

COMMONWEALTH OF PENNSYLVANIA

Legislative Journal

TUESDAY, NOVEMBER 19, 1996

SESSION OF 1996

180TH OF THE GENERAL ASSEMBLY

No. 60

SENATE

TUESDAY, November 19, 1996

The Senate met at 1 p.m., Eastern Standard Time.

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

PRAYER

The Chaplain, Reverend MICHAEL M. MAZER, of First Baptist Church, Washington, offered the following prayer:

Let us pray.

Almighty God, our Heavenly Father, we come together today and we are united in prayer, seeking Your blessings upon the Members of this body. We know, O God, because of Your omniscience that You are ever mindful and concerned about the way we all live, and most of all today we are aware that You are very much concerned how we wear ourselves out putting in such long days. It seems from time to time that we are more willing to take better care of our automobiles than our very lives.

So we pause today in this moment of prayer, seeking Your blessings and strength, asking that You grant unto the Senators good health and that You give them common sense to preserve their good health. Bless all the members of their families, be with their staff members and all who are working here in this Chamber today. May we all commit ourselves unto Your care so that we will not be anxious about any activity that will come before us, but knowing that we have been guided by You, we can give You our best work.

Lord, there are many people who have converged on the city today. They have many needs and concerns that they want to bring before this body and others, and some of these individuals are angry and others are concerned and perplexed. And so we pray that as the Senate deals with these matters of the Commonwealth that they will know which matters they need to take care of today, that they will not give themselves over to activity and to foolishness which takes away from them and which takes away from the time that they could devote to worthy projects. Help us to use our minds so that we can make good choices and use our time wisely. And, Lord, we wait upon You even now, knowing that You hear our prayers and will answer them according to Your gracious will.

Lord God in heaven, we pray that You will bless the Members of the Senate and that You grant Your favor upon the people of the Commonwealth of Pennsylvania. We offer this prayer in the name of Your son, who is our Lord and our Savior. Amen.

The PRESIDENT. The Chair thanks Reverend Mazer, who is the guest today of Senator Stout.

JOURNAL APPROVED

The PRESIDENT. A quorum of the Senate being present, the Clerk will read the Journal of the preceding Session of November 18, 1996.

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 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 1757.

SENATE BILL RETURNED WITH AMENDMENTS

The Clerk of the House of Representatives returned to the Senate SB 1397, 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 XIV, section 5, this bill will be referred to the Committee on Rules and Executive Nominations.

HOUSE CONCURS IN SENATE AMENDMENTS BY AMENDING SAID 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 by amending said amendments to HB 544 and HB 2685, in which concurrence of the Senate is requested.

The PRESIDENT. Pursuant to Senate Rule XIV, 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:

**Weekly adjournment.**

**HOUSE BILLS FOR CONCURRENCE**

The Clerk of the House of Representatives presented to the Senate the following bills for concurrence, which were referred to the committees indicated:

November 19, 1996

**HB 2498** -- Committee on Local Government.

**HB 2627** -- Committee on Community and Economic Development.

**HB 2637** -- Committee on Judiciary.

**HB 2659** -- Committee on Finance.

**BILLS INTRODUCED AND REFERRED**

The PRESIDENT laid before the Senate the following Senate Bills numbered, entitled, and referred as follows, which were read by the Clerk:

November 18, 1996

Senator SALVATORE presented to the Chair SB 1732, entitled:

An Act amending the act of August 14, 1991 (P. L. 342, No. 36), entitled "Lottery Fund Preservation Act," defining "annual deductible"; further defining "maximum annual income"; further providing for the eligibility of additional claimants for pharmaceutical assistance to the elderly; providing for a copayment schedule for additional claimants; providing for the licensing and regulation of limited electronic gaming machines in this Commonwealth; and providing for the establishment and preservation of a Limited Electronic Gaming Fund.

Which was committed to the Committee on STATE GOVERNMENT, November 18, 1996.

Senators HOLL, HELFRICK, O'PAKE, GREENLEAF, STOUT, MUSTO and WENGER presented to the Chair SB 1733, entitled:

An Act amending Title 74 (Transportation) of the Pennsylvania Consolidated Statutes, creating the Commonwealth Aviation Advisory Committee and providing for its powers and duties.

Which was committed to the Committee on TRANSPORTATION, November 18, 1996.

Senators O'PAKE, ULIANA, MELLOW, TARTAGLIONE, SALVATORE, STAPLETON, HART, AFFLERBACH, DELP, BODACK, HUGHES and BELAN presented to the Chair SB 1734, entitled:

An Act amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, further providing for the release of confidential reports.

Which was committed to the Committee on JUDICIARY, November 18, 1996.

Senator SALVATORE presented to the Chair SB 1735, entitled:

An Act authorizing and directing the Department of General Services, with the approval of the Governor, to convey tracts of land and buildings, consisting of a portion of the former Philadelphia State Hospital, located in the 58th Ward of the City of Philadelphia; and making a repeal.

Which was committed to the Committee on STATE GOVERNMENT, November 18, 1996.

November 19, 1996

Senators PICCOLA, WENGER, AFFLERBACH, O'PAKE and HECKLER presented to the Chair SB 1736, entitled:

An Act amending the act of July 28, 1988 (P. L. 556, No. 101), entitled "Municipal Waste Planning, Recycling and Waste Reduction Act," further providing for permit applications for landfill or resource recovery facilities.

Which was committed to the Committee on ENVIRONMENTAL RESOURCES AND ENERGY, November 19, 1996.

Senators THOMPSON and GERLACH presented to the Chair SB 1737, entitled:

An Act amending Titles 62 (Procurement), 1 (General Provisions) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, adding provisions relating to procurement; and making repeals.

Which was committed to the Committee on STATE GOVERNMENT, November 19, 1996.

Senators SCHWARTZ, BELAN, LAVALLE, MUSTO, AFFLERBACH, O'PAKE, STOUT and TARTAGLIONE presented to the Chair SB 1738, entitled:

An Act amending the act of January 30, 1974 (P. L. 13, No. 6), entitled "Loan Interest and Protection Law," providing for the payment of interest by residential mortgage lenders on certain amounts held in escrow.

Which was committed to the Committee on BANKING AND INSURANCE, November 19, 1996.

**RESOLUTION INTRODUCED AND REFERRED**

The PRESIDENT laid before the Senate the following Senate Resolution numbered, entitled, and referred as follows, which was read by the Clerk:

November 19, 1996

**COMMEMORATING THE 30TH ANNIVERSARY  
OF THE PASSAGE OF THE MENTAL HEALTH  
AND MENTAL RETARDATION ACT OF 1966**

Senators PETERSON, THOMPSON, HELFRICK, WILLIAMS, MOWERY, SALVATORE, TOMLINSON, ULIANA, DELP, ROBBINS, WENGER, O'PAKE, AFFLERBACH, TILGHMAN, HART, GERLACH and KASUNIC offered the following resolution (**Senate Resolution No. 158**), which was read and referred to the Committee on Rules and Executive Nominations:

In the Senate, November 19, 1996

A RESOLUTION

Commemorating the 30th Anniversary of the passage of the Mental Health and Mental Retardation Act of 1966.

WHEREAS, The Mental Health and Mental Retardation Act of 1966 was signed into law on October 20, 1966, and took effect on January 1, 1967; and

WHEREAS, The Mental Health and Mental Retardation Act of 1966 requires the Department of Public Welfare "to assure within the State the availability and equitable provision of adequate mental health and mental retardation services for all persons who need them, regardless of religion, race, color, national origin, settlement, residence, or economic or social status"; and

WHEREAS, The Mental Health and Mental Retardation Act of 1966 emphasizes the provision of community-based mental health and mental retardation services; and

WHEREAS, Almost a quarter of a million persons a year receive community-based mental health services, and over 67,000 persons receive community-based mental retardation services under the Mental Health and Mental Retardation Act of 1966; and

WHEREAS, In the three decades since the enactment of the Mental Health and Mental Retardation Act of 1966, recipients of those community-based services and their family members have become increasingly more involved in helping to shape the mental health and mental retardation services systems; and

WHEREAS, The Mental Health and Mental Retardation Act of 1966 fostered a partnership among providers of services, the Commonwealth and the counties that has resulted in an extensive system of community-based services and treatment dedicated to meeting individual needs in an appropriate fashion; and

WHEREAS, The members of the Pennsylvania Community Providers Association have been proud to be a keystone in Pennsylvania's community-based mental health and mental retardation system; therefore be it

RESOLVED, That the Senate commemorate the 30th Anniversary of the passage of the Mental Health and Mental Retardation Act of 1966 and join with all Pennsylvanians in commending providers of community-based mental health and mental retardation services.

**BILL SIGNED**

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

**HB 1757.**

**SPECIAL ORDER OF BUSINESS  
ANNOUNCEMENTS BY THE SECRETARY**

The SECRETARY. Consent has been given for the following committees to meet during today's Session: the Committee on Appropriations to consider House Bills No. 1782, 2210, and 2257; the Committee on Aging and Youth to consider House Bill No. 2191; and the Committee on Rules and Executive Nominations to consider House Bill No. 544 and certain nominations.

**REPORTS FROM COMMITTEES**

Senator ROBBINS, from the Committee on Local Government, reported the following bills:

**HB 2586 (Pr. No. 4252) (Amended)**

An Act amending the act of August 9, 1955 (P.L.323, No.130), known as The County Code, authorizing counties to make appropriations to municipal corporations for disaster or emergency aid.

**HB 2657 (Pr. No. 4158)**

An Act amending the act of May 25, 1945 (P.L.1050, No.394), known as the Local Tax Collection Law, requiring notice to be sent to certain taxpayers who fail to make timely payment of certain taxes.

Senator GREENLEAF, from the Committee on Judiciary, reported the following bills:

**HB 647 (Pr. No. 3369)**

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for the expungement of certain arrest records relating to sexual offenses.

**HB 974 (Pr. No. 3587)**

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, empowering the Governor to authorize the transfer of certain convicted offenders pursuant to outstanding treaties; providing for Accelerated Rehabilitative Disposition; and making a repeal.

**HB 1181 (Pr. No. 4265) (Amended)**

An Act amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, further providing for orders for protection from domestic abuse and for the release of confidential reports.

**HB 1972 (Pr. No. 3784)**

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for reappointment of district justice; and authorizing immunity for employers who disclose certain information regarding employees.

**HB 2348 (Pr. No. 3035)**

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for retail theft.

**HB 2362 (Pr. No. 4266) (Amended)**

An Act amending Titles 18 (Crimes and Offenses) and 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further providing for wiretapping and electronic surveillance and for windshield obstructions.

**HB 2393 (Pr. No. 4267) (Amended)**

An Act amending Titles 18 (Crimes and Offenses) and 54 (Names) of the Pennsylvania Consolidated Statutes, requiring the Pennsylvania State Police to receive notification when the court orders a change of name for a person with a criminal record; regulating change of name after conviction of a felony; and further providing for certain injunctive relief.

**HB 2401 (Pr. No. 3213)**

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for bad checks.

**HB 2403 (Pr. No. 4268) (Amended)**

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, providing for police animals and for the sale of dogs; and providing penalties.

**HB 2522 (Pr. No. 3785)**

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

**HB 2592 (Pr. No. 3936)**

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

Senator LEMMOND, from the Committee on State Government, reported the following bills:

**SB 1166 (Pr. No. 1362)**

An Act authorizing the Department of General Services, with the approval of the Governor, to sell and convey to Growth Horizons, Inc., certain improved land situate in the Township of Bristol, Bucks County.

**SB 1709 (Pr. No. 2359)**

An Act amending the act of November 13, 1995 (P. L. 604, No. 61), entitled "State Fire Commissioner Act," providing for the Fire Equipment Loan System.

**HB 2243 (Pr. No. 2859)**

An Act prohibiting certain fees for the use of State property for the purpose of making commercial motion pictures.

**LEGISLATIVE LEAVES**

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

Senator LOEPER. Mr. President, I request legislative leaves on behalf of Senator Armstrong and Senator Peterson.

The PRESIDENT. Senator Loeper requests legislative leaves for Senator Armstrong and Senator Peterson, and without objection, those leaves are granted.

The Chair recognizes the gentleman from Lackawanna, Senator Mellow.

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

The PRESIDENT. Senator Mellow requests a temporary Capitol leave for Senator Andrezeski. Without objection, that leave is granted.

**LEAVE OF ABSENCE**

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

**CALENDAR****HB 774 CALLED UP OUT OF ORDER**

**HB 774 (Pr. No. 4199)** -- Without objection, the bill was called up out of order, from page 2 of the Third Consideration Calendar, by Senator LOEPER, as a Special Order of Business.

**BILL ON THIRD CONSIDERATION  
AND FINAL PASSAGE**

**HB 774 (Pr. No. 4199)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 51 (Military Affairs) of the Pennsylvania Consolidated Statutes, further providing for the appointment of Assistant Adjutant Generals and for the pay of officers and enlisted personnel.

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—49**

Afflerbach	Greenleaf	Madigan	Shaffer
Andrezeski	Hart	Mellow	Stapleton
Armstrong	Heckler	Mowery	Stewart
Belan	Helfrick	Musto	Stout
Bell	Holl	O'Pake	Tartaglione
Bodack	Hughes	Peterson	Thompson
Brightbill	Jubelirer	Piccola	Tilghman
Corman	Kasunic	Porterfield	Tomlinson
Costa	Kitchen	Punt	Uliana
Delp	LaValle	Rhoades	Wagner
Fisher	Lemmond	Robbins	Wenger
Fumo	Loeper	Schwartz	Williams
Gerlach			

**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  
GUESTS OF SENATOR NOAH W. WENGER  
PRESENTED TO THE SENATE**

The PRESIDENT. The Chair recognizes the gentleman from Lancaster, Senator Wenger.

Senator WENGER. Mr. President, I have the pleasure today of introducing several guests from my district. First of all, as a special guest Page today, I have Sheila Verghese, who lives in Leola, Pennsylvania. She is a sixth grade student at Brownstown Elementary School. Also in the gallery we have

her father, Mr. Tom Verghese, and her brother, Sam. I would like for us to welcome the Verghese family and especially Sheila, who is our guest Page.

The PRESIDENT. Would our guests please rise so that the Senate may acknowledge you.

(Applause.)

#### GUESTS OF SENATOR MICHAEL A. O'PAKE PRESENTED TO THE SENATE

The PRESIDENT. The Chair recognizes the gentleman from Berks, Senator O'Pake.

Senator O'PAKE. Mr. President, also in the gallery are three constituents who purchased "A Day With Your Senator," a charity run by Berks Community Television Octoberfest, and they, I think, learned a lot today. They spent the morning in the museum, they saw all the demonstrators, we had a quick lunch, and they are now in the gallery to watch the Senate in action. They are Marlin Sonon, Linda Hoffa, and Jennifer Harris from Bernville. Marlin is the one with the firefighter's hat. They are all in the gallery.

The PRESIDENT. Would our guests please rise so that the Senate may give you its usual warm welcome.

(Applause.)

#### GUEST OF SENATOR TERRY L. PUNT PRESENTED TO THE SENATE

The PRESIDENT. The Chair recognizes the gentleman from Franklin, Senator Punt.

Senator PUNT. Mr. President, it is a pleasure to introduce a very special guest I have with me today, and that is my son. Christian is 12 years old. He is in seventh grade, and they are having Career Day, so he is here today in Harrisburg to see firsthand and to do what his father is doing. And, Mr. Majority Leader, since he has to go home and write a report yet tonight, we are counting on you not to have Session too late.

I would like to ask my son to stand. As you can see, in 4 years I will be asking him for the car keys. I would like to ask all of you to extend Christian a very warm welcome.

The PRESIDENT. Would the Senate extend its usual warm welcome.

(Applause.)

The PRESIDENT. The Senate welcomes to the floor Senator Punt's son, Christian.

#### GUESTS OF SENATOR VINCENT J. FUMO PRESENTED TO THE SENATE

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Mr. President, I, too, have an introduction. I would like the Senate to give a warm welcome to the high school seniors in the governmental studies program at Furness Senior High School in south Philadelphia and their teacher, Mr. Pat Hand, who are in the gallery.

The PRESIDENT. Would our guests please rise so that the Senate may acknowledge you.

(Applause.)

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

Senator LOEPER. Mr. President, I would also just like to take a moment to welcome Mr. Hand and his class to the Senate of Pennsylvania. It is always good to have them visit us on an annual basis.

Senator FUMO. Mr. President, I want that class to note that that is one of the few bipartisan greetings that we get around here. They should be honored.

The PRESIDENT. That will be noted.

#### CONSIDERATION OF CALENDAR RESUMED

##### HB 2572 CALLED UP OUT OF ORDER

HB 2572 (Pr. No. 4203) -- Without objection, the bill was called up out of order, from page 6 of the Third Consideration Calendar, by Senator LOEPER, as a Special Order of Business.

##### BILL AMENDED

HB 2572 (Pr. No. 4203) -- The Senate proceeded to consideration of the bill, entitled:

An Act providing for the rights and privileges of taxpayers.

On the question,

Will the Senate agree to the bill on third consideration?

Senator LOEPER offered the following amendment No. A7549:

Amend Table of Contents, page 2, by inserting between lines 12 and 13:

Section 401. Expiration.

Amend Table of Contents, page 2, line 13, by striking out "401" and inserting: 402

Amend Bill, page 15, by inserting between lines 11 and 12 :  
Section 401. Expiration.

This act shall expire on December 31, 2000.

Amend Sec. 401, page 15, line 12, by striking out "401" and inserting: 402

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 LOEPER.

#### RECESS

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

Senator LOEPER. Mr. President, at this time I request a recess of the Senate, first for a meeting of the Committee on Rules and Executive Nominations in the rear of the Senate Chamber, to be followed immediately by a Republican caucus in the first floor caucus room, with the intention of trying to return to the floor at approximately 3:45.

The PRESIDENT. The Chair recognizes the gentleman from Lackawanna, Senator Mellow.

Senator MELLOW. Mr. President, I would also request that upon conclusion of the meeting of the Committee on Rules and

Executive Nominations, the Democratic Members of the Senate report to our caucus room at the rear of the Chamber.

The PRESIDENT. For purposes of a Republican caucus to occur in the first floor caucus room, as well as a Democratic caucus, the respective Members are encouraged to make their way to those locations. This Senate will stand in recess, with the intention of returning at approximately 3:45 p.m., and it should be made known that immediately upon the recess a meeting of the Committee on Rules and Executive Nominations will be conducted in the Rules room at the rear of the Senate Chamber. For these purposes, the Senate stands in recess.

#### 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 Community and Economic Development to meet during today's Session to consider House Bill No. 2627.

#### REPORTS FROM COMMITTEES

Senator HECKLER, from the Committee on Aging and Youth, reported the following bill:

##### HB 2191 (Pr. No. 4271) (Amended)

An Act providing for supervision of child-care facilities; and conferring powers and duties on the Department of Public Welfare.

Senator LOEPER, from the Committee on Rules and Executive Nominations, reported the following bill:

##### HB 544 (Pr. No. 4238) (Rereported) (Concurrence)

An Act amending the act of August 26, 1971 (P.L.351, No.91), known as the State Lottery Law, transferring provisions relating to the State Lottery Fund; providing for pharmaceutical assistance for the elderly, for transportation assistance to the elderly and for pharmaceutical purchasing; conferring powers and duties upon the Department of Aging, the Department of Revenue and the Department of Transportation; imposing penalties; making editorial changes; and making repeals.

#### LEGISLATIVE LEAVE

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Mr. President, I request a temporary Capitol leave for Senator Mellow, who has been called to his office.

The PRESIDENT. Without objection, that leave is granted.

#### CONSIDERATION OF CALENDAR RESUMED

##### HB 2210 CALLED UP OUT OF ORDER

HB 2210 (Pr. No. 4215) -- Without objection, the bill was called up out of order, from page 5 of the Third Consideration Calendar, by Senator LOEPER, as a Special Order of Business.

#### BILL AMENDED AND REREFERRED

HB 2210 (Pr. No. 4215) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of October 15, 1975 (P.L.390, No.111), known as the Health Care Services Malpractice Act, further providing for liability insurance and the Medical Professional Liability Catastrophe Loss Fund.

On the question,

Will the Senate agree to the bill on third consideration?

Senator LOEPER offered the following amendment No. A7546:

Amend Title, page 1, lines 1 through 10, by striking out all of said lines and inserting: Amending the act of October 15, 1975 (P.L.390, No.111), entitled "An act relating to medical and health related malpractice insurance, prescribing the powers and duties of the Insurance Department; providing for a joint underwriting plan; the Arbitration Panels for Health Care, compulsory screening of claims; collateral sources requirement; limitation on contingent fee compensation; establishing a Catastrophe Loss Fund; and prescribing penalties," further providing for definitions, for statutes of limitation, for professional liability insurance and the Medical Professional Liability Catastrophe Loss Fund, for administration of that fund and for liability of excess carriers; providing for a Medical Professional Insurance Fund Advisory Board and for surcharge limits; and further providing for plan operation and rates, for reports to the Insurance Commissioner, for forms of doing business and for the Joint Study Committee.

Amend Bill, page 1, lines 13 through 15; pages 2 and 3, lines 1 through 30; page 4, lines 1 through 13, by striking out all of said lines on said pages and inserting:

Section 1. Section 103 of the act of October 15, 1975 (P.L.390, No.111), known as the Health Care Services Malpractice Act, amended July 15, 1976 (P.L.1028, No.207) and November 6, 1985 (P.L.311, No.78) and repealed in part February 23, 1996 (P.L.27, No.10), is amended to read:

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

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

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

"Commissioner" means the Insurance Commissioner of this Commonwealth.

"Fund" means the Medical Professional Liability Catastrophe Loss Fund created in Article VII.

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

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

"Informed consent" means for the purposes of this act and of any proceedings arising under the provisions of this act, the consent of a patient to the performance of health care services by a physician or

podiatrist: Provided, That prior to the consent having been given, the physician or podiatrist has informed the patient of the nature of the proposed procedure or treatment and of those risks and alternatives to treatment or diagnosis that a reasonable patient would consider material to the decision whether or not to undergo treatment or diagnosis. No physician or podiatrist shall be liable for a failure to obtain an informed consent in the event of an emergency which prevents consulting the patient. No physician or podiatrist shall be liable for failure to obtain an informed consent if it is established by a preponderance of the evidence that furnishing the information in question to the patient would have resulted in a seriously adverse effect on the patient or on the therapeutic process to the material detriment of the patient's health.

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

"Licensure Board" means the State Board of [Medical Education and Licensure] Medicine, the State Board of Osteopathic [Examiners] Medicine, the State Board of Podiatry [Examiners], the Department of Public Welfare and the Department of Health.

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

"Prevailing primary premium" means the schedule of occurrence rates approved by the Insurance Commissioner for the Joint Underwriting Association.

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

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

Section 2. Section 605 of the act, amended July 15, 1976 (P.L.1028, No.207), is amended to read:

Section 605. Statute of Limitations.—All claims for recovery pursuant to this act must be commenced within the existing applicable statutes of limitation. In the event that any claim is made against a health care provider subject to the provisions of Article VII more than four years after the breach of contract or tort occurred which is filed within the statute of limitations, such claim shall be defended and paid by the [Medical Professional Liability Catastrophe Loss Fund established pursuant to section 701.] fund, if the fund has received a written request for indemnity and defense within 180 days of the date on which notice of the claim is given to the health care provider or his insurer. Where multiple treatments or consultations took place less than four years before the date on which the health care provider or his insurer received notice of the claim, the claim shall be deemed, for purposes of this section, to have occurred less than four years prior to the date of notice and shall be defended by the insurer pursuant to section 702(d). If such claim is made after four years because of the willful concealment by the health care provider or his insurer, the fund shall have the right of full indemnity including defense costs from such health care provider or his insurer. A filing pursuant to section 401 shall toll the running of the limitations contained herein.

Section 3. Section 701 of the act, amended October 15, 1980 (P.L.971, No.165), is amended to read:

Section 701. Professional Liability Insurance and Fund.—(a) Every health care provider as defined in this act, practicing medicine or podiatry or otherwise providing health care services in the Commonwealth shall insure his professional liability only with an insurer licensed or approved by the Commonwealth of Pennsylvania, or provide proof of self-insurance in accordance with this section.

(1) (i) [A] For policies issued or renewed in the calendar years 1997 through 1998, a health care provider, other than hospitals, who conducts more than 50% of [his] its health care business or practice within the Commonwealth of Pennsylvania shall annually insure or self-insure [his] its professional liability in the amount of [\$100,000]

\$300,000 per occurrence and [\$300,000] \$900,000 per annual aggregate, and hospitals located in the Commonwealth shall insure or self-insure their professional liability in the amount of [\$100,000] \$300,000 per occurrence, and [\$1,000,000] \$1,500,000 per annual aggregate, hereinafter known as "basic coverage insurance" and they shall be entitled to participate in the fund. [In the event that amounts which shall become payable by the fund shall exceed the amount of \$20,000,000 in any year following calendar year 1980, basic coverage insurance commencing in the ensuing year shall become \$150,000 per occurrence and \$450,000 per annual aggregate for health care providers other than hospitals for which basic coverage insurance shall become \$150,000 per occurrence and \$1,000,000 per annual aggregate.

(ii) In the event that amounts which shall become payable by the fund shall exceed the amount of \$30,000,000 in any year following calendar year 1982, basic coverage insurance commencing in the ensuing year shall become \$200,000 per occurrence and \$600,000 per annual aggregate for health care providers other than hospitals for which basic coverage insurance shall become \$200,000 per occurrence and \$1,000,000 per annual aggregate.]

(ii) For policies issued or renewed in the calendar years 1999 through 2000, a health care provider, other than hospitals, who conducts more than 50% of its health care business or practice within this Commonwealth shall annually insure or self-insure its professional liability in the amount of \$400,000 per occurrence and \$1,200,000 per annual aggregate, and hospitals located in this Commonwealth shall insure or self-insure their professional liability in the amount of \$400,000 per occurrence and \$2,000,000 per annual aggregate.

(iii) For policies issued or renewed in the calendar year 2001, and each year thereafter, a health care provider, other than hospitals, who conducts more than 50% of its health care, business or practice within this Commonwealth shall annually insure or self-insure its professional liability in the amount of \$500,000 per occurrence and \$1,500,000 per annual aggregate, and hospitals located in this Commonwealth shall insure or self-insure their professional liability in the amount of \$500,000 per occurrence and \$2,500,000 per annual aggregate.

(2) (i) A health care provider who conducts 50% or less of [his] its health care business or practice within the Commonwealth shall insure or self-insure [his] its professional liability in the [amount of \$200,000 per occurrence and \$600,000 per annual aggregate] amounts listed in subparagraphs (ii), (iii) and (iv) and shall not be required to contribute to or be entitled to participate in the fund set forth in Article VII of this act or the plan set forth in Article VIII of this act.

(ii) For calendar years 1997 through 1998, basic insurance coverage shall, on an annual basis, be in the amount of \$300,000 per occurrence and \$900,000 per annual aggregate.

(iii) For calendar years 1999 through 2000, basic insurance coverage shall, on an annual basis, be in the amount of \$400,000 per occurrence and \$1,200,000 per annual aggregate.

(iv) For calendar year 2001, and each year thereafter, basic insurance coverage shall, on an annual basis, be in the amount of \$500,000 per occurrence and \$1,500,000 per annual aggregate.

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

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

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

(6) Self-insured health care providers and hospitals if exempt from this act shall submit the information required under section 809 to the commissioner.

(b) (1) No insurer providing professional liability insurance shall be liable for payment of any claim against a health care provider for any loss or damages awarded in a professional liability action in ex-



cess of the basic coverage insurance, as provided in subsection (a)(1) for each health care provider against whom an award is made unless the health care provider's professional liability policy or self-insurance plan provides for a higher annual aggregate limit.

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

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

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

(1) For calendar years 1997 through 1998, the limit of liability of the fund shall be \$900,000 for each occurrence for each health care provider and \$2,700,000 per annual aggregate for each health care provider.

(2) For calendar years 1999 through 2000, the limit of liability of the fund shall be \$800,000 for each occurrence for each health care provider and \$2,400,000 per annual aggregate for each health care provider.

(3) For calendar year 2001, and each year thereafter, the limit of liability of the fund shall be \$700,000 for each occurrence for each health care provider and \$2,100,000 per annual aggregate for each health care provider.

(e) (1) [The] After December 31, 1996, the fund shall be funded by the levying of an annual surcharge on or after January 1 of every year on all health care providers entitled to participate in the fund. The surcharge shall be determined by the [director appointed pursuant to section 702 and subject to the prior approval of the commissioner] fund, filed with the commissioner and communicated to all basic insurance coverage carriers and self-insured providers. The surcharge shall be based on the [cost to] prevailing primary premium for each health care provider for maintenance of professional liability insurance and shall be the appropriate percentage thereof, necessary to produce an amount sufficient to reimburse the fund for the payment of [all claims paid] final claims and expenses incurred during the preceding [calendar year] claims period and to provide an amount necessary to maintain an additional [\$15,000,000.] 15% of the final claims and expenses incurred during the preceding claims period.

(2) The Joint Underwriting Association shall file updated rates for all health care providers with the commissioner by May 1 of each year.

(3) The fund shall review and may adjust the prevailing primary premium in line with any applicable changes to the prevailing primary premium made in filings by the Joint Underwriting Association and approved by the commissioner.

(4) The fund may adjust the applicable prevailing primary premium of any hospital, including a hospital associated with a university or other education institution, through an increase or decrease in the individual hospital's prevailing primary premium not to exceed 20%. Any such adjustment shall be based upon the frequency and severity of claims paid by the fund on behalf of other hospitals of similar class, size, risk and kind within the same defined region during the past five most recent claims periods. All premium adjustments pursuant to this subsection shall require the approval of the commissioner.

(5) For health care providers that do not engage in direct clinical practice on a full-time basis, the prevailing primary premium rate

shall be adjusted by the fund to reflect the lower risk associated with the less than full-time direct clinical practice.

(6) The surcharge provided in paragraph (1) shall be reviewed by the commissioner within 30 days of submission. After review, the commissioner may only disapprove a surcharge if it is inadequate or excessive. If so disapproved, the fund shall make an adjustment to the next surcharge calculation to reflect the appropriate increase or decrease.

(7) When a health care provider changes the term of its professional liability coverage, the surcharge shall be calculated on an annual base and shall reflect the surcharge percentages in effect for all the surcharge periods over which the policy is in effect.

[(2)] (8) Health care providers having approved self-insurance plans shall be surcharged an amount equal to the surcharge imposed on a health care provider of like class, size, risk and kind as determined by the director. The fund and all income from the fund shall be held in trust, deposited in a segregated account, invested and reinvested by the director, and shall not become a part of the General Fund of the Commonwealth. All claims shall be computed on [August 31, 1981 for all claims which become final between January 1, 1981 and August 31, 1981 and annually thereafter on] August 31 for all claims which became final between that date and September 1 of the preceding year. All such claims shall be paid on or before December 31 following the August 31 by which they became final, as provided above. [All claims which become final between January 1, 1980 and the effective date of this amendatory act shall be computed on the effective date of this amendatory act and shall be paid on or before December 31, 1980.

(3) (9) Notwithstanding the above provisions relating to an annual surcharge, the commissioner shall have the authority, during September 1981 and during September of each year thereafter, if the fund would be exhausted by the payment in full of all claims which have become final and the expenses of the office of the director, to determine and levy an emergency surcharge on all health care providers then entitled to participate in the fund. Such emergency surcharge shall be the appropriate percentage of the cost to each health care provider for maintenance of professional liability insurance necessary to produce an amount sufficient to allow the fund to pay in full all claims determined to be final as of [August 31, 1981 and] August 31 of each year [thereafter] and the expenses of the [office of the director, as of December 31, 1980 and] fund as of December 31 of each year [thereafter].

[(4)] (10) The annual and emergency surcharges on health care providers and any income realized by investment or reinvestment shall constitute the sole and exclusive sources of funding for the fund. No claims or expenses against the fund shall be deemed to constitute a debt of the Commonwealth or a charge against the General Fund of the Commonwealth.

(11) The director shall issue rules and regulations consistent with this section regarding the establishment and operation of the fund including all procedures and the levying, payment and collection of the surcharges except that the commissioner shall issue rules and regulations regarding the imposition of the emergency surcharge. [A fee shall be charged by the director to all self-insurers for examination and approval of their plans.]

(12) Upon the effective date of this section, the fund shall immediately notify all insurers writing professional liability insurance of the schedule of occurrence rates approved by the commissioner and in effect for the Joint Underwriting Association.

(13) Within 20 days of the effective date of this section, the fund shall recalculate the surcharge for health care providers for the surcharge period beginning January 1, 1997, based upon the prevailing primary premium.

(14) A health care provider may elect to pay the annual surcharge in equal installments, not exceeding four, if the health care provider informs the primary carrier of the option to pay in installments and the entire annual surcharge is collected and remitted to the fund by December 10, with four equal installments commencing 60 days from the date of policy inception or renewal with payment due



each 60 days thereafter until the full remittance is paid. This paragraph shall apply to surcharges for 1997. This paragraph shall expire January 1, 1998.

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

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

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

Section 4. Section 702 of the act, amended July 15, 1976 (P.L.1028, No.207) and October 15, 1980 (P.L.971, No.165), is amended to read:

Section 702. Director and Administration of Fund.—(a) The fund shall be administered by a director who shall be appointed by the Governor and whose salary shall be fixed by the Executive Board. The director may employ and fix the compensation of such clerical and other assistants as may be deemed necessary and may promulgate rules and regulations relating to procedures for the reporting of claims to the fund.

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

(c) The basic coverage insurance carrier or self-insured provider shall promptly notify the director of any case where it reasonably believes that the value of the claim exceeds the basic insurer's coverage or self-insurance plan or falls under section 605. Such information, including the fund's claim file, shall be confidential, notwithstanding the [act of July 19, 1974 (P.L.486, No.175) referred to as the Public Agency Open Meeting Law, and] act of June 21, 1957 (P.L.390, No.212) referred to as the Right To Know Law[,] and the act of July 3, 1986 (P.L.388, No.84), known as the "Sunshine Act." Failure to so notify the director shall make the basic coverage insurance carrier or self-insured provider responsible for the payment of the entire award or verdict, provided that the fund has been prejudiced by the failure of notice.

(d) The basic coverage insurance carrier or self-insured provider shall be responsible to provide a defense to the claim, including defense of the fund, except as provided for in section 605. In such instances where the director has been notified in accordance with subsection (c), the director may[, at his option,] join in the defense and be represented by counsel.

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

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

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

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

(i) Upon the request of a party to a case within the fund coverage limits, the fund may provide for a mediator in instances where multiple carriers disagree on a case. Upon the consent of all parties to any proceeding hereunder that mediation shall be binding, the parties shall be bound by the conclusions of the mediator. The fund shall promulgate such rules and regulations as are necessary to implement this provision. Proceedings conducted under this section shall be confidential and shall not be considered public information subject to disclosure under the Right-to-Know Law and the "Sunshine Act."

(j) Delay damages and postjudgment interest applicable to the fund's liability in a case shall be paid by the fund and shall not be charged against the insured's annual aggregate limits. The basic insurance carrier or self-insurer shall be responsible for its proportionate share of delay damages and post-judgment interest.

(k) The fund shall have the authority to borrow money for periods of less than two years in order to pay claims and expenses until sufficient revenues are realized by the fund.

Section 5. Section 705 of the act, added July 15, 1976 (P.L.1028, No.207), is amended to read:

Section 705. Liability of Excess Carriers.—(a) No insurer providing excess professional liability insurance to any health care provider eligible for coverage under the [Medical Professional Liability Catastrophe Loss Fund] fund shall be liable for payment of any claim against a health care provider for any loss or damages except those in excess of the fund coverage limits [of liability provided by the Medical Professional Liability Catastrophe Loss Fund].

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

Section 6. The act is amended by adding a section to read:

Section 706. Advisory Board.—(a) There is hereby established an advisory board of seven members to be known as the Medical Professional Liability Insurance Catastrophe Loss Fund Advisory Board.

(b) The board shall be comprised of the following 11 persons:

(1) The Insurance Commissioner.

(2) Four members, one each to be appointed by the President pro tempore of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives and the Minority Leader of the House of Representatives. These members shall have experience in the areas of law, health care, liability insurance, finance or actuarial analysis.

(3) Six members appointed by the Governor as follows:

(i) One physician, who shall be appointed for a three-year term.

(ii) One representative of a hospital provider, who shall be appointed for a three-year term.

(iii) One representative of a casualty insurer with 1% or less share of the medical professional liability insurance market in this Commonwealth, who shall be appointed for a two-year term.

(iv) One podiatrist or one representative of a nursing home, who shall be appointed for a three-year term. The podiatrist and the representative of a nursing home shall alternate terms.

(v) Two representatives of the public-at-large, one of whom shall be appointed for a two-year term and the other for a one-year term.

(c) After the initial terms under this paragraph have been completed, all terms shall be for a period of three years.

(d) The members of the board shall serve without compensation, but shall be reimbursed for their actual and necessary traveling and other expenses in connection with attendance at meetings.

(e) The members of the board shall have the following powers and duties:

(1) To review procedures and operations of the fund.

(2) To commission audits to be paid for by the fund, not to exceed more than one every two years.

(3) To adopt reasonable standards for prompt investigation and settlement of claims arising under this act to include, but not be limited to:

(i) Prompt acknowledgment of pertinent communications with respect to claims.

(ii) Reasonable standards for prompt investigation and settlement of claims.

(iii) Prompt and reasonable settlement of claims in which liability has become reasonably clear.

(iv) Fair settlement of all claims.

(v) Prevention of duplication in formal proof of loss and subsequent verification.

(vi) Provision of reasonable and accurate explanations of basis for claims denials or settlement offers.

(f) The board shall make annual reports to the Governor and the General Assembly which shall include recommendations regarding management and legislative changes.

(g) The board shall undertake a study of the operations and structure of the fund and shall report to the Governor and the General Assembly, not later than September 1, 1997, its recommendations concerning the future of the fund, including, but not limited to, an opt-out provision for doctors and hospitals, total elimination or phase-out of the fund and other provisions for providing adequate medical professional liability insurance, including evaluation of the unfunded liability and financing options to retire any unfunded liabilities. The report shall recommend measures to be taken by the General Assembly.

(h) As used in this section, the term "board" means the Medical Professional Liability Insurance Catastrophe Loss Fund Advisory Board.

Section 7. Section 803 of the act, amended October 15, 1980 (P.L.971, No.165), is amended to read:

Section 803. Plan Operation, Rates and Deficits.—(a) Subject to the supervision and approval of the commissioner, insurers may consult and agree with each other and with other appropriate persons as to the organization, administration and operation of the plan and as to rates and rate modifications for insurance coverages provided under the plan. Rates and rate modifications adopted or changed for insurance coverages provided under the plan shall be approved by the commissioner in accordance with the act of June 11, 1947 (P.L.538, No.246), known as "The Casualty and Surety Rate Regulatory Act," except as may be inconsistent with subsection (c).

(b) In the event that the Joint Underwriting Association suffers a deficit in any calendar year, the board of directors of the Joint Underwriting Association shall so certify to the director of the [Catastrophe Loss Fund and the Insurance Commissioner] fund and the commissioner. Such certification shall be subject to the review and approval of the [Insurance Commissioner] commissioner. Within 60 days following such certification and approval the director of the fund shall make sufficient payment to the Joint Underwriting Association to compensate for said deficit. A deficit shall exist whenever the sum of the earned premiums collected by the Joint Underwriting Association and the investment income therefrom is exhausted by virtue of payment of or allocation for the Joint Underwriting Association's necessary administrative expenses, taxes, losses, loss adjustment expenses and reserves, including reserves for: (1) losses incurred, (2) losses incurred but not reported, (3) loss adjustment expenses, (4) unearned premiums.

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

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

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

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

Section 8. Section 809 of the act is amended to read:

Section 809. [Annual Reports to Insurance Commissioner.—The plan shall report to the commissioner annually on a date and, on a form prescribed by the commissioner the total amount of premium dollars collected, the total amount of claims paid and expenses incurred therewith, the total amount of reserve set aside for future claims, the nature and substance of each claim, the date and place in which each claim arose, the amounts paid, if any, and the disposition of each claim (judgment of arbitration panel, judgment of court, settlement or otherwise), and such additional information as the commissioner shall require.] Reports to Commissioner and Claims Information.—(a) By October 15 of each year, basic coverage insurance carriers and self-insured providers shall report to the fund the claims information specified in subsection (b).

(b) Sixty days after the end of any calendar year, the fund shall prepare a report for the commissioner. The report shall contain the total amount of claims paid and expenses incurred therewith, the total amount of reserve set aside for future claims, the date and place in which each claim arose, the amounts paid, if any, and the disposition of each claim, judgment of court, settlement or otherwise, and such additional information as the commissioner shall require. For final claims at the end of any calendar year, the report shall include details by basic coverage insurance carriers and self-insured providers of the amount of surcharge collected, the number of reimbursements paid and the amount of reimbursements paid.

(c) A copy of any report prepared pursuant to this section shall be submitted to the chairman and minority chairman of the Banking and Insurance Committee of the Senate and the chairman and minority chairman of the Insurance Committee of the House of Representatives.

Section 9. Section 811 of the act, added November 26, 1978 (P.L.1324, No.320), is amended to read:

Section 811. Professional Corporations, Professional Associations and Partnerships.—(a) The Joint Underwriting Association shall offer basic coverage insurance to such professional corporations, professional associations and partnerships entirely owned by health care providers who cannot conveniently obtain insurance through ordinary methods at rates not in excess of those applicable to similarly situated professional corporations, professional associations and partnerships.

(b) In the event that a professional corporation, professional association or partnership entirely owned by health care providers elects to be covered by basic coverage insurance and upon payment of the annual surcharge as required by section 701(e), the professional corporation, professional association or partnership shall be entitled to such excess coverage from the [Medical Professional Liability Catastrophe Loss Fund] fund as is provided in this act.

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

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

Section 10. Section 1006 of the act is repealed.

Section 11. This act shall take effect immediately.

On the question,

Will the Senate agree to the amendment?

It was agreed to.

On the question,

Will the Senate agree to the bill, as amended?

Upon motion of Senator LOEPER, and agreed to, the bill, as amended, was rereferred to the Committee on Appropriations.

**SPECIAL ORDER OF BUSINESS  
SUPPLEMENTAL CALENDAR No. 1**

**SENATE CONCURS IN HOUSE AMENDMENTS**

**HB 544 (Pr. No. 4238)** — 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, transferring provisions relating to the State Lottery Fund; providing for pharmaceutical assistance for the elderly, for transportation assistance to the elderly and for pharmaceutical purchasing; conferring powers and duties upon the Department of Aging, the Department of Revenue and the Department of Transportation; imposing penalties; making editorial changes; and making repeals.

On the question,

Will the Senate concur in the amendments made by the House to Senate amendments to House Bill No. 544?

Senator LOEPER. Mr. President, I move that the Senate do concur in the amendments made by the House to Senate amendments to House Bill No. 544.

On the question,

Will the Senate agree to the motion?

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

Senator LOEPER. Mr. President, just very briefly, I would just like to make the Members aware that the issue before us is the expansion of the PACE program, the Pharmaceutical Assistance Contract for the Elderly. Mr. President, there has been much discussion and much work done to try to bring about a compromise on the expansion of the PACE program. And not only have we heard the Governor take the lead on this program as far as trying to address the concerns of our senior citizens throughout the Commonwealth who avail themselves of this program, but I would also just like to take a moment particularly to commend the gentleman from Bucks, Senator Heckler, the gentleman from Philadelphia, Senator Salvatore, the gentlewoman from Philadelphia, Senator Tartaglione, and also the gentleman from Berks, Senator O'Pake, who have worked diligently for many months to try to bring this program to fruition here in the Senate. And, Mr. President, I am pleased that we were able to have this legislation before us today. It overwhelmingly passed the House of Representatives last evening.

At this time, Mr. President, I not only ask for an affirmative vote on the legislation, but I would ask that you recognize the gentleman from Bucks, Senator Heckler.

The PRESIDENT. The Chair recognizes the gentleman from Bucks, Senator Heckler.

Senator HECKLER. Mr. President, this is indeed a happy day. Given the discussions we have had on this floor over some substantial period of time now, it is an overdue day. But I simply want to take my hat off, number one, to Tom Ridge, the Governor of this State, who had the vision to focus upon this need and upon the proposal that was crafted on a bipartisan basis by so many to reach out not only to reverse the inex-

orable annual decline in the number of PACE participants in our Commonwealth, but to reach out to a new population to provide a stable future for so many who simply would have continued falling off PACE had we simply increased the income threshold once again.

I do not think I would be telling tales out of school, Mr. President, if I say that sometimes in our Caucus in moments of levity—and we do have a few of them—that when we do not know what else to say about legislation we say that it is good and it does good, and, of course, sometimes with tongue in cheek. I say to you today with the utmost seriousness that this legislation is good, it is good public policy, it is a fiscally responsible use of a limited and precious resource, the funds which flow into our lottery program through the participation of those who buy lottery tickets and participate in that State effort. Those funds go only to the benefit of senior citizens, and the PACE program is one of the programs we fund from that Lottery Fund. We do not use taxpayers' dollars to fund this program, and we know that lottery revenues are restricted. We know that there are many other important programs upon which our senior citizens in this Commonwealth depend which are funded by the Lottery program. So we have achieved here an expansion of PACE eligibility to 75,000 new senior citizens, some of them recaptured, who have unfortunately fallen off PACE in recent years, but at least 50,000 new folks we would not have reached simply by increasing the threshold by \$1,000, and we have done so without endangering the Lottery Fund, without endangering any of the other programs so important to our senior citizens which are funded by lottery dollars.

And then, of course, this is what has taken us the time and the painstaking work. We get a fairer deal for the citizens of Pennsylvania for their PACE dollars. We finally, after long and hard negotiation in which all Members and their representatives and the executive branch of government have engaged, have succeeded in gaining concessions from both the pharmaceutical manufacturing industry and the pharmacists who fill the prescriptions across this State to achieve fair and appropriate reductions so that we may afford this benefit in a fiscally responsible way.

So this is good public policy. And most important, I am confident that we will go back home in a few short days now for Thanksgiving and for the holidays, secure in the confidence that we have done good, that this legislation will drive PACE enrollment back up in the best fashion we can with the resources we have, and that we will target the benefit to those who need it most.

Mr. President, let me tell you, we have had a wonderful bipartisan effort over the last 6, 9 months. I join with the gentleman from Delaware, Senator Loeper, in recognizing the gentlewoman from Philadelphia, Senator Tartaglione, the gentleman from Berks, Senator O'Pake, and point out that we have had hearings and strong involvement from the gentleman from Bucks, Senator Tomlinson, in his district, the gentleman from Allegheny, Senator Wagner, in his, and the gentleman from Luzerne, Senator Lemmond. Also, I think we did go to Senator O'Pake's district, and I think I am probably leaving out one or

two. We got around the State, and we had a number of others, like the gentleman from York, Senator Delp, who was ready to have a hearing, who perceived a strong need, and we had that in reserve if there were further issues that needed to be highlighted.

And of all the extensive testimony we heard, the testimony that struck me as the most telling and which filled me with a sense of commitment to get this job done and to get it done right was the testimony from senior citizens in community after community across this State who are willing to make some contribution, who have planned for their retirement, who within their means want to be self-reliant and self-sufficient, but who all too often have encountered that day when the doctor says, Mrs. Jones, Mr. Smith, we have discovered that you have a medical problem, and the good news is we can help you manage that problem and control it and you will be able to lead a normal life for many years to come because medical science, the pharmaceutical industry, has developed a particular drug or combination of drugs which will help manage your circumstances. The bad news comes when Mrs. Jones or Mr. Smith goes to the pharmacist and finds out that that prescription they are now going to need is going to cost them \$200, \$300, \$400 a month. That is an expense they have not prepared for, that is an expense they could not have foreseen, that is an expense that is going to change the way they live. They are going to have to choose between paying the rent and buying food, between other necessities and meeting those responsibilities, keeping that lifeline.

We have now expanded from the state of things today. By the passage of this legislation we have expanded the universe of people we will be there for when that news comes by 75,000 people, 75,000 senior citizens, starting with the most needy we do not reach with PACE on up to the median income of those single individuals who have the least resources. We will have, when the Governor signs this bill, 75,000 new people who when that day comes we can say we will be there for you. We may, if you are in PACENET, ask you to pay the first \$500 in a year, but after that point we will be there for you, you are not going to get wiped out. Your plans for the future are not destroyed. That is an important change. That is something that was worth the fight and worth the effort we have been through.

I thank you all for your patience, for your involvement. I believe that this is a happy and important day for the senior citizens of our State, and I am glad that all of us could be part of its achievement.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Berks, Senator O'Pake.

Senator O'PAKE. Mr. President, I, likewise, rise to support this bill and ask my colleagues on this side of the aisle to join in that support. There is an old saying that all is well that ends well, and today is indeed a happy day for thousands of senior citizens. Finally, I can go back to the Oswald family in Berks County, the family who was 4 cents over the limit and therefore lost hundreds of thousands of dollars of PACE prescription benefits, and tell them that they now will be eligible.

There are about 27,000 other senior citizens in that category, those who just went over the limit and were dropped from the PACE rolls.

Finally, though, we have resolved this, and I have to say I appreciate the work of the gentleman from Bucks, Senator Heckler, and others on that side of the aisle. They have responded in a bipartisan way. I have to also say that about 9 months ago I think that we Senate Democrats infused the spark of life into what was a dormant issue, and 9 months later we are bringing forth a product that I think will benefit many, many, many senior citizens.

Now, there are some on this side of the aisle who would have preferred another resolution. As you know, this is a two-tiered solution to the problem. We have raised the income eligibility by \$1,000 a year, so that for a person living alone it goes from \$13,000 to \$14,000 a year, and for a married couple living together it goes from \$16,200 to \$17,200 a year, and that is good and that will take care of a lot of people who lost PACE this year because of an increase in the Social Security cost-of-living adjustment.

The second tier is a so-called PACENET, the Heckler-Ridge-Salvatore creation, and what that does is adds more people to the eligibility rolls by increasing the income limits by \$2,000 more. However, those senior citizens in that category, namely from \$14,000 to \$16,000 a year and from \$17,200 to \$19,200 a year for a couple, they will now be eligible for PACE. However, they will have to pay the first \$500, and they will pay a higher copay. Many on this side of the aisle wanted the first part of that, to increase the eligibility by \$1,000 a year across the board.

We also tried to amend into this the automatic indexing to take care of the cost-of-living adjustments so that we do not have to come back here and each year face the problem when there is a cost-of-living adjustment. Unfortunately, that did not receive a majority vote and, therefore, we are now dealing with the \$1,000 increase, which we advocated, and the \$2,000 additional PACENET with the \$500 deductible. One caution: Down the road there will be many people as they get cost-of-living adjustments and increases in their pension who will move from tier one into PACENET, the tier two. When they reach the \$14,000 limit, they are going to fall into the second category and then they are going to have to pay the first \$500 in deductibles. A lot of them cannot afford that \$500, some of them do not have \$500 in medical bills.

But while we solve a problem in the long range here, we have to be aware of the fact that down the road the PACE program may become a \$500-deductible program. The consolation is that when we reach that point we will be able to address that issue legislatively, and if the will is there to solve that problem at that time, we can do so at that time. So again, after 9 months of pressure and speeches and willingness to cooperate, I am happy that we have a product that will go to the Governor that will restore about 27,000 senior citizens immediately to the \$6 PACE prescription and another 50,000 or so to the second tier with a \$500 deductible.

I urge my colleagues on this side of the aisle to support this. This is a step forward for the senior citizens of Pennsyl-

vania, and I am happy that our 9 months of effort have finally paid off. As I said when we started, all is well that ends well, and there will be many senior citizens who can believe again that the system does work. It took a little longer than we had hoped, but it will go to the Governor, I am sure he will sign it, and we can all feel that we did something positive for the senior citizens of Pennsylvania who need this medication very, very badly.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Mr. President, on our side of the aisle we will vote for this mainly because our senior citizens require that. One of the frustrations, Mr. President, has been, though, that we have waited a long time for this. We were originally supposed to take care of the PACE problem, if you will, back in June, before we broke for the summer recess. We were told that we could not get it done then. We were going to wait a little bit longer and make it better.

Mr. President, what we are faced with tonight is, yes, something that is a little bit better, but this kind of a program we could have done back in June very easily. What we have still sown in this bill are the seeds of its own destruction. We advocated and lost, as Democrats, an amendment that would have taken away the COLAs for Social Security in the future. Right now we have helped a few people who have gone over the line of the \$13,000, if they are single. And we have said if it is \$14,000, you are okay. Mr. President, in a year or two, maybe a little bit longer, those people are now going to be at the upper limit of that. Then we throw them into PACENET, and PACENET is a \$500 deductible and a higher copay of \$8 and \$15 for brand-name drugs. And then at the same time those people who are currently in PACENET, whom we think we are helping, are going to be pushed out of the system. Mr. President, I guess that is the difference between moderate Democrats and moderate Republicans. We on this side of the aisle would have gone the little extra distance to solve this problem once and for all and to help those senior citizens forever.

Mr. President, yes, there are cost savings in here. We did get some more money back from the drug companies, but we could have gotten more if we had the courage to stand up to that special lobby. And, Mr. President, under this proposal, \$22 million a year will still be transferred from the Lottery Fund to the General Fund because we want our winnings to be tax-free in Pennsylvania. Those kinds of little savings could have allowed us to put a COLA on this that would have lasted at least into the next decade, but no, the Majority Party decided not to take those steps. And maybe it is because you would like to keep a string on those senior citizens so in a few years when the Social Security COLAs take effect and other COLAs take effect, they can come back and grovel at our feet and ask us to help them again. I think that is demeaning for us to ask our senior citizens to do that when the solution is within our grasp.

So tonight, Mr. President, because we are in the Minority as Democrats, we could not prevail, but we will have our say and we have had our say. And our say is to those senior citi-

zens who think this problem has been solved by news conferences with the Governor and by pious explanations of the Majority, the problem has not been solved. And to those people for whom this problem has not been solved, our senior citizens who have worked so hard in their lives, I want to say to you the problem could have been solved with just a little bit of effort. And that is the sad part.

Mr. President, we will vote for this because we will take what we can get on behalf of our constituents, but this is not this Senate's finest hour for senior citizens. The sad part is it could have been.

Thank you, Mr. President.

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

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

#### YEAS—49

Afflerbach	Greenleaf	Madigan	Shaffer
Andrezski	Hart	Mellow	Stapleton
Armstrong	Heckler	Mowery	Stewart
Belan	Helfrick	Musto	Stout
Bell	Holl	O'Pake	Tartaglione
Bodack	Hughes	Peterson	Thompson
Brightbill	Jubelirer	Piccola	Tilghman
Corman	Kasunic	Porterfield	Tomlinson
Costa	Kitchen	Punt	Uliana
Delp	LaValle	Rhoades	Wagner
Fisher	Lemmond	Robbins	Wenger
Fumo	Loeper	Schwartz	Williams
Gerlach			

#### 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.

### CONSIDERATION OF CALENDAR RESUMED

#### THIRD CONSIDERATION CALENDAR

#### BILL REREPORTED FROM COMMITTEE AS AMENDED OVER IN ORDER

**SB 1122** -- Without objection, the bill was passed over in its order at the request of Senator LOEPER.

#### BILLS OVER IN ORDER

**HB 682, HB 683, HB 684, HB 685 and HB 686** -- Without objection, the bills were passed over in their order at the request of Senator LOEPER.

### SPECIAL ORDER OF BUSINESS SUPPLEMENTAL CALENDAR No. 1 RESUMED

#### BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

**HB 2572 (Pr. No. 4264)** -- The Senate proceeded to consideration of the bill, entitled:

An Act providing for the rights and privileges of taxpayers.

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—49

Afflerbach	Greenleaf	Madigan	Shaffer
Andrezeski	Hart	Mellow	Stapleton
Armstrong	Heckler	Mowery	Stewart
Belan	Helfrick	Musto	Stout
Bell	Holl	O'Pake	Tartaglione
Bodack	Hughes	Peterson	Thompson
Brightbill	Jubelirer	Piccola	Tilghman
Corman	Kasunic	Porterfield	Tomlinson
Costa	Kitchen	Punt	Uliana
Delp	LaValle	Rhoades	Wagner
Fisher	Lemmond	Robbins	Wenger
Fumo	Loeper	Schwartz	Williams
Gerlach			

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.

THIRD CONSIDERATION CALENDAR RESUMED

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 868 (Pr. No. 2381) -- The Senate proceeded to consideration of the bill, entitled:

An Act regulating the use, storage, purchase and sale of explosive materials; requiring the licensing of persons for the detonation of explosive materials; requiring permits for the purchase and sale of explosive materials; imposing duties on persons who use, store, purchase and sell explosive materials; authorizing the Environmental Quality Board to adopt regulations and the Department of Environmental Protection to enforce and administer the act and regulations; providing for enforcement and remedies; establishing a fund; prescribing penalties; 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—49

Afflerbach	Greenleaf	Madigan	Shaffer
Andrezeski	Hart	Mellow	Stapleton
Armstrong	Heckler	Mowery	Stewart
Belan	Helfrick	Musto	Stout
Bell	Holl	O'Pake	Tartaglione
Bodack	Hughes	Peterson	Thompson
Brightbill	Jubelirer	Piccola	Tilghman
Corman	Kasunic	Porterfield	Tomlinson
Costa	Kitchen	Punt	Uliana
Delp	LaValle	Rhoades	Wagner
Fisher	Lemmond	Robbins	Wenger
Fumo	Loeper	Schwartz	Williams
Gerlach			

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.

LEGISLATIVE LEAVE CANCELLED

The PRESIDENT. Senator Andrezeski has returned, and the record should reflect that his temporary Capitol leave is now cancelled.

THIRD CONSIDERATION CALENDAR RESUMED

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

HB 873 (Pr. No. 4200) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of January 8, 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control Act, further providing for the prohibition against adoption of agricultural rules and regulations and for the small business ombudsman.

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—49

Afflerbach	Greenleaf	Madigan	Shaffer
Andrezeski	Hart	Mellow	Stapleton
Armstrong	Heckler	Mowery	Stewart
Belan	Helfrick	Musto	Stout
Bell	Holl	O'Pake	Tartaglione
Bodack	Hughes	Peterson	Thompson
Brightbill	Jubelirer	Piccola	Tilghman
Corman	Kasunic	Porterfield	Tomlinson
Costa	Kitchen	Punt	Uliana
Delp	LaValle	Rhoades	Wagner
Fisher	Lemmond	Robbins	Wenger

Fumo                      Loeper                      Schwartz                      Williams  
Gerlach

**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 981** -- Without objection, the bill was passed over in its order at the request of Senator LOEPER.

**BILL ON THIRD CONSIDERATION AND FINAL PASSAGE**

**SB 1160 (Pr. No. 2382)** -- The Senate proceeded to consideration of the bill, entitled:

An Act providing for review procedures pertaining to accident and health insurance form and rate filings; providing penalties; 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—49**

Afflerbach	Greenleaf	Madigan	Shaffer
Andrezeski	Hart	Mellow	Stapleton
Armstrong	Heckler	Mowery	Stewart
Belan	Helfrick	Musto	Stout
Bell	Holl	O'Pake	Tartaglione
Bodack	Hughes	Peterson	Thompson
Brightbill	Jubelirer	Piccola	Tilghman
Corman	Kasunic	Porterfield	Tomlinson
Costa	Kitchen	Punt	Uliana
Delp	LaValle	Rhoades	Wagner
Fisher	Lemmond	Robbins	Wenger
Fumo	Loeper	Schwartz	Williams
Gerlach			

**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.

**ANNOUNCEMENT BY MAJORITY LEADER**

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

Senator LOEPER. Mr. President, before we take up consideration of Senate Bill No. 1448, I request at this time that we

have an off-the-floor meeting of the Committee on Community and Economic Development, and I also ask that that be held in the Rules room at the rear of the Senate Chamber, but while that committee is meeting if we could continue with consideration of today's Calendar.

The PRESIDENT. As mentioned and now reiterated, all Members of the Senate Committee on Community and Economic Development should make their way to the Rules room at the rear of the Chamber.

**THIRD CONSIDERATION CALENDAR RESUMED**

**BILL ON THIRD CONSIDERATION AND FINAL PASSAGE**

**SB 1448 (Pr. No. 2302)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for wiretapping and electronic surveillance.

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 PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Mr. President, Senate Bill No. 1448 is the reauthorization of the wiretap provisions of the Criminal Code. Mr. President, I personally have had a longstanding objection to government interference and wiretaps, and I will be voting "no" on this. Part of my problem has been, Mr. President, that the Attorney General is supposed to report to the chairmen of the various Committees on Judiciary his activity on these things and, to my knowledge, that has never been honored since we put that in in the first place, and I have often wondered what they do over there that they have to be so secretive.

I also do not know, Mr. President, how many real convictions have been as a result of wiretapping. Law enforcement people tell us it is a sexy tool to have, it is important to have, but yet when we ask them for the data, i.e., how many wiretaps have you conducted, and of those how many have resulted in indictments or convictions, we do not get the appropriate data. It seems to me it just gives a little bit too much authority to government, and in today's times when we want government off our backs, I submit to you that the citizens of the Commonwealth definitely would like government off of their telephone receivers.

I do not offer a Caucus position on this. It is my own personal belief as a member of the American Civil Liberties Union, and a card-carrying member at that.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Montgomery, Senator Greenleaf.



Senator GREENLEAF. Mr. President, I rise in support of the legislation, and I will just quote briefly from the Pennsylvania District Attorneys Association their position on this: "It corrects gaps or problems in the current law and it responds to the advanced technology being employed by today's sophisticated criminals. The wiretap package will equip police, prosecutors and telecommunication carriers with the necessary tools to stop organized illegal conduct, major drug trafficking enterprises, pedophile rings, systematic thefts of telecommunications services and myriad serious criminal offenses."

Specifically what this legislation does is it will help to prevent the theft of cellular phone numbers. What has been happening is a multi-billion dollar theft activity has been going on in the United States where people will pick up a cellular phone, one used in a particular area, and then take that phone number and use it for drug trafficking, so this legislation helps law enforcement in stopping that type of activity. And in addition, it deals with and puts our law in line with Federal law and the vast majority of the other States in allowing what they call "soft" wires, where the Federal government and the United States Supreme Court has said--

The PRESIDENT. Will the gentleman yield.

The Senate will come to order.

Senator GREENLEAF. Mr. President, it also adds additional offenses. Since we had the Special Session on crime, there are additional offenses that we have in our Crimes Code that are not covered by the wiretap law. Those types of offenses are theft of telecommunications and insurance, computer and food stamp fraud, escape, aggravated assault, money laundering, unlicensed firearms, serious sexual offenses, all of which will now be covered with passage of this legislation.

It also will allow police officers, when they are stopping an individual, to record the stop so that both they and the motorist can be protected. The police officer can be protected in regard to recording exactly what happens between him and the motorist; and, secondly, it can help the motorist. We saw recently where a motorist was abused by a police officer and that also was shown, and so I think it is important for both parties to have this protection. It also allows for other than appellate court judges who have signed orders for wiretap, it now also allows a common pleas court judge to also file orders and allow wiretapping procedures.

I think it is important for us, for Pennsylvania, to make the step forward and to meet modern technology, because if we do not, the criminals are and will be way ahead of us in their technology. In addition, the Federal government and agencies in other States have these abilities to do the things that this legislation now permits Pennsylvania law enforcement officers to do. If we do not pass this legislation, then what is going to happen is that Pennsylvania law enforcement agents are going to have to give up the cases they are pursuing, investigating, and prosecuting and turn them over to Federal agents who have the rights to take these steps. So I would urge a positive vote.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Mr. President, I was not going to bring this up, but I am glad the gentleman brought up the fact that this bill is at the behest of the Pennsylvania District Attorneys Association, because I think it is important that we discuss their motivation.

Mr. President, regrettably, over the years that has become a Republican little club, with a Republican agenda. Mr. President, in the last election I submit to you that these very paragons of legal virtue who are elected in their counties to enforce the laws of the Commonwealth in my opinion violated the laws of the Commonwealth criminally, and specifically the Election Code, by having a news conference in which they lambasted Democrats and came out for the Republicans. They listed their little score sheet in which they skewed reports. Not one Democrat on this side of the aisle got an A. Lo and behold, the overwhelming majority of Republicans got A's and A-pluses. Most of us got F's. And I am proud that I got an F from those turkeys, quite frankly. It helped me enormously in my election. I won by 80-20. So they can rate me an F every day of the week, and I challenge them to do so.

Mr. President, what we really have here are a bunch of insecure prosecutors who cannot win cases on their own, so they come to us and continually ask us to move the playing field not level but on a downward slope so that they can have an extra edge. I have watched this association come to this General Assembly when they have lost the easiest of cases and say to us, I lost that case before a jury, I want the law changed.

Mr. President, I would submit to you and I would hope that that association would get their act together, learn the law, develop some trial skills, and win some cases within the law, rather than bellyaching every day of the week that the laws are not good enough to help them stop crime. It is a shame, Mr. President, that a bunch of elected officials like that act in the babyish manner that they do.

Now, I have heard the arguments for this bill. We need this bill to fight supercriminals, superguys, real technical guys, but there has yet to be one case that this illustrious group of district attorneys has brought to this General Assembly where they have said to us, we had a bad guy and we could not get him because the law would not let us do it. Not one. What they want to do, Mr. President, is continue to increase a police state in which they can snoop, like every other little snoop, into the lives of our citizens under the guise of "we are protecting you from crime."

While these rocket scientists have been doing such a great job, Mr. President, the crime rate in this Commonwealth has skyrocketed. And I submit to you it has not been because this General Assembly did not do its homework and give them the proper legislative tools and statutes to do their jobs. I submit to you, Mr. President, it is because these DAs have decided they would rather be politicians than prosecutors. Mr. President, there is a stench out there among our prosecutors, and I hope they clean it up. Maybe we should go to the system they have in New Jersey, where the Governor appoints the local prosecutors, and we could get them out of politics and then

demand that they do their jobs effectively rather than coming up here and trying to do our jobs and trying to be politicians.

Mr. President, there is no need for this legislation. It is just greater encroachment upon the civil liberties of our citizens under the guise of fighting crime, and they have done a lousy job of fighting crime. I would ask for a negative vote.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Lehigh, Senator Afflerbach.

Senator AFFLERBACH. Mr. President, will the gentleman from Montgomery, Senator Greenleaf, stand for brief interrogation, please?

The PRESIDENT. Senator Greenleaf, will you stand for interrogation?

Senator GREENLEAF. Mr. President, I will.

The PRESIDENT. You may proceed, Senator Afflerbach.

Senator AFFLERBACH. Mr. President, there has been some discussion of a concept known as a good faith exclusion. Could the gentleman tell me if that concept is embodied in this bill, and if so, how is it embodied in this bill?

Senator GREENLEAF. Mr. President, yes, I appreciate the gentleman asking me that question. There were two items in the bill that were removed in the Committee on Appropriations by amendments offered by the gentleman from Philadelphia, Senator Fumo. One was the good faith exclusion. It was removed in the Senate Committee on Appropriations and that provision is no longer in the bill. That would have allowed the use of the evidence if it was technically improperly obtained but was obtained by good faith efforts and not with an inappropriate motive. That provision, regardless, was taken out of the bill. It is no longer in the bill.

The second change in the Senate Committee on Appropriations was on roving wiretaps, those in which a drug dealer, for example, will go from pay phone to pay phone to pay phone and only use one pay phone in 1 or 2 days, and by the time you get a wiretap order he is already on another pay phone. So this bill would allow law enforcement officers to have a roving wiretap on that particular person, but there was an additional protection on that, and that is that you must obtain a court order and show probable cause that this individual is involved in criminal activity, what the criminal activity is, the reason for the wiretap, why you have to have a wiretap, why you have to have a roving tap. And then a judge, a common pleas court judge or an appellate court judge, would then issue the order either allowing or not allowing that wiretap, and I think that was an improvement as well.

So both of those items have been changes in the bill. I believe, if you are looking at an old analysis, that would not reflect that, but there is an updated analysis that would reflect those two changes.

Senator AFFLERBACH. Mr. President, in sum then, it is the gentleman's position that by removing the so-called good faith exclusion, only evidence which is collected in the strict standards of the bill itself, with respect to a court order and so forth, would be admissible?

Senator GREENLEAF. Mr. President, absolutely. And if there was a violation of that court order or a violation of any

statute or law, none of the evidence obtained in that wiretap would be allowed to be used.

Senator AFFLERBACH. Mr. President, I thank the gentleman.

**The PRESIDENT pro tempore (Robert C. Jubelirer) in the Chair.**

The PRESIDENT pro tempore. The Chair recognizes the gentleman from Dauphin, Senator Piccola.

Senator PICCOLA. Mr. President, the gentleman from Philadelphia, Senator Fumo, had a few choice words for Pennsylvania district attorneys. Since the district attorneys of Pennsylvania are not here on the floor of this Senate in a position to defend themselves, I would like to submit for the record the letter dated November 12, 1996, asking for the Senate of Pennsylvania to support this bill, from the Pennsylvania District Attorneys Association, signed by Ted McKnight of Clinton County, the president, and Lynne Abraham, the District Attorney of Philadelphia County, the legislative chair of that organization.

I would also like to submit for the record the letter from the Attorney General of the Commonwealth of Pennsylvania, Thomas Corbett, also asking for support of this particular piece of legislation.

Thank you, Mr. President.

The PRESIDENT pro tempore. Without objection, the letters will be received and made a part of the record.

*(The following letters were made a part of the record at the request of the gentleman from Dauphin, Senator PICCOLA:)*

PENNSYLVANIA DISTRICT ATTORNEYS ASSOCIATION  
2929 North Front Street  
Harrisburg, PA 17110

November 12, 1996

Commonwealth of Pennsylvania  
Senate of Pennsylvania  
Main Capitol Building  
Harrisburg, PA 17120

**RE: Senate Bill 1448, House Bill 2362 ("the wiretap package")**

Dear Senator:

We are writing to seek your support of S.B. 1448 and H.B. 2362 ("the wiretap package"), for which we are seeking enactment before the completion of the session.

This proposed legislation, most of which came a hair's breadth from enactment at the close of the 1993-1994 legislative session, is critical to law enforcement. It corrects gaps or problems in the current law and it responds to the advanced technology being employed by today's sophisticated criminals. The wiretap package will equip police, prosecutors and telecommunications carriers with the necessary tools to stop organized illegal conduct, major drug trafficking enterprises, pedophile rings, systematic thefts of telecommunications services and myriad serious criminal offenses.

**Section 5773 (clone phones):** The most important technological amendment in the wiretap package is the inclusion, definition and regulation of Telecommunication Identification Interception Devices ("TIDD"). Pennsylvania citizens using their cellular phones are being ripped off at will by criminal "phone-cloners". These criminals use advanced technology to steal phone codes from innocent passersby, and then use those codes to make calls at their victims' expense. They operate with virtual impunity. Moreover, these cloned-phones are

commonly used by drug kingpins, who can thereby conduct their nefarious dealings without fear of being identified. The law enforcement and business communities have joined together to stop these costly and dangerous phone-cloning practices, by drafting and supporting the "TIID" [*sic*] amendments in the wiretap package. These changes are critical, necessary and long overdue.

**Section 5704 (2) (iii) (in-home consensual):** The wiretap package also addresses the problems raised in Commonwealth v. Brion, 534 Pa. 652 (1994). Prior to Brion (and in virtually every other state and in the federal system), an individual wearing a consensual wire (usually an undercover agent) would be permitted to go into an individual's home if invited. The Pennsylvania Supreme Court in Brion rejected U.S. Supreme Court precedent and held that the agent violates the suspect's state constitutional rights if he accepts the suspect's invitation into the suspect's home.

As a result, there is currently no statutory procedure set forth to cover such "in-home" consensual (or "soft") wires. Under the proposed wiretap package, such soft wires would be permissible only if authorities first obtain a warrant from the Court of Common Pleas based on probable cause. This procedural safeguard exceeds those required in virtually every other state in the nation, where no warrant is required at all.

**Section 5708 (1) (addition of new, serious offenses):** The wiretap package expands the list of predicate offenses allowable to obtain surveillance orders to include such crimes as theft of telecommunications, insurance, computer and food stamp fraud, escape, aggravated assault, money laundering, unlicensed firearms and serious sexual offenses. This expansion is needed to meet recent substantive changes in the Crimes Code, especially in the area of newly-created offenses.

**Section 5704 (14) & (15) (traffic stops):** A new section would allow police to tape conversations with drivers during traffic stops. This provision provides several benefits. Recording of stops affords greater protection to police, whose lives are increasingly in danger during routine traffic stops. It also provides highly reliable evidence in cases where the defendant is alleged to have volunteered incriminating statements during such stops.

**Section 5721.1 (a) (disclosure):** The wiretap package would allow legally intercepted communications to be used in criminal trials, civil trials, administrative proceedings and any other type of legal proceeding in Pennsylvania. Presently, contents of wires revealing criminal conduct cannot be used in civil tax suits, forfeiture proceedings, professional license revocation and disciplinary proceedings.

**Section 5717 (a) (technical errors):** Pennsylvania's wiretap law contains a myriad of technical procedural requirements, some minor and some major. Under present law, communications which have been illegally intercepted may not be introduced at trial (or even disclosed), no matter how minor or technical the mistake. The proposed "good faith" rule of the wiretap package would allow such communications to be disclosed or introduced so long as they were obtained in good faith reliance on the law.

**Section 5712 (h) (in personam wiretaps):** Finally, the proposed law gives state authorities, like their federal counterparts, the power to target specific "roving" criminals for surveillance, where a court finds probable cause and other requirements are met. Usually, in order to obtain a surveillance order, authorities must identify to the judge or magistrate one particular site of the surveillance — for example, the specific telephone to be tapped. However, even the dullest of criminals can figure out they only need move from phone to phone or from building to building, in order to keep one step ahead of the law. This new provision closes this gaping loophole and allows authorities to follow the criminal without having to obtain a series of new authorizations every time the criminal changes phones or locations (which can happen several times a day). This in personam wiretap provision has been codified in the Federal Wiretaps Act for over a decade. There have been no complaints of abuse on a national level.

**Summary.** The wiretap package basically brings Pennsylvania up to par with other states and the federal system. It does not contain any of the provisions in the more controversial Anti-Terrorism Act considered by Congress earlier this year.

Moreover, those who believe law enforcement is more properly carried out at the state and local levels (rather than by Federal authorities) should enthusiastically support this legislation. Without it, Pennsylvania authorities are often forced to turn investigations over to Federal control since, all too often, only Federal authorities possess the legal capacity to meet the advanced technology used by today's sophisticated and well-heeled criminals.

For all of these reasons, the Pennsylvania District Attorney's Association urges passage of the wiretap package before the close of the current legislative session.

Sincerely,

TED McKNIGHT  
President

LYNNE ABRAHAM  
Legislative Chair

COMMONWEALTH OF PENNSYLVANIA  
Office of Attorney General  
Harrisburg, PA 17120

November 18, 1996

Honorable Jeffrey E. Piccola  
Senate of Pennsylvania  
168 Main Capitol Building  
Harrisburg, PA 17120

RE: Wiretapping and Electronic Surveillance Control Act Amendments

Dear Senator Piccola:

I am writing to ask for your support for Senate Bill 1448 and House Bill 2362. Senate Bill 1448 and House Bill 2362 are important pieces of legislation which, as the Commonwealth's chief law enforcement officer, I wholeheartedly endorse. This legislation goes a long way towards making the Pennsylvania Wiretapping and Electronic Surveillance Control Act a more useful tool while extending protection of the privacy of Pennsylvania citizens.

If enacted, communications by Pennsylvanians who use cordless phones would be extended the same protection given to communications on traditional phones. Law enforcement would be required to use technology which would limit access to unauthorized information available through the use of certain pen registers. Further, the wiretap legislation would protect users of cellular phones who are currently being defrauded by criminals, often drug dealers, who employ advanced technology known as "Telecommunication Identification Interception Devices" to "clone" cellular phone codes.

These bills, if enacted, would enhance the ability of law enforcement to use wiretapping and electronic surveillance as a productive investigative tool. In-home one-party consensual interceptions of oral communications could be authorized by a judge of the court of common pleas rather than by an appellate judge. The number of crimes for which a wiretap may be sought is expanded. Surveillance based upon the person rather than a specific location is made possible. Suppression of evidence would be limited as a remedy to instances where the electronic surveillance was unconstitutional or not obtained in good faith reliance on the Act. No longer would all the evidence from a wiretap be suppressed because of a technical violation of the Act.

Pennsylvania needs Senate Bill 1448 and House Bill 2362. I respectfully urge you to support these important pieces of legislation.

Sincerely,

THOMAS W. CORBETT, JR.  
Attorney General

The PRESIDENT pro tempore. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Mr. President, I would just like to submit for the record letters from Gun Owners of America and Keystone Firearms Coalition opposing this particular legislation and ask that they be entered into the record.

The PRESIDENT pro tempore. Without objection, the letters will be received and made a part of the record.

*(The following letters were made a part of the record at the request of the gentleman from Philadelphia, Senator FUMO:)*

GUN OWNERS OF AMERICA  
8001 Forbes Place  
Suite 102  
Springfield, VA 22151

Monday, November 11, 1996

re: SB-1448

Dear Senator;

On behalf of GOA members and all Pennsylvania gun owners, I urge you to oppose SB-1448, the "Roving Wiretap Bill."

If enacted, this legislation would subject thousands of peaceful, honest Pennsylvania gun owners to unwarranted, unnecessary, unproductive, and unconstitutional scrutiny by an ever-expanding police state.

This is a dangerous and unnecessary step to take. While this bill will contribute little or nothing to reasonable law enforcement, it will serve to intimidate the exercise of free speech guaranteed to all Americans. Additionally, such legislation will serve to further alienate Pennsylvanians from both their lawmakers and their police. Such an atmosphere is obviously not conducive to respect for law and order and thus this legislation might ultimately be counterproductive.

Therefore, I urge you again to oppose SB-1488 *[sic]* and instead stand squarely behind the Commonwealth's Constitution and *the basic human right of all Pennsylvanians to be left alone.*

Sincerely,

DENNIS FUSARO  
Director, State and Local Affairs  
Gun Owners of America

KEYSTONE FIREARMS COALITION  
Legislative Committee  
Post Office Box 331  
Southampton, Pennsylvania

November 11, 1996

Senators  
Commonwealth of Pennsylvania

**KFC OPPOSES S.B. 1448**

As we reflect on today, Veterans' Day, we remember the American veterans who gave their all so that we could remain a free people. As we reflect on the Pennsylvania Senate, however, we remember that it has become a breeding ground for strange causes and for totalitarian legislation; we cannot understand why many of our Senators are working so hard to promote the same style of government that many of our veterans died to defeat.

We remember SB 75 which would allow federal law enforcement agents (yes, the same agents who have repeatedly proved that they cannot be trusted) to enforce Pennsylvania laws. We remember SB 806 which would amend the PA Constitution to strip Pennsylvanians of their historic freedom from arbitrary search and seizure. Now we understand that the Senate will vote tomorrow on SB 1448 -- a "rov-

ing wiretap" bill.

Nobody who believes in a free society and understands SB 1448, especially if it were coupled with SB 75/806, could support it. We urge you and your colleagues to defeat SB 1448 and to stop supporting totalitarian legislation which will turn Pennsylvania into a "police state in the making." If these bills have any merit, why have they been shrouded in secrecy? Why have their supporters not bragged to their constituents about their support for them? Why have some senators admitted that they were wrong to support these bills?

We are not prepared to allow our inalienable rights to be taken away under the guise of fighting crime. We are not prepared to accept harassment by federal officers, arbitrary search and seizure, or random wiretaps simply because the PA Senate has lost its bearings. We are not prepared to give up our Liberty just to make it easier for police/prosecutors to get convictions. The purpose of a Commonwealth is *not* to make it easy to convict its citizens!

We hope that you and your colleagues will reconsider what you have been (and are!) doing. We are certain that your constituents would agree with us, rather than with those who are urging you to support such strange, anti-freedom legislation. SB 1448 will haunt its supporters' political careers and may even end some of them.

**PLEASE DO WHAT YOU KNOW IS RIGHT -  
PLEASE DEFEAT S.B. 1448**

Sincerely,

WILLIAM A. DUFF, M.A.  
Chairman, Legislative Committee

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—35**

Afflerbach	Greenleaf	Mellow	Stapleton
Andrezeski	Hart	Mowery	Stewart
Armstrong	Heckler	Musto	Thompson
Belan	Helfrick	O'Pake	Tilghman
Bell	Holl	Peterson	Tomlinson
Brightbill	Jubelirer	Piccola	Uliana
Corman	Lemmond	Punt	Wagner
Fisher	Loeper	Rhoades	Wenger
Gerlach	Madigan	Shaffer	

**NAYS—14**

Bodack	Hughes	Porterfield	Stout
Costa	Kasunic	Robbins	Tartaglione
Delp	Kitchen	Schwartz	Williams
Fumo	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 present said bill to the House of Representatives for concurrence.

**BILL AMENDED**

**SB 1470 (Pr. No. 1879) --** 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 priority of restitution.

On the question,  
 Will the Senate agree to the bill on third consideration?  
 Senator COSTA offered the following amendment No. A7170:

Amend Title, page 1, line 2, by inserting after "Statutes,": further providing for causes of action; and

Amend Bill, page 1, lines 6 through 8, by striking out all of said lines and inserting:

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

**§ 8313. Wrongful discharge action.**

(a) Intent.—It is the intent of the General Assembly that it is against public policy for an employer to terminate an employee because the employee files a claim for workers' compensation.

(b) Cause of action.—An action may be brought by a person against a former employer of that person for damages resulting from the employer's discharge of that person because that person files a claim for workers' compensation.

Section 2. Section 9728(d) of Title 42 is amended to read:

Amend Bill, page 1, line 18, by striking out all of said line and inserting:

Section 3. This act shall be retroactive to March 1, 1994.

Section 4. This act shall take effect immediately.

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 LOEPER.

**BILL ON THIRD CONSIDERATION  
 AND FINAL PASSAGE**

**HB 1532 (Pr. No. 3585) --** The Senate proceeded to consideration of the bill, entitled:

An Act providing for certain health insurance policies to cover the cost of formulas necessary for the treatment of phenylketonuria and related disorders.

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—49**

Afflerbach	Greenleaf	Madigan	Shaffer
Andrezeski	Hart	Mellow	Stapleton
Armstrong	Heckler	Mowery	Stewart
Belan	Helfrick	Musto	Stout
Bell	Holl	O'Pake	Tartaglione
Bodack	Hughes	Peterson	Thompson
Brightbill	Jubelirer	Piccola	Tilghman
Corman	Kasunic	Porterfield	Tomlinson
Costa	Kitchen	Punt	Uliana
Delp	LaValle	Rhoades	Wagner
Fisher	Lemmond	Robbins	Wenger
Fumo	Loeper	Schwartz	Williams
Gerlach			

**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**

**SB 1559 --** Without objection, the bill was passed over in its order at the request of Senator LOEPER.

**BILLS ON THIRD CONSIDERATION  
 AND FINAL PASSAGE**

**SB 1560 (Pr. No. 2049) --** The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 54 (Names) of the Pennsylvania Consolidated Statutes, providing further procedures prior to name change orders.

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—49**

Afflerbach	Greenleaf	Madigan	Shaffer
Andrezeski	Hart	Mellow	Stapleton
Armstrong	Heckler	Mowery	Stewart
Belan	Helfrick	Musto	Stout
Bell	Holl	O'Pake	Tartaglione
Bodack	Hughes	Peterson	Thompson
Brightbill	Jubelirer	Piccola	Tilghman
Corman	Kasunic	Porterfield	Tomlinson
Costa	Kitchen	Punt	Uliana
Delp	LaValle	Rhoades	Wagner
Fisher	Lemmond	Robbins	Wenger
Fumo	Loeper	Schwartz	Williams
Gerlach			

**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 1646 (Pr. No. 2384) --** The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of April 9, 1929 (P. L. 177, No. 175), entitled "The Administrative Code of 1929," authorizing the Department of Corrections to assess and collect certain payments from prisoners.

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	Gerlach	Madigan	Shaffer
Andrezski	Greenleaf	Mellow	Stapleton
Armstrong	Hart	Mowery	Stewart
Belan	Heckler	Musto	Stout
Bell	Helfrick	O'Pake	Tartaglione
Bodack	Holl	Peterson	Thompson
Brightbill	Hughes	Piccola	Tilghman
Corman	Jubelirer	Porterfield	Tomlinson
Costa	Kasunic	Punt	Uliana
Delp	LaValle	Rhoades	Wagner
Fisher	Lemmond	Robbins	Wenger
Fumo	Loeper	Schwartz	Williams

NAYS—1

Kitchen

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 1662 (Pr. No. 2259) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of April 14, 1972 (P. L. 233, No. 64), entitled "The Controlled Substance, Drug, Device and Cosmetic Act," further providing for schedules of controlled substances.

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—49

Afflerbach	Greenleaf	Madigan	Shaffer
Andrezski	Hart	Mellow	Stapleton
Armstrong	Heckler	Mowery	Stewart
Belan	Helfrick	Musto	Stout
Bell	Holl	O'Pake	Tartaglione
Bodack	Hughes	Peterson	Thompson
Brightbill	Jubelirer	Piccola	Tilghman
Corman	Kasunic	Porterfield	Tomlinson
Costa	Kitchen	Punt	Uliana
Delp	LaValle	Rhoades	Wagner
Fisher	Lemmond	Robbins	Wenger
Fumo	Loeper	Schwartz	Williams
Gerlach			

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 1667 (Pr. No. 2385) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of August 6, 1941 (P. L. 861, No. 323), entitled, as amended, "Pennsylvania Board of Probation and Parole Law," further providing for probation and parole.

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—49

Afflerbach	Greenleaf	Madigan	Shaffer
Andrezski	Hart	Mellow	Stapleton
Armstrong	Heckler	Mowery	Stewart
Belan	Helfrick	Musto	Stout
Bell	Holl	O'Pake	Tartaglione
Bodack	Hughes	Peterson	Thompson
Brightbill	Jubelirer	Piccola	Tilghman
Corman	Kasunic	Porterfield	Tomlinson
Costa	Kitchen	Punt	Uliana
Delp	LaValle	Rhoades	Wagner
Fisher	Lemmond	Robbins	Wenger
Fumo	Loeper	Schwartz	Williams
Gerlach			

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.

HB 1929 (Pr. No. 4201) -- The Senate proceeded to consideration of the bill, entitled:

An Act relating to the recycling and reuse of waste tires; providing for the proper disposal of waste tires and the cleanup of stock-piled tires; authorizing investment tax credits for utilizing waste tires; providing remediation grants for the cleanup of tire piles and for pollution prevention programs for small business and households; establishing the Small Business and Household Pollution Prevention Program and management standards for small business hazardous waste; providing for a household hazardous waste program and for grant programs; making appropriations; 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—49

Afflerbach	Greenleaf	Madigan	Shaffer
Andrezski	Hart	Mellow	Stapleton
Armstrong	Heckler	Mowery	Stewart
Belan	Helfrick	Musto	Stout
Bell	Holl	O'Pake	Tartaglione
Bodack	Hughes	Peterson	Thompson

Brightbill	Jubelirer	Piccola	Tilghman
Corman	Kasunic	Porterfield	Tomlinson
Costa	Kitchen	Punt	Uliana
Delp	LaValle	Rhoades	Wagner
Fisher	Lemmond	Robbins	Wenger
Fumo	Loeper	Schwartz	Williams
Gerlach			

## 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 OVER IN ORDER

**HB 2021 and HB 2118** -- Without objection, the bills were passed over in their order at the request of Senator LOEPER.

## BILL AMENDED

**HB 2186 (Pr. No. 4079)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 30 (Fish) of the Pennsylvania Consolidated Statutes, further providing for clarification of the status of members of the Fish and Boat Commission, its Boating Advisory Board and deputy waterways patrolmen; providing for a volunteer program; and further providing for classification of offenses and penalties, for boating under the influence and for Class A regulated fishing lakes.

On the question,

Will the Senate agree to the bill on third consideration?

Senator DELP offered the following amendment No. A7218:

Amend Title, page 1, line 5, by striking out "AND"

Amend Title, page 1, line 7, by removing the period after "lakes" and inserting: ; and providing for marking of dams.

Amend Bill, page 5, by inserting between lines 25 and 26:

Section 4. Title 30 is amended by adding a section to read:

**§ 3510. Marking of dams.**

(a) New dams.—In issuing permits for the construction or installation of new run-of-the-river dams on the waters of this Commonwealth, the department shall include a permit advisory notifying the permittee of the requirements of this section. The permittee of a new run-of-the-river dam shall mark the areas above and below the dam and on the banks immediately adjacent to the dam with signs and buoys of a design and content determined by the commission to warn the swimming, fishing and boating public of the hazards posed by the dam.

(b) Existing dams.—The department shall compile and maintain a current list of existing dams on the waters of this Commonwealth that the department determines to be run-of-the-river type dams. Within three months of the effective date of this section, the department shall notify the permittees and owners of those run-of-the-river dams of the requirements of this section. Within six months of the effective date of this section or within three months of receiving notification of the requirements of this section from the department, whichever date occurs sooner, the permittees and owners of run-of-the-river dams shall mark the areas above and below the dam and on the banks immediately adjacent to the dam with signs and buoys of a design and content determined by the commission to warn the swimming, fishing and boating public of the hazards posed by the dam.

(c) Maintenance of signs and buoys.—

(1) It shall be the responsibility of the permittees and owners of run-of-the-river dams to maintain at all times in proper location and legible condition signs and buoys installed pursuant to the requirements of this section.

(2) When a permittee or owner learns that signs or any buoys installed under this section have been removed or defaced by an act of God or the acts or omissions of third parties other than the permittee or owner or his agent, he shall repair or replace the signs or buoys within 30 days. If a permittee or owner or his agent removes any signs or buoys, he shall have five days thereafter to repair or replace the signs or buoys.

(d) Size, content and location of signs and buoys marking run-of-the-river dams.—The commission, after consultation with the department, shall establish requirements for the content and location of signs and buoys to be installed under the authority of this section and the time periods of the year when the signs and buoys shall be required to be in place. The commission shall describe the requirements by notice published in the Pennsylvania Bulletin and may from time to time revise the requirements as circumstances require.

(e) Standard of care.—A dam permittee or owner who complies with the provisions of this section to mark a dam and who maintains signs and buoys as required by this section shall be deemed to have met the standard of care for marking a run-of-the-river dam.

(f) Regulations.—The commission may promulgate regulations to implement the provisions of this section.

(g) Penalties.—

(1) Any run-of-the-river dam permittee or owner who fails to mark his dam in the manner prescribed by the commission pursuant to this section commits a misdemeanor of the third degree with a fine of not less than \$500. Each calendar year of noncompliance shall constitute a separate violation.

(2) Any run-of-the-river dam permittee or owner who fails to maintain the signs or buoys required by and erected under the provisions of this section commits a misdemeanor of the third degree.

(3) Any person who enters an exclusion zone marked under the provisions of this section commits a summary offense of the third degree provided that it shall not be a violation of this section for the permittee or owner and his agents and officers of the Commonwealth and local government to enter the exclusion zone for purposes of maintaining the dams and signs and buoys or for enforcement and rescue purposes.

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

"Department." The Department of Environmental Protection of the Commonwealth.

"Owner." The person who owns a run-of-the-river dam regulated by the Department of Environmental Protection pursuant to the act of November 26, 1978 (P.L.1375, No.325), known as the Dam Safety and Encroachments Act.

"Permit." A permit issued by the Department of Environmental Protection pursuant to the act of November 26, 1978 (P.L.1375, No.325), known as the Dam Safety and Encroachments Act.

"Permittee." The person who has been issued a permit by the Department of Environmental Protection to maintain a run-of-the-river dam.

"Run-of-the-river dam." A manmade structure which:

(1) is regulated or permitted by the Department of Environmental Protection pursuant to the act of November 26, 1978 (P.L.1375, No.325), known as the Dam Safety and Encroachments Act;

(2) is built across a river or stream for the purposes of impounding water where the impoundment, at normal flow levels, is completely within the banks and all flow passes directly over the structure within the banks to a natural channel downstream; and

(3) the department determines to have hydraulic characteristics such that at certain flows persons entering the area immediately below the dam may be caught in the backwash.

Amend Sec. 4, page 5, line 26, by striking out "4" and inserting:



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 LOEPER.

#### BILL ON THIRD CONSIDERATION

**HB 2295 (Pr. No. 4205)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for copying and recording devices; and providing for unlawful operation of a recording device in a motion picture theater.

On the question,  
Will the Senate agree to the bill on third consideration?  
Senator THOMPSON offered the following amendment No. A7410:

Amend Title, page 1, line 3, by striking out "and"

Amend Title, page 1, line 4, by removing the period after "theater" and inserting: ; and further providing for exceptions to prohibition of interception and disclosure of communications.

Amend Bill, page 8, by inserting between lines 23 and 24:

Section 3. Section 5704 of Title 18 is amended by adding a paragraph to read:

§ 5704. Exceptions to prohibition of interception and disclosure of communications.

It shall not be unlawful under this chapter for:

\* \* \*

(14) The personnel of a business engaged in telephone sales by means of wire, oral or electronic communication to intercept such sales communications where such interception is made for the purpose of training, quality control or monitoring by the business.

Amend Sec. 3, page 8, line 24, by striking out all of said line and inserting:

Section 4. This act shall take effect as follows:

- (1) The amendment of 18 Pa.C.S. § 5704 shall take effect immediately.
- (2) This section shall take effect immediately.
- (3) The remainder of this act shall take effect in 60 days.

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

The PRESIDENT pro tempore. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Mr. President, will the maker of the amendment stand for brief interrogation?

The PRESIDENT pro tempore. Senator Thompson, will you stand for interrogation?

Senator THOMPSON. Mr. President, yes.

The PRESIDENT pro tempore. Senator Fumo, you may proceed.

Senator FUMO. Mr. President, as I read the amendment, it would allow businesses the right to electronically record communications between them and their customers if they are in the business of telephone sales. Would this also allow a consumer to record such a conversation?

Senator THOMPSON. Mr. President, no, it was written just for the businesses.

Senator FUMO. Mr. President, can the gentleman tell me why we would not allow consumers equal rights under these same limited circumstances?

Senator THOMPSON. Mr. President, frankly, I did not think of it. The reason for the amendment is to bring Pennsylvania's law into compliance with Federal laws which allow telemarketers to monitor, for quality control purposes, the calls made within Pennsylvania. Currently, if a Pennsylvania telemarketer calls to Delaware, for instance, they can in fact monitor those calls because Federal law allows that to be done. They can also call from Delaware into Pennsylvania and do it because Delaware law provides that it can be done. Only Pennsylvania in this area prohibits this from happening, and what is happening is that our telemarketing firms in Pennsylvania cannot record calls within Pennsylvania, so this would put Pennsylvania employers who are in telemarketing positions on the same playing field, an even playing field, with their counterparts in other States.

Senator FUMO. Mr. President, will the gentleman tell me whether or not there is some kind of competitive edge that is needed by these firms that they need to have the ability to wiretap their phones in order to do business? Is it hurting their business in Pennsylvania?

Senator THOMPSON. Mr. President, yes, it is for a quality control purpose and to comply with laws. It is impossible to monitor, legally, those calls that are being made within the State.

Senator FUMO. Mr. President, the gentleman says that this will bring us into compliance with Federal law. I do not think that is really what he means. We are not under any kind of mandate to adopt a statute like this, are we, Mr. President?

Senator THOMPSON. Mr. President, in conformance, I guess, is a better word.

Senator FUMO. Okay, Mr. President. I thank the gentleman.

I am not going to vote for the amendment because of my general distrust of electronic surveillance, whether it is done by government or business, and I think when it is done by business we should even be more suspicious. But I am also concerned about the fact that consumers do not have the same rights when they make a telephone call to a telemarketer or when they are besieged with phone calls, as they are constantly with people harassing them on the telephones. They are not allowed to record those conversations to show people they are being harassed. I do not honestly know why we should have a playing field that is not level and allow just businesses to do that. I might be more persuaded if it were fair on both sides, but under its current form I personally oppose the amendment.

Thank you, Mr. President.

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

Senator LOEPER. Mr. President, very briefly, I think that the gentleman from Chester, Senator Thompson, indicated clearly the need for this amendment to the bill before us, that essentially what we are talking about is putting Pennsylvania on a level playing field, particularly Pennsylvania's telemarketers with competing telemarketers out of State and for our businesses that are located within the Commonwealth. In

order to assure a quality control issue with them, I ask for an affirmative vote on the amendment.

The PRESIDENT pro tempore. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Mr. President, I think we have to clear up something here. This is not something that businesses need to have a competitive edge or in order to be competitive with their competition. This is just another way of government allowing people to pry into the private lives of individuals. Mr. President, the definitions involved here concern me as well. It is very vague. It says, "The personnel of a business engaged in telephone sales by means of wire, oral or electronic communication" can intercept. That can almost be anybody. Someone can say, gee, I am going to call my neighbor and ask if they want to buy something, and while I am at it, I am going to tap the phone call but they are not going to be able to tap me.

Mr. President, we are getting into some very, very dangerous areas here when we talk about the civil rights of Pennsylvanians. There is a reason why Pennsylvania does not jump up to what every other State wants to do in these areas, and that is because this is the birthplace of liberty. This is where we adopted the Bill of Rights. This is where the foundation of people being protected from their government was started in the world. So we are not anxious to give away those civil rights. But only in a business environment like this do I find conservatives on that side of the aisle so anxious to trample on the Bill of Rights because somebody came to them and said, gee, this would be neat, let us do this.

Mr. President, this is even more dangerous than the last wiretapping law because at least there you had some elected officials involved in the process, you had the courts involved in the process. Here, anybody who wants to call themselves a business who makes phone calls for sales is now allowed to wiretap. That is a very dangerous precedent, Mr. President, regardless of how high the motivation is.

I do not submit that the gentleman from Chester, Senator Thompson, is trying to do anything nefarious here, but I think he has been a little bit misguided by this overwhelming pro-business environment that the Republicans have brought to Pennsylvania. While we are doing everything for business, we should recognize individual civil liberties. I know many of my constituents are constantly harassed by telephone solicitations. They do not have the right to tap that phone call so they could call the district attorney and say, look what this guy is doing to me, but the other side, the business, has the right to. It is simply not fair, it is ill-advised, and I ask for a negative vote.

Thank you, Mr. President.

The PRESIDENT pro tempore. The Chair recognizes the gentleman from Lehigh, Senator Afflerbach.

Senator AFFLERBACH. Mr. President, would the gentleman from Chester, Senator Thompson, stand for another brief interrogation, please.

The PRESIDENT pro tempore. Senator Thompson, would you be willing to be interrogated?

Senator THOMPSON. Yes, Mr. President.

The PRESIDENT pro tempore. You may proceed, Senator Afflerbach.

Senator AFFLERBACH. Mr. President, as I review the amendment, I do not see any requirement for the business that may in fact be tape recording the conversation to notify the person on the other end of that telephone call that they are being recorded. Is there such a requirement?

Senator THOMPSON. Mr. President, I do not believe there is, to be honest with you.

Senator AFFLERBACH. Mr. President, earlier in response to interrogation, the gentleman indicated that he had not included the ability of the individual receiving the call from also recording the conversation because he frankly had not thought of it. My question is, would the gentleman be willing to withdraw the amendment at this time and include two things: one, the availability of the individual receiving the call to also record it; and, two, a notification to the individual receiving the call that he or she is in fact being tape recorded?

The PRESIDENT pro tempore. The Senate will be at ease. (The Senate was at ease.)

BILL OVER IN ORDER

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

Senator LOEPPER. Mr. President, I request that House Bill No. 2295 go over in its order.

The PRESIDENT pro tempore. Without objection, that bill will now go over in its order.

BILLS ON THIRD CONSIDERATION AND FINAL PASSAGE

HB 2312 (Pr. No. 3000) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of June 24, 1931 (P.L.1206, No.331), known as The First Class Township Code, further providing for contracts.

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—49

Afflerbach	Greenleaf	Madigan	Shaffer
Andrezeski	Hart	Mellow	Stapleton
Armstrong	Heckler	Mowery	Stewart
Belan	Helfrick	Musto	Stout
Bell	Holl	O'Pake	Tartaglione
Bodack	Hughes	Peterson	Thompson
Brightbill	Jubelirer	Piccola	Tilghman
Corman	Kasunic	Porterfield	Tomlinson
Costa	Kitchen	Punt	Uliana
Delp	LaValle	Rhoades	Wagner
Fisher	Lemmond	Robbins	Wenger
Fumo	Loeper	Schwartz	Williams
Gerlach			

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.

**HB 2313 (Pr. No. 3001)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of February 1, 1966 (1965 P.L.1656, No.581), known as The Borough Code, further providing for contracts.

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—49**

Afflerbach	Greenleaf	Madigan	Shaffer
Andrezeski	Hart	Mellow	Stapleton
Armstrong	Heckler	Mowery	Stewart
Belan	Helfrick	Musto	Stout
Bell	Holl	O'Pake	Tartaglione
Bodack	Hughes	Peterson	Thompson
Brightbill	Jubelirer	Piccola	Tilghman
Corman	Kasunic	Porterfield	Tomlinson
Costa	Kitchen	Punt	Uliana
Delp	LaValle	Rhoades	Wagner
Fisher	Lemmond	Robbins	Wenger
Fumo	Loeper	Schwartz	Williams
Gerlach			

**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

**HB 2314 (Pr. No. 3002)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of May 1, 1933 (P.L.103, No.69), known as The Second Class Township Code, further providing for letting contracts.

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—49**

Afflerbach	Greenleaf	Madigan	Shaffer
Andrezeski	Hart	Mellow	Stapleton
Armstrong	Heckler	Mowery	Stewart
Belan	Helfrick	Musto	Stout
Bell	Holl	O'Pake	Tartaglione

Bodack	Hughes	Peterson	Thompson
Brightbill	Jubelirer	Piccola	Tilghman
Corman	Kasunic	Porterfield	Tomlinson
Costa	Kitchen	Punt	Uliana
Delp	LaValle	Rhoades	Wagner
Fisher	Lemmond	Robbins	Wenger
Fumo	Loeper	Schwartz	Williams
Gerlach			

**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

**BILLS OVER IN ORDER**

**HB 2511, HB 2579 and HB 2617** -- Without objection, the bills were passed over in their order at the request of Senator LOEPER.

**BILL ON THIRD CONSIDERATION AND FINAL PASSAGE**

**HB 2828 (Pr. No. 4116)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of July 17, 1961 (P.L.659, No.339), known as the Pennsylvania Bituminous Coal Mine Act, providing standards and procedures for the use and maintenance of diesel-powered equipment; establishing the Technical Advisory Committee on Diesel-Powered Equipment; providing for the committee's powers and duties; creating a fund; and making editorial changes.

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—49**

Afflerbach	Greenleaf	Madigan	Shaffer
Andrezeski	Hart	Mellow	Stapleton
Armstrong	Heckler	Mowery	Stewart
Belan	Helfrick	Musto	Stout
Bell	Holl	O'Pake	Tartaglione
Bodack	Hughes	Peterson	Thompson
Brightbill	Jubelirer	Piccola	Tilghman
Corman	Kasunic	Porterfield	Tomlinson
Costa	Kitchen	Punt	Uliana
Delp	LaValle	Rhoades	Wagner
Fisher	Lemmond	Robbins	Wenger
Fumo	Loeper	Schwartz	Williams
Gerlach			

**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.

**RECESS**

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

Senator LOEPER. Mr. President, at this time I ask for a very brief recess of the Senate for the purpose of a meeting of the Committee on Appropriations to be held in the Rules room at the rear of the Senate Chamber.

The PRESIDENT pro tempore. Senator Loeper has requested a brief recess of the Senate for the purpose of a meeting of the Committee on Appropriations to be held in the Rules Committee room at the rear of the Senate Chamber, and for that purpose the Senate will stand in recess.

**AFTER RECESS**

The PRESIDENT pro tempore. The time of recess having expired, the Senate will come to order.

**CONSIDERATION OF CALENDAR RESUMED****SECOND CONSIDERATION CALENDAR****BILLS ON SECOND CONSIDERATION**

**HB 304 (Pr. No. 4084)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of November 6, 1987 (P.L. 381, No. 79), known as the Older Adults Protective Services Act, further providing for definitions; providing for criminal history for employees at certain facilities; and making editorial changes.

Considered the second time and agreed to,

Ordered, To be printed on the Calendar for third consideration.

**HB 305 (Pr. No. 4085)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of November 6, 1987 (P.L. 381, No. 79), known as the Older Adults Protective Services Act, adding definitions of "registry" and "serious bodily injury"; further providing for definitions, for reporting, for investigations and for confidentiality of records; providing for reporting suspected abuse by employees; and making editorial changes.

Considered the second time and agreed to,

Ordered, To be printed on the Calendar for third consideration.

**HB 306 (Pr. No. 4086)** -- The Senate proceeded to consideration of the bill, entitled:

An Act providing for Statewide nurse aide training programs relating to nursing facilities.

Considered the second time and agreed to,

Ordered, To be printed on the Calendar for third consideration.

**HB 1116 (Pr. No. 4127)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of May 1, 1933 (P.L.103, No.69), known as The Second Class Township Code, further providing for

appropriations for training fire personnel and for fire training schools or centers.

Considered the second time and agreed to,

Ordered, To be printed on the Calendar for third consideration.

**HB 1117 (Pr. No. 4128)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of June 24, 1931 (P.L.1206, No.331), known as The First Class Township Code, providing authorization to make appropriations for the training of fire personnel and for fire training schools or centers; and further providing for contracts.

Considered the second time and agreed to,

Ordered, To be printed on the Calendar for third consideration.

**HB 1118 (Pr. No. 4129)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of February 1, 1966 (1965 P.L.1656, No.581), known as The Borough Code, further providing for contracts and purchases; and providing for appropriations for training fire personnel and for fire training schools and centers.

Considered the second time and agreed to,

Ordered, To be printed on the Calendar for third consideration.

**BILLS OVER IN ORDER**

**SB 1404, SB 1405, SB 1406, SB 1672, SB 1673, SB 1674, SB 1675 and SB 1676** -- Without objection, the bills were passed over in their order at the request of Senator LOEPER.

**BILL ON SECOND CONSIDERATION AND REREFERRED**

**HB 1834 (Pr. No. 4239)** -- The Senate proceeded to consideration of the bill, entitled:

An Act providing for the establishment of charter schools; providing for powers and duties of the Secretary of Education; establishing a State Charter School Appeal Board; providing for payments to charter schools; and requiring certain reports and recommendations.

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.

**BILL OVER IN ORDER**

**HB 2065** -- Without objection, the bill was passed over in its order at the request of Senator LOEPER.

**BILLS ON SECOND CONSIDERATION**

**HB 2463 (Pr. No. 4236)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 34 (Game) of the Pennsylvania Consolidated Statutes, defining "bodily injury," "facsimile," "poaching" and "serious bodily injury"; further defining "game," "hunt" or "hunting,"

"take" and "wildlife" to include facsimiles; further providing for the terms of commission members; providing for the use of facsimiles for law enforcement purposes, for the use of protective materials by officers and for an additional penalty for poaching; and further providing for incident reports and assistance, for increased penalties for shooting at, causing injury to or killing another person, for the use of lights while hunting, for carrying loaded firearms in certain vehicles, for safety zones by employees and agents of political subdivisions holding valid deer control permits, for the training of dogs, for restrictions on vehicles, for license revocation, for disabled hunting licenses and for taxidermy permits.

Considered the second time and agreed to,

Ordered, To be printed on the Calendar for third consideration.

**HB 2585 (Pr. No. 4237)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 30 (Fish) of the Pennsylvania Consolidated Statutes, further providing for the organization of the Pennsylvania Fish and Boat Commission; providing for use of credit and debit cards; providing for limitation on regulatory jurisdiction; prohibiting interference with lawful fishing and boating and further providing for disabled veterans.

Considered the second time and agreed to,

Ordered, To be printed on the Calendar for third consideration.

**HB 2630 (Pr. No. 3576)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of June 28, 1935 (P.L.477, No.193), referred to as the Enforcement Officer Disability Benefits Law, extending benefits to certain employees of the Office of Attorney General.

Considered the second time and agreed to,

Ordered, To be printed on the Calendar for third consideration.

### UNFINISHED BUSINESS REPORTS FROM COMMITTEES

Senator TILGHMAN, from the Committee on Appropriations, reported the following bills:

**HB 1782 (Pr. No. 3657)** (Rereported)

An Act amending the act of May 26, 1947 (P. L. 318, No. 140), known as The C.P.A. Law, amending the title; further providing for the short title, for definitions, for the Public Accountants' Advisory Committee, for the State Board of Accountancy and its general powers, for general qualifications, for education and experience and for reciprocity; providing for foreign reciprocity; further providing for licensure, for partnership and corporate licensure and for registration of public accountants; providing for licensure of firms and for peer review; further providing for discipline, for reinstatement, for revocation and suspension, for agency, for work product, for privilege, for penalties and remedies, for construction and for audits; regulating the professional responsibility of licensees; and reenacting certain provisions.

**HB 2210 (Pr. No. 4270)** (Rereported)

An Act amending the act of October 15, 1975 (P.L.390, No.111), known as the Health Care Services Malpractice Act, further providing

for definitions, for statutes of limitation, for professional liability insurance and the Medical Professional Liability Catastrophe Loss Fund, for administration of that fund and for liability of excess carriers; providing for a Medical Professional Insurance Fund Advisory Board and for surcharge limits; and further providing for plan operation and rates, for reports to the Insurance Commissioner, for forms of doing business and for the Joint Study Committee.

Senator SHAFFER, from the Committee on Community and Economic Development, reported the following bill:

**HB 2627 (Pr. No. 4249)**

An Act amending the act of December 10, 1974 (P.L.852, No.287), referred to as the Underground Utility Line Protection Law, further providing for definitions, for duties of facility owners, for a One Call System, and for designers and contractors for a One Call System; and providing for penalties.

### SENATE RESOLUTIONS

#### DECLARING THE PENNSYLVANIA SHAKESPEARE FESTIVAL AS "THE OFFICIAL SHAKESPEARE FESTIVAL OF THE COMMONWEALTH OF PENNSYLVANIA"

Senators BRIGHTBILL and AFFLERBACH, by unanimous consent, offered the following resolution (**Senate Resolution No. 159**), which was read, considered and adopted:

In the Senate, November 19, 1996

#### A RESOLUTION

Declaring the Pennsylvania Shakespeare Festival as "The Official Shakespeare Festival of the Commonwealth of Pennsylvania."

WHEREAS, In 1992, the Reverend Gerard J. Schubert founded the Pennsylvania Shakespeare Festival at Allentown College; and

WHEREAS, Seasonal attendance at the Pennsylvania Shakespeare Festival has grown from more than 10,000 people in 1992 to more than 22,000 people in 1995; and

WHEREAS, More than 25,000 people are expected to see the 1997 productions of Julius Caesar, The Comedy of Errors and Shaw's Arms and the Man; and

WHEREAS, The audience comes from as many as 11 different states; and

WHEREAS, The Pennsylvania Shakespeare Festival continues its rise to national prominence; and

WHEREAS, The preeminent regional theatre critics have declared the festival as "one of the major presenters of the Bard's plays" and called its productions "the most significant theatre events of the year"; therefore be it

RESOLVED, That the Senate declare the Pennsylvania Shakespeare Festival as "The Official Shakespeare Festival of the Commonwealth of Pennsylvania."

#### RECOGNIZING PENNSYLVANIA'S FOREST PRODUCTS INDUSTRY AND THE SUSTAINABLE FORESTRY INITIATIVE

Senators MADIGAN, MUSTO, PETERSON, STAPLETON, WENGER, CORMAN, AFFLERBACH, HELFRICK, ROB-BINS, SCHWARTZ, RHOADES, HART, SALVATORE, TOMLINSON and HECKLER, by unanimous consent, offered the following resolution (**Senate Resolution No. 160**), which was read, considered and adopted:

In the Senate, November 19, 1996

### A RESOLUTION

Recognizing Pennsylvania's forest products industry and the Sustainable Forestry Initiative.

WHEREAS, This Commonwealth has a rich natural bounty of more than 17 million acres of renewable hardwood forest land; and

WHEREAS, This vast forest resource has been a staple component of this nation's and this Commonwealth's economy since the founding of America and has sustained businesses, families and entire rural communities; and

WHEREAS, Through the generations, Pennsylvania's forest products industry has grown to represent this Commonwealth's fourth largest manufacturing sector, with more than 2,200 employers and 90,000 employees; and

WHEREAS, The forest products industry relies on the forest resource to make this Commonwealth the number one producer of hardwood-based material and to meet the public's increasing demand for wood and wood-related products; and

WHEREAS, The Pennsylvania forest products industry, in recognition of its stewardship responsibilities in nurturing the forest resource, has committed itself to the continuing principles of sustainable forestry by initiating the Sustainable Forestry Initiative to promote, educate, train and monitor adherence to sustaining the forest resource for future generations; and

WHEREAS, The Sustainable Forestry Initiative is based on the responsible environmental stewardship of the forests, water resources and wildlife; therefore be it

RESOLVED, That the Senate commend Pennsylvania's forest products industry for its history of care and commitment to the responsible use of resources; and be it further

RESOLVED, That the Senate recognize the development of Sustainable Forestry Initiative, which has educated landowners, foresters and loggers about the sustainability of Pennsylvania's forests; and be it further

RESOLVED, That the Senate endorse the Sustainable Forestry Initiative and its self-regulatory objectives of increasing knowledge, professionalism and stewardship that will foster the sustainability of Pennsylvania's forests; and be it further

RESOLVED, That the Senate request that the public, forest landowners and resource agencies embrace and support the objectives of the Sustainable Forestry Initiative in this Commonwealth.

### 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 Donald J. Rhine by Senator Brightbill.

Congratulations of the Senate were extended to Rose Lucchino, Nancy Bonenberger and to the Honorable Ivan Itkin by Senator Costa.

Congratulations of the Senate were extended to Dr. Anna Brigante Colonna by Senator Fumo.

Congratulations of the Senate were extended to Mr. and Mrs. Alfred A. Kowalski, Mr. and Mrs. Carroll B. Laubach, Mr. and Mrs. Robert Lindquist, Mr. and Mrs. Clifford Machesic, Mr. and Mrs. Herbert H. Quinn and to Gerald C. Wertz by Senator Helfrick.

Congratulations of the Senate were extended to Mr. and Mrs. Neal Hasbrouck by Senator Peterson.

Congratulations of the Senate were extended to Kathryn J. Bainbridge by Senator Piccola.

Congratulations of the Senate were extended to the Good Shepherd Mediation Program of Philadelphia and the communities of Johannesburg, Soweto, Thokoza, and Brahmfontein, South Africa, by Senator Schwartz.

Congratulations of the Senate were extended to Lon H. Colborn by Senator Shaffer.

Congratulations of the Senate were extended to Mr. and Mrs. Howard Abraham, Mr. and Mrs. John Bafik, Mr. and Mrs. Ellis L. Pierce and to Mr. and Mrs. Voris White by Senator Stapleton.

Congratulations of the Senate were extended to Mr. and Mrs. Charles E. Bradshaw, Mr. and Mrs. Edsel S. Bryner, Mr. and Mrs. James M. Church, Mr. and Mrs. Glenn H. Durbin and to Crystal Graves Smith Linn by Senator Stout.

Congratulations of the Senate were extended to the First Evangelical Congregational Church of Easton by Senator Uliana.

### POSTHUMOUS CITATION

The PRESIDENT laid before the Senate the following citation, which was read, considered and adopted:

A posthumous citation honoring the late Richard Hammer was extended to the family by Senator Costa.

### BILLS ON FIRST CONSIDERATION

Senator ULIANA. Mr. President, I move that the Senate do now proceed to consideration of all bills reported from committees for the first time at today's Session.

The motion was agreed to.

The bills were as follows:

**SB 1166, SB 1709, HB 647, HB 974, HB 1181, HB 1972, HB 2191, HB 2243, HB 2348, HB 2362, HB 2393, HB 2401, HB 2403, HB 2522, HB 2586, HB 2592, HB 2627 and HB 2657.**

And said bills having been considered for the first time, Ordered, To be printed on the Calendar for second consideration.

### ANNOUNCEMENTS BY THE SECRETARY

The following announcements were read by the Secretary of the Senate:

#### SENATE OF PENNSYLVANIA

#### COMMITTEE MEETINGS

WEDNESDAY, NOVEMBER 20, 1996

9:30 A.M.	APPROPRIATIONS (to consider Senate Bill No. 1720; and House Bills No. 1834, 2257, 2292 and 2595)	Room 461 Main Capitol
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#### CANCELLED

10:30 A.M.	LAW AND JUSTICE (to consider the nomination of George McManus to the Liquor Control Board)	Room 461 Main Capitol
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MONDAY, NOVEMBER 25, 1996

1:00 P.M.      LABOR AND INDUSTRY (public      Room 461  
hearing to consider the nomination of      Main Capitol  
Herbert Hoffman to the Workmen's  
Compensation Appeals Board)

TUESDAY, NOVEMBER 26, 1996

10:30 A.M.      BANKING AND INSURANCE      Room 461  
for the purpose of reviewing banks      Main Capitol  
selling insurance products; Senate  
Bill No. 1711; and any other business  
that may come before the Committee)

**ADJOURNMENT**

Senator LOEPER. Mr. President, I move that the Senate do now adjourn until Wednesday, November 20, 1996, at 11 a.m., Eastern Standard Time.

The motion was agreed to.

The Senate adjourned at 5:35 p.m., Eastern Standard Time.