



The Judiciary Review

Report from the Senate Judiciary Committee (D)

JAY COSTA JR., DEMOCRATIC CHAIRMAN

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February 2004

Damage Caps to be Considered by Senate in March

■ Senate Bill 9 Printer's No. 1386

A Senate Bill introduced on February 9 was reported from the Senate Judiciary Committee and sets up a vote on the Senate floor regarding the issue of damage caps in liability actions. The bill makes technical changes to Article III, section 18 of the Pennsylvania Constitution. The section being amended provides that statutes of limitations for the commencement of suits against corporations for injuries to persons or property by the corporations must be consistent with the statutes of limitations for such suits against natural persons.

However, at the Judiciary Committee meeting it was determined that the bill would be reported from committee without any language addressing damage caps so the issue could be preserved for the full Senate. It is expected that during the first two weeks of March, the Senate will consider amendments to Senate Bill 9 that will detail whether to adopt damage caps and if they will be limited to medical liability actions or be generally applicable. Further, to be decided by the Senate will be whether any caps, if adopted, provide exceptions based on the nature of the injury or the parties involved.

*Current status: Senate Calendar—
Second Consideration*

■ Senate Resolution 160 Printer's No. 1214

After several hearings on the issue of medical liability, damage caps and insurance costs, the Senate Judiciary Committee authorized further study of the issue by reporting Senate Resolution 160. The resolution directs the Joint State Government Commission to empanel a task force to study alternatives to the existing civil litigation system for considering health care liability claims resulting from medical professional liability. The study proposed by the resolution would include but not be limited to no fault administration of medical professional claims, peer review or specialized medical malpractice courts. The commission's task force would be required to report to the General Assembly on or before June 1, 2004.

The resolution goes to the full Senate for its consideration. Adoption by the House of Representatives is not necessary to initiate the study by the Joint State Government Commission.

Current status: Senate Calendar

■ Senate Bill 979 Printer's No. 1393

This legislation establishes the Pennsylvania Uniform Child Witness Testimony by Alternative Methods Act by amending Title

42 (Judiciary and Judicial Procedure) to provide the enabling legislation for the recently adopted constitutional amendment governing testimony of child victims and material witnesses in criminal prosecutions by alternative methods.

This subchapter governs the testimony of child victims or child material witnesses who are under the age of 13 years in all criminal proceedings and juvenile proceedings alleging conduct, which if committed by an adult, would constitute a violation of criminal law. Under the procedures outlined in the bill, the court may order a hearing on its own motion; or on the motion of any one of the following persons, for good cause shown, the court shall order a hearing:

- Any party to the action.
- A child victim or child material witness.
- An individual determined by the court to have sufficient standing to act on behalf of the child victim or material witness.

The requirements for such a hearing conducted by the court provide that the hearing must be on the record and reasonable notice of the hearing must be provided to all parties including a non-party movant or any other

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person specified by the court. The presence of the child victim or child material witness is not required unless otherwise ordered by the court. Further, the rules of evidence remain applicable to the hearing considering alternative methods of testimony.

If the court finds that testifying either in an open forum, in the presence and full view of the finder of fact, or in a face-to-face confrontation between the child victim or material witness and a defendant would cause the child victim or material witness to suffer serious emotional distress that would substantially impair the child victim or material witnesses ability to communicate, the court may order testimony by an alternative method.

Any order authorizing testimony by an alternative method shall state findings of fact and conclusions of law to support the determination by the court. Specifically, the determination shall consider all of the following:

- Available methods of alternative testimony.
- Available means for protecting the interest of or reducing the emotional trauma to the child victim or material witness without resorting to alternative methods.
- The nature of the case.
- The relative rights of the parties.
- The importance of the proposed testimony of the child victim or material witness.
- The nature and degree of emotional trauma that the child victim or material witness may suffer if an alternative method is not used.
- Any other relevant factor.

The alternative method of testimony shall be the least restrictive method necessary to protect the rights of the parties to the criminal action under the circumstances and to serve the purposes of the order. Further, the method devised by the court must provide a full and fair opportunity for the examination and cross-examination of the child victim or child material witness.

Current status: Senate Calendar—Second Consideration

■ **Executive Nominations**

The Senate Judiciary Committee reported Gerald N. Massaro, Ph.D. by a unanimous vote. Dr. Massaro has been nominated by Governor Rendell to be a member of the Pennsylvania Board of Probation and Parole. Dr. Massaro currently serves on the Pennsylvania Board of Pardons and will resign that position upon confirmation by the Senate.

■ **Judiciary Legislation from Previous Editions**

Senate Bill 152, Printer’s No. 1324

Establishes the Uniform Trade Secrets Act that provides civil penalties for the misappropriation of trade secrets by the acquisition or disclosure of such trade secrets by improper means.

Previously Reported in the Judiciary Review—February 2003

Current Status: Senate Rules Committee

Senate Bill 133, Printer’s No. 1219

The bill amends Title 75 of the Pennsylvania Consolidated Statutes to further provide for chemical testing to determine amount of alcohol or controlled substance and for abandonment of vehicles.

Previously Reported in Judiciary Review—April 2003

Current Status: House Calendar—Third Consideration



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