

COMMONWEALTH OF PENNSYLVANIA

Legislative Journal

TUESDAY, DECEMBER 6, 2005

SESSION OF 2005 189TH OF THE GENERAL ASSEMBLY

No. 72

SENATE

TUESDAY, December 6, 2005

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

The PRESIDENT (Lieutenant Governor Catherine Baker Knoll) in the Chair.

PRAYER

The Chaplain, Reverend RANDAL FRIEDMAN, of North Chester Baptist Church, Chester, offered the following prayer:

Let us pray.

Almighty God, we come before Your throne of grace today acknowledging Your sovereignty and our dependence upon You. Lord, I pray today for these Senators. I pray, Lord, that You would guide them, that You would give them wisdom, that, Lord, they would realize that You have given them this position for the good of the people of this Commonwealth. Lord, we do pray that as they take care of business today, that they would find guidance and direction from You. And, Lord, that through all that is done, You may receive the glory in all things.

Lord, we do praise You for who we are, we do thank You for all things, for life, for the ability to be here, and, Lord, we do give You the honor and the glory, especially during this Christmas season we do thank You. Be with us now in this time. In Christ Jesus' name, our Lord and Savior. Amen.

The PRESIDENT. The Chair thanks Reverend Friedman, who is the guest today of Senator Pileggi.

PLEDGE OF ALLEGIANCE

(The Pledge of Allegiance was recited by those assembled.)

JOURNAL APPROVED

The PRESIDENT. A quorum of the Senate being present, the Clerk will read the Journal of the preceding Session of December 5, 2005.

The Clerk proceeded to read the Journal of the preceding Session, when, on motion of Senator BRIGHTBILL, and agreed to by voice vote, further reading was dispensed with and the Journal was approved.

HOUSE MESSAGES

SENATE BILL RETURNED WITH AMENDMENTS

The Clerk of the House of Representatives returned to the Senate SB 157, 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 CONCURRENT RESOLUTION

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

Weekly recess.

BILLS REPORTED FROM COMMITTEE

Senator WONDERLING, from the Committee on Communications and Technology, reported the following bills:

SB 770 (Pr. No. 1408) (Amended)

An Act amending the act of December 16, 1999 (P.L.971, No.69), known as the Electronic Transactions Act, providing for the definition of "United States Postal Service Electronic Postmark" and for electronic postmark.

SB 936 (Pr. No. 1409) (Amended)

An Act amending the act of July 9, 1990 (P.L.340, No.78), known as the Public Safety Emergency Telephone Act, providing for interconnected Voice over Internet Protocol service; and establishing the VoIP Emergency Services Fund.

LEGISLATIVE LEAVES

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, I ask for legislative leaves for Senator Punt, Senator Madigan, and Senator Earll.

The PRESIDENT. Senator Brightbill requests legislative leaves for Senator Punt, Senator Madigan, and Senator Earll.

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

Senator O'PAKE. Madam President, I request a legislative leave for Senator Tartaglione.

The PRESIDENT. Senator O'Pake requests a legislative leave for Senator Tartaglione.

Without objection, the leaves will be granted.

CALENDAR

BILL ON CONCURRENCE IN
HOUSE AMENDMENTS

SENATE CONCURS IN HOUSE AMENDMENTS

SB 573 (Pr. No. 1382) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of May 21, 1943 (P.L.571, No.254), known as The Fourth to Eighth Class County Assessment Law, further providing for valuation of persons and property.

On the question,

Will the Senate concur in the amendments made by the House to Senate Bill No. 573?

Senator BRIGHTBILL. Madam President, I move that the Senate do concur in the amendments made by the House to Senate Bill No. 573.

On the question,

Will the Senate agree to the motion?

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

YEA-50

| | | | |
|------------|-----------|-------------|----------------------|
| Armstrong | Greenleaf | Piccola | Tomlinson |
| Boscola | Hughes | Pileggi | Vance |
| Brightbill | Jubelirer | Pippy | Washington |
| Browne | Kasunic | Punt | Waugh |
| Conti | Kitchen | Rafferty | Wenger |
| Corman | LaValle | Regola | White, Donald |
| Costa | Lemmond | Rhoades | White, Mary Jo |
| Earll | Logan | Robbins | Williams, Anthony H. |
| Erickson | Madigan | Scarnati | Williams, Constance |
| Ferlo | Mellow | Stack | Wonderling |
| Fontana | Musto | Stout | Wozniak |
| Fumo | O'Pake | Tartaglione | |
| Gordner | Orie | Thompson | |

NAY-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.

SPECIAL ORDER OF BUSINESS
GUESTS OF SENATOR JOHN PIPPY
PRESENTED TO THE SENATE

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Pippy.

Senator PIPPY. Madam President, today I am pleased to introduce two honored guests from my district. Adrian Liptrot from Pittsburgh is a senior at the University of Pittsburgh majoring in political science and German. He attends Pitt on an academic scholarship as a member of the chess club, and plans to further his education in law school after completing his undergraduate studies in the spring.

Also, we have with us Stacy Gault from Whitehall in Allegheny County, who is a junior at Duquesne University majoring in communication studies and journalism. She is an active member of various campus organizations, including the Public Relations Student Society of America, was a sports writer for the campus newspaper, The Duquesne Dukes, and is also a member of our Pennsylvania Air National Guard, 171st Air Refueling Wing, where she serves in the public affairs office at the rank of Senior Airman.

Both Stacy and Adrian have been interns in my district office during this semester and have done an excellent job. They are fine examples of the future of Pennsylvania, people who care and are interested in government, and I know they will do well in all their endeavors. I would like to give them a round of applause. They are seated in the gallery.

The PRESIDENT. Will Adrian and Stacy please rise.

(Applause.)

GUESTS OF SENATOR DOMINIC F.
PILEGGI PRESENTED TO THE SENATE

The PRESIDENT. The Chair recognizes the gentleman from Chester, Senator Pileggi.

Senator PILEGGI. Madam President, it is my pleasure this afternoon to introduce the Senate the Chaplain for today, Pastor Randal Friedman of the North Chester Baptist Church. He was born in Abington, Pennsylvania, to missionary parents who moved the family to France when he was 4 years old. He returned to the United States at the age of 16 and graduated from the Plumstead Christian School in Bucks County, Pennsylvania, and pursued his education at the Philadelphia College of the Bible. In 1998, he became the pastor at the North Chester Baptist Church, where he continues to minister to the community of the city of Chester and surrounding communities. He is accompanied today by his wife, Pam, and their three children, Amanda, Jennifer, and Joshua, who are seated in the gallery. Madam President, I ask that we extend our traditional warm welcome to Pastor Randal Friedman and his family.

The PRESIDENT. Would Pastor Friedman and his wife and children please rise so we can give you a nice warm welcome.

(Applause.)

GUESTS OF SENATOR ROBERT D.
ROBBINS PRESENTED TO THE SENATE

The PRESIDENT. The Chair recognizes the gentleman from Mercer, Senator Robbins.

Senator ROBBINS. Madam President, I had the pleasure of Nicholas Cianci and John Stumpff being guest Pages yesterday and today, following me around to learn a little bit about government, and they had to leave early, so I would like to submit my remarks for the record.

The PRESIDENT. Thank you. I am sorry we cannot recognize Nicholas and John.

(The following prepared remarks were made a part of the record at the request of the gentleman from Mercer, Senator ROBBINS:)

Both Nicholas and John are eighth graders currently attending St. Michael School in Greenville.

Nicholas is a member of the school's football, cross country, soccer, basketball, track, and baseball teams. He additionally is a member of the school band.

John serves his class as a student council representative. Additionally, he is a member of the school choir, band, and soccer team.

They were accompanied here today by Nick's father, Mark Cianci. Madam President and fellow Members, please join me in welcoming my special guests to the Senate of Pennsylvania.

GUEST OF SENATOR CONSTANCE H. WILLIAMS PRESENTED TO THE SENATE

The PRESIDENT. The Chair recognizes the gentlewoman from Montgomery, Senator Connie Williams.

Senator C. WILLIAMS. Madam President, today I had the honor of being shadowed by Philip Piatt, a young man from Lower Merion Township who is a junior at Lower Merion High School. He certainly has come on a day that has been very busy and has had a great opportunity to see what we do up here. Phil is up in the balcony, and I would like us all to welcome him. Maybe he will come back some day soon, if we do not wear him out.

The PRESIDENT. Will Phil Piatt please rise so we can give you a nice warm welcome.

(Applause.)

RECESS

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, at this time I ask for a recess of the Senate for the purpose of a Republican caucus, which will begin immediately in the Majority Caucus Room.

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

Senator O'PAKE. Madam President, I ask all Democrats to report to our caucus room immediately.

The PRESIDENT. For purposes of Republican and Democratic caucuses, without objection, the Senate stands in recess.

AFTER RECESS

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

CONSIDERATION OF CALENDAR RESUMED

SB 895 CALLED UP OUT OF ORDER

SB 895 (Pr. No. 1403) -- Without objection, the bill was called up out of order, from page 2 of the Third Consideration Calendar, by Senator BRIGHTBILL, as a Special Order of Business.

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 895 (Pr. No. 1403) -- 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 police animals.

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:

YEA-50

| | | | |
|------------|-----------|-------------|----------------------|
| Armstrong | Greenleaf | Piccola | Tomlinson |
| Boscola | Hughes | Pileggi | Vance |
| Brightbill | Jubelirer | Pippy | Washington |
| Browne | Kasunic | Punt | Waugh |
| Conti | Kitchen | Rafferty | Wenger |
| Corman | LaValle | Regola | White, Donald |
| Costa | Lemmond | Rhoades | White, Mary Jo |
| Earl | Logan | Robbins | Williams, Anthony H. |
| Erickson | Madigan | Scarnati | Williams, Constance |
| Ferlo | Mellow | Stack | Wonderling |
| Fontana | Musto | Stout | Wozniak |
| Fumo | O'Pake | Tartaglione | |
| Gordner | Orie | Thompson | |

NAY-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.

RECESS

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, at this time I ask for a recess of the Senate for the purpose of a meeting of the Committee on Appropriations, which will be held in the Rules room. We expect to be back on the floor in about 10 or 15 minutes.

The PRESIDENT. There will be a recess for a meeting of the Committee on Appropriations. For that purpose, without objection, the Senate stands in recess.

AFTER RECESS

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

BILLS REPORTED FROM COMMITTEE

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

SB 736 (Pr. No. 1411) (Amended) (Rereported)

An Act amending the act of November 10, 1999 (P.L. 491, No. 45), known as the Pennsylvania Construction Code Act, further providing for definitions and for regulations; and providing for applicability on certain uncertified buildings.

HB 163 (Pr. No. 3260) (Amended) (Rereported)

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

CONSIDERATION OF CALENDAR RESUMED**THIRD CONSIDERATION CALENDAR****BILL AMENDED**

HB 111 (Pr. No. 3217) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code, further defining "case" and "eligible entity"; providing for extension of existing license to cover additional area; and further providing for breweries, for surrender of certain licenses for benefit of licensee, for unlawful acts relative to malt or brewed beverages and licensees, for hours of operation relative to manufacturers, importing distributors and distributors and for unlawful acts relative to liquor, malt and brewed beverages and licensees.

On the question,

Will the Senate agree to the bill on third consideration?

Senator RAFFERTY offered the following amendment No. A4843:

Amend Sec. 2 (Sec. 406.1), page 7, line 30, by inserting brackets before and after "§ 7.21(c)(3)" and inserting: § 7.21

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 BRIGHTBILL.

BILL OVER IN ORDER

SB 170 -- Without objection, the bill was passed over in its order at the request of Senator BRIGHTBILL.

**BILLS ON THIRD CONSIDERATION
AND FINAL PASSAGE**

SB 394 (Pr. No. 1400) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of May 29, 1956 (1955 P.L.1804, No.600), referred to as the Municipal Police Pension Law, further providing for payments under existing pension plans for service increments to pensions of police officers.

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:

YEA-49

| | | | |
|------------|-----------|-------------|----------------------|
| Armstrong | Hughes | Pileggi | Vance |
| Boscola | Jubelirer | Pippy | Washington |
| Brightbill | Kasunic | Punt | Waugh |
| Browne | Kitchen | Rafferty | Wenger |
| Conti | LaValle | Regola | White, Donald |
| Corman | Lemmond | Rhoades | White, Mary Jo |
| Costa | Logan | Robbins | Williams, Anthony H. |
| Erickson | Madigan | Scarnati | Williams, Constance |
| Ferlo | Mellow | Stack | Wonderling |
| Fontana | Musto | Stout | Wozniak |
| Fumo | O'Pake | Tartaglione | |
| Gordner | Orie | Thompson | |
| Greenleaf | Piccola | Tomlinson | |

NAY-1

Earl

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 435 (Pr. No. 1357) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, amending provisions relating to comparative negligence.

On the question,

Will the Senate agree to the bill on third consideration?

Senator GREENLEAF offered the following amendment No. A4650:

Amend Title, page 1, lines 1 through 3, by striking out all of said lines and inserting:

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for comparative negligence.

Amend Bill, page 1, lines 6 through 17; pages 2 through 10, lines 1 through 30; page 11, lines 1 through 20, by striking out all of said lines on said pages and inserting:

Section 1. Section 7102 of Title 42 of the Pennsylvania Consolidated Statutes is amended to read:

§ 7102. Comparative negligence.

(a) General rule.—In all actions brought to recover damages for negligence resulting in death or injury to person or property, the fact that the plaintiff may have been guilty of contributory negligence shall not bar a recovery by the plaintiff or his legal representative where such negligence was not greater than [the causal negligence of the defendant or defendants against whom recovery is sought] 50%, but any damages sustained by the plaintiff shall be diminished in proportion to the amount of negligence attributed to the plaintiff.

(a.1) Recovery against joint defendant; contribution.—

(1) Where recovery is allowed against more than one defendant, each defendant shall be liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of that defendant's causal negligence to the amount of causal negligence attributed to all defendants against whom recovery is allowed.

(2) Except as set forth in paragraph (3), a plaintiff may recover the full amount of the allowed recovery from any defendant against whom recovery is allowed. A defendant compelled under this paragraph to pay more than that defendant's percentage share may seek contribution.

(3) Joint liability is abolished as to any defendant whose percentage share of liability is less than the percentage share attributed to the plaintiff. The plaintiff may not recover damages from such a defendant in excess of that defendant's percentage share.

(4) In a case in which a defendant has been found jointly liable pursuant to paragraphs (2) and (3) but is shown to be unable to satisfy fully its percentage share of liability, the court, upon motion of any party, shall divide that defendant's deficiency between the plaintiff and any other defendant found jointly liable based upon the parties' respective shares of liability as found by the fact-finder. The entire deficiency shall be redistributed proportionately and the court shall calculate an adjusted percentage share for each party, including the plaintiff. With respect to any such percentage share of deficiency allocated to the plaintiff, the plaintiff shall be prohibited from satisfying that portion of the judgment from any party other than the defendant against whom such share of liability was originally assessed. With respect to any such share of the deficiency reallocated to a jointly liable defendant, such defendant retains its rights of contribution and indemnity. In determining whether a defendant is unable to satisfy its share of liability, the court may make such a finding and determine the amount of the deficiency based upon evidence of a lack of adequate liability insurance or assets immediately subject to execution or attachment.

[(b) Recovery against joint defendant; contribution.—Where recovery is allowed against more than one defendant, each defendant shall be liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of his causal negligence to the amount of causal negligence attributed to all defendants against whom recovery is allowed. The plaintiff may recover the full amount of the allowed recovery from any defendant against whom the plaintiff is not barred from recovery. Any defendant who is so compelled to pay more than his percentage share may seek contribution.]

(b.1) Recovery against joint defendant; contribution.—

(1) Where recovery is allowed against more than one person, including actions for strict liability, and where liability is attributed to more than one defendant, each defendant shall be liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of that defendant's liability to the amount of liability attributed to all defendants and other persons to whom liability is apportioned under subsection (b.2).

(2) Except as set forth in paragraph (3), a defendant's liability shall be several and not joint, and the court shall enter a separate and several judgment in favor of the plaintiff and against each defendant for the apportioned amount of that defendant's liability.

(3) A defendant's liability in any of the following actions shall be joint and several, and the court shall enter a joint and several judgment in favor of the plaintiff and against the defendant for the total dollar amount awarded as damages:

- (i) Intentional misrepresentation.
- (ii) An intentional tort.
- (iii) Where a defendant has been held liable for not less than 60% of the total liability apportioned to all parties.
- (iv) A release or threatened release of a hazardous substance under section 702 of the act of October 18, 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup Act.
- (v) A civil action in which a defendant has violated section 497 of the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code.

(4) Where a defendant has been held jointly and severally liable under this subsection and discharges by payment more than that defendant's proportionate share of the total liability, that defendant is entitled to recover contribution from defendants who have paid less than their proportionate share. Further, in any case, any defendant may recover from any other person all or a portion of the damages assessed that defendant pursuant to the terms of a contractual agreement.

(b.2) Apportionment of responsibility among certain nonparties and effect.—For purposes of apportioning liability only, the question of liability of any defendant or other person who has entered into a release with the plaintiff with respect to the action and who is not a party shall be transmitted to the trier of fact upon appropriate requests and proofs

by any party. A person whose liability may be determined pursuant to this section does not include an employer to the extent that the employer is granted immunity from liability or suit pursuant to the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act. An attribution of responsibility to any person or entity as provided in this subsection shall not be admissible or relied upon in any other action or proceeding for any purpose. Nothing in this section shall affect the admissibility or nonadmissibility of evidence regarding releases, settlements, offers to compromise or compromises as set forth in the Pennsylvania Rules of Evidence. Nothing in this section shall affect the rules of joinder of parties as set forth in the Pennsylvania Rules of Civil Procedure.]

(b.3) Off-road vehicle riding.—

(1) Off-road vehicle riding area operators shall have no duty to protect riders from common, frequent, expected and nonnegligent risks inherent to the activity, including collisions with riders or objects.

(2) The doctrine of knowing voluntary assumption of risk shall apply to all actions to recover damages for negligence resulting in death or injury to person or property brought against any off-road vehicle riding area operator.

(3) Nothing in this subsection shall be construed in any way to abolish or modify a cause of action against a potentially responsible party other than an off-road vehicle riding area operator.

(c) Downhill skiing.—

(1) The General Assembly finds that the sport of downhill skiing is practiced by a large number of citizens of this Commonwealth and also attracts to this Commonwealth large numbers of nonresidents significantly contributing to the economy of this Commonwealth. It is recognized that as in some other sports, there are inherent risks in the sport of downhill skiing.

(2) The doctrine of voluntary assumption of risk as it applies to downhill skiing injuries and damages is not modified by subsections (a) and [(b)] (a.1).

[(c.1) Savings provisions.—Nothing in this section shall be construed in any way to create, abolish or modify a cause of action or to limit a party's right to join another potentially responsible party.]

(c.2) Savings provisions.—Nothing in this section shall be construed in any way to create, abolish or modify a cause of action or to limit a party's right to join another potentially responsible party.

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

"Defendant or defendants [against whom recovery is sought]." Includes impleaded defendants.

"Off-road vehicle." A motorized vehicle that is used off-road for sport or recreation. The term includes snowmobiles, all-terrain vehicles, motorcycles and four-wheel drive vehicles.

"Off-road vehicle riding area." Any area or facility providing recreational activities for off-road vehicles.

"Off-road vehicle riding area operator." A person or organization owning or having operational responsibility for any off-road vehicle riding area. The term includes:

- (1) Agencies and political subdivisions of this Commonwealth.
- (2) Authorities created by political subdivisions.
- (3) Private companies.

"Plaintiff." Includes counter claimants and cross-claimants. Section 2. This act shall take effect in 60 days.

On the question,

Will the Senate agree to the amendment?

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

Senator GREENLEAF. Madam President, today we are going to be dealing with the issue of joint and several liability, and my amendment, obviously, and this bill that I propose to amend deals with this issue. They are similar in this way, that they deal with an issue of basically repealing the joint and several liability

concept where it is absolutely a 100-percent joint and several liability, and we are dealing now with percentages, and I am offering this amendment as a compromise in the hopes that we can come up with a proposal that would be fair to all parties, both the defendant and the plaintiff, the victim and the person who is charged with the negligence.

The civil law that we are dealing with here today, both issues of comparative negligence and joint and several liability, go back to our English courts centuries ago in which the standard of establishing whether an individual is liable was an all-or-nothing system, both in liability issues when you are determining who is at fault and in joint and several liability after you determine who is at fault and then decide who is going to be paying the judgments, especially if there is a situation in which one of the defendants is insolvent.

The liability issue was all or nothing in that if you were a plaintiff and you were in any degree contributorily negligent, you would be unable to recover at all, even if you were 1-percent negligent. That was called contributory negligence. It was an all-or-nothing system, and you had to be 100-percent free of any liability or any cause of the injury that occurred to you, and if you were, you could recover, and if you were not, you could not recover.

In the early 1970s, we changed that law to a comparative negligence, so a plaintiff could recover even if they were negligent, but they could not be negligent more than 50 percent or they would not be able to recover. We changed it to a comparative negligence system and it was a fair system, so a defendant could not recover their 50 percent, let us say if they were 50 percent or 20 percent or 30 percent, whatever that liability would be, they could not recover that percentage, but they could recover the remaining percentages for which a defendant wrongdoer was liable, and that has been in place for some time. But we did not change joint and several liability, so it is important for us to do that as well. How should we change it? Should we change it to an all-or-nothing system, as the present bill does? Basically, the defendant must be at least 60-percent negligent in order for the joint and several to apply, and statistically it is very difficult for that to occur, so it is basically still an all-or-nothing system.

What I am proposing is a comparative negligence system that would apply to joint and several that would basically say that only if the defendant was more negligent than the plaintiff would those defendants be subject to joint and several or joint liability. If they were less negligent than the plaintiff, then they would have no exposure for joint liability. What this does is basically maintain a system in which they are looking at and comparing the negligence of the parties. So as a plaintiff becomes less negligent, let us say 0 percent, 5 percent, 7 percent, 10 percent, they have a less likelihood that they would have to be subjected to joint liability. As the plaintiff becomes more negligent, then they lose that joint and several liability. For example, if they were, let us say, 50-percent negligent, then they could not recover. It is less likely that they are going to recover under a joint and several liability concept.

So what it does, in summary, is an innocent plaintiff remains protected, but where the plaintiff has also been found to be negligent responsible, that is more negligent, this amendment would penalize such a plaintiff or a person in three ways. First of all,

they would have their percentage of negligence subtracted from the amount of the original liability. For example, if they were 30-percent negligent, then they would have that amount subtracted from the amount of money that they would be able to recover.

Secondly, as any other reallocation of financial responsibility caused by one or more defendant's inability to pay their share, the plaintiff's percentage of responsibility would be applied a second time as they set off what the other defendants must pay to make up the shortfall. So they would be in that mix in determining the amount of money that would be recoverable from an insolvent defendant. So if you have multiple defendants and one is insolvent, this would go against it and it would be a further subtraction from the amount that could be recovered.

Thirdly, as to any defendant who shares responsibility and is found to be less responsible than the plaintiff, that defendant's responsibility is capped at that amount, regardless of the ability or inability of other defendants to pay the award. So as I said before, if a defendant is less negligent than the plaintiff, then they would not be subject to joint and several liability.

There are a number of concessions here in regard to joint and several liability. You have to be more negligent than the plaintiff, you have to be in a situation where the plaintiff's share of negligence would be deducted from the joint and several liability contribution, and it is basically a comparative negligence situation. I think it is important for us to adopt something that is fair and equitable to all parties, so that in a case, for example, I think there was a memo sent around to a number of Senators in regard to a situation where two drag racers are going down the street. They injured a person, so they are probably 50-50 negligent. One of them would be insolvent, and one of them would not. We would all think that certainly the individual who is responsible for the injury should be responsible for all those damages in that situation. Certainly, the innocent victim should not be the one who would absorb that loss. There are other examples that could be used that would be similar to this.

But Senate Bill No. 435, in almost every case, joint and several liability would not be applicable, but if we amend the bill as I am proposing, then the applicability of joint and several liability would be based on the comparable negligence of the parties. It is a fair way of approaching it, it is a way in which I think would take into consideration both the victim's rights and injuries, as well as the defendant's rights when they are not as negligent.

Just a final point on this. In regard to other States, I have a list of the States that have dealt with this issue, and they are, quite frankly, all over the ballpark on how they deal with this, but there are many, many States that have not changed joint and several liability, where it is still all or nothing. If you are a defendant and you have been found liable, regardless of the degree of negligence, you are subject to paying all the damages in case there is an insolvent defendant. So this is a compromise, it is a proposal which I think is fair and equitable, and I ask for a "yes" vote on the amendment.

Thank you.

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

Senator PICCOLA. Madam President, I am going to attempt to bring this debate down from the language of lawyers to the language of the common man, at least I hope I will be able to do that. As Senator Greenleaf said, this amendment and the bill that it seeks to amend deals with a legal concept known as joint and several liability. As the gentleman indicated, it is an ancient concept that basically and very simply says that if you are the defendant in civil litigation and you are found to be liable and there are multiple defendants in that case and the percentage of liability assigned to you by the jury finding is, let us say, 5 percent, but that the other defendants are 95 percent liable, if they have no assets or if they have no insurance, you, as the defendant only 5 percent liable, could be held responsible for paying 100 percent of the award, no matter what that award might be, and that happens very frequently in cases around the Commonwealth. In fact, plaintiffs make it a practice, and as an attorney I know this for a fact, of suing everybody. The first thing you learn in law school in torts is to sue everybody so that you will find somebody who has deep pockets, either a lot of insurance coverage or a lot of assets, so that even if you can hold them 1-percent liable in that case, you are assured of getting all of the recovery that the jury awards.

Now, 3 or 4 years ago, many people here in the Commonwealth, particularly in the medical community, our hospitals in particular, and people in the business community, felt that this was an unfair concept, an unfair principle in the law, that if you are only 1-percent or 5-percent liable for damages that amount to \$100,000, why should you possibly have to pay the full \$100,000? If you are 5-percent liable, then you should pay \$5,000, if it is a \$100,000 award.

Former Senator Mowery from Cumberland County and I introduced a bill called the Fair Share Act, which basically repealed the concept of joint and several liability and said whatever percentage you are assigned as a defendant in a lawsuit, that is what you pay. Fair share. Common sense. That bill was introduced in the Senate and a companion bill was introduced in the House, and over a period of time, probably about a year and a half, the bill was finally brought up, it was compromised and a bill passed the Senate called the Fair Share Act, and I believe in June of 2002 it was signed into law by the Governor.

Basically, what that law did was said that if you are 60-percent or more liable as a defendant in a case, you could be held responsible for 100 percent of the award, but if you are less than 60-percent liable in terms of that negligence case, you are only going to be held responsible for paying the percentage that the court assesses against you. It was called the Fair Share Act.

Now, for a variety of reasons which I will not go into, this statute was attacked not on the substance of the law but on the procedure that the House and the Senate used to get the bill to the Governor, and the Commonwealth Court has recently ruled that the process violated the provisions of our Constitution. I am not going to debate whether they are right or whether they are wrong, but the fact of the matter is the Fair Share Act is being threatened by this court decision, and we will not have a Fair Share Act if this court decision continues to be upheld. Senator Corman, in response to that decision, introduced Senate Bill No. 435, and that is what is on the floor for debate today and which Senator Greenleaf is attempting to amend, and all Senator Corman's bill

does is reenact the exact provisions that were enacted into law, signed by the Governor in June of 2002, pure and simple. It received 40 votes here in the Senate in June of 2002, called the Fair Share Act. Now, Senator Greenleaf has offered an amendment that changes that basic Fair Share Act concept that this Senate, the House of Representatives, and the Governor signed into law back in 2002. I would like to address that amendment, and I urge a negative vote on that amendment for these reasons.

First of all, in every case where a plaintiff, not a defendant, a plaintiff is not found to have contributed any negligence to his or her injuries, joint and several liability continues to be applied. That is the unfair share act. It continues to be unfair. With 5-percent negligence, you could be held responsible for paying 100 percent of the award. Now, Senator Greenleaf does one thing to change that, and he says in his amendment that if a plaintiff is found to have any negligence attributed to him or her, it is possible, it is possible that a defendant who has a percentage assigned to him or her could be relieved of having joint and several, or the unfair share act, applied to him. This gets a little complicated because the Senator has a very complex formula in section 4 of his amendment that determines how those calculations are made. I have read through this several times and I still am at a loss to fully understand and comprehend how those calculations are to be made by a court. But, be that as it may, let us talk about the circumstances when a plaintiff might actually be held responsible for a portion of the negligence. It hardly ever happens, and it certainly does not happen in very large percentages when it does happen.

First of all, let us take product liability cases. It never happens in product liability cases, and here is the reason why. Product liability is judged by something called strict liability. The only issue in a product liability case is whether the product was defective. There is no issue as to whether the plaintiff, the person bringing the lawsuit, was in any way liable or negligent and contributed to their own injuries. That is not even an issue. So there is never any contributory negligence in a product liability case, and joint and several, or the unfair share law, will always apply in those cases.

Let us take medical malpractice cases. A patient goes into the hospital, is operated on, comes out of anesthesia, and is found to be injured at some point in time. Very rarely, if ever, is a plaintiff, the patient in those cases, found to have contributed to their own injuries, very rarely, very, very rarely does that ever happen. Consequently, the unfair share act continues to apply, joint and several continues to apply. I thought about which cases a plaintiff may get assigned any significant responsibility, and there are not very many of those kinds of cases out there where they would apply. Probably the most common would be the common automobile accident where you have multiple vehicles and one of the participants in the accident is injured, and because they were the driver, they have been assigned a portion of negligence, but in those cases, it is a battle between insurance companies, because we mandate that people in Pennsylvania when they drive an automobile have to have insurance. So it really does not have any major impact. It is just one insurance company fighting with another insurance company over who is going to pay what amounts to the plaintiffs and to the other parties. It does not really affect any real, live assets, it does not affect health care, it

does not affect anything but the insurance companies in that particular automobile case.

Madam President, this amendment will weaken Pennsylvania's law on the concept of joint and several liability. It will take us a step backward. We had a major victory in 2002 in trying to curb something that I call lawsuit abuse. That is, using lawsuits in a way that is not fair and destroys personal responsibility, and the concept of joint and several is one of those areas of lawsuit abuse, because it is not fair. It is unfair. If you are only 5-percent negligent, why should you have to pay 100 percent of the damages? This amendment, for all practical purposes, will take us back to where we were before June of 2002 and put Pennsylvania back into a category where some nationwide observers of tort reform refer to us as one of the top 10 judicial hellholes in the country.

We need Senator Corman's bill passed without amendment, and I urge, I strongly urge a negative vote on amendment A4650. Thank you, Madam President.

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Costa.

Senator COSTA. Madam President, I rise in support of the amendment being offered by my colleague and good friend from the Senate Committee on Judiciary, the chairman, Senator Greenleaf. Before I provide remarks relative to why I support that particular amendment, I would just like to address a couple of things that the previous speaker spoke about relative to this amendment.

First and foremost, Madam President, the previous speaker started his comments by saying, let us put it in terms of the common man, and I think that is appropriate, and I think as a body here, we need to decide who is the common man. This particular piece of legislation, in my estimation, Madam President, deals with victims and the ability of victims to recover. Let us be clear. We are talking about victims and whether or not they will be fully compensated for damages they sustain.

Now, it is important, Madam President, that we start with that point. As Senator Greenleaf indicated earlier, this is a very, very old doctrine, and Senator Piccola made reference to it as well. It is several hundred years old and it derives from our English common law. It allows an injured plaintiff to recover their damages from any one of a combination of defendants, and let me define that term "defendants." Any number of wrongdoers, individuals who are found to be wrong, individuals who are responsible for the damages to the plaintiff, that is whom we are talking about, victims and wrongdoers. Innocent parties, Madam President, are never, never held responsible for harm caused by others. The individuals who are part of a plaintiff's case are individuals and defendants, wrongdoers, as I said, who were determined to be responsible.

I would like to also address very briefly the point about lawsuit abuse and the term "we" used by the previous speaker. When he speaks about "we," I do not know whom he is speaking about, because he is not speaking about the victims when he said "we" achieved a major victory. Victims did not achieve a major victory when we passed this legislation last time, nor will we achieve it without the adoption of this amendment.

We also heard reference to lawsuit abuse in the context of the previous discussion. Madam President, the legislation being offered today, either by Senator Greenleaf and possibly a later

piece of legislation by Senator Corman and the amendment by Senator Greenleaf, will not stop one single lawsuit from being filed. What we are talking about is how we apportion damages after it has been determined that there are wrongdoers, after, Madam President, the case has gone through the process of preliminary objections, motions to dismiss, demurs, motions on pleadings, summary judgments. After all those processes have been gone through with respect to a legal case and then the case is actually tried and fault has been assigned, that is when joint and several kicks in.

Madam President, it strikes me that we are here today talking about this issue again along the context of medical malpractice, as well as some other concepts, but the fact of the matter remains that it is a concept that we need to make certain that we try to preserve as best as we can in a very reasonable and a very compassionate way, and I think that Senator Greenleaf's amendment does that in a variety of ways, as was articulated by Senator Greenleaf earlier.

Madam President, there are a number of reasons why I think we need to continue to preserve it in the manner that Senator Greenleaf talked about. Eliminating joint and several liability would mean that the victim could possibly not be fully compensated simply because one or more additional wrongdoers are also responsible for the injury. When one wrongdoer ends up paying a disproportionate share of compensation to the injured victim, an issue of unfairness among the wrongdoers arises. However, Madam President, I believe, and I hope that a number of my colleagues agree as well, that it would be more unjust that the victim, who was injured by the wrongdoers, would not receive the resources that they need to rebuild their lives. Joint and several liability only applies, as I said, when a defendant is found to be responsible for harm to a plaintiff. Imposing full measure of damages on an individual defendant is not unfair, as they have already been found to be responsible for that harm.

Joint and several liability is the easiest and most practical method of apportioning damages between defendants. In truth, the joint and several doctrine most often results, at the end of the day, in the defendant being liable only for the individual harm they have caused. While a plaintiff is entitled to recovery for the entire amount of damages for any one defendant under joint and several liability, that defendant can then turn around and sue and recover money from the other wrongdoers. This recovery, again, is based on the determination in the trial of each wrongdoer's proportion of fault and proportion of responsibilities for those damages accordingly. Consequently, each wrongdoer ends up paying only his or her comparative share of the harm at the end of the day.

Madam President, this is simply a question of whether or not individual victims, innocent victims who are not the wrongdoers, are going to be able to recover in most cases, and I believe it is a more appropriate situation to allow for a situation where an individual victim is able to recover from multiple defendants, multiple wrongdoers, to the extent possible so that they are made whole. I appreciate the comments of my colleagues, the previous speakers, and I ask my colleagues to provide an affirmative vote on the Greenleaf amendment.

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

Senator GREENLEAF. Madam President, I rise for some brief comments. I did not name the previous legislation the Fair Share Act. I think it is anything but a fair share, and in fact, it provides that you have to be negligent over 60 percent in order for joint and several liability to kick in. That is almost statistically impossible. So if we are talking about not having any remedy, that basically puts us back to the opposite of what joint and several liability is, it is an all-or-nothing standard.

The amendment that we are offering applies to every personal injury case, and to think that you do not have a defense in personal injury cases, just go to a courtroom and you will see defenses being put up in every personal injury case, and it will continue to apply under these circumstances as well. When a case has been tried and they hear that when a plaintiff is not negligent, that then they should not be able to recover their full award, I think that makes my case. If Senator Piccola is arguing that there are never any cases where a plaintiff is negligent, then we should be making sure that plaintiff is recoverable, that they can recover everything that is entitled to them. Why should not an innocent victim, the common man, be able to have a full recovery? That is what this amendment does, it allows a completely innocent victim to recover their full award. I ask for an affirmative vote.

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

Senator MELLOW. Madam President, I will try to be brief. When we had this drill back in October of 2002, I spoke at length against the final passage of this bill, not the amendment that is offered by Senator Greenleaf, which is an amendment to the bill offered by Senator Corman. So basically my remarks are going to be about the amendment, and then really about if the amendment does not carry what the consequences would be or could be in Senate Bill No. 435.

Madam President, I had the opportunity, obviously as everyone else had, of listening to the comments that have been delivered by three lawyers. Maybe now is the opportunity to listen to comments delivered by people who are not lawyers, those of us or our families who could potentially suffer if this particular amendment is not passed by the Senate and then sent on to the House of Representatives.

Madam President, October of 2002 is some 3-plus years ago, and the gentleman who said there were 40 votes on final passage is absolutely correct, there were 40 votes on final passage. But the original vote for final passage of which then became Act 13 was something much less than 40, and once it hit the number of 26, many individuals in this body who did not feel comfortable of voting for that particular proposal voted for it because of the threat of doctors leaving Pennsylvania based on Pennsylvania's laws with regard to tort and medical malpractice. Madam President, it is a different day in this Senate today than it was 3-plus years ago, and it is a different time. Many things have taken place with regard to medical malpractice in the last 3 years that were not in place on that particular day in October of 2002, and of the 40 individuals who voted in favor of that bill today, a number of them are not with us in this Chamber this evening to discuss and deliberate on a very important piece of legislation.

Madam President, it was suggested that we are one of the top 10 hellholes in the country when it comes to liability, tort liability in Pennsylvania. I do not know where that came from because

today is the first time I have ever heard it. I guess it was meant to be sensational, to get those individuals who are in the news room to try to come up with a headline, it would be known as a headline grabber, to attract the attention of people who write news articles, because I do not believe we are one of the top 10 hellholes in liability in this country. In fact, if we are, that really does not speak well of us as Members of this Senate.

Madam President, prior to October 2002, we did not have many of the preventions that are in place today. Shortly after the election of Governor Rendell, he made it very, very clear, and I think it was the week after he was elected in November of that year, that since he was now elected Governor, one of the things he would want to do is to enact some type of program that would subsidize professionals, doctors in Pennsylvania, to give them an opportunity until all of the legislation that was passed to enact tort reform kicked in to save on their medical malpractice insurance premiums. But we voted, I think every Member at the time, back in 2003, there were many of us who are currently Members of this General Assembly, Members of the Senate, to enact a 25-cent tax on cigarettes sold in Pennsylvania and that money would be put into a dedicated fund for the purpose of giving doctors practicing in Pennsylvania relief from the overburdened amount of money they were paying for medical malpractice. That total amount of money per year was approximately \$250 million. Incidentally, for those who are interested, that is more new money than we appropriate on an annual basis to educate our children in Pennsylvania. So we were prepared, and rightfully so at the time, because we were at a crisis period, to enact a new tax for the purpose of subsidizing doctors which, as I said, was appropriate so there would be less of a burden on them in paying for their medical malpractice insurance. We have approved \$250 million now for 3 years, and before we adjourn, before the end of December when we adjourn for this Session in 2005, we are going to once again reenact that tax, at least I hope we are going to reenact that tax, to once again give medical professionals in Pennsylvania the opportunity to benefit from the tax on cigarettes to subsidize them in their payment of their medical malpractice insurance.

Madam President, there are a lot of different things that are taking place in this Chamber today that took place in 2002, and I appreciate the dissertations that were given to us by Senator Greenleaf, Senator Piccola, and Senator Costa. They were great if we are going to attend law school class 101 on tort reform, but for those of us who are not lawyers, we need a layman's approach to understand what is happening in this proposal, because if we allow Senate Bill No. 435 to pass in its current form and do not accept the amendment that has been offered by Senator Greenleaf, then I am going to offer my own sensational comment that the reporters might want to listen to, that if we do not accept the amendment, then we are going to have a potential mass exodus of doctors in Pennsylvania because of what restraints they may come under with the enactment of Senate Bill No. 435.

It was stated before, and I am not sure which speaker stated it, because I was sitting here making some notes to myself, that there would not be a great number of doctors who would be affected by what would take place if Senator Corman's bill would pass and defeat Senator Greenleaf's amendment. I believe that was meant for the doctors who potentially would be found more

than 60-percent liable in any particular case, and it was said there would not be that many of them involved, so what is the difference? Why should we not pass it? Well, the difference is pure and simple, Madam President. We in Pennsylvania, never to my knowledge, on a medical malpractice insurance claim where the plaintiff has received an award from the court and where that award may have exceeded the amount of insurance that a doctor had, we have never in the history of this State that I am aware of, attached any type of a lien or any kind of judgment on the doctor's assets. With the implementation of Senate Bill No. 435, so we make no mistake about it for the Members who are here today, how you vote on something will have to be rectified in your own mind. So there is no mistake, once you do this, and you notice the Pennsylvania Medical Society has been very quiet on the issue, they did not lobby the issue, they were not up here in Harrisburg saying to the Members it is very important that they enact Senate Bill No. 435 because it means a lot to us to continue the job that we have started on tort reform. They have been very quiet and have not come in to see anybody. When you talk to doctors who are not here but are your constituents and tell them if Senator Corman's bill passes, Senate Bill No. 435, and you are found more than 60-percent or more liable in a particular case, your assets could be attached and probably will be attached because the plaintiff's lawyer is legally obligated to enforce the judgment, whether he or she wants to or not. So if the 60 percent would put that doctor above the \$1 million which he would have in insurance, and that award may possibly be \$1.3 million, \$1.4 million, or \$1.5 million, and possibly another doctor in that same situation is insolvent, then the doctor who has over 60-percent liability is going to have his or her assets attached.

You can say, well, they can hide their assets or put them in their wives' names, put them in a corporate name, they could do all these things to try to finagle and hide exactly what they have, but I would not want to be the doctor who is legitimate, and most are. I would not want to be the individual who is not going to hide his assets, who wants to be up front, whose name is doctor so and so, owns a home that is paid for, and has assets that are available that he has worked very hard to accumulate. Under this proposal, if Senator Greenleaf's amendment is not accepted, those assets can be attached and must be attached because there is a legal obligation to enforce the judgment. It is very plain and simple. This is what this is all about. You can make all the legal discussions you want, you can talk about all the tort reform you want, we can bring up five more lawyers and have five more discussions, which I personally am not going to understand. I can understand black and white of what I know can possibly take place.

If a doctor who has just finished medical school and has taken his medical boards and now wants to practice orthopaedics in Pennsylvania, he can look at this proposal that would be staring him in the face, and he has the opportunity of going to Philadelphia or right across the river into the State of Delaware, where he may not have to face this, what do you think he is going to do? Is he going to say, well, that is okay, I will practice in Pennsylvania and take the chance? Perhaps, and we all know no one wants to make a mistake. There is no professional who wants to conduct a medical procedure on an individual and then make a mistake when that person's life or quality of life had been impacted

upon, and then find that he is more than 60-percent liable and know full well that he worked very hard for his career and profession and dealt with thousands and thousands of people and made one mistake, and because of that one mistake, he could lose all of his assets. All of his hard work for so many years in trying to build up a good name, but because of what has taken place on a verdict, he may have to forfeit all of his assets.

So it is very plain and simple. There is no mistake here. We have all the legal interpretations, but it is very simple. If you vote for Senator Greenleaf's amendment, you basically vote to help the doctors of Pennsylvania. That is what it comes right down to, and if it were not for that, the Medical Society would have been all over us yesterday and today, and if we do not do it tonight, then tomorrow, and if we do not do it tomorrow, then Monday, Tuesday, or Wednesday of next week, or for however long this will take place.

Senate Bill No. 435 was introduced quite a while ago, and there has been little or no lobbying by the medical profession in Pennsylvania based on the final passage of this particular proposal. So make no mistake about it, there is no question whatsoever, I do believe very strongly that if you want to see a potential exodus of doctors in Pennsylvania that would make 2001-02 pale in comparison to what could take place in 2005-06, then I suggest that you vote against the amendment and you vote for Senate Bill No. 435 in final passage. In a year and a half when you come back to the General Assembly and throw your hands up and ask, what are we going to do, we are losing doctors in Pennsylvania, we cannot get doctors to practice in this State, how can we change the statutes, what can we do to change the legislation? Then you should think about tonight, December 6, at a quarter to 6:00 in the evening, and what type of action we are taking in jeopardizing the medical professionals in Pennsylvania, because enactment of Senate Bill No. 435, minus the amendment that is being offered by Senator Greenleaf, is going to jeopardize every practicing physician in Pennsylvania because it is going to expose them, if they have a 60-percent or more liability and the judgment is more than what the doctor's medical malpractice insurance is, and their personal assets are going to be in jeopardy and we are going to be the ones to be blamed for it.

Thank you very much, and I ask for an affirmative vote on the amendment.

RECESS

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Anthony Williams.

Senator A.H. WILLIAMS. Madam President, I ask for a brief Democratic caucus before we actually have a final vote on this.

The Chair recognizes the gentleman from Lackawanna, Senator Mellow.

Senator MELLOW. Madam President, I request a recess for the purpose of a Democratic caucus.

The PRESIDENT. For the purpose of a Democratic caucus, without objection, the Senate will stand in recess.

AFTER RECESS

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

And the question recurring,
Will the Senate agree to amendment No. A4650?

LEGISLATIVE LEAVE

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Costa.

Senator COSTA. Madam President, I request a temporary Capitol leave for Senator Fumo.

The PRESIDENT. Without objection, the leave will be granted.

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

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

YEA-24

| | | | |
|----------|-----------|---------|----------------------|
| Boscola | Fumo | Lemmond | Stack |
| Conti | Greenleaf | Logan | Stout |
| Costa | Hughes | Mellow | Tartaglione |
| Erickson | Kasunic | Musto | Washington |
| Ferlo | Kitchen | O'Pake | Williams, Anthony H. |
| Fontana | LaValle | Pileggi | Wozniak |

NAY-26

| | | | |
|------------|----------|-----------|---------------------|
| Armstrong | Madigan | Rhoades | Wenger |
| Brightbill | Orie | Robbins | White, Donald |
| Browne | Piccola | Scarnati | White, Mary Jo |
| Corman | Pippy | Thompson | Williams, Constance |
| Earll | Punt | Tomlinson | Wonderling |
| Gordner | Rafferty | Vance | |
| Jubelirer | Regola | Waugh | |

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

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

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

On the question,
Shall the bill pass finally?

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

YEA-32

| | | | |
|------------|-----------|----------|---------------------|
| Armstrong | Gordner | Pippy | Tomlinson |
| Boscola | Greenleaf | Punt | Vance |
| Brightbill | Jubelirer | Rafferty | Waugh |
| Browne | Lemmond | Regola | Wenger |
| Conti | Madigan | Rhoades | White, Donald |
| Corman | Orie | Robbins | White, Mary Jo |
| Earll | Piccola | Scarnati | Williams, Constance |
| Erickson | Pileggi | Thompson | Wonderling |

NAY-18

| | | | |
|---------|---------|-------------|----------------------|
| Costa | Kasunic | Musto | Washington |
| Ferlo | Kitchen | O'Pake | Williams, Anthony H. |
| Fontana | LaValle | Stack | Wozniak |
| Fumo | Logan | Stout | |
| Hughes | Mellow | Tartaglione | |

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

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

BILL ON THIRD CONSIDERATION

SB 563 (Pr. No. 1368) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for comparative negligence.

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

MOTION TO TABLE BILL

The PRESIDENT. The Chair recognizes the gentleman from Centre, Senator Corman.

Senator CORMAN. Madam President, this is a bill that we just voted on previously as an amendment to my bill, so I move at this point to table this bill.

The PRESIDENT. Senator Corman moves to table Senate Bill No. 563.

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

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

YEA-23

| | | | |
|------------|----------|-----------|----------------|
| Armstrong | Madigan | Regola | Waugh |
| Brightbill | Orie | Robbins | Wenger |
| Browne | Piccola | Scarnati | White, Donald |
| Corman | Pippy | Thompson | White, Mary Jo |
| Earll | Punt | Tomlinson | Wonderling |
| Jubelirer | Rafferty | Vance | |

NAY-27

| | | | |
|----------|-----------|---------|----------------------|
| Boscola | Gordner | Logan | Stout |
| Conti | Greenleaf | Mellow | Tartaglione |
| Costa | Hughes | Musto | Washington |
| Erickson | Kasunic | O'Pake | Williams, Anthony H. |
| Ferlo | Kitchen | Pileggi | Williams, Constance |
| Fontana | LaValle | Rhoades | Wozniak |
| Fumo | Lemmond | Stack | |

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

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

Senator PICCOLA offered the following amendment No. A4781:

Amend Title, page 1, lines 1 through 3, by striking out all of said lines and inserting:

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, amending provisions relating to comparative negligence.

Amend Bill, page 1, lines 6 through 18; pages 2 through 4, lines 1 through 30; page 5, lines 1 through 10, by striking out all of said lines on said pages and inserting:

Section 1. Section 7102 of Title 42 of the Pennsylvania Consolidated Statutes is amended to read:

§ 7102. Comparative negligence.

(a) General rule.—In all actions brought to recover damages for negligence resulting in death or injury to person or property, the fact that the plaintiff may have been guilty of contributory negligence shall not bar a recovery by the plaintiff or his legal representative where such negligence was not greater than the causal negligence of the defendant or defendants against whom recovery is sought, but any damages sustained by the plaintiff shall be diminished in proportion to the amount of negligence attributed to the plaintiff.

(a.1) Recovery against joint defendant; contribution.—

(1) Where recovery is allowed against more than one person, including actions for strict liability, and where liability is attributed to more than one defendant, each defendant shall be liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of that defendant's liability to the amount of liability attributed to all defendants and other persons to whom liability is apportioned under subsection (a.2).

(2) Except as set forth in paragraph (3), a defendant's liability shall be several and not joint, and the court shall enter a separate and several judgment in favor of the plaintiff and against each defendant for the apportioned amount of that defendant's liability.

(3) A defendant's liability in any of the following actions shall be joint and several, and the court shall enter a joint and several judgment in favor of the plaintiff and against the defendant for the total dollar amount awarded as damages:

(i) Intentional misrepresentation.

(ii) An intentional tort.

(iii) Where a defendant has been held liable for not less than 60% of the total liability apportioned to all parties.

(iv) A release or threatened release of a hazardous substance under section 702 of the act of October 18, 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup Act.

(v) A civil action in which a defendant has violated section 497 of the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code.

(4) Where a defendant has been held jointly and severally liable under this subsection and discharges by payment more than that defendant's proportionate share of the total liability, that defendant is entitled to recover contribution from defendants who have paid less than their proportionate share. Further, in any case, any defendant may recover from any other person all or a portion of the damages assessed that defendant pursuant to the terms of a contractual agreement.

(a.2) Apportionment of responsibility among certain nonparties and effect.—For purposes of apportioning liability only, the question of liability of any defendant or other person who has entered into a release with the plaintiff with respect to the action and who is not a party shall be transmitted to the trier of fact upon appropriate requests and proofs by any party. A person whose liability may be determined pursuant to this section does not include an employer to the extent that the employer is granted immunity from liability or suit pursuant to the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act. An attribution of responsibility to any person or entity as provided in this subsection shall not be admissible or relied upon in any other action or

proceeding for any purpose. Nothing in this section shall affect the admissibility or nonadmissibility of evidence regarding releases, settlements, offers to compromise or compromises as set forth in the Pennsylvania Rules of Evidence. Nothing in this section shall affect the rules of joinder of parties as set forth in the Pennsylvania Rules of Civil Procedure.

[(b) Recovery against joint defendant; contribution.—Where recovery is allowed against more than one defendant, each defendant shall be liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of his causal negligence to the amount of causal negligence attributed to all defendants against whom recovery is allowed. The plaintiff may recover the full amount of the allowed recovery from any defendant against whom the plaintiff is not barred from recovery. Any defendant who is so compelled to pay more than his percentage share may seek contribution.]

(b.1) Recovery against joint defendant; contribution.—

(1) Where recovery is allowed against more than one person, including actions for strict liability, and where liability is attributed to more than one defendant, each defendant shall be liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of that defendant's liability to the amount of liability attributed to all defendants and other persons to whom liability is apportioned under subsection (b.2).

(2) Except as set forth in paragraph (3), a defendant's liability shall be several and not joint, and the court shall enter a separate and several judgment in favor of the plaintiff and against each defendant for the apportioned amount of that defendant's liability.

(3) A defendant's liability in any of the following actions shall be joint and several, and the court shall enter a joint and several judgment in favor of the plaintiff and against the defendant for the total dollar amount awarded as damages:

(i) Intentional misrepresentation.

(ii) An intentional tort.

(iii) Where a defendant has been held liable for not less than 60% of the total liability apportioned to all parties.

(iv) A release or threatened release of a hazardous substance under section 702 of the act of October 18, 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup Act.

(v) A civil action in which a defendant has violated section 497 of the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code.

(4) Where a defendant has been held jointly and severally liable under this subsection and discharges by payment more than that defendant's proportionate share of the total liability, that defendant is entitled to recover contribution from defendants who have paid less than their proportionate share. Further, in any case, any defendant may recover from any other person all or a portion of the damages assessed that defendant pursuant to the terms of a contractual agreement.

(b.2) Apportionment of responsibility among certain nonparties and effect.—For purposes of apportioning liability only, the question of liability of any defendant or other person who has entered into a release with the plaintiff with respect to the action and who is not a party shall be transmitted to the trier of fact upon appropriate requests and proofs by any party. A person whose liability may be determined pursuant to this section does not include an employer to the extent that the employer is granted immunity from liability or suit pursuant to the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act. An attribution of responsibility to any person or entity as provided in this subsection shall not be admissible or relied upon in any other action or proceeding for any purpose. Nothing in this section shall affect the admissibility or nonadmissibility of evidence regarding releases, settlements, offers to compromise or compromises as set forth in the Pennsylvania Rules of Evidence. Nothing in this section shall affect the rules of joinder of parties as set forth in the Pennsylvania Rules of Civil Procedure.]

(b.3) Off-road vehicle riding.—

(1) Off-road vehicle riding area operators shall have no duty to protect riders from common, frequent, expected and nonnegligent risks inherent to the activity, including collisions with riders or objects.

(2) The doctrine of knowing voluntary assumption of risk shall apply to all actions to recover damages for negligence resulting in death or injury to person or property brought against any off-road vehicle riding area operator.

(3) Nothing in this subsection shall be construed in any way to abolish or modify a cause of action against a potentially responsible party other than an off-road vehicle riding area operator.

(c) Downhill skiing.—

(1) The General Assembly finds that the sport of downhill skiing is practiced by a large number of citizens of this Commonwealth and also attracts to this Commonwealth large numbers of nonresidents significantly contributing to the economy of this Commonwealth. It is recognized that as in some other sports, there are inherent risks in the sport of downhill skiing.

(2) The doctrine of voluntary assumption of risk as it applies to downhill skiing injuries and damages is not modified by subsections (a) and [(b)] (a.1).

[(c.1) Savings provisions.—Nothing in this section shall be construed in any way to create, abolish or modify a cause of action or to limit a party's right to join another potentially responsible party.]

(c.2) Savings provisions.—Nothing in this section shall be construed in any way to create, abolish or modify a cause of action or to limit a party's right to join another potentially responsible party.

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

"Defendant or defendants [against whom recovery is sought]." Includes impleaded defendants.

"Off-road vehicle." A motorized vehicle that is used off-road for sport or recreation. The term includes snowmobiles, all-terrain vehicles, motorcycles and four-wheel drive vehicles.

"Off-road vehicle riding area." Any area or facility providing recreational activities for off-road vehicles.

"Off-road vehicle riding area operator." A person or organization owning or having operational responsibility for any off-road vehicle riding area. The term includes:

(1) Agencies and political subdivisions of this Commonwealth.

(2) Authorities created by political subdivisions.

(3) Private companies.

"Plaintiff." Includes counter claimants and cross-claimants.

Section 2. Nothing in the amendment of 42 Pa.C.S. § 7102 or in the act of June 19, 2002 (P.L.394, No.57), entitled "An act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for DNA testing of certain offenders; reestablishing the State DNA Data Base and the State DNA Data Bank; further providing for duties of the Pennsylvania State Police; imposing costs on certain offenders; reestablishing the DNA Detection Fund; further providing for the apportionment of liability and damages; imposing penalties; and making a repeal," shall be construed to diminish the immunity of an employer to the extent that the employer is granted immunity from liability or suit pursuant to the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act.

Section 3. The amendment of 42 Pa.C.S. § 7102 shall apply to causes of action which accrue on or after the effective date of this section.

Section 4. This act shall take effect immediately.

On the question,

Will the Senate agree to the amendment?

RECESS

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, I request a recess for a short caucus by the Republicans in the Rules room.

The PRESIDENT. Senator Brightbill requests a recess for a Republican caucus. For that purpose, without objection, the Senate stands in recess.

AFTER RECESS

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

And the question recurring,

Will the Senate agree to amendment No. A4781?

AMENDMENT A4781 WITHDRAWN

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

Senator PICCOLA. Madam President, I would like to withdraw my amendment at this time.

The PRESIDENT. Senator Piccola withdraws the amendment.

And the question recurring,

Will the Senate agree to the bill on third consideration?

BILL OVER IN ORDER

Senator BRIGHTBILL. Madam President, I ask that Senate Bill No. 563 go over in its order.

The PRESIDENT. Without objection, the bill will go over in its order.

BILLS OVER IN ORDER

SB 856, SB 881, SB 897 and HB 1686 -- Without objection, the bills were passed over in their order at the request of Senator BRIGHTBILL.

SECOND CONSIDERATION CALENDAR

BILLS REREPORTED FROM COMMITTEE AS AMENDED OVER IN ORDER

SB 656 and HB 1690 -- Without objection, the bills were passed over in their order at the request of Senator BRIGHTBILL.

BILLS OVER IN ORDER

HB 87 and HB 213 -- Without objection, the bills were passed over in their order at the request of Senator BRIGHTBILL.

BILL ON SECOND CONSIDERATION AND REREFERRED

SB 398 (Pr. No. 1404) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 51 (Military Affairs) of the Pennsylvania Consolidated Statutes, further providing for life insurance.

Considered the second time and agreed to,
Ordered, To be printed for third consideration.

Upon motion of Senator BRIGHTBILL, and agreed to by voice vote, the bill just considered was rereferred to the Committee on Appropriations.

BILLS OVER IN ORDER

SB 660, SB 811 and HB 894 -- Without objection, the bills were passed over in their order at the request of Senator BRIGHTBILL.

BILL ON SECOND CONSIDERATION

SB 1034 (Pr. No. 1398) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of July 7, 2005 (P.L. , No.1A), increasing the State appropriation for payment of law enforcement officers' and emergency response personnel death benefits.

Considered the second time and agreed to,

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

SPECIAL ORDER OF BUSINESS SUPPLEMENTAL CALENDAR No. 1

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

HB 111 (Pr. No. 3237) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code, further defining "case" and "eligible entity"; providing for extension of existing license to cover additional area; and further providing for breweries, for surrender of certain licenses for benefit of licensee, for unlawful acts relative to malt or brewed beverages and licensees, for hours of operation relative to manufacturers, importing distributors and distributors and for unlawful acts relative to liquor, malt and brewed beverages and licensees.

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:

YEA-46

| | | | |
|------------|-----------|----------|----------------------|
| Armstrong | Greenleaf | Piccola | Tomlinson |
| Boscola | Hughes | Pileggi | Vance |
| Brightbill | Jubelirer | Pippy | Washington |
| Browne | Kasunic | Punt | Waugh |
| Conti | Kitchen | Rafferty | White, Donald |
| Corman | LaValle | Regola | White, Mary Jo |
| Costa | Lemmond | Rhoades | Williams, Anthony H. |
| Earl | Logan | Scarnati | Williams, Constance |
| Erickson | Mellow | Stack | Wonderling |
| Ferlo | Musto | Stout | Wozniak |

Fontana
Fumo

O'Pake
Orie

Tartaglione
Thompson

NAY-4

Gordner

Madigan

Robbins

Wenger

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

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

SPECIAL ORDER OF BUSINESS SUPPLEMENTAL CALENDAR No. 3

BILL REREPORTED FROM COMMITTEE AS AMENDED ON SECOND CONSIDERATION

SB 736 (Pr. No. 1411) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of November 10, 1999 (P.L.491, No.45), known as the Pennsylvania Construction Code Act, further providing for definitions and for regulations; and providing for applicability on certain uncertified buildings.

Considered the second time and agreed to,

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

SPECIAL ORDER OF BUSINESS SUPPLEMENTAL CALENDAR No. 2

BILL REREPORTED FROM COMMITTEE AS AMENDED OVER IN ORDER

HB 163 (Pr. No. 3260) -- The Senate proceeded to consideration of the bill, entitled:

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

On the question,

Will the Senate agree to the bill on third consideration?

MOTION TO REVERT TO PRIOR PRINTER'S NUMBER

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Ferlo.

Senator FERLO. Madam President, I move to revert to prior Printer's No. 1968.

The PRESIDENT. Senator Ferlo moves to revert to prior Printer's No. 1968.

On the question,

Will the Senate agree to the motion?

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Ferlo.

Senator FERLO. Madam President, the bill as originally submitted had unanimous and overwhelming support from both sides of the aisle. It was an important measure that has long been fought for by various senior advocacy organizations, certainly the AARP in particular, and others. Being a new Member of the Senate, I was not totally aware of this issue of the unemployment compensation offset for Social Security recipients, so needless to say, I was very pleased to see that this legislation was forthcoming and that it had such widespread support. Unfortunately, within the committee structure, an amendment was added which I find onerous and an amendment that really sways and steers away from the true intent of the piece of legislation, and that has to do with an amendment that was submitted in regard to the severance pay issue. Therefore, I would like to revert back to prior Printer's No. 1968.

I think the issue of severance pay is pay that is rightfully garnered by an individual employee within the context--

The PRESIDENT. Will the Senate come to order. Senator Ferlo is addressing us on House Bill No. 163.

MOTION WITHDRAWN

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Ferlo.

Senator FERLO. Madam President, the floor leader is right, as usual. He said we have a shot at the apple tomorrow, so I would like to respectfully withdraw my motion to revert to the prior printer's number and leave it for another day, because I am a good guy.

The PRESIDENT. Senator Ferlo withdraws his motion.

And the question recurring,

Will the Senate agree to the bill on third consideration?

Senator BRIGHTBILL. Madam President, I move that House Bill No. 163 go over in its order.

The PRESIDENT. Without objection, the bill will go over in its order.

UNFINISHED BUSINESS CONGRATULATORY RESOLUTIONS

The PRESIDENT laid before the Senate the following resolutions, which were read, considered, and adopted by voice vote:

Congratulations of the Senate were extended to Helen G. Brown by Senator Boscola.

Congratulations of the Senate were extended to Paula Kaunitz by Senator Browne.

Congratulations of the Senate were extended to Maggie Hardy Magerko by Senators Kasunic and Stout.

Congratulations of the Senate were extended to Mildred H. Compton by Senator Lemmond.

Congratulations of the Senate were extended to William Kirk III by Senator Orie.

Congratulations of the Senate were extended to O'Donnell, Weiss and Matti of Pottstown and to the Westwood Fire Company Station 44, Ambulance Division, by Senator Rafferty.

Congratulations of the Senate were extended to Mary Luce-Caterino, Michael Heston, Thomas Miles, Rudolph Muller and

to Joseph Walker by Senators Stack and Tartaglione.

Congratulations of the Senate were extended to Mr. and Mrs. Donald Knox, Mr. and Mrs. George Marshall and to Glenn Stewart by Senator D. White.

Congratulations of the Senate were extended to Mr. and Mrs. James R. Mays and to Mr. and Mrs. Walter Henry Whitling by Senator M.J. White.

Congratulations of the Senate were extended to Alan Hart and Marentha Young Hart, Al-Baaree G. Smith, Douglas B. Harris and to Bilal Smith by Senator A.H. Williams.

Congratulations of the Senate were extended to Frances M. Lyons by Senator Wonderling.

CONDOLENCE RESOLUTIONS

The PRESIDENT laid before the Senate the following resolutions, which were read, considered, and adopted by voice vote:

Condolences of the Senate were extended to the family of the late Dr. Fredric Rieders by Senator Greenleaf.

Condolences of the Senate were extended to the family of the late Brent Adams by Senator Orie.

BILLS ON FIRST CONSIDERATION

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

The motion was agreed.

The bills were as follows:

SB 770 and SB 936.

And said bills having been considered for the first time,

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

PETITIONS AND REMONSTRANCES

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

Senator HUGHES. Madam President, I ask the Majority Leader to stand for a very brief moment of interrogation. Very brief, Madam President.

The PRESIDENT. He indicates that he will.

Senator HUGHES. Madam President, briefly, one question. Do we intend to have scheduled for a vote either this evening or on the scheduled days of the Calendar prior to adjourning for the Christmas holiday break the minimum wage bill?

Senator BRIGHTBILL. Madam President, the gentleman is an experienced State Senator and should know that there is no bill on the Calendar that would enable us to cast such a vote at this time.

Senator HUGHES. Madam President, the question is then, is there an intention for any bill to be moved toward the Calendar for a vote?

Senator BRIGHTBILL. Madam President, again, the gentlemen should know that is up to the committee chairmen, and I am not one.

Senator HUGHES. Madam President, the gentleman is the all-powerful leader, and he has been known to make magic happen on this floor. Does the Majority Leader intend to--

POINT OF ORDER

Senator BRIGHTBILL. Madam President, point of order.

The PRESIDENT. The gentleman will state his point.

Senator BRIGHTBILL. Madam President, there is a section dealing with debate that references something called disorderly words, and I would note to the gentleman that we are on the floor of the Senate of Pennsylvania and his sarcastic reference to me as the all-powerful leader was inappropriate.

The PRESIDENT. The Chair would admonish all speakers to please speak with good manners.

Senator HUGHES. Madam President, I certainly apologize to the Majority Leader for making a reference about his power and influence over the process. I certainly apologize. It was only my intention at this moment to try to diminish some of the acrimony that occurred in our last conversation on the floor of the Senate and to try to approach the issue in a different fashion. However, I apologize to the gentleman if he felt offense to my comments. What I am trying--

Senator BRIGHTBILL. Madam President, it was very kind of the gentleman to do that. He need not go on. I will simply say that it is not my intention to attempt to assert any influence on any chairman regarding this issue at this time, and that would be my present intent. I note for the record that we have just spent a day working on joint and several. Tomorrow we have a bill that deals with the office of Lieutenant Governor. Next week we are going to hopefully move tax reform. We have had some discussions, negotiations involving tax reform. I think this week we have moved a tax bill where we cut taxes, and I think that the gentleman has raised these issues before. We are aware of these issues, and we are looking at these issues. I am happy to comment further. If the gentleman would like, I have done some research on this issue.

The PRESIDENT. Are there any further questions, Senator Hughes?

Senator HUGHES. Madam President, I have no further questions for the Majority Leader, and I appreciate his work and effort on a number of the other issues he just discussed, so no further questions. I do wish to comment, however, Madam President, if that is in order.

The PRESIDENT. The gentleman is in order.

Senator HUGHES. Madam President, we are at day 5, we are at the fifth day of scheduled days before we are scheduled to adjourn for the holiday break. We are at day 5. Yesterday was day 6, today is day 5, and the gentleman has indicated that there is no intention at this moment for moving the minimum wage legislation.

I would remind folks that usually in this period, as we approach the holidays of this season, that there is a great uptake in employment, especially in the retail industry. The unfortunate reality, Madam President, is that too many of those individuals are working at the minimum wage scale, and 5 days prior to us adjourning for the holiday season, we are in a situation where there apparently is no intention for this body to address the needs, the economic needs of thousands of people in this Commonwealth, no intention. The body is failing the people of Pennsylvania. The leadership is failing the people of Pennsylvania. The people of Pennsylvania who need us the most have found

failure on the floor of the Senate of Pennsylvania. There are 5 days left and we continue to count, and in the counting, people suffer. Is there no healing for the people in Pennsylvania? Is there no healing for the people in Pennsylvania? The harvest has passed, is there no healing for the people of Pennsylvania? There is healing in New York, there is healing in New Jersey, there is healing in Maryland, there is healing in Delaware, there is healing in States all across the country, but there is no economic justice for the people of Pennsylvania who deserve it the most. They are women, they are heads of households, and they are struggling and suffering at an income far below the Federal poverty level. Is there no healing? Five days and we continue to count. We are failing the people of Pennsylvania, this Chamber, this body, and on Christmas day, if there is no action, we will have no presents for the people of Pennsylvania, and they will consider us failures.

Thank you, Madam President.

The PRESIDENT. The Chair recognizes the gentleman from Jefferson, Senator Scarnati.

Senator SCARNATI. Madam President, I rise to commend my colleague for moving this issue and bringing it to the forefront. Earlier this year, as chairman of the Committee on Labor and Industry here in the Senate, along with the Minority chair, Senator Tartaglione, we had a forum in Philadelphia, and it was attended by other colleagues of mine, Senator Ferlo, Senator Thompson, and it was very informative. I learned a lot. This forum was scheduled long before the Governor or anybody else here on the floor was talking about minimum wage issues. Again, myself and the Minority chair, Senator Tartaglione, took this initiative to talk about the issue, because we thought it was important to move it forward. In raising the minimum wage, there is an argument that it will cost jobs and it will cost employers more. This is debatable. We can debate this all day. What is not debatable on this issue is how do we help the most needy working families? I think that is what my colleague is talking about, the most needy, those in poverty, those who are under the Federal poverty guidelines, who are working but cannot make ends meet. How do we help them?

We have a problem in this Commonwealth as other States have, we do have a number of unskilled workers, workers who cannot make large amounts of money because they do not have the skills. But do you know what? That is not business's fault. It is not business's fault that we have untrained workers. You cannot blame them. Whom do we blame? Do we blame ourselves? Do we blame the Federal government? Do we blame our schools? Again, that is debatable. We can debate that whole issue. But is it worth the risk of losing possibly thousands of jobs for these unskilled workers because we just jump up the minimum wage? I was at that forum and I heard what people had to say, educated people, people who have studied this issue. I agree with my colleague, it is unconscionable that we have people in this Commonwealth living in the poverty levels that we have, but I disagree on how to do it. Making businesses pick up the tab for this social issue is like blaming weathermen for hurricanes. It is not their fault.

Now, let us talk some facts. According to U.S. government data, only 15 percent of the minimum-wage recipients are raising a family on minimum wage. The remaining 85 percent are teenagers living with their parents, adults living alone, or dual earn-

ers, married couples. Furthermore, a majority of minimum-wage employees do not work full-time, and nearly a quarter, 25 percent, work fewer than 20 hours a week, 25 percent work fewer than 20 hours a week.

Now, data from the U.S. Census shows that the average family income of a minimum wage recipient is over \$43,000 a year. We have to ask ourselves, why? Well, the majority of recipients are either teenagers or second earners in relatively high-income earning families. The McPherson Study found that the average family income of minimum wage employees in Pennsylvania is just over \$49,000, and that 80 percent, here is a key number, over 80 percent of the benefits of a wage hike go to families who are not poor. Research from Syracuse University shows that 83 percent of the benefits from the last minimum wage hike went to families above the poverty line.

So, I think these facts are important. They are important to my colleague, they are important to me, to both our concerns. But how do we truly help, how do we truly help the most needy of Pennsylvanians? I have an answer. I have an answer and I have a bill, and that is Senate Bill No. 975, which provides and creates a State Earned Income Tax Credit to mirror the Federal plan. If any of you are not familiar with the Federal Earned Income Tax Credit, you can get a book, look at it, it is real simple to figure out, the Earned Income Tax Credit is for working people who are not making it.

Now, I would like to talk a little bit about the Earned Income Tax Credit. It has been enacted by States led by Republicans, States led by Democrats, and States with bipartisan leadership. The credits are supported by business groups as well as social service advocates. There is a great quote from just a few years ago from President Bill Clinton: "We can increase the Earned Income Tax Credit by a couple of billion dollars a year and, far more efficiently than raising the minimum wage, lift the working poor out of poverty." President Clinton supports the Earned Income Tax Credit because it really works.

State Earned Income Tax Credits also play a role in shaping tax systems. A number of States responded to weak fiscal conditions by increasing taxes and fees. Enacting a State EITC is a way to reduce or at least avoid increasing the already substantial burden of State and local taxes on the poor. The Earned Income Tax Credit was also found to produce substantial increases in employment and reduction in welfare receipts among single parents, as well as long decreases in poverty. Research indicates that families who use the EITC will pay for necessities, home repairs, vehicles that are needed to commute to work, and in some cases, to boost the employability and earning power by obtaining additional education or training.

You know, there are a lot of quotes, a lot of people say a lot of things, but without a doubt, something that has to be said here is this quote: "The idea of using a minimum wage to overcome poverty is old, honorable--and fundamentally flawed. It's time to put this hoary debate behind us, and find a better way to improve the lives of people who work very hard for very little." That is from the New York Times.

Madam President, I think we really do have an issue here that we need to discuss, and as I said earlier, it is debatable. But I propose, and I have done something, I have introduced a bill to help the working families, and it will help them, and we need to

explore that avenue. We need to continue to make Pennsylvania a great State. And by helping these people in poverty, the poor, we need to move forward first with proven results. It is proven, the Earned Income Tax Credit will help the most needy. I cannot see why we would want to give more money, I would love to give more money to everybody, after all, that makes a lot of friends in here, but what we really want to do is help those most in need. Madam President, I strongly urge my colleagues across the aisle, and on this side of the aisle, to support Senate Bill No. 975, to support a concept that has proven to help the most needy.

Thank you, Madam President.

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Anthony Williams.

Senator A.H. WILLIAMS. Madam President, it was not my intent to speak about this issue tonight because I think we should speak about the bill. Once it arrives on the floor, we should have the ability to debate it publicly, but to the extent that we are going to make comments, let us at least make sure that they are fair, accurate, and appropriate.

I studied economics, and I am not sure what book this gentleman is speaking from, but for those thousands of jobs that we are supposedly going to lose in Pennsylvania, I think the New York Times would also reflect upon that argument as old, tired, out of date, and frankly, wrong, if not exaggerated. When you have surrounding States such as New York, New Jersey, Delaware, Ohio, we are an island by ourselves underpaying people by the thousands. So I do not know where these people want to flee to. If they have not left Ohio, New York, Delaware, and New Jersey to come to Pennsylvania, why the heck do we believe they will leave Pennsylvania and go to China? That is stupid.

The minimum wage was created for economic purpose and gain. It is a minimum standard by which we relate to society. It is not a social program. It is an economic engine which was invented. If you are going to study these issues, know these issues, but do not play with them because you are playing with people's lives, and most importantly, you are playing with the economy of this country. The minimum wage means something. By the way, the New York Times, I am a Daily News type of reader, and frankly, the minimum-wage person is a Daily News type of reader. Those people who have graduate degrees and advanced degrees, that is not whom I am talking about here. So with all due respect to the New York Times, let us talk about the Daily News type of reader. Oh yeah, and that 20 percent or so, whatever they are talking about, that minimum population who works 20 hours a week, those are teenagers in the middle class who are coming from families who can no longer afford to pay for their college education without the child working. Check that number out. That is who is working. Oh, and by the way, senior citizens who have laid their life on the line so we can stand our butts up here talking and pontificating, because they are paid tax dollars, they have to continue to work those 20 hours a week. They are getting minimum wage working at McDonald's. That is who is working. And by the way, it will mean something to them when they have to pay their heating bill this year on minimum wage.

This is not a concept, a theoretical discussion without consequence. This is the economic engine of this country. So if you are going to study it, do not come up with prescribed prescriptions from business owners and industries that no longer, frankly, pay

the minimum wage. The arguments opposing it are just as tired, just as irrelevant, just as outdated as anyone who is trying to purport that they are making arguments for, because they do not know the substance of what they are talking about.

The minimum wage means something to those who are on the fringe of the middle class now. And guess what? Just as we stand here with arrogance on the pay raise and a slow drip of people out there in Pennsylvania, this is not an urban issue, this is not about Philadelphia or Pittsburgh, this is about those parts of Pennsylvania where people get up at 5 o'clock in the morning, heat up their cold house, and go someplace to work for minimum wage, because parts of Pennsylvania cannot and do not desire to pay any more than the minimum wage. This means more for parts of rural Pennsylvania, in some circumstances, than it does to urban Pennsylvania any day of the week. Frankly, most of the people who work in my district do not work for minimum wage. That is right, because in the cities they have exceeded that number, but parts of Pennsylvania that are on the other side of the aisle, there are a lot of minimum-wage workers out there. Go to a racetrack, go to a racetrack in Pennsylvania and ask those folks who are in the back stalls, cleaning out the back stalls, whether they get minimum wage or exceed minimum wage. Ask that teenager or that person who gets 20 hours a week about whom the gentleman is talking.

Know the facts, not the rhetoric. But guess what? Keep playing with the issue. Play with it, toy with it. You will feel the wrath of that population when we have such high-minded arrogance to suggest they are a fringe. They are not a fringe. They read the Daily News. They watch PCN. They clearly study what we do. If we want to define their work as, frankly, not that important and not that much in need because of the hours of work that they relegate themselves to, I would not stand here and talk about what is the need for that money. I would not stand here and suggest that any of them, any of them work any less hard than I do because they work 20 hours a week. But I want to tell you one thing, nobody here is getting minimum wage for the 20-plus hours they work. No one here in their family is getting minimum wage for the hours that they are putting in. So I am not going to be judge and jury. So if it does not mean that much, I do not understand why we are scared for it to see the light of day.

Oh, and the tax credit concept, you know, if I do another tax arrangement for corporate Pennsylvania, I am almost going to regurgitate. This is not a corporate State. Small business runs Pennsylvania, and they are not scared to death of the minimum wage. They are not. Small businesses are not scared of the minimum wage, and I have done enough of that study to find out what they pay. Corporate America does not fund Pennsylvania. It is what my dear friend, John Wozniak, says about Joe Puffna and all those other names that he would mention to me on a given day. People who are nameless, unseen, are making history because they define what this State is about. It is about hard work in difficult times, but I am not going to contribute to make it any harder, so I am not going to be silent on this issue anymore. This issue will drip, drip, drip, and then eventually the spigots are going to be open and then it will start to pour, and when it starts to pour, it will start to rain, and when it rains, it will flood, and when it floods, I do not want to hear excuses about, well, I did not understand what the legislation meant. I did not know there

were so many. The numbers that were given to me were inaccurate.

We have a moment. Senator Hughes was absolutely right. It is repugnant that we stand here in the holiday season and argue about something that people said is irrelevant. Well, if it is irrelevant, vote for it.

Thank you, Madam President.

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

Senator WONDERLING. Madam President, I thoroughly enjoyed listening to my colleagues this evening and, quite frankly, Madam President, it is uplifting to hear a discussion that is robust with passion, and I applaud all three of my colleagues for, in many respects, wanting to do what is best for as many Pennsylvanians as possible. I really took to heart Senator Williams' comments as he was wrapping up regarding working men and women in this Commonwealth, and indeed, Senator Williams is correct that the majority of the folks who work in this Commonwealth work for small enterprises that have 100 or less employees. So perhaps there is yet a third approach to help folks, the hard working men and women of this Commonwealth, to put a little bit more money in their pockets, to relieve the burdens that they are carrying. What I am hearing from the working men and women in the 24th Senatorial District is we need to do something with the spiraling costs of health care, and particularly the cost of health care that they have to pay as they are working, particularly if they are working in a small business enterprise. I think it is important, perhaps, for us to dial back on the rhetoric for a moment and look at the facts as they relate to good policy in this Commonwealth that will impact low and moderate income Pennsylvanians the most. I think what we want to try to do in this Commonwealth within our responsibility to be proper stewards of the tax dollars, to be fiscally responsible, is to find a way to help as many working men and women as possible in this Commonwealth, to help lift those burdens that they are carrying, those economic burdens, particularly at this time of year.

So let us look at the facts. There are roughly 12 million Pennsylvanians. According to statistics that have been presented to me, less than 2 percent of working men and women in this Commonwealth currently work on a full-time basis at the minimum wage rate. In fact, on average, for both part-time and full-time employees in this Commonwealth, the average Pennsylvanian, the working men and women in this Commonwealth are currently making a little over \$2 per hour above minimum wage. Now, let us put roughly about 200,000 working men and women and compare that to 6 million working men and women who work for those small business enterprises that I spoke of a moment ago. And again, over 85 percent, Madam President, 85 percent of the folks who work in this Commonwealth work for small businesses, the risk takers, and they are the ones, these working men and women who are making a decent wage, who are making difficult choices this holiday season because they have to make difficult choices in terms of how they are going to provide health care for their wives, their husbands, their sons and daughters, their extended families.

That is why, Madam President, I have introduced Senate Bill No. 671, which has no impact on the State budget, has no impact on the private employer, but what it seeks to do is, in a very neu-

tral sense, change the way in which principally out-of-State insurance companies rate their insurance, the amount of money they charge a small business to provide coverage. What Senate Bill No. 671 seeks to do, Madam President, is to outlaw the concept of medical underwriting and demographic rating. I encourage my colleagues to look at the insurance applications that working men and women have to complete if they want health insurance in this Commonwealth. It borders discrimination, questioning ethnicity, age, gender. God forbid, if you work for a small business and you are a female of child-bearing years and you have to fill out one of these forms, and if you are that small business owner and that data is collected, you had better believe you will get a higher premium bill this year. In fact, in the small business community, over the last 3 or 4 years, premiums have increased anywhere from 35 to 65 percent because these large out-of-State private insurers practice demographic rating, medical underwriting, and come in and cherry pick only healthy small businesses, leaving in particular our urban centers in this Commonwealth, entrepreneurs in places like West Philadelphia, Allegheny County, York City, or Lebanon City, having to make difficult choices about whether they can provide adequate employer-covered health insurance for those hard-working men and women. Senate Bill No. 671 seeks to eliminate all of that at no cost to the State budget and no cost to the employer. It is regulatory reform.

Now, this evening we have talked a bit about reform and the need to do things a little more modern here in this Commonwealth in the 21st century. Let us face it, the bright light of public scrutiny is shining on us in a way that has never been shone before, at least as long as I have been here in my 3 1/2 years. So here we have an opportunity with Senate Bill No. 671 to perhaps change the dynamic of the debate that I agree is 20 or 30 years in the making. It is a 20th century debate. Let us move forward into the 21st century and find a different way to impact the pocket-book of working men and women in this Commonwealth, and we can do that through Senate Bill No. 671, Madam President. I am absolutely and positively confident of that, and in doing so, we are not helping 2 percent of the population, we are helping over 80 percent of the folks who work for small enterprises in this Commonwealth for small group rating reform.

Madam President, I really again applaud my colleagues during this time in raising these issues. We should be having the needs and the wants and the desires of working men and women in this Commonwealth in the forefront of what we do every day as public servants here, but we have to be rational. We have to be modern. We have to be understanding that everything does come with a cost and a price. Now, I have touted Senate Bill No. 671 as a means in which we can do the fiscally responsible thing. I can also tell you that if we advance Senate Bill No. 671 and remove its discriminatory nature, particularly among ethnic groups in this Commonwealth as an insurance rating system, we are going to be able to avoid spiraling costs in the State budget. Because we have not moved to ban medical underwriting and this whole process of demographic rating in this Commonwealth, what we have done since 2002 is add over 250,000 Pennsylvanians to the ranks of the uninsured. And where will the uninsured Pennsylvanians seek subsidy of the last resort? They will come to their friendly, local State Senator, their friendly local public servant, seeking a State government program to provide for their health care insur-

ance.

Which brings us to another question: should we in this Commonwealth, and those of us who are stewards over the budget, be in the business of expanding government-subsidized health insurance, which, Madam President, grows at a rate of over 8 percent per year and the costs increase tremendously? We as taxpayers will have to pay that increased cost, or is there another alternative to relieve that economic burden on working men and women, whether they are at the minimum wage, \$2 above the minimum wage, or a little bit more, who are faced with the prospect of losing their health insurance this year? We can do so, Madam President, by embracing Senate Bill No. 671, banish medical underwriting, banish demographic rating, stave off potential high cost to taxpayers by the Commonwealth becoming more and more the insurer of last resort through government-subsidized health care, and really do some good work for the citizens of this Commonwealth.

Thank you, Madam President.

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

Senator HUGHES. Madam President, just to close out on this section, and I certainly appreciate Senator Wonderling's comments, and I think they are worthy of exploring, and if I remember correctly, I may be a cosponsor on Senate Bill No. 671. Is that correct?

Senator WONDERLING. Correct, Madam President.

Senator HUGHES. Thank you.

So that is a good thing. I certainly think that the good gentleman, the Majority chairman of the Senate Committee on Labor and Industry and his proposal, Senate Bill No. 975, with the Pennsylvania Earned Income Tax Credit, I think is worthy of exploring. I think it is worthy of moving down that path and discussing it.

Obviously, everyone knows my feelings about Senator Tartaglione's legislation, Senate Bill No. 926, which calls for an increase in the minimum wage, which has not occurred since 1998. It is 7, 8 years since the last increase, and the value of that \$5.15 has not kept pace with the inflation rate. Obviously, I am certainly in support of raising the minimum wage. Quite frankly, I think all three of these things need to be done in some fashion. Here is my thing, Madam President. I started off in this process 2 weeks ago counting down the days. We need to do something. Here is the problem. Do something. Act. Let us have a bias for action. Let us do something. Let the people who cannot afford health insurance and are literally dying because there is no healing for them, the people who are in poverty and low-income situations literally are falling behind because they cannot get a tax break, a tax credit that the good gentleman is suggesting. The 200,000 working people who would immediately be impacted by the dollar increase in the minimum wage of Senator Tartaglione's bill, they are suffering, and they have been suffering for far too long. Here is the issue. Do something. The time for studying is past. The time for analysis is over. For any economist that the opposition can provide on this legislation, I can provide 10 who say it is good. We have gone down that path. That path has been studied and analyzed over and over and over again. The comments about loss of jobs have been refuted over and over again, and even if there is a gray area there, think about it, \$5.15 an

hour.

In this land of plenty, where every week, every month, every year we create more and more and more millionaires in this country, billionaires in this country, wage disparities have gone way out. That is what we have done. Since 1998, the last time we increased the minimum wage, folks have made \$5.15 an hour for 8 years, but the billionaires are skyrocketing, and the average person knows it, the average person sees it. The average person knows exactly what I am talking about. They see it, they feel it, they live it every day, whether they read the Daily News, the New York Times, whatever they read, they see it, they understand it, they are feeling it every day, but we have failed in responding to their cry. Some people say, well, I do not get any calls in my office about increasing the minimum wage. Do you know why? Because they are trying to survive on \$206 a week. Think about it. Think about living on that salary. Think about living on that income. Think about what that means, \$206 a week.

The cry now with 5 days left, Madam President, is very simple. Do something. Act. There is a saying that the Minority has its say, and in Petitions and Remonstrances, which is where we are right now, I am having my say, but the Majority has its way. Those in charge run the table, they run the Calendar, they run the information, they run the legislation, and they run what happens on this floor. Do something. Lead, follow, or get out of the way, but do something.

Thank you very much, Madam President.

The PRESIDENT. The Chair recognizes the gentleman from Jefferson, Senator Scarnati.

Senator SCARNATI. Madam President, in my opening remarks I said this is a debatable issue. I guess I undersold that statement, it really is a debatable issue. But, you know, do not shoot the messenger. Do not shoot the messenger. Decades of economic research from Cornell University, the University of Connecticut, the Federal Reserve, Carnegie Mellon, economists at Stanford, Princeton, Massachusetts, this is what they believe. They believe this will work. They believe that the "responsible approach," that is the word I want to use, the "responsible approach," is a State Earned Income Tax Credit, and that is Senate Bill No. 975. Because if we do not do that, if we do not go that route, we are treating the symptom, not the disease. We need to do a better job in our schools of training our workers, and we need to do a better job here in the Commonwealth and with the Feds in putting money into work force development programs, because we need skilled workers. If we do not have skilled workers, as we continue to compete with China and India and Vietnam, they are going to take our jobs, and the lowest skilled people will not have a job. So let us treat the disease, not the symptom, and that is what I am asking, and I think you agree with that. This is about getting real money to the most needy people, and raising the minimum wage could take many of these low-income workers off of very important public assistance programs. The Earned Income Tax Credit will not. It helps them.

We all study economics. We are all economists in our own sense, running our households, running our small businesses, running our Senate offices. Yeah, we are all economists, but when Nobel prize winners, President Clinton, all embrace the Earned Income Tax Credit approach, I have a difficult time putt-

ing their thoughts and ideas in the garbage can. I think this is a responsible approach, this is the right approach for Pennsylvania, and, Madam President, I am willing to help move it forward.

Thank you.

ANNOUNCEMENTS BY THE SECRETARY

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

SENATE OF PENNSYLVANIA

COMMITTEE MEETINGS

WEDNESDAY, DECEMBER 7, 2005

| | | |
|---------------|--|----------------------|
| Off the Floor | BANKING AND INSURANCE (to consider Senate Bill No. 972; and House Bill No. 2041) | Rules Com. Conf. Rm. |
|---------------|--|----------------------|

| | | |
|---------------|--|----------------------|
| Off the Floor | RULES AND EXECUTIVE NOMINATIONS (to consider Senate Bill No. 157; and certain executive nominations) | Rules Com. Conf. Rm. |
|---------------|--|----------------------|

TUESDAY, DECEMBER 13, 2005

| | | |
|-----------|--|---------------------|
| 9:30 A.M. | ENVIRONMENTAL RESOURCES AND ENERGY and TRANSPORTATION (joint public hearing on Clean Vehicle Emission Standards) | Room 8E-A East Wing |
|-----------|--|---------------------|

| | | |
|------------|---|-----------------------|
| 10:00 A.M. | FINANCE (to consider Senate Bills No. 292, 592 and 993; and House Bills No. 459 and 1427) | Room 461 Main Capitol |
|------------|---|-----------------------|

RECESS

The PRESIDENT. The Chair recognizes the gentleman from Jefferson, Senator Scarnati.

Senator SCARNATI. Madam President, I move that the Senate do now recess until Wednesday, December 7, at 11 a.m., Eastern Standard Time.

The motion was agreed to by voice vote.

The Senate recessed at 8:18 p.m., Eastern Standard Time.