July 20, 1917 (P. L. 1158, No. 401), referred to as the "Constable Fee Law," changing fees and adding provisions relating to training and certification; and making a repeal.

HB 2602 (Pr. No. 3860) (Rereported)

An Act providing minimum standards, terms and conditions for the licensing of persons who engage in wholesale distributions in interstate commerce of prescription drugs; and making a repeal.

HB 2791 (Pr. No. 3892) (Rereported)

An Act amending the act of July 10, 1989 (P. L. 313, No. 52), known as the "Industrial Communities Action Program Act," further providing for definitions, for project eligibility and for time limit on award of grants.

BILL SIGNED

The PRESIDENT pro tempore (Robert C. Jubelirer) in the presence of the Senate signed the following bill:

HB 2482.

CONSIDERATION OF CALENDAR RESUMED

HB 2509 CALLED UP

HB 2509 (Pr. No. 3580) — Without objection, the bill, which previously went over in its order temporarily, was called up, from page 8 of the Third Consideration Calendar, by Senator LOEPER.

BILL ON THIRD CONSIDERATION AMENDED

HB 2509 (Pr. No. 3580) — The Senate proceeded to consideration of the bill, entitled:

An Act authorizing the Department of General Services, with the approval of the Governor, to sell and convey a certain lot or tract of land situate in the City of Erie, Erie County, Pennsylvania;

Considered the third time,

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

BRIGHTBILL AMENDMENT

Senator BRIGHTBILL, by unanimous consent, offered the following amendment No. A3147:

Amend Title, page 1, line 4, by striking out all of said line and inserting: and authorizing the conveyance of a tract of land in Berks County to Valley View Mobile Home Park.

Amend Bill, page 5, by inserting between lines 5 and 6:

Section 2. The Department of General Services, with the approval of the Department of Public Welfare and the Governor, is authorized on behalf of the Commonwealth to sell to Valley View Mobile Home Park, for a consideration determined by an independent appraisal obtained by the Department of General Services, the following tract of land:

All that certain parcel or tract of land situate on the northeastern side of Pennsylvania State Highway S.R. 0422, leading from Reading to Harrisburg, between Wernersville and Robesonia, in the Township of Lower Heidelberg, County of Berks and Commonwealth of Pennsylvania, and being more fully bounded and described, as follows, to wit:

Beginning at the corner of the centerline of Pennsylvania State Highway, S.R. 0422, being the southern corner of property belonging to D.A.M. Management Corp., grantee herein, thence along said property north 39 degrees 11 minutes east, a distance of 491.05 feet to a corner marked by a monument, being a corner of property belonging to now or late Maggie Palm, Vincent P. Obold and Karl H. Obold; thence along said property south 47 degrees 54 minutes 19 seconds east, a distance of 501.28 feet to a corner marked by a monument; thence along property now or late of the Commonwealth of Pennsylvania Department of Welfare, of which this was a part, south 42 degrees 38 minutes 41 seconds west, a distance of 534.72 feet to a corner on the centerline of the aforesaid State Highway S.R. 0422; thence along said centerline along a curve deflecting to the right having a delta angle of 02 degrees 21 minutes 59.70 seconds, a radius of 11,459.19 feet, an arc length of 473.32 feet and a chord bearing and distance of north 42 degrees 32 minutes 11.40 seconds west 473.28 feet to the place of beginning.

Containing in area 5.734 acres of land.

Being a portion of the same property which by deed dated and recorded in Deed Book Volume 473, Page 93, Berks County Records at Reading, Pennsylvania granted and conveyed unto the Commonwealth of Pennsylvania.

Amend Sec. 2, page 5, line 6, by striking out "2. The conveyance" and inserting: 3. The conveyances

Amend Sec. 3, page 5, line 14, by striking out "3" and inserting: 4

Amend Sec. 3, page 5, line 14, by striking out "this" and inserting: each

Amend Sec. 4, page 5, line 16, by striking out "4. The deed" and inserting: 5. The deeds

Amend Sec. 5, page 6, line 1, by striking out "5" and inserting: 6

Amend Sec. 6, page 6, line 7, by striking out "6" and inserting: 7

On the question,

Will the Senate agree to the amendment?

It was agreed to.

On the question,

Will the Senate agree to the bill on third consideration, as amended?

WENGER AMENDMENT

Senator WENGER, by unanimous consent, offered the following amendment No. A3146:

Amend Title, page 1, line 4, by removing the period after "Pennsylvania" and inserting: ; and authorizing and directing the Department of General Services to accept the conveyance to the Commonwealth of a parcel of land situate in the Township of Honeybrook, County of Chester and Township of Salisbury, County of Lancaster; and authorizing the Department of General Services to sell said parcel of land with a contiguous parcel of land previously approved for sale pursuant to the Surplus Property Disposition Plan of 1985, approved by the Legislature, in accordance with Article XXIV-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

Amend Sec. 1, page 1, line 7, by inserting after "1.": (a)

Amend Sec. 2, page 5, line 6, by striking out "Section 2." and inserting: (b)

Amend Sec. 3, page 5, line 14, by striking out "Section 3." and inserting: (c)

Amend Sec. 4, page 5, line 16, by striking out "Section 4." and inserting: (d)

Amend Sec. 5, page 6, line 1, by striking out "Section 5." and inserting: (e)

Amend Bill, page 6, by inserting between lines 6 and 7:

Section 2. (a) The Department of General Services is hereby authorized and directed to accept on behalf of the Commonwealth of Pennsylvania, the conveyance from Federated Medical Resources, Incorporated, of a parcel of land located in the Township of Honeybrook, County of Chester, and the Township of Salisbury, County of Lancaster, bounded and described as follows:

Beginning at a point set in the title line of Beaver Dam Road (T-433) at its intersection with the title line of Engletown Road (T-348); thence extending along the title line of Beaver Dam Road (T-433) the two following courses and distances to wit: south 75 degrees 20 minutes 20 seconds west - 154.66 feet to a point; thence north 81 degrees 46 minutes 40 seconds west (crossing over the County line dividing Salisbury Township, Lancaster County from Honeybrook Township, Chester County) 483.20 feet to a spike set at a common corner with land belonging now or formerly to Wayne M. Reiter; thence leaving the road and extending along land belonging now or formerly to Wayne M. Reiter, and land now or formerly belonging to Amos L. Stoltzfus (crossing over the Sun Pipe Line easement 40 feet wide) north 28 degrees 47 minutes 56 seconds west - 2,160.87 feet to a point set at a corner of land belonging now or formerly to Vesta S. Lammy; thence extending along land belonging now or formerly to Vesta S. Lammy the two following courses and distances to wit: north 78 degrees 44 minutes 27 seconds east - 402.85 feet to a stone; thence north 04 degrees 21 minutes 30 seconds east - 455.47 feet to an iron pin set at a corner of land belonging now or formerly to John U. Stoltzfus; thence extending along land belonging now or formerly to John U. Stoltzfus, south 81 degrees 11 minutes 38 seconds east - 383.74 feet to a point; thence extending along land belonging now or formerly to the General State Authority the twelve following courses and distances to wit: south 08 degrees 48 minutes 22 seconds west - 198.62 feet to a point; thence south 44 degrees 53 minutes 43 seconds east (crossing over the County line dividing Salisbury Township, Lancaster County from Honeybrook Township, Chester County) 625.76 feet to a point; thence north 89 degrees 44 minutes 09 seconds east - 530.67 feet to a point; thence south 13 degrees 00 minutes 01 seconds east - 377.55 feet to a point; thence south 47 degrees 56 minutes 42 seconds east - 413.48 feet to a point; thence south 79 degrees 30 minutes east - 341.53 feet to a point; thence south 34 degrees 30 minutes east 65 feet to a point of curve; thence in southeasterly direction, along a curved line curving to the left, having a radius of 511.64 feet for an arc distance of 129.48 feet and the chord of the arc being south 41 degrees 45 minutes east - 129.14 feet to a point of tangent; thence south 49 degrees east - 180 feet to a point of curve; thence in a southeasterly direction along a curved line curving to the right, having a radius of 214.56 feet for an arc distance of 288.43 feet and the chord of the arc being, south 18 degrees 30 minutes east - 217.89 feet to a point of tangent; thence south 12 degrees west - 305 feet to a point; thence south 49 degrees 15 minutes 08 seconds west - 74.50 feet (passing over the Sun Pipe Line 40 foot wide easement) to a point set in the title line in the bed of Beaver Dam Road (T-433); thence extending along the title line of Beaver Dam Road (T-433) the three following courses and distances to wit: south 83 degrees west - 261 feet to a spike; thence south 70 degrees 26 minutes 06 seconds west - 421.56 feet to a spike; thence south 80 degrees 49 minutes 16 seconds west - 86.17 feet to a point; thence leaving Beaver Dam Road and extending along land belonging now or formerly to the General State Authority the seven following courses and distances to wit: north 27 degrees 40 minutes 04 seconds west - (passing over the Sun Pipe Line easement 40 feet wide) 669.75 feet to a point; thence south 62 degrees 19 minutes 56 seconds west - 260 feet to a point; thence south 27 degrees 40 minutes 04 seconds east - 180 to a point; thence south 62 degrees 19 minutes 56 seconds west - 100 feet to a point; thence south 27 degrees 40 minutes 04 seconds east - 150 feet to a point; thence north 62 degrees 19 minutes 56 seconds east - 280 feet to a point; thence south 27 degrees 40 minutes 04 seconds east (passing over the Sun Pipe Line easement 40 feet wide) 313 feet to a point set in the title line of Beaver Dam Road (T-433); thence extending along Beaver Dam Road (T-433) south 80 degrees 40 minutes 14 seconds west - 195.64 feet to the first mentioned point and place of beginning.

Containing an area of 77.625 acres of land being the same more or less. Being approximately 44.851 acres in Chester County and 32.774 in Lancaster County.

Being subject to a 40 foot wide easement for Sun Pipe Line; and a 20 foot wide utility easement in favor of the General State Authority; and subject to the rights within Beaver Dam Road (T-433) and 25 feet from the center line thereof.

(b) Costs and fees incidental to this conveyance shall be borne by Federated Medical Resources, Incorporated.

(c) The Department of General Services is hereby authorized to sell the aforesaid parcel of land situate in the Township of Honeybrook, County of Chester and the Township of Salisbury, County of Lancaster, bounded and described in subsection (a).

(d) The parcel is authorized to be sold with a contiguous parcel of land previously approved for sale pursuant to the Surplus Property Disposition Plan of 1985 approved by the General Assembly, in accordance with Article XXIV-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, in accordance with the terms and conditions provided in the aforesaid surplus property plan.

(e) All costs and fees for the sale of this parcel shall be borne by the Commonwealth as provided for in Article XXIV-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

Amend Sec. 6, page 6, line 7, by striking out "6" and inserting: 3

On the question,

Will the Senate agree to the amendment?

It was agreed to.

And the question recurring,

Will the Senate agree to the bill on third consideration, as amended?

ANDREZESKI AMENDMENT

Senator ANDREZESKI, by unanimous consent, offered the following amendment No. A3144:

Amend Title, page 1, line 4, by removing the period after "Pennsylvania" and inserting: ; and providing for the conveyance of Wolverine Memorial Park in Erie to the Erie-Western Pennsylvania Port Authority.

Amend Bill, page 5, by inserting between lines 5 and 6:

Section 2. (a) The Department of General Services, with the approval of the Governor, is hereby authorized and directed, on behalf of the Commonwealth of Pennsylvania, to grant and convey to the Erie-Western Pennsylvania Port Authority, an entity of local government organized under the laws of the Commonwealth, for a consideration of one dollar, the following land and rights therein situate at 80 State Street in the city and county of Erie, known as Wolverine Memorial Park, bounded and described as follows:

Beginning at the point of intersection of the north line of Front Street with the west line of State Street; thence westwardly along said north line of Front Street, 132.768 feet to the point where the east line of In Shore Water Lot 73 intersects said north line of Front Street; thence northwardly along said east line of In Shore Water Lot 73 and parallel with State Street, 639.48 feet to the north line of said In Shore Water Lot 73; thence eastwardly parallel with said Front Street, and along the north line of In Shore Water Lots 71 and 72, 133 feet to the west line of State Street; and thence southwardly along the said west line of State Street, 607.08 feet to the north line of Front Street, at the place of beginning. The premises contains 1.852 acres and comprises In Shore Water Lots 71, 72, 73 and 74, less subdivisions A, B, C, D and E of Lots 73 and 74.

Amend Sec. 2, page 5, line 6, by striking out "2. The conveyance" and inserting: 3. The conveyances

Amend Sec. 3, page 5, line 14, by striking out "3" and inserting : 4

Amend Sec. 3, page 5, line 14, by striking out "this" and inserting: each

Amend Sec. 4, page 5, line 16, by striking out "4. The deed" and inserting: 5. The deeds

Amend Sec. 4, page 5, line 19, by inserting after "Pennsylvania.": The conveyance under section 2 shall contain a clause providing that, if the land is not used as a park, title shall revert to the Commonwealth.

Amend Sec. 4, page 5, line 19, by inserting after "CONVEYANCE": under section 1

Amend Sec. 5, page 6, line 1, by striking out "5" and inserting: 6

Amend Sec. 6, page 6, line 7, by striking out "6" and inserting: 7

On the question,

Will the Senate agree to the amendment?

It was agreed to.

And the question recurring,

Will the Senate agree to the bill on third consideration, as amended?

ROBBINS AMENDMENT

Senator ROBBINS, by unanimous consent, offered the following amendment No. A3138:

Amend Title, page 1, lines 2 and 3, by striking out "a certain lot or tract" and inserting: certain tracts

Amend Sec. 1, page 1, line 11, by striking out "a tract" and inserting: , tracts

Amend Sec. 4, page 5, lines 21 through 30, by striking out all of said lines and inserting:

(1) Reaffirming the wetlands park, free parking area for at least 50 cars and public access thereto as required by the act of October 23, 1988 (P.L.1059, No.122), entitled "An act amending the act of April 9, 1929 (P.L.177, No.175), entitled 'An act providing for and reorganizing the conduct of the executive and administrative work of the Commonwealth by the Executive Department thereof and the administrative departments, boards, commissions, and officers thereof, including the boards of trustees of State Normal Schools, or Teachers Colleges; abolishing, creating, reorganizing or authorizing the reorganization of certain administrative departments, boards, and commissions; defining the powers and duties of the Governor and other executive and administrative officers, and of the several administrative departments, boards, commissions, and officers; fixing the salaries of the Governor, Lieutenant Governor, and certain other executive and administrative officers; providing for the appointment of certain administrative officers, and of all deputies and other assistants and employes in certain departments, boards, and commissions; and prescribing the manner in which the number and compensation of the deputies and all other assistants and employes of certain departments, boards and commissions shall be determined,' requiring the Auditor General to periodically audit the affairs of the Pennsylvania Turnpike Commission; further providing for powers and duties of the Department of Agriculture relative to the manufacture and use of ethyl alcohol and the transportation of poultry, and for leases of lands and offices by nonprofit corporations to the Commonwealth; making an editorial change; providing for the exemption from taxes of the lease upon the Eastern Pennsylvania Psychiatric Institute; authorizing and directing The General State Authority and the Department of General Services to remove all restrictions or encumbrances on certain land situate in Philadelphia; authorizing and directing the Department of General Services, with the approval of the Governor and the Department of Environmental Resources, to convey certain easements and parcels of land situate in the Borough of New Hope, Bucks County, Pennsylvania, to the River Road Development Corporation,

and to accept the conveyance to the Commonwealth of certain parcels of land in the same borough; authorizing the Department of Environmental Resources to accept the conveyance of an easement in the same borough; authorizing and directing the Department of General Services, with the approval of the Governor, to sell and convey a tract of land situate in East Allen Township, Northampton County, Pennsylvania; authorizing and directing the Department of General Services, with the approval of the Governor and the Secretary of Environmental Resources, to sell and convey a certain parcel of land in Erie County, Pennsylvania; authorizing and directing the Department of General Services, with the approval of the Governor and the Department of Transportation, to convey to the county commissioners of Lackawanna County a tract of land situate in the Borough of Moosic, Lackawanna County, Pennsylvania; authorizing and directing the Department of General Services, with the approval of the Governor and the Department of Public Welfare, to convey to Kirwan Heights Volunteer Fire Department a tract of land situate in Collier Township, Allegheny County, Pennsylvania; authorizing and directing the Department of General Services, with the approval of the Governor and the Department of Public Welfare, to convey a tract of land situate in the City of Pittsburgh, Allegheny County, Pennsylvania; authorizing and directing the Department of General Services, with the approval of the Governor, to convey to the Canon-McMillan School District 3.109 acres of land, more or less, situate in the Borough of Canonsburg, Washington County, Pennsylvania; and making a repeal," and as set forth in a certain deed from the Commonwealth of Pennsylvania to Perry's Landing Ltd., No.1 dated January 26, 1989 and recorded January 31, 1989 in Erie County Record Book 76, page 2227; and

(2) Assuring adequate provisions for grantee providing an undeveloped green area along a strip of land located between the Bayfront Highway and the southeasterly bank of Cascade Creek, approximately 400 feet long and approximately 25 feet wide, the southwestern boundary of the green area to be at the current curb cut on the Bayfront Highway, just northeast of Cranberry Street.

On the question,

Will the Senate agree to the amendment?

It was agreed to.

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

LEGISLATIVE LEAVES

Senator LOEPER. Mr. President, I would request temporary Capitol leaves for Senator Peterson, who has been called from the floor, and Senator Bell.

The PRESIDENT pro tempore. Senator Loeper requests temporary Capitol leaves for Senator Peterson and Senator Bell. Without objection, those leaves will be granted.

Senator MELLOW. Mr. President, I request a temporary Capitol leave for Senator Reibman.

The PRESIDENT pro tempore. Senator Mellow requests a temporary Capitol leave for Senator Reibman. Without objection, that leave will be granted.

SPECIAL ORDER OF BUSINESS

SUPPLEMENTAL CALENDAR NO. 4

THIRD CONSIDERATION CALENDAR

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

HB 2442 (Pr. No. 3917) — The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of August 14, 1991 (P. L. 342, No. 36), known as the "Lottery Fund Preservation Act," further providing, relative to pharmaceutical assistance for the elderly, for definitions, for responsibilities of the Department of Aging, for the Pharmaceutical Assistance Review Board and for the prescription drug education program; further providing for prudent pharmaceutical purchasing; and directing the Legislative Budget and Finance Committee to perform a study.

Considered the third time,

On the question,

Will the Senate agree to the bill on third consideration?

MOTION TO REVERT TO PRIOR PRINTER'S NUMBER

Senator ANDREZESKI. Mr. President, at this time I would like to ask that we revert to the prior printer's number for House Bill No. 2442, and the printer's number would be 3226, which would reflect the bill as it came out of the House.

The PRESIDENT pro tempore. Senator Andrezeski moves to revert from Printer's No. 3917 to Printer's No. 3226 of House Bill No. 2442.

On the question,

Will the Senate agree to the motion?

Senator LOEPER. Mr. President, it is my view that the current printer's number reflects the product of many hours of bipartisan negotiation and I believe achieves greater savings than the prior printer's number in order that we can ensure the stability of the PACE Program for our seniors, and I would oppose the motion to revert.

Senator ANDREZESKI. Mr. President, on this motion to revert, I would like to refer to the original intent of this bill, which was the PACE rescue plan, as viewed by the plan coalition members. The coalition members were the senior citizens of Pennsylvania who, on numerous occasions, have rallied within their districts and in the State Capitol on the need to come up with a comprehensive plan to deal with escalating drug costs which are threatening the viability of the PACE Program and the Lottery Program itself.

The reason I ask to revert to the prior printer's number is, quite simply, this is the best product, in my view and in the view of the senior citizens of Pennsylvania and in the view of the senior citizens whom I represent, in achieving the greatest savings, the greatest cost containment, and the greatest control in this program.

I would like to point out that we sort of become victims of those who are here on Capitol Hill at times, and as this bill went from the House to the Senate it was massaged in a lot of

different ways, and it was massaged mainly by a sea of professional masseurs or masseuses who came to the Capitol here, talked to a lot of people and rubbed them the right way and were able to say, well, what you really need is this or what you really need is that, and as their magic fingers worked their magic on certain portions of this, we now end up, in my opinion, Mr. President, with the pharmaceutical profit bill or the pharmaceutical rescue bill rather than the PACE rescue plan.

At this time, I do not want to go into every detail or every amendment that was put in, but I think it would be sufficient for me to say that in asking for a reversion to Printer's No. 3226, I am asking that we vote for the older Americans, for the seniors in Pennsylvania who would benefit most by the original printing of this bill as it came out of the House, not for something that was massaged by the professionals who descended from the pharmaceutical companies and said, say it this way or say it that way and it will look like we are doing something for the people as we do something for ourselves.

I think we have a higher obligation as elected officials and I think we have a higher obligation than what is presently amended into this bill, and I would urge my colleagues here to stand up and be counted for those whom they represent in their Senatorial districts and not stand up and be counted for those who might be roaming the Capitol hallways from the various pharmaceutical companies.

Thank you, Mr. President.

Senator O'PAKE. Mr. President, very briefly, I rise to support the motion to revert. The main reason is that if we do revert to the form in which this passed the House, it will go to the Governor, he can sign it into law, and the senior citizens of Pennsylvania can receive some assurance that the solvency of the Lottery Fund, and, therefore, the PACE Program, is guaranteed. We do not know when the House of Representatives is going to come back to consider amendments that we add here tonight, so rather than try to debate the individual merits of what is being inserted here, I would like to see us go back to the way this passed the House. It saved millions of dollars for the PACE fund. It limited the increases that the pharmaceutical manufacturers could put on the price of drugs.

Last year, as you recall, there was a 12.5-percent volume discount which the pharmaceutical manufacturers did give to PACE and to the State of Pennsylvania, which is the largest volume purchaser of pharmaceutical drugs in the country. But, while they gave back 12.5 percent, they raised their prices 20 percent. To stop this, we have to get a bill over to the Governor now, and, therefore, I would urge that we revert to the form in which it passed the House and not make the senior citizens of Pennsylvania—thousands of whom have rallied to the Capitol in support of the House version—pay the price for the political games that are played up here.

Senator BRIGHTBILL. Mr. President, would the gentleman from Berks, Senator O'Pake, stand for interrogation?

The PRESIDENT pro tempore. Will the gentleman from Berks, Senator O'Pake, permit himself to be interrogated?

Senator O'PAKE. I will, Mr. President.

Senator BRIGHTBILL. Mr. President, is it the gentleman's position that the House of Representatives acted irresponsibly by going home and forcing us into the position that he is talking about?

Senator O'PAKE. Ha-ha.

The PRESIDENT pro tempore. I think the answer is "ha-ha." Is that a Pepsi ad?

Senator O'PAKE. Uh-huh.

The PRESIDENT pro tempore. I think that is the best answer you are going to get, Senator.

Senator BRIGHTBILL. Thank you, sir.

LEGISLATIVE LEAVE

Senator MELLOW. Mr. President, prior to the roll, may we place Senator Dawida on temporary Capitol leave.

The PRESIDENT. Senator Mellow requests a temporary Capitol leave for Senator Dawida. Without objection, said leave will be granted.

And the question recurring,

Will the Senate agree to the motion?

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

YEAS—14

Afflerbach	Jones	O'Pake	Stapleton
Andrezeski	LaValle	Porterfield	Stewart
Bortner	Lewis	Schwartz	Stout
Greenwood	Musto		

NAYS—34

Armstrong	Fisher	Lincoln	Rhoades
Baker	Fumo	Loeper	Robbins
Belan	Greenleaf	Madigan	Scanlon
Bell	Hart	Mellow	Shaffer
Bodack	Helfrick	Pecora	Shumaker
Brightbill	Holl	Peterson	Tilghman
Corman	Hopper	Punt	Wenger
Dawida	Jubelirer	Reibman	Williams
Fattah	Lemmond		

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

And the question recurring,

Will the Senate agree to the bill on third consideration?

It was 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

Afflerbach	Fumo	Lincoln	Rhoades
Armstrong	Greenleaf	Loeper	Robbins
Baker	Greenwood	Madigan	Scanlon
Belan	Hart	Mellow	Shaffer
Bell	Helfrick	Musto	Shumaker
Bodack	Holl	O'Pake	Stapleton
Bortner	Hopper	Pecora	Stewart
Brightbill	Jubelirer	Peterson	Stout

Corman	LaValle	Porterfield	Tilghman
Dawida	Lemmond	Punt	Wenger
Fattah	Lewis	Reibman	Williams
Fisher			

NAYS—3

Andrezeski	Jones	Schwartz

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

Ordered, That the Secretary of the Senate 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.

SPECIAL ORDER OF BUSINESS
SUPPLEMENTAL CALENDAR NO. 6

THIRD CONSIDERATION CALENDAR

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

HB 164 (Pr. No. 3919) — The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of August 26, 1971 (P. L. 351, No. 91), known as the "State Lottery Law," further providing for powers and duties of the Secretary of Revenue; permitting the Secretary of Revenue to enter into contracts for the placement of commercial advertisements on lottery tickets; further providing for disposition of funds from sales; making an appropriation; and making repeals.

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

Afflerbach	Fisher	Lewis	Rhoades
Andrezeski	Fumo	Lincoln	Robbins
Armstrong	Greenleaf	Loeper	Scanlon
Baker	Greenwood	Madigan	Schwartz
Belan	Hart	Mellow	Shaffer
Bell	Helfrick	Musto	Shumaker
Bodack	Holl	O'Pake	Stapleton
Bortner	Hopper	Pecora	Stewart
Brightbill	Jones	Peterson	Stout
Corman	Jubelirer	Porterfield	Tilghman
Dawida	LaValle	Punt	Wenger
Fattah	Lemmond	Reibman	Williams

NAYS—0

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

Ordered, That the Secretary of the Senate 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.

SPECIAL ORDER OF BUSINESS
SUPPLEMENTAL CALENDAR NO. 7

SECOND CONSIDERATION CALENDAR

BILL ON SECOND CONSIDERATION

HB 2574 (Pr. No. 3731) — The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of July 20, 1917 (P. L. 1158, No. 401), referred to as the "Constable Fee Law," changing fees and adding provisions relating to training and certification; and making a repeal.

Considered the second time and agreed to,

Ordered, To be printed on the Calendar for third consideration.

UNFINISHED BUSINESS
CONGRATULATORY RESOLUTIONS

The PRESIDENT pro tempore laid before the Senate the following resolutions, which were read, considered and adopted:

Congratulations of the Senate were extended to Mr. and Mrs. Robert W. Obetz, Sr. by Senator Armstrong.

Congratulations of the Senate were extended to Sister Mary Appolonia by Senator Baker.

Congratulations of the Senate were extended to Chief Stanley A. Smith by Senator Belan.

Congratulations of the Senate were extended to Mr. and Mrs. Burnell Fuhrman by Senator Bortner.

Congratulations of the Senate were extended to Dr. Eleanor Aurand and to James Havice, Jr. by Senator Corman.

Congratulations of the Senate were extended to Mr. and Mrs. Frank Anello and to Mr. and Mrs. Franklin Gibbs by Senator Greenleaf.

Congratulations of the Senate were extended to Mr. and Mrs. Edwin McCrackan by Senator Hart.

Congratulations of the Senate were extended to Jeffrey Richer by Senator Helfrick.

Congratulations of the Senate were extended to Joseph DeRaymond by Senator Holl.

Congratulations of the Senate were extended to Rwanda Luckett by Senator Jones.

Congratulations of the Senate were extended to Mr. and Mrs. Everett Green by Senator Madigan.

Congratulations of the Senate were extended to Saint John's United Church of Christ by Senator Musto.

Congratulations of the Senate were extended to Mr. and Mrs. Joe Yenerall, Mr. and Mrs. Anthony Trongo, Sr., Mr. and Mrs. John Colaizzi and to Michael Shapiola, Jr. by Senator Porterfield.

Congratulations of the Senate were extended to Reverend and Mrs. George R. Kell by Senator Shumaker.

Congratulations of the Senate were extended to Mr. and Mrs. George Corbin, Sr., Mr. and Mrs. Thurman M. Peel, Mr. and Mrs. George Ermacoff and to Mr. and Mrs. Paul Patton by Senator Stout.

CONDOLENCE RESOLUTIONS

The PRESIDENT pro tempore laid before the Senate the following resolutions, which were read, considered and adopted:

Condolences of the Senate were extended to the family of the late Guy Miller and to the family of the late Chief Derle Shoemaker by Senator Helfrick.

BILLS SIGNED

The PRESIDENT pro tempore (Robert C. Jubelirer) in the presence of the Senate signed the following bills:

HB 2010, 2449 and **2541**.

ADJOURNMENT

Senator LOEPER. Mr. President, I move the Senate do now adjourn until Wednesday, July 1, 1992, at 10:00 a.m., Eastern Daylight Saving Time.

The motion was agreed to.

The Senate adjourned at 8:05 p.m., Eastern Daylight Saving Time.