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IN THE

COMMONWEALTH COURT OF PENNSYLVANIA

449 C.D. 2015

CITY OF HARRISBURG, et al.
Appellants

v.

U.S. LAW SHIELD OF PENNSYLVANIA, LLC , et al.
Appellees

BRIEF OF *AMICI CURIAE*, MEMBERS OF THE PENNSYLVANIA GENERAL ASSEMBLY, IN OPPOSITION TO APPELLANTS APPEAL FROM THE FEBRUARY 25, 2015 ORDER OF THE DAUPHIN COUNTY COURT OF COMMON PLEAS, DOCKET NO 2015-CV-255

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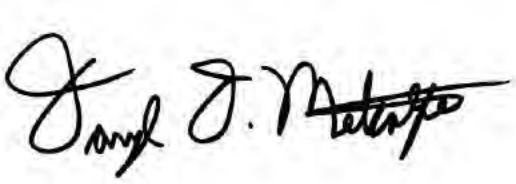

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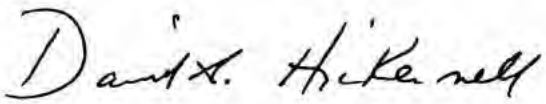

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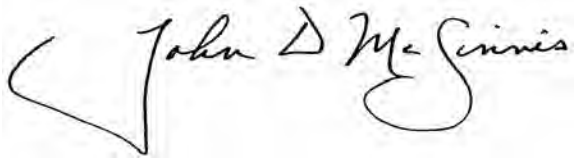

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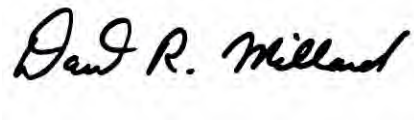

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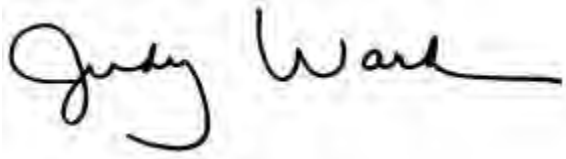

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I. STATEMENT OF INTEREST OF AMICUS CURIAE

Amici Curiae, those Members of the General Assembly, which voted for or support Act 192 and have endorsed their names to this brief, submit this brief in opposition to Appellant's Appeal from the February 25, 2015 Order of the Dauphin County Court of Common Pleas, docket no. 2015-cv-255.

The *Amici* are those Representatives that support and defend the Second Amendment to the U.S. Constitution and Article 1, Sections 21 and 25 of the Pennsylvania Constitution and protect freedom from transgression. The Representatives having endorsed their names to this brief are intimately familiar with the issues presented by Appellants and were involved with or otherwise support the process by which 18 Pa.C.S. § 6120 was enacted, including the recent amendment thereto – House Bill 80, Printer's No. 4318, Session of 2013, which became Act 2014-192 ("Act 192"). *See* HB 80, PN 4318, fully incorporated herein and a copy attached hereto as Appendix A.

For these reasons, the *Amici* believe this Honorable Court will benefit from their perspective.

II. SUMMARY OF ARGUMENT

In relation to Act 192, although this Court previously ruled in *Leach v. Cmwlth.*, 2015 WL 3889262 (Pa. Cmwlth. June 25, 2015) that Act 192 was unconstitutionally enacted, *Amici* believe that the Court was not sufficiently advised of the germaneness of the amendments and therefore seek to bring additional information to the Court's attention for its consideration. Further, as an appeal has been filed with the Pennsylvania Supreme Court in *Leach*, docketed as 61 MAP 2015, and which acts as a supersedeas, pursuant to Pa.R.A.P. 1736(b), *Amici* desire to ensure this Court first has opportunity to directly address all issues relating to the constitutionality of Act 192.

In relation to Appellants' Ordinances, the Ordinances violate the Second Amendment to the United States Constitution, Article 1, Section 21 of the Pennsylvania Constitution and 18 Pa.C.S. § 6120. As Article 1, Section 21 and Section 6120 provide explicit express preemption and the Uniform Firearms Act ("UFA") provides field preemption, Appellants are precluded from enacting any regulations, in any manner, regarding, *inter alia*, the ownership, possession and transport of firearms and ammunition. While this Court has previously held that even regulation *consistent* with the UFA is proscribed pursuant to Article 1, Section 21 and Section 6120, Appellants argue that they are entitled to regulate consistently with the UFA.

Even if, *arguendo*, Appellants were empowered to regulate consistently with the UFA, contrary to their assertions, the Ordinances seek to regulate the *lawful* ownership, possession and transport of firearms and ammunition, which is *inconsistent* with the UFA.

III. ARGUMENT

A. The *Leach* Decision is Stayed and Act 192 is in Full Force and Effect

On July 20, 2015, the Commonwealth filed a Notice of Appeal with this Court in relation to its decision in *Leach, et al. v. Commonwealth, et al.*, 585 M.D. 2014. A copy of the docket attached hereto and incorporated herein as Appendix B. On July 24, 2015, the Pennsylvania Supreme Court docketed the appeal as 61 MAP 2015.

Pursuant to Pa.R.A.P. 1736(b), the taking of an appeal by the Commonwealth or any officer thereof, operates as an automatic supersedeas in favor of the appellant, unless otherwise ordered. See generally, *Patterson v. Armco, Inc.*, 515 A.2d 657, 659 (Pa. Cmwlth. Ct. 1986). In 585 M.D. 2014, as the Commonwealth and officers thereof have appealed, and there does not exist any order directing otherwise, this Court's decision in *Leach* is stayed, leaving Act 192 in full force and effect, including its standing provisions in relation to Section 6120.

B. Constitutionality of Act 192[1]

It has been well settled by this honorable Court that a statute is presumed to be constitutional and not to be declared otherwise unless it "clearly, palpably, and plainly violates the Constitution." *Pennsylvania Liquor Control Board v. Spa Athletic Club,* 506 Pa. 364, 485 A.2d 732, 735 (1984). Upon challenging the constitutionality of a state statute, the challenging party bears a heavy burden of persuasion and all doubts must be resolved in favor of upholding the legislation in question. *Pennsylvania School Boards Association, Inc. v. Commonwealth Association of School Administrators,* 569 Pa. 436, 805 A.2d 476, 479 (2002).

1. *Act 192 Passes the Test of Original Purpose Under Section 1*

Art. III, Section I of the Pennsylvania Constitution states –

> No law shall be passed except by bill, and no bill shall be so altered or amended, on its passage through either House, as to change its original purpose.

---

[1] While it is acknowledged that this Honorable Court previously ruled that Act 192 was unconstitutionally enacted, *Leach v. Cmwlth.*, 2015 WL 3889262 (Pa. Cmwlth. June 25, 2015), as an appeal was filed with the Pennsylvania Supreme Court in relation to the *Leach* decision, 61 MAP 2015, which acts as a supersedeas pursuant to Pa.R.A.P. 1736(b), the *Amici* want to ensure that this Court has the first opportunity to directly address all issues relating to the constitutionality of Act 192.

Amici would welcome the Court to reconsider its decision in *Leach*, given the arguments made herein.

The Commonwealth Court and Supreme Courts of this State have, over time, dealt with a cavalcade of Constitutional challenges to legislation alleging violation of Section 1 – the "original purpose" requirement; such challenges have almost always failed. The seminal case construing constitutional challenges under Section 1 and setting forth the current standards for such a constitutional challenge is *Pennsylvanians Against Gambling Expansion Fund, Inc.*, 583 Pa. 275, 877 A.2d 383, 393 (2005) (hereinafter "*PAGE*"). The Pennsylvania Supreme Court, in *PAGE*, set forth an instructive two-part test by which courts of the Commonwealth are to determine a legislated bill's constitutionality in the face of an Art. III, Section 1 challenge.

> 1) "…comparison between the original purpose and the final purpose of the bill."
>
> 2) "…whether the title and the content of the bill in final form were deceptive."

Id., at 408. A litany of other constitutional challenges brought under Section 1 have reiterated this two-part test as necessary and dispositive of this matter. *See, Stilp v. Com*, 588 Pa. 539, 905 A.2d 918, 956-57 (2006); *Washington v. Dept. of Public Welfare*, 71 A.3d 1070, 1078-79 (Pa. Cmwlth. 2013); *Christ the King Manor v. Com., Dept. of Public Welfare*, 911 A.2d

624, 636 (Pa. Cmwlth. 2006) (aff'd sub nom. *Christ King Manor v. Com., Dep't of Pub. Welfare*, 597 Pa. 217, 951 A.2d 255 (2008)).

Significantly, the Supreme Court in *PAGE* held that the "original purpose" of legislation must be considered in "reasonably broad terms." *PAGE*, at 409. In elaborating on what "reasonably broad terms" should mean for a court's consideration, the *PAGE* Court accounted for the customary multitude of amendments a bill often undergoes as part of normative legislative processes – "the legislative process…can involve significant changes to legislation in the hopes of a consensus."; "…legislation will be transformed during the enactment process." *Id*., ((citing *Consumer Party v. Commonwealth*, 510 Pa. 158, 507 A.2d 323, 334 (1986) (citing *Pennsylvania School Board Ass'n of School Administrators*, 569 Pa. 436, 805 A.2d 476, 489 (2002)). In fact, not only are amendments a normal part of the legislative process, their need is expressly acknowledged by Art. III, Section 4 of the Constitution. *Washington* 71 A.3d at 1080. Concerning the permissible effects of amendments to legislation in a Section 1 analysis, courts have ruled that "[p]rovisions which are added to an original bill must either (1) assist in carrying out the bill's main objective or (2) be germane to the bill's subject as reflected in its title." *English v. Com*,

845 A.2d 999, 1002-03 (Pa. Cmwlth. 2004) (citing *City of Philadelphia v. Commonwealth*, 575 Pa. 542, 838 A.2d 566 (2003)).

It is axiomatic that this State's judiciary "is normally loathe to substitute its judgment for that of the legislative branch under the guise of determining whether the constitutional 'purpose' of a bill has changed during the course of its passage through the legislative process." *Pennsylvania AFL-CIO by George v. Commonwealth*, 691 A.2d 1023, 1035 (Pa. Cmwlth. 1997) (quoting *Consumer Party*, at 335). Thus, the "reasonably broad terms" with which a court must consider the passage of legislation gives wide latitude to the General Assembly to make potentially significant changes to any given bill.

The Supreme Court's analysis of the first prong of the test in *PAGE* is informative. In *PAGE*, a constitutional challenge alleging, *inter alia,* violations of Sections 1 and 3 of the Constitution, was brought against a particular piece of legislation, the Gaming Act. The Gaming Act began as a one-page bill dealing exclusively with the role of the PA State Police vis-à-vis the State Harness and Horse Racing Commission. *Id*., at 409. By the time of third consideration of the bill before the State Senate, the Gaming Act had been transformed into a 145 page bill, having *seven* chapters and *eighty-six* sections. *Id.*, at 392. The Gaming Act, nevertheless, survived all

constitutional challenges. Specifically, the Supreme Court held that such expansion of a bill as part of a normal legislative process does not necessarily equate to a violation of the "original purpose" rule.

Similarly, in *Christ the King Manor*, a Section 1 and Section 3 constitutional challenge was brought against a bill, which amended the Public Welfare Code. *Christ the King Manor*, 911 A.2d at 634-36. The bill began its legislative life as a single page amendment to the Public Welfare Code. By the time of its passage, the bill was over *one-thousand* lines long and amended *twenty-four* discrete sections of the Public Welfare Code; yet such was found to be constitutional and was later affirmed *Per Curiam* by the Pennsylvania Supreme Court. *Id*. at 631, 634-39.

Considering all the foregoing cases mentioned wherein constitutional challenges to legislation were brought and defeated, and the legislation reviewed in each, the amendments or other changes to Act 192 were relatively miniscule. In fact, HB 80 – PN 4318, dealing with theft of "secondary metals" under the Crimes Code, began as a two-page bill having four sub-sections. By the time of passage, 192 had only been expanded to have a total of seven pages with five sections. *Amici* submit that if an expansion of legislation from one page to one-hundred-forty-five pages of the same title, as was the case in *PAGE*, or an expansion of legislation from

one page to thirty-four pages of the same title, as was the case in *Christ the King Manor*, were not deemed violative of the Constitution, then the minimal expansion at issue in Act 192, which also only amended the same title, is similarly constitutional.

In this vein, it is important to note that Act 192 amended only 18 Pa.C.S. §§ 3503, 6111.1, and 6120 – all within the Crimes Code. When compared with – for example – the *twenty-four* amendments to the Public Welfare Code upheld in *Christ the King Manor*, the Act 192 changes to Section 6120 were again minimal.

In turning to Act 192's stated purpose – "amending the Crimes Code" – it cannot be said to be overly broad based on the decision in *PAGE* and *Christ the King Manor*. Amici submit that such a stated purpose falls squarely within the ambit of "reasonable" and necessary broadness permitted to the course of legislation. To hold otherwise will open Pandora's box to challenges regarding previously enacted legislation and usurp the General Assembly's power to enact reasonably related amendments, to the same title, during the legislative process. In turn, that limitation may ossify existing statutory law as legislators are unable to make the necessary compromises to ensure majority support.

In relation to the second prong of the *PAGE* test – requisite deception – *Amici* submit that in the passage of Act 192, there was none, as the amendment was fully noticed and was the result of lively debate, including a vote on the constitutionality of the amendments, which was affirmed.

This particular prong is designed to ensure that those charged with representing the citizens of the Commonwealth know the type and contents of the legislation for which they are voting. *Fumo v. Pennsylvania Public Utility Commission*, 719 A.2d 10, 13 (Pa. Cmwlth. 1998). Put another way, the deception prong requires that laws passed in the Commonwealth place a reasonable person on notice of the general subject matter of the bill. *Stilp*, 905 A.2d at 957 (citing *PAGE*, at 406). *Amici* submit that not only were the citizens of the Commonwealth not deceived by Act 192, many of the same opponents of the Act, [2] by their own conduct during the legislative process, have demonstrated that neither were they deceived.

To prove a lack of deception, it is useful to take a close look at the legislative history of Act 192. Doing so reveals a timeline of significant

[2] See *Leach v. Commonwealth*, 585 M.D. 2014 – Petition for Review filed before this Court on November 10, 2014. Many of the complainants in that litigation are Commonwealth Senators and House Representatives who lost their challenge against Act 192 in the General Assembly and then, *post hoc*, mounted the legal challenge against the constitutional sufficiency of the Act.

events that all show a robust and informed consideration of HB 80, including all its amendments.

i. On January 10, 2013, HB 80, PN 68 was referred to the Judiciary Committee of the House of Representatives. *See* HB 80, PN 68, a copy of which is attached hereto and incorporated herein as Appendix C.

ii. From June 10, 2013 to October 6, 2014, HB 80, PN 68 underwent several amendments and other minor changes. *See* HB 80, PN 2066; HB 80, PN 3831; HB 80, PN 4248, copies of which are attached hereto and incorporated herein as Appendices D, E, and F, respectively.[3]

iii. Senator Daylin Leach, the named petitioner in *Leach v. Commonwealth*, as part of the debate of Act 192, introduced his own proposed amendment to Section 6108 of the Crimes Code. *See* Leach Amendment No. A10492, a copy of which is attached hereto and incorporated herein as Appendix G. Senator Leach's proposed amendment, "Limitation on the regulation of firearms and ammunition", failed in the Senate by a vote of 17-31. *Id.*

[3] These three minor amendments defined the "theft of secondary metals" offense, and amended Section 3503 of the Crimes Code to include provisions relating to theft of secondary metals.

iv. Senator Lawrence Farnesse, another petitioner in the *Leach* case, proposed his own amendment to Section 6108, entitled "Carrying Firearms on Public Streets or Public Property in Philadelphia." *See* Farnesse Amendment No. A10461, a copy of which is attached hereto and incorporated herein as Appendix H. Senator Farnesse's proposal was defeated by a vote of 22-26. *Id*.

v. Senator Alloway, again as all part of vigorous debate of HB 80, introduced his own proposed amendment of HB 80. *See* Alloway Amendment No. A10397 (hereinafter "Alloway Amendment"), a copy of which is attached hereto and incorporated herein as Appendix I. The "Alloway Amendment" sought to amend Sections 6111.1 and 6120 of the Crimes Code, and was entitled "Pennsylvania State Police". *Id*. The Alloway amendment passed by a vote of 32-16. *Id*.

vi. On October 20, 2014, HB 80, PN 4318 was referred to the House Rules Committee. *See* Appendix A. There, the bill was particularly well debated before it was passed. Cherelle L. Parker, yet another petitioner in the *Leach* action, proposed several amendments to the bill, as part of one motion. *See* Parker Amendments No. A10507, A10508, A10509; copies of which are

attached hereto and incorporated herein as Appendices J, K, and L, respectively. Representative Parker's motion failed by a vote of 7-25. *See* Roll Call for Parker Motion, a copy of which is attached hereto and incorporated herein as Appendix M. A number of other Representatives attempted to amend HB 80 in the House Rules Committee; none of these attempts carried a majority vote. *See e.g.* Waters Amendment No. A10515; Mundy Amendment No. A10512; Sturla Amendment No. A10510; copies of which are attached hereto and incorporated herein as Appendices N, O, and P, respectively.

vii. On October 20, 2014, HB 80 was also strenuously debated on the House floor. *See* Unofficial House Notes dated October 20, 2014; a copy of which is attached hereto and incorporated herein as Appendix Q. Again, several motions were made. Again, as the foregoing paragraph (¶ vi) and Appendices referenced therein show, several motions questioning the constitutionality of the bill were made, considered, and defeated. The bill was finally taken to vote and passed by a strong, bipartisan majority. *See* House Roll Call No. 1818; a copy of which is attached hereto and incorporated herein as Appendix R. It should be noted that 194 of 203 possible

votes were cast on either side – thus, virtually the entire House chose to vote on passage of HB 80. *Id*.

It is therefore quite apparent that no credible argument about deception in or surrounding the legislation of HB 80, PN 4318 can be made. As to the lawmakers who voted for or against Act 192, there can be little doubt that their vote was informed and that they were all on notice of the contents of the bill.

In *Leach*, the Petitioners' brief and several of the amicus briefs supporting the Petitioners made much of the fact that Act 192 was passed relatively late in the legislative cycle. However, it has been settled by the Pennsylvania Supreme Court that the passage of a law at a late point in the legislative cycle, by itself, is not tantamount to deception for purposes of a Section 1 challenge. *Stilp*, 905 A.2d at 957.

As Act 192 is *only* an amendment of the Crimes Code and considering that HB 80, PN 4318 was itself amended as part of its legislative passage, it is significant to point out that: 1) any amendment made to HB 80 did assist in carrying out the stated purpose of HB 80 and 2) any amendment or changes made to HB 80 was entirely germane to its subject as reflected by the title of the bill. For an amendment to be valid, it need only accomplish one of the foregoing two, not both. *English,* 845 A.2d at 1002-03.

The title of Act 192 states:

> AN ACT Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, IN BURGLARY AND OTHER CRIMINAL INTRUSION, FURTHER PROVIDING FOR THE OFFENSE OF CRIMINAL TRESPASS; defining the offense of theft of secondary metal; prescribing penalties; AND, IN FIREARMS AND OTHER DANGEROUS ARTICLES, FURTHER PROVIDING FOR PENNSYLVANIA STATE POLICE AND FOR LIMITATION ON THE REGULATION OF FIREARMS AND AMMUNITION.

Therefore, it is clear that the amendment effectuated by Act 192 is literally enumerated by its title. This is all that is required of a valid amendment; however, in exceeding requirements, *Amici* further submit that any amendments made to HB 80 also assisted in furthering the purpose of the bill as stated by its title.

2. *Act 192 Passes the Single Subject Test Under Section 3*

Art III, Section III of the Pennsylvania Constitution states –

> No bill shall be passed containing more than one subject, which shall be clearly expressed in its title, except a general appropriation bill or a bill codifying or compiling the law or a part thereof.

The rationale for Section 3, not dissimilarly from Section 1, is to ensure a measure of effectiveness and transparency in the legislative process by "prevent[ing] the passage of 'sneak' legislation." *Pennsylvania State Lodge v. Com., Dept. of Labor and Industry*, 692 A.2d 609, 615 (Pa. Cmwlth. 1997) (citing *Pennsylvania Chiropractic Federation v. Foster*, 583 A.2d

844, 847-48 (Pa. Cmwlth. 1990)). Put another way, Section 3 prohibits "secretive measures". *See*, *In re Com., Dept. of Transportation*, 511 Pa. 620, 626 (1986) (citing *In re Lancaster City Ordinance, No. 16-1952*, 374 Pa. 529, 98 A.2d 25 (1953)). Further, in this vein, courts have stated that Section 3 was promulgated to "assure against the practice of the intentional masking of acts with misleading or 'omnibus' titles." *Id.* (citing *Kotch v. Middle Coal Field Poor District*, 329 Pa. 390, 197 A. 334 (1938)). A bill does *not* violate Section 3 even where the bill amends several statutes, unless the amendments do *not* relate to the same subject. *Washington*, 71 A.3d at 1082 (citing *PAGE*, 877 A.2d at 395-96). The Pennsylvania Supreme Court in *City of Philadelphia v. Com.*, 838 A.2d 566, 588 (2003) set-forth a two-part test, which a court must employ when assessing Section 3 challenges:

1) [T]he title of the bill must clearly express the substance of the proposed law; and

2) [T]he differing topics within the bill must be germane to each other.

The first prong, known as the "clear title" requirement, is to prevent legislators from "intentionally disguising the real purpose of [a] bill by a misleading title or by [a] comprehensive phrase." *Id.*, at 586. It follows then that, similar to the test of constitutionality under Section 1, much of the inquiry to a Section 3 challenge revolves around evidence of deception.

Indeed, case law concerning this matter has traditionally applied what is substantially the same "deception test" from the second prong of Section 1 to the first prong of Section 3.[4] That is, courts must look for evidence of deception in the title and/or contents of the bill. *Com. v. Brooker*, 103 A.3d 325, 337 (Pa. Super. 2014) (citing *Com. v. Neiman*, 624 Pa. 53, 84 A.3d 603, 611-12 (2013)). For this prong of a Section 3 analysis, deception or confusion on the part of the legislature and/or the public is strong evidence of unconstitutionality. *Stilp*, 905 A.2d at 956.

No aspect of Act 192's legislative history should raise concerns under the first prong of the Section 3 test. The clear title of Act 192 precisely and completely articulates the purpose of that bill – "amending the Crimes Code". As discussed *supra*, concerning Art. III, Sec. 1, there is no credible evidence that the legislators in enacting Act 192, in the House or Senate, were themselves deceived by the substance or titling of the law.[5] *Stilp*, 905 A.2d at 956; *Brooker*, 103 A.3d at 337. To the contrary, and as more fully

[4] *See PAGE*, 877 A.2d at 409: "Consistent with our finding above regarding the sufficiency of the title, we find that the final title was not deceptive. It placed reasonable persons on notice of the subject of the bill." While discussing the deception aspect of Art. III, S. 1 (prohibiting deception in title or contents of a bill), the Supreme Court referred back to its earlier discussion concerning deception under the *clear title* prong of Art. III, S. 3.

[5] As discussed, the robust debates and vigorous challenges concerning and against passage of Act 192 and its antecedent legislation is all indicative of legislators' informed knowledge of the law.

set forth in the foregoing section, there is no aspect of Act 192, by its passage, which evidences any deceit of any form or kind. In fact, and as detailed in the foregoing, the entire General Assembly, inclusive of the House of Representatives and the Senate, participated in, or had full opportunity to participate in, the debate and vote on Act 192. Telling, Appellants, like Petitioners in *Leach*, bring forth no allegation or evidence suggesting that the public has somehow been deceived by Act 192's passage.

Furthermore, moving to the second prong of the Art. III, Section 3 test of constitutionality, there can be little doubt that all topics comprising Act 192 are germane to each other. More precisely, all topics comprising Act 192 effect changes to the Crimes Code. It should be underlined that in assessing this particular prong of Section 3, the Court should again give due deference and consider the *germaneness* in terms of a possibly "reasonably broad [general] subject" which each subtopic is relevant to. *City of Philadelphia v. Com.*, 838 A.2d at 588. Similarly, it has been held that Section 3 is satisfied where the various subjects touched-on by a bill can fairly be viewed as serving "a single unifying purpose." *Markovsky v. Crown Cork & Seal Co.*, 107 A.3d 749, 765 (Pa. Super. 2014), reargument denied (Feb. 26, 2015) (holding that subtopics which may appear unrelated

relative to each other may still be *germane* for purposes of Section 3 where they all regulate a single concern).

Indeed, as a general matter of legislation, it is usually not practically possible to pass laws without necessitating that bills be subdivided under several headings. *Payne v. School Dist. Of Coudersport Borough*, 31 A. 1072, 1074 (Pa. 1895). *Amici* submit that this Court should also be guided by the Pennsylvania Supreme Court's decision in *Spahn*, where a bill ultimately amending "one thing" – the Home Rule Act – was found to be fully constitutional, despite including multiple sub-sections, headings and sub-headings in effecting that amendment. *Spahn v. Zoning Bd. Of Adjustment*, 602 Pa. 83, 977 A.2d 1132, 1152 (2009).

In *Ritter v. Commonwealth*, the bill amended *five* distinct segments of the Crimes Code – (i) underage drinking; (ii) litigation with prisoners; (iii) penalties for drug trafficking to minors; (iv) penalties for the scattering of rubbish; and (b) regulations regarding the performance and funding of abortions. 548 A.2 1317, 1318 (Pa. Cmwlth. 1988) (aff'd, 521 Pa. 536, 557 A.2d 1064 (1989)). Significantly, in granting summary judgments to Respondents there, this Court held, and the Pennsylvania Supreme Court later affirmed, that those 5 (five) amendments *were* germane in that they all

served the overarching and unifying purpose of "amending the Penal Code". *Id*.

> "[d]espite the disparity in the types of acts described [by Act 31], we have no problem in concluding that Act 31, as enacted, embraces a single subject – i.e., amendments to the Penal Code." *Id.*

Even assuming, *arguendo*, that this Court were to find that the topics of Act 192 are various and facially different from one another, even though all provisions amend the Crimes Code, this fact alone does not render Act 192 unconstitutional. In fact, the *Leach* Petitioners' citation of *Washington*, for the proposition that a multi-faceted bill having the unifying purpose of amending the Crimes Code, is somehow (automatically) unconstitutional under Section 3, was misdirected. Rather, a fair reading of that holding in *Washington* alongside this Court's holding in *Ritter* shows that: 1) having the multiple sections of a bill simply amend the Crimes Code does *not* automatically satisfy Section 3; *but also*, 2) having multiple sections of a bill simply amend the Crimes Code does *not* automatically render such bill unconstitutional.

Thus, it is apparent that a more sophisticated, case-by-case scrutiny of the bill(s) in question and how any sub-sections of such bill(s) practically relate to the overarching unifying purpose of the legislation is necessary. Doing so with Act 192 readily demonstrates that law's constitutionality.

Consistent with the bills upheld in *PAGE*, *Markovsky, Spahn*, et al., the three "subjects" of Act 192 – theft of secondary metals, standing to sue where municipalities violate certain criminal provision of the Uniform Firearms Act, and mental health records – are *germane* subtopics with a common nexus vis-à-vis the overarching Second Amendment/Article 1, Section 21 and Crimes Code concerns they address – 1) all directly relate to and directly affect individual rights to purchase, carry and bear arms; and 2) all amend the Crimes Code as relating to and/or potentially impactful upon an individual's right to purchase, carry and bear arms.

Although it appears to have been overlooked in the *Leach* matter, Act 192, regarding trespass in relation secondary metal theft, mandated the grading of an offense of that subsection as a misdemeanor of the first degree. Pursuant to 18 Pa.C.S. § 106, a misdemeanor of the first degree can be punished by a maximum of five years. Pursuant to 18 U.S.C. § 922(g)(1), which is defined by 18 U.S.C. § 921(a)(20)(B), a state law crime of a misdemeanor nature that *can be punished* by *more than* two years serves to restrict the firearms rights of the offender. Therefore, any individual who is convicted of secondary metal theft is prohibited from possessing, purchasing and carrying firearms and ammunition.

Similarly, in addition to a violation of 18 Pa.C.S. § 6120 being a misdemeanor of a first degree, pursuant to 18 Pa.C.S. § 6119, which would also prohibit any individual convicted of an offense under Section 6120 from possessing, purchasing and carrying firearms under Section 922(g)(1), Act 192 provided the ability of an individual to challenge an illegal ordinance, restricting his/her right to possess, purchase and carry firearms, in advance of being prosecuted for any such violation. The General Assembly, after seeing Mr. Justin Dillon unlawfully and illegally prosecuted for putatively carrying a firearm in a City of Erie park and the District Attorney not only failing to bring charges against the City officials responsible but also ratifying and condoning the prosecution, determined that it was immediately necessary to provide additional safeguards to protect individuals in similar situations. *Dillon v. City of Erie*, 83 A.3d 467, 474 (Pa. Cmwlth. Ct. 2014).

Lastly, pursuant to 18 U.S.C. § 922(g)(4), any individual who is committed to a mental institution – the records that Act 192 sought to provide to the Federal Bureau of Investigation – is prohibited from possessing, purchasing and carrying firearms and ammunition.

As reflected in the Brief of Respondents Mike Turzai, Speaker of the House of Representatives, and Joseph B. Scarnati, President Pro Tempore of

the Senate, at 34-35, in the *Leach* matter, Representative Bryan Cutler, during the debate, specifically stated:

> HB 80 has a single subject. It deals with crimes and regulations which affect the ability to own firearms, which directly involves the Second Amendment. Within that subject, there are several subtopics including the creation of two new offense which can preclude the purchase or possession of firearms under Federal Law, because under Federal Law, a misdemeanor of the first degree or above can implicate you right to own a firearm. Providing firearms information is also included in this bill as it relates to mental health records. That is also an important distinction relating to the ownership of a firearm. That is something that this administration undertook in 2013 under the leadership of the gentleman from Montgomery County. And I think it is important that we recognize that that also deals with the ownership and the rights of those who can own firearms. And furthermore, it does provide for remedies for unauthorized local regulations of firearms.

Accordingly, the three "subjects" of Act 192 are germane subtopics with a common nexus or single unifying subject relating to the possessing, purchasing and carrying of firearms. Therefore, Amici respectfully invites the Court to reconsider its decision in *Leach* and any decision issued in this matter.

C. The General Assembly Has Preempted the Entire Field of Firearm and Ammunition Regulation

Contrary to the assertions of Appellants, and consistent with the holding of the Pennsylvania Supreme Court in *Ortiz v. Commonwealth*, the General Assembly has preempted the entire field of firearms and

ammunition regulation through both express and field preemption. 545 Pa. 279, 681 A.2d 152, 156 (1996).

1. ***Express Preemption***

In relation to expressed preemption, the Pennsylvania Supreme Court's decision in *Huntley & Huntley, Inc. v. Borough Council of Borough of Oakmont*, 600 Pa. 207, 964 A.2d 855 (2009), is extremely informative. The Court started out by emphasizing that

> Municipalities are creatures of the state and have no inherent powers of their own. Rather, they "possess only such powers of government as are expressly granted to them and as are necessary to carry the same into effect."

Id. at 862 (citing *City of Phila. v. Schweiker,* 579 Pa. 591, 858 A.2d 75, 84 (2004) (quoting *Appeal of Gagliardi,* 401 Pa. 141, 163 A.2d 418, 419 (1960)). The Court then turned to addressing the different types of preemption that exist and declared that express provisions are those "where the state enactment contains language specifically prohibiting local authority over the subject matter." *Id*. at 863.

Starting with the plain language of Article 1, Section 21, it provides, "The right of the citizens to bear arms in defense of themselves and the State shall not be questioned." In addressing and citing to Article 1, Section 21, the Pennsylvania Supreme Court in *Ortiz* declared:

> Because the ownership of firearms is constitutionally protected, its regulation is a matter of statewide concern. The constitution does not provide that the right to bear arms shall not be questioned in any part of the commonwealth except Philadelphia and Pittsburgh, where it may be abridged at will, but that it shall not be questioned in any part of the commonwealth. Thus, regulation of firearms is a matter of concern in all of Pennsylvania, not merely in Philadelphia and Pittsburgh, and the General Assembly, not city councils, is the proper forum for the imposition of such regulation.

681 A.2d at 156. In this regard, when buttressed with Article 1, Section 25,[6] Article 1, Section 21, is exactingly clear that every citizen has an inalienable right to bear arms in defense of themselves. Through Article 1, Section 25, the People have reserved for themselves or otherwise expressly preempted the General Assembly from restricting this inviolate right. In this regard, if the General Assembly cannot even regulate, clearly a local government with "no inherent powers," as set forth by the Court's in *Huntley & Huntley*, cannot so regulate, *even with* the blessing of the General Assembly, as such is a power that even the General Assembly does not retain and therefore cannot grant.

In turning to the plain wording of Section 6120, it too evidences the General Assembly's intent to expressly preempt the field of firearm and ammunition regulation. Under the clear, unambiguous, text of Section 6120,

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[6] Article 1, Section 25 provides, "**Reservation of powers in people**. To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.

it cannot be disputed that the General Assembly has specifically prohibited all local government authority in relation to the ownership, possession, transfer and transportation of firearms and ammunition.

Therefore, as Article 1, Section 21 and Section 6120 expressly preempt any firearm and ammunition regulation, Appellants are prohibited from regulating, *in any manner*, firearms and ammunition.

2. ***Field Preemption***

Even if, *arguendo*, this Court was to find that the expressed preemption of Article 1, Section 21 and Section 6120 was insufficient in some regard in relation to the ordinances challenged in this matter, the UFA, 18 Pa.C.S. §§ 6101 – 6127, clearly provides for field preemption.

In relation to field preemption, the Pennsylvania Supreme Court's decision in *Huntley & Huntley* is again extremely instructive. The Court explained that "[p]reemption of local laws may be implicit, as where the state regulatory scheme so completely occupies the field that it appears the General Assembly did not intend for supplementation by local regulations." 964 A.2d at 864. Even more enlightening is the Court's holding that "[e]ven where the state has granted powers to act in a particular field, moreover, such powers do not exist if the Commonwealth preempts the field." *Id*. at 862 (citing *United Tavern Owners of Phila. v. Philadelphia Sch. Dist.*, 441

Pa. 274, 272 A.2d 868, 870 (1971)). In further explaining the field preemption doctrine, the court declared that "local legislation cannot permit what a state statute or regulation forbids or prohibit what state enactments allow." *Id*. (citing *Liverpool Township v. Stephens*, 900 A.2d 1030, 1037 (Pa. Cmwlth. 2006)).

In relation to Article 1, Section 21 and Section 6120, the Pennsylvania Supreme Court in *Ortiz* clearly held that "[b]ecause the ownership of firearms is constitutionally protected, its regulation is a matter of statewide concern … Thus, regulation of firearms is a matter of concern in all of Pennsylvania, not merely in Philadelphia and Pittsburgh, and the General Assembly, not city councils, is the proper forum for the imposition of such regulation." 681 A.2d at 156 (emphasis added). Thereafter and consistent therewith, this Honorable Court in *Nat'l Rifle Ass'n v. City of Philadelphia*, citing to *Ortiz*, additionally held that the General Assembly has preempted the entire field. 977 A.2d 78, 82 (Pa. Cmwlth. 2009).

In reviewing more generally the UFA, 18 Pa.C.S. §§ 6101 – 6127, it is evident that the regulatory scheme completely occupies the field of firearm and ammunition regulation that it cannot be argued that the General Assembly intended for supplementation by local regulations – Section 6102 (definitions); Section 6103 (crimes committed with firearms); Section 6104

(evidence of intent); Section 6105 (persons not to possess, use, manufacture, control, sell or transfer firearms); Section 6106 (firearms not to be carried without a license); Section 6106.1 (carrying loaded weapons other than firearms); Section 6107 (prohibited conduct during emergency); Section 6108 (carrying firearms on public streets or public property in Philadelphia); Section 6109 (licenses); Section 6110.1 (possession of firearm by minor); Section 6110.2 (possession of firearm with altered manufacturer's number); Section 6111 (sale or transfer of firearms); Section 6111.1 (Pennsylvania State Police); Section 6111.2 (firearm sales surcharges); Section 6111.3 (firearm records check fund); Section 6111.4 (registration of firearms); Section 6111.5 (rules and regulations); Section 6112 (retail dealer require to be licenses); Section 6113 (licensing dealers); Section 6114 (judicial review); Section 6115 (loans on, or lending or giving firearms prohibited); Section 6116 (false evidence of identity); Section 6117 (altering or obliterating marks of identification); Section 6118 (antique firearms); Section 6119 (violation penalty); Section 6120 (limitation on the Regulation of Firearms and Ammunition); Section 6121 (certain bullets prohibited); Section 6122 (proof of license and exception); Section 6123 (waiver of disability or pardons); Section 6124 (administrative regulations); Section

6125 (distribution of uniform firearm laws and firearm safety brochures); and Section 6127 (firearm tracing).

Furthermore, the General Assembly restricted the promulgation of rules and regulations relating to the UFA to the Pennsylvania State Police, pursuant to 18 Pa.C.S. § 6111.5, directed that the Pennsylvania State Police administer the Act, pursuant to 18 Pa.C.S. § 6111.1, and declared that the Pennsylvania State Police was responsible for the uniformity of the license to carry firearms applications in the Commonwealth, pursuant to 18 PA.C.S. § 6109(c). In this regard, these statutory provisions are substantially similar to the Anthracite Strip Mining and Conservation Act, 52 P.S. §§ 681.1–681.22, and its regulatory proscription, 52 P.S. § 681.20c, which the Pennsylvania Supreme Court found to result in field preemption in *Harris-Walsh, Inc. v. Dickson City Borough,* 420 Pa. 259, 216 A.2d 329, 336 (1966).

Although Appellants attempt to argue that since the Pennsylvania Supreme Court in *Nutter v. Dougherty*, 595 Pa. 340, 938 A.2d 401, 414-15 (2007) failed to list the UFA as resulting in field preemption, the Court must not have "considered the field preempted," such ignores the fact that the Court had already found express preemption, *eleven years prior* in *Ortiz*. With express preemption already established, especially based on Article 1,

Section 21, there was no reason for the Court to additionally specify that UFA also constituted field preemption. Moreover, given the breadth of the UFA and holding in *Ortiz*, it is difficult to fathom how the UFA would not constitute the same-type of field preemption as the Pennsylvania Supreme Court found in relation to the Banking Code of 1965, 7 P.S. §§ 101–2204, in *City of Pittsburgh v. Allegheny Valley Bank of Pittsburgh*, 488 Pa. 544, 412 A.2d 1366, 1369-70 (1980). Indeed, as the Supreme Court in Ortiz declared, "[b]ecause the ownership of firearms is constitutionally protected, its regulation is a matter of statewide concern… and the General Assembly, not city councils, is the proper forum for the imposition of such regulation." 681 A.2d at 156.

Therefore, even absent the express preemption of Article 1, Section 21 and Section 6120, the UFA completely occupies the field of firearm and ammunition regulation and therefore preempts the Appellants regulation, *in any manner*, of firearms and ammunition.

3. Third Class City Code Does Not Permit Appellants to Regulate Concealed Carry or Discharge

While Appellants cite to the Third Class City Code for their putative power to regulate concealed carry and ban discharge, they noticeably ignore the Pennsylvania Supreme Court's dictate in *Huntley & Huntley* and fail to

advise this Court of the full text of 53 Pa.C.S. § 37423 and its legislative history.

In 1931, June 23, P.L. 932, No. 317, art. XXIV, § 2423, (codified as Section 37423), was enacted. At that time, the statutory language was:

> **Regulate guns, et cetera.–**To regulate, prohibit, and prevent the discharge of guns, rockets, powder, or any other dangerous instrument or combustible material within the city, and to prevent the carrying of concealed deadly weapons.

Thereafter, in 1974 and as more thoroughly explained in the foregoing sections, the General Assembly enacted Section 6120 prohibiting any local government from regulating, *in any manner*, firearms and ammunition. When the Third Class City Code was up for reenactment in 2014, the General Assembly was concerned, pursuant to 1 Pa.C.S. §§ 1933, 1936 and the recent decision in *Dillon*, 83 A.3d at 470, with the possibility of Section 37423 limiting the statewide applicability and restriction on local government regulation of firearms and ammunition (Section 6120) and the regulation of licenses to carry firearms (Section 6109).

Therefore, in reenacting the Third Class City Code, the General Assembly modified the language found in Section 37423, to include a prefatory clause of "[t]o the extent permitted by Federal and other State law," so to invalidate any arguments under Sections 1933 and 1936 that Section 37423 supersedes or otherwise limits Section 6120. (Emphasis

added). Furthermore, as discussed *supra*, the Pennsylvania Supreme Court held in *Huntley & Huntley* that "[e]ven where the state has granted powers to act in a particular field, moreover, such powers do not exist if the Commonwealth preempts the field." 964 A.2d at 862 (citing *United Tavern Owners of Phila. v. Philadelphia Sch. Dist.*, 441 Pa. 274, 272 A.2d 868, 870 (1971)).

In this matter, there exists both expressed and field preemption enacted by the General Assembly preventing Appellants from regulating the carrying, transportation and discharge of firearms. That preemption, moreover, serves to protect the explicitly preserved constitutional right of the people.

In relation to carrying and transporting firearms, the General Assembly has set forth the criteria for an individual to obtain a license to carry firearms, 18 Pa.C.S. § 6109, and has specified when and where firearms may be carried and transported in the absence of a license to carry firearm, 18 Pa.C.S. § 6106. In fact, in relation to Philadelphia, as it is exactingly clear that only the General Assembly can regulate the carrying and transporting of firearms, the Legislature enacted 18 Pa.C.S. § 6108 prohibiting the "carrying firearms on public streets or public property in Philadelphia," as the city lacked the power to so regulate. If local

governments had been provided the power to regulate the carrying and transporting of firearms, this provision would have been unnecessary, as the city could have simply enacted its own regulation.

Similarly, understanding that local governments are foreclosed from regulating firearms and ammunition, the General Assembly regulated the carrying of firearms during emergencies, 18 Pa.C.S. § 6107, the possession and transport of firearms by minors, 18 Pa.C.S. § 6110.1, and even the carrying of loaded weapons other than firearms, 18 Pa.C.S. § 6106.1.

More importantly, the U.S. Supreme Court in *District of Columbia v. Heller,* 554 U.S. 570, 584-85 (2008) specifically held that the definition of "bear arms" was to "wear, bear, or carry … upon the person or in the clothing or in a pocket, for the purpose of . . . being armed and ready for offensive or defensive action in a case of conflict with another person." *(*quoting *Muscarello v. United States*, 524 U.S. 125, 143 (1998)(emphasis added)). Accordingly, the Second Amendment protects the carrying of a firearm in one's pocket for purpose of self-defense, a constitutional right that the Appellants seek to restrict, pursuant to their ordinances – §§ 3-355.2, 3-345.1, 3-345.2, and 10-301.13. While the U.S. Supreme Court's holding was in relation to the Second Amendment, this Court previously observed in relation to Article 1, Section 21, that

> Though the United States Supreme Court has only recently recognized "that individual self-defense is 'the central component' of the Second Amendment right," McDonald, —— U.S. at ——, 130 S.Ct. at 3036 (emphasis omitted) (quoting Heller, 554 U.S. at 599, 128 S.Ct. 2783), *the right to bear arms in defense of self has never seriously been questioned in this Commonwealth*.

Caba v. Weaknecht, 64 A.3d 39, 58 (Pa. Cmwlth. Ct.), reconsideration denied (Mar. 27, 2013), appeal denied, 621 Pa. 697, 77 A.3d 1261 (2013)(emphasis added). Therefore, this Court has already found that an individual has a similar, if not identical, right to self-defense in Article 1, Section 21, which would again prohibit Appellants from regulating, in any manner, the carrying and discharge of firearms for self-defense and hunting.

Of utmost importance, even if the Appellants' had the power to regulate the carrying and discharge of firearms, their provisions are absolute and fail to provide for any exception, including for self-defense or hunting; thereby, violating the holdings in *Heller* and *Caba*. While the decision of the Dauphin County Court of Common Pleas acknowledges the absence of such exceptions, it seems that the court was unaware of the U.S. Supreme Court's holding in *Heller*, where the Court, in response to the District's argument that there was an inherent exception, found that such an argument was "precluded by the unequivocal text" of the ordinance. *Heller*, 554 U.S. at 630. Moreover, as the text of ordinances §§ 3-345.1, 3-345.2, 10-301.13 evidences, where the Appellants desired to provide an exception, they knew

how to draft such. Therefore, Appellants are precluded from arguing that there exists an inherent exception.

Accordingly, as the Second Amendment, Article 1, Section 21 and the statutes clearly provide for express and field preemption, even ignoring Section 6120, and Section 37423 was explicit in only permitting regulation to the extent permitted by the laws of the U.S. Government and the Commonwealth, the Appellants are precluded from regulating the carrying, transporting and discharge of firearms.

4. ***The Appellants' Enjoined Ordinances Violate the Second Amendment, Article 1, Section 21 and the Uniform Firearms Act***

While this Court previously ruled in *Clarke v. House of Representatives*, 957 A.2d 361, 364 (Pa. Cmwlth. 2008) (*en banc*), and *Nat'l Rifle Ass'n v. City of Philadelphia*, 977 A.2d at 82 (*en banc*) that even regulation *consistent* with the Uniform Firearms Act was preempted, Appellants attempt to argue that their regulation is merely consistent regulation, based on *Minich v. Cnty. of Jefferson*, 869 A.2d 1141 (Pa. Cmwlth. Ct. 2005), while ignoring the maxim *expressio unius est exclusio alterius* and the Pennsylvania Supreme Court's holding in *Huntley & Huntley* that "local legislation cannot permit what a state statute or regulation forbids or prohibit what state enactments allow." 600 Pa at 220

(citing *Liverpool Township v. Stephens*, 900 A.2d 1030, 1037 (Pa. Cmwlth. 2006)).

As set forth *supra*, all of the challenged ordinances violate the Second Amendment and Article 1, Section 21, as they infringe upon the inviolate right to carry and use a firearm for purposes of self-defense. Even the lost and stolen ordinance is violative, as it has a chilling effect upon the lawful ownership of firearms.[7] In no other context does any level of government seek to re-victimize a victim of crime by prosecuting him/her for failing to report his/her victimization.

Even if the ordinances would survive the constitutional challenge and this Court were to ignore its prior precedent in *Clarke* and *Nat'l Rifle Ass'n* that municipalities many not regulate even the *unlawful* ownership, possession, carrying and transporting of firearms and ammunition, the Appellants seek to regulate the *lawful* ownership, possession, carrying and transporting of firearms and ammunition, which is specifically proscribed by

[7] Appellants' lost and stolen ordinance additionally violates Section 6120, as it regulates otherwise lawful conduct and this Court, *en banc*, previously held in *Clarke* that the City of Philadelphia's lost and stolen ordinance was violative of Section 6120. 957 A.2d at 364.

Section 6120 and this Court's prior holdings in *Minich*[8] and *Schneck v. City of Philadelphia,* 383 A.2d 227 (Pa. Cmwlth. 1978).[9]

i. Minors

Ordinance § 3-345.1 provides,

> It shall be unlawful for any minor under the age of 18 years to have in his or her possession, except in his or her place of residence, any firearm, flobert rifle, air gun, spring gun or any implement which impels with force a metal pellet of any kind, unless said minor is accompanied by an adult.

Yet, when one reviews 18 Pa.C.S. § 6110.1, the General Assembly has only regulated as unlawful the following:

> **(a) Firearm.--**Except as provided in subsection (b), a person under 18 years of age shall not possess or transport a firearm anywhere in this Commonwealth.

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[8] In *Minich*, this Court held that "the County may not enact an ordinance which regulates firearm possession ***if*** the ordinance would make the otherwise lawful possession of a firearm unlawful." 869 A.2d at 1143 (emphasis in original).

[9] In *Schneck*, this Court held that "it is a well-established principle of law that where a state statute preempts local governments from imposing regulations on a subject, any ordinances to the contrary are unenforceable." 383 A.2d at 229 (citing *United Tavern Owners of Philadelphia v. Philadelphia School District*, 441 Pa. 274, 272 A.2d 868 (1971); *Harris-Walsh, Inc. v. Dickson City Borough*, 420 Pa. 259, 216 A.2d 329 (1966); *Department of Licenses and Inspections v. Weber*, 394 Pa. 466, 147 A.2d 326 (1959); *Girard Trust Co. v. Philadelphia*, 336 Pa. 433, 9 A.2d 883 (1939); *City of Erie v. Northwestern Pennsylvania Food Council*, 322 A.2d 407 (Pa. Cmwlth. 1974).

> **(b) Exception.--**Subsection (a) shall not apply to a person under 18 years of age:
>
> (1) who is under the supervision of a parent, grandparent, legal guardian or an adult acting with the expressed consent of the minor's custodial parent or legal guardian and the minor is engaged in lawful activity, including safety training, lawful target shooting, engaging in an organized competition involving the use of a firearm or the firearm is unloaded and the minor is transporting it for a lawful purpose; or
>
> (2) who is lawfully hunting or trapping in accordance with 34 Pa.C.S. (relating to game).
>
> **(c) Responsibility of adult.--**Any person who knowingly and intentionally delivers or provides to the minor a firearm in violation of subsection (a) commits a felony of the third degree.
>
> **(d) Forfeiture.--**Any firearm in the possession of a person under 18 years of age in violation of this section shall be promptly seized by the arresting law enforcement officer and upon conviction or adjudication of delinquency shall be forfeited or, if stolen, returned to the lawful owner.

While, at first blush, it may seem like Section 6110.1 is more restrictive than Ordinance § 3-345.1, it is imperative to review the definition of a "firearm" as specified in 18 Pa.C.S. § 6102. The definition for a "firearm" is

> Any pistol or revolver with a barrel length less than 15 inches, any shotgun with a barrel length less than 18 inches or any rifle with a barrel length less than 16 inches, or any pistol, revolver, rifle or shotgun with an overall length of less than 26 inches. The barrel length of a firearm shall be determined by measuring from the muzzle of the barrel to the face of the closed action, bolt or cylinder, whichever is applicable.

Accordingly, it immediately becomes apparent that possession of rifles and shotguns, unless they constitute a short-barreled rifle/shotgun under the National Firearms Act, 26 U.S.C. § 5801, *et seq.*, by minors *are not restricted*, in any manner, by Section 6110.1. Rather, unlike Ordinance § 3-345.1, which applies to all types of firearms including rifles and shotguns, Section 6110.1 only makes *unlawful* the possession, generally, of handguns by minors, unless one of the exemptions applies. Therefore, Appellants *are* regulating the *lawful* possession of rifles and shotguns by minors. Furthermore, unlike the Section 6110.1(b)(2)'s exemption, Ordinance § 3-345.1 regulates a minor's use of a handgun in relation to Title 34, which, again, is the regulation of a minor's *lawful* right to possess and transport handguns, rifles and shotgun in compliance with Title 34.

ii. Parks [10]

Ordinance § 10-301.13 – Hunting, firearms and fishing – provides,

> A. No person shall hunt, trap or pursue wildlife in any park at any time, except in connection with bona fide recreational activities and with the approval of the Director by general or special order or rules or regulations.
>
> B. No person shall use, carry or possess firearms of any description, or air rifles, spring guns, bow and arrows, slings or any other form of weapons potentially inimical to wildlife and dangerous to

[10] While Appellants label their section "Parks and Playgrounds," there is nothing in § 10-301.13 that addresses playgrounds.

human safety, or any instrument that can be loaded with and fire blank cartridges, or any kind of trapping device in any park.

C. No person shall shoot or propel any object from any of the foregoing into park areas from beyond park boundaries or while in a park.

D. No person shall fish in Italian Lake.

As discussed *supra*, while there do exist some statutory restrictions on carrying and discharging firearms in relation to hunting, there does not exist any statutory prohibition on the use, carry or possession of a firearm in a park. More importantly, this Court addressed this exact issue in *Dillon*, where the City of Erie had a parks ordinance, Section 955.06(b), which provided,

> No person shall use, carry or possess firearms of any descriptions, or air-rifles, spring guns, bow and arrows, slings, paint ball weapons or any other forms of weapons potentially inimical to wild life and dangerous to human safety, or any instrument that can be loaded with and fire blank cartridges, or any kind of trapping device. Shooting into park areas from beyond park boundaries is forbidden. 83 A.3d at 470.

In striking down the ordinance, this Court declared, "Section 6120(a) of the Act does preempt Section 955.06(b) by its own terms and by the case law and precludes the City from regulating the lawful possession of firearms" *Id*. at 473.

It must be noted that the language in Appellants' ordinance is almost verbatim the ordinance in *Dillon* and the operative text – the first eleven

words – is verbatim. Accordingly, this Court has already ruled that the text of this ordinance violates Section 6120.

While Appellants attempt to argue that they are entitled to regulate in parks, including open carrying, they (1) rely on statutory provisions that provide no such power, (2) cite to an irrelevant and unlawful DCNR regulation, and (3) ignore the Pennsylvania Supreme Court's dictate that open carrying is lawful in the Commonwealth.

First, Appellants relying on *dicta* from footnote nine of *Dillon*, argue that third class cities have a proprietary authority to manage their property, including prohibiting the open carrying of firearms. As Appellants concede, this Court did not address that issue in *Dillon*.

Regardless, Appellants rely on 53 P.S. § 37402.1(a) and 53 Pa.C.S. § 37435 for their proposition that they can regulate the open carrying of firearms – neither of which provide any specific power to so regulate and both of which specifically state that such power is limited. In fact, Section 37435 is explicitly clear that any regulation cannot be "inconsistent with or restrained by the Constitution of Pennsylvania and laws of this Commonwealth." Moreover, as discussed at length *supra*, as the Pennsylvania Supreme Court declared in *Huntley & Huntley*, "[e]ven where the state has granted powers to act in a particular field, moreover, such

powers do not exist if the Commonwealth preempts the field." 600 Pa. at 220 (citing *United Tavern Owners of Phila. v. Philadelphia Sch. Dist.*, 441 Pa. 274, 279, 272 A.2d 868, 870 (1971)). Therefore, even if Appellants were correct in their assertion, they would still be precluded by Article 1, Section 21 and Section 6120, as the General Assembly has preempted the field.

Furthermore, under the Statutory Construction Act, Appellants also miss the mark in their argument, as the particular controls the general, pursuant to 1 Pa.C.S. § 1933, and when the language in a statute is clear and free from all ambiguity, it must be given its explicit meaning, pursuant to 1 Pa.C.S. § 1921. In relation to Article 1, Section 21 and Section 6120, it cannot be disputed that they are the particular, which control the general. Moreover, even as acknowledged by the Court in *Ortiz*, Article 1, Section 21 and Section 6120 are exactingly clear and free from ambiguity. Additionally, the Pennsylvania Supreme Court has declared that "[a]ny fair, reasonable doubt as to the existence of power [in a municipality] is resolved by the courts against its existence." *Denbow v. Borough of Leetsdale*, 556 Pa. 567, 721 A.2d 1113, 1118 (1999).

Second, Appellants erroneously rely on 17 Pa.Code. § 11.215, an irrelevant and unlawful DCNR regulation, for support of their position that they are entitled to regulate open carry. While they acknowledge that 18

Pa.C.S. § 6109(m.2) prohibits DCNR from regulating concealed carry of a firearm, which was enacted by 2008, Oct. 17, P.L. 1628, No. 131, § 4, they ignore 18 Pa.C.S. § 6109(m.3), more recently enacted by 2011, June 28, P.L. 48, No. 10, § 6, which specifically provides that

> Nothing in this section shall be construed to:
> …
> (2) Authorize any Commonwealth agency to regulate the possession of firearms in any manner inconsistent with the provisions of this title.

While this Court mentioned in *dicta* in footnote nine of *Dillon* that 17 Pa.Code. § 11.215 may provide some basis in the law to support such regulation, if the City of Erie had raised this issue, the undersigned, who was counsel for the Appellant Justin Dillon, would have raised the unlawfulness of 17 Pa.Code. § 11.215 with the Court. As the City of Erie did not raise such issue, Appellant Justin Dillon had no opportunity to respond to DCNR's unlawful regulation, as he was not aware that such regulation was even being reviewed or considered by this Court. Of course, this problem with not subjecting a theory to adversarial briefing illustrates why *dicta* is entitled to little, if any, weight. Furthermore, even if DCNR, a Commonwealth agency, had the power to so regulate, it would be irrelevant and immaterial to whether a municipal government had the power to so regulate.

Third, Appellants also seemingly ignore, assuming *arguendo* that they have the power to regulate *unlawful* conduct,[11] the Pennsylvania Supreme Court's holdings in *Com. v. Hawkins*, 547 Pa. 652, 692 A.2d 1068, 1071 (1997) and *Ortiz,* 681 A.2d at 155, that it is *lawful* to open carry in the Commonwealth, with the exception of Philadelphia, absent a license to carry firearms.

If this Court were to agree with Appellants that they are entitled to regulate open carry or any other regulation in relation to firearms and ammunition, such regulation would eviscerate the purpose of Article 1, Section 21 and Section 6120, as local governments could enact a patchwork of laws across the Commonwealth that would ensnare law-abiding citizens, who have no intent to violate the law. It was to prevent any such patchwork that the Commonwealth originally enacted a *uniform* firearms act and why the General Assembly enacted Section 6120 in 1974.

Nevertheless, as Appellants are attempting to open Pandora's box by arguing that they have such right, if this Court is to seriously consider their argument, it must consider that any property in the possession of Appellants is held for *public*, not private, purposes, under the Public Trust doctrine; and therefore, they are precluded from regulating it as a private property owner.

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[11] This Court's holdings in *Clarke* and *Nat'l Rifle Association v. City of Philadelphia* reject that premise.

In *Board of Trustees of Philadelphia Museums v. Trustees of Univ. of Pennsylvania*, 251 Pa. 115, 96 A. 123, 125 (1915), the Pennsylvania Supreme Court held that

> A nation, state, or municipality which dedicates land that it owns in the site of a town to public use for the purpose of a park is as conclusively estopped as a private proprietor from revoking that dedication, from selling the park, and from appropriating the land which it occupies to other purposes, after lots have been sold, after the town has been settled, and after the park has been improved with moneys raised by the taxation of its residents and taxpayers in reliance upon the grant and covenant which the dedication evidences. (emphasis added).

The Pennsylvania Supreme Court has also held that *only* if a municipal park is held for public purposes, is it immune from taxation. *City of New Castle v. Lawrence Cnty.*, 353 Pa. 175, 44 A.2d 589, 594 (1945)(holding that "[a] taxing authority must declare exempt any property within its taxing district *if it is public property used for public purposes* because the legislature has exempted such property, not because the city has selected the site for a public park.) As it is believed, and there is no evidence of record to the contrary of which *Amici* are aware, that the City of Harrisburg does not pay taxes in relation to its parks, it is estopped from arguing that the property is held privately, instead of publicly and used for public purposes.

It is therefore clear, Appellants do not have the power to regulate, in any manner, the possession, carrying, or transporting of firearms or ammunition.

iii. Emergencies

Ordinance § 3-355.2 – Emergency measures – provides,

> A. Whenever the Mayor declares that a state of emergency exists, the following emergency prohibitions shall thereupon be in effect during the period of said emergency and throughout the City:
>
> (1) *The sale or transfer of possession, with or without consideration, the offering to sell or so transfer and the purchase of any ammunition, guns or other firearms of any size or description*.
>
> (2) *The displaying by or in any store or shop of any ammunition, guns or other firearms of any size or description*.
>
> (3) *The possession in a public place of a rifle or shotgun by a person, except a duly authorized law enforcement officer or person in military service acting in an official performance of his or her duty*.
>
> B. The Mayor may order and promulgate all or any of the following emergency measures, in whole or in part, with such limitations and conditions as he or she may determine appropriate; any such emergency measures so ordered and promulgated shall thereupon be in effect during the period of said emergency and in the area or areas for which the emergency has been declared:
>
> (1) The establishment of curfews, including but not limited to the prohibition of or restrictions on pedestrian and vehicular movement, standing and parked, except for the provision of designated essential services such as fire, police and hospital

services, including the transportation of patients thereto, utility emergency repairs and emergency calls by physicians.

(2) The prohibition of the sale of any alcoholic beverage as defined in the Liquor Code.

(3) The prohibition of the possession on the person in a public place of any portable container containing any alcoholic beverage.

(4) The closing of places of public assemblage with designated exceptions.

(5) The prohibition of the sale or transfer of possession, with or without consideration, of gasoline or any other flammable or combustible liquid, except by delivery into a tank properly affixed to an operative motor-driven vehicle, bike, scooter, or boat and necessary for the propulsion thereof.

(6) The prohibition of the possession in a public place of any portable container containing gasoline or any other flammable or combustible liquid.

(7) The prohibition or limitation of the number of persons who may gather or congregate upon the public highways or public sidewalks or in any other public place, except only persons who are awaiting transportation, engaging in recreational activities at a usual and customary place or peaceably entering or leaving buildings.

(8) *The prohibition of the possession in a public place or park of weapons, including but not limited to firearms, bows and arrows, air rifles, slingshots, knives, razors, blackjacks, billy clubs, or missiles of any kind*. (Emphasis added throughout)

Yet, in reviewing 18 Pa.C.S. § 6107, the General Assembly has only regulated as unlawful the following:

(a) General rule.--No person shall carry a firearm upon the public streets or upon any public property during an emergency proclaimed by a State or municipal governmental executive unless that person is:

(1) Actively engaged in a defense of that person's life or property from peril or threat.

(2) Licensed to carry firearms under section 6109 (relating to licenses) or is exempt from licensing under section 6106(b) (relating to firearms not to be carried without a license).

(b) Seizure, taking and confiscation.--Except as otherwise provided under subsection (a) and notwithstanding the provisions of 35 Pa.C.S. Ch. 73 (relating to Commonwealth services) or any other provision of law to the contrary, no firearm, accessory or ammunition may be seized, taken or confiscated during an emergency unless the seizure, taking or confiscation would be authorized absent the emergency.

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

"Accessory." Any scope, sight, bipod, sling, light, magazine, clip or other related item that is attached to or necessary for the operation of a firearm.

"Firearm." The term includes any weapon that is designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any weapon.

As this Court previously held in *Clarke*, 957 A.2d at 364 (*en banc*), and *Nat'l Rifle Ass'n v. City of Philadelphia*, 977 A.2d at 82 (*en banc*), even regulation consistent with the Uniform Firearms Act is preempted under Section 6120. Even if, *arguendo*, this Court were to reconsider its holdings in *Clarke* and *Nat'l Rifle Ass'n* in relation to whether Section 6120 permits a

municipality to regulate consistent with the Uniform Firearms Act, Ordinance 3-355.2 would still be violative, as it regulates *lawful* activity.

In comparing Section 6107 to Ordinance 3-355.2, it is explicitly clear that in violation of the holding in *Heller* and this Court's declaration in *Caba*, unlike Section 6107, Ordinance 3-355.2 fails to provide any self-defense exception; yet, in Ordinance 3-355.2(A)(3), it reflects that Appellants were acutely aware of how to include and draft exceptions to the ordinance.

Further, unlike Section 6107, Ordinance 3-355.2 provides no exception for an individual who possess a valid license to carry firearms, pursuant to Section 6109, or is exempt, pursuant to Section 6106. Additionally, and again unlike Section 6107, Ordinance 3-355.2 restricts the sale, transfer and displaying of firearms and ammunition, which is perfectly lawful under Section 6107. The clear and unambiguous text of Section 6120 was to preempt this exact form of regulation.

Contrary to the assertion of Appellants that the Mayor has discretion in implementing these firearm and ammunition restrictions, Ordinance 3-355.2(A), unlike section 3-355.2(B), is explicitly clear that the Mayor lacks any discretion and that such regulations are effective immediately upon the declaration of a state of emergency by the Mayor. While the Mayor would

have discretion in relation to Ordinance 3-355.2(B)(8), such does not change the fact that Ordinance 3-355.2(B)(8) also violates Article 1, Section 21 and Section 6120, as at a minimum, it is the regulation of lawful activity, as discussed *supra*. Also, while Appellants stop short of stating that a state of emergency has never been declared by an acting Mayor of the City of Harrisburg, they also do not advise the Court that on September 7, 2011, as a result of massive flooding, Harrisburg Mayor Linda Thompson declared a state of emergency, which triggered the prohibitions of Ordinance 3-355.2(A).[12]

As all of Appellants ordinances violate the Second Amendment, Article 1, Section 21 and Section 6120, the ordinances must be enjoined. Even if, *arguendo*, this Court were to agree with Appellants that they may regulate consistent with the Uniform Firearms Act, as explained *supra*, all of the ordinances go far beyond the unlawful conduct specified in the Uniform Firearms Act and seek to regulate lawful activity.

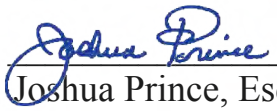
IV. CONCLUSION

For all the foregoing reasons, *Amici* respectfully submit that Act 192 does *not* violate the Pennsylvania Constitution and that the Court should

[12] *See*, http://www.pennlive.com/midstate/index.ssf/2011/09/harrisburg_mayor_declares_stat.html

uphold the February 25, 2015 Order of the Dauphin County Court of Common Pleas, docket no. 2015-cv-255.

Respectfully Submitted,



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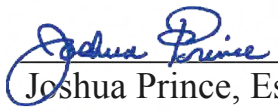
WORD COUNT CERTIFICATION

I certify that based on the word count of Microsoft Word that this brief does not exceed 14,000 words, pursuant to PA.R.A.P. 2135.



Joshua Prince, Esq.

APPENDICES

SENATE AMENDED

PRIOR PRINTER'S NOS. 68, 2066, 3831, 4248 PRINTER'S NO. 4318

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 80 Session of 2013

INTRODUCED BY METCALFE, CLYMER, D. COSTA, COX, GILLEN, GROVE, C. HARRIS, HESS, KAUFFMAN, KORTZ, LONGIETTI, MILLARD, O'NEILL, PASHINSKI, PETRI, READSHAW, ROCK, SAYLOR, SWANGER, TOEPEL, WATSON, FREEMAN, R. MILLER, MULLERY, GABLER, FARRY, EVANKOVICH, TOOHIL, MARSHALL AND CALTAGIRONE, JANUARY 10, 2013

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, OCTOBER 15, 2014

AN ACT

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, IN BURGLARY AND OTHER CRIMINAL INTRUSION, FURTHER PROVIDING FOR THE OFFENSE OF CRIMINAL TRESPASS; defining the offense of theft of secondary metal; ~~and~~ prescribing penalties; AND, IN FIREARMS AND OTHER DANGEROUS ARTICLES, FURTHER PROVIDING FOR PENNSYLVANIA STATE POLICE AND FOR LIMITATION ON THE REGULATION OF FIREARMS AND AMMUNITION. <--

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

~~Section 1. Title 18 of the Pennsylvania Consolidated Statutes is amended by adding a section to read:~~ <--

~~SECTION 1. SECTION 3503(B.1) OF TITLE 18 OF THE PENNSYLVANIA CONSOLIDATED STATUTES IS AMENDED TO READ:~~ <--

SECTION 1. SECTION 3503(B.1) AND (D) OF TITLE 18 OF THE PENNSYLVANIA CONSOLIDATED STATUTES ARE AMENDED TO READ: <--

§ 3503. CRIMINAL TRESPASS.

* * *

(B.1) SIMPLE TRESPASSER.--

(1) A PERSON COMMITS AN OFFENSE IF, KNOWING THAT HE IS NOT LICENSED OR PRIVILEGED TO DO SO, HE ENTERS OR REMAINS IN ANY PLACE FOR THE PURPOSE OF:

(I) THREATENING OR TERRORIZING THE OWNER OR OCCUPANT OF THE PREMISES;

(II) STARTING OR CAUSING TO BE STARTED ANY FIRE UPON THE PREMISES; [OR]

(III) DEFACING OR DAMAGING THE PREMISES[.]; OR

(IV) UNLAWFULLY TAKING SECONDARY METAL FROM THE PREMISES.

(2) AN OFFENSE UNDER [THIS SUBSECTION] PARAGRAPH (1)(IV) CONSTITUTES A FIRST DEGREE MISDEMEANOR. AN OFFENSE UNDER PARAGRAPH (1)(I), (II) OR (III) CONSTITUTES A SUMMARY OFFENSE.

* * *

(D) [DEFINITION.--AS USED IN THIS SECTION, THE TERM "SCHOOL GROUNDS" MEANS ANY] DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SUBSECTION: <--

"SCHOOL GROUNDS." ANY BUILDING OF OR GROUNDS OF ANY ELEMENTARY OR SECONDARY PUBLICLY FUNDED EDUCATIONAL INSTITUTION, ANY ELEMENTARY OR SECONDARY PRIVATE SCHOOL LICENSED BY THE DEPARTMENT OF EDUCATION, ANY ELEMENTARY OR SECONDARY PAROCHIAL SCHOOL, ANY CERTIFIED DAY-CARE CENTER OR ANY LICENSED PRESCHOOL PROGRAM.

"SECONDARY METAL." AS DEFINED IN SECTION 3935 (RELATING TO THEFT OF SECONDARY METAL).

SECTION 2. TITLE 18 IS AMENDED BY ADDING A SECTION TO READ:

§ 3935. Theft of secondary metal.

(a) Offense defined.--A person commits the offense of theft of secondary metal if the person unlawfully takes or attempts to take possession of, carries away or exercises unlawful control over any secondary metal with intent to deprive the rightful owner thereof.

(b) Grading.--Except as set forth in subsection (c):

(1) An offense under this section constitutes a misdemeanor of the third degree when the value of the secondary metal unlawfully obtained is less than $50.

(2) When the value of the secondary metal unlawfully obtained is $50 or more but less than $200 the offense constitutes a misdemeanor of the second degree.

(3) When the value of the secondary metal unlawfully obtained is $200 or more but less than $1,000 the offense constitutes a misdemeanor of the first degree.

(4) When the value of the secondary metal unlawfully obtained is $1,000 or more, the offense constitutes a felony of the third degree.

(c) Third or subsequent offenses.--An offense under this section constitutes a felony of the third degree when the offense is a third or subsequent offense, regardless of the value of the secondary metal. For purposes of this subsection, a first and second offense includes a conviction, acceptance of Accelerated Rehabilitative Disposition or other form of preliminary disposition before the sentencing on the present violation for an offense under this section or an offense under section 3921 (relating to theft by unlawful taking or disposition).

(d) Definition.--As used in this section, the term "secondary metal" means wire, pipe or cable commonly used by

communications, gas and electrical utilities and railroads and mass transit or commuter rail agencies, copper, aluminum or other metal, or a combination of metals, that is valuable for recycling or reuse as raw material.

SECTION 3. SECTION 6111.1(F)(3) AND (G)(1) AND (3) OF TITLE 18 ARE AMENDED TO READ: <--

§ 6111.1. PENNSYLVANIA STATE POLICE.

* * *

(F) NOTIFICATION OF MENTAL HEALTH ADJUDICATION, TREATMENT, COMMITMENT, DRUG USE OR ADDICTION.--

* * *

(3) NOTWITHSTANDING ANY LAW TO THE CONTRARY, THE PENNSYLVANIA STATE POLICE [MAY] SHALL, WITHIN 72 HOURS OF RECEIPT, DISCLOSE, ELECTRONICALLY OR OTHERWISE, TO THE UNITED STATES ATTORNEY GENERAL OR A DESIGNEE, ANY RECORD RELEVANT TO A DETERMINATION OF WHETHER A PERSON IS DISQUALIFIED FROM POSSESSING OR RECEIVING A FIREARM UNDER 18 U.S.C. § 922 (G) (3) OR (4) OR AN APPLICABLE STATE STATUTE[.], AND ANY RECORD RELEVANT TO A DETERMINATION OF WHETHER A PERSON IS NOT DISQUALIFIED OR IS NO LONGER DISQUALIFIED FROM POSSESSING OR RECEIVING A FIREARM UNDER 18 U.S.C. § 922(G)(3) OR (4) OR AN APPLICABLE STATE STATUTE.

(G) REVIEW BY COURT.--

(1) UPON RECEIPT OF A COPY OF THE ORDER OF A COURT OF COMPETENT JURISDICTION WHICH VACATES A FINAL ORDER OR AN INVOLUNTARY CERTIFICATION ISSUED BY A MENTAL HEALTH REVIEW OFFICER, THE PENNSYLVANIA STATE POLICE SHALL, AFTER DISCLOSING RELEVANT RECORDS UNDER SUBSECTION (F)(3), EXPUNGE ALL RECORDS OF THE INVOLUNTARY TREATMENT RECEIVED UNDER SUBSECTION (F).

* * *

(3) THE PENNSYLVANIA STATE POLICE, AFTER DISCLOSING RELEVANT RECORDS UNDER SUBSECTION (F)(3), SHALL EXPUNGE ALL RECORDS OF AN INVOLUNTARY COMMITMENT OF AN INDIVIDUAL WHO IS DISCHARGED FROM A MENTAL HEALTH FACILITY BASED UPON THE INITIAL REVIEW BY THE PHYSICIAN OCCURRING WITHIN TWO HOURS OF ARRIVAL UNDER SECTION 302(B) OF THE MENTAL HEALTH PROCEDURES ACT AND THE PHYSICIAN'S DETERMINATION THAT NO SEVERE MENTAL DISABILITY EXISTED PURSUANT TO SECTION 302(B) OF THE MENTAL HEALTH PROCEDURES ACT. THE PHYSICIAN SHALL PROVIDE SIGNED CONFIRMATION OF THE DETERMINATION OF THE LACK OF SEVERE MENTAL DISABILITY FOLLOWING THE INITIAL EXAMINATION UNDER SECTION 302(B) OF THE MENTAL HEALTH PROCEDURES ACT TO THE PENNSYLVANIA STATE POLICE.

* * *

SECTION 4. SECTION 6120(B) OF TITLE 18 IS AMENDED AND THE SECTION IS AMENDED BY ADDING SUBSECTIONS TO READ:

§ 6120. LIMITATION ON THE REGULATION OF FIREARMS AND AMMUNITION.

* * *

(A.2) RELIEF.--A PERSON ADVERSELY AFFECTED BY AN ORDINANCE, A RESOLUTION, REGULATION, RULE, PRACTICE OR ANY OTHER ACTION PROMULGATED OR ENFORCED BY A COUNTY, MUNICIPALITY OR TOWNSHIP PROHIBITED UNDER SUBSECTION (A) OR 53 PA.C.S. § 2962(G) (RELATING TO LIMITATION ON MUNICIPAL POWERS) MAY SEEK DECLARATORY OR INJUNCTIVE RELIEF AND ACTUAL DAMAGES IN AN APPROPRIATE COURT.

(A.3) REASONABLE EXPENSES.--A COURT SHALL AWARD REASONABLE EXPENSES TO A PERSON ADVERSELY AFFECTED IN AN ACTION UNDER SUBSECTION (A.2) FOR ANY OF THE FOLLOWING:

(1) A FINAL DETERMINATION BY THE COURT IS GRANTED IN FAVOR OF THE PERSON ADVERSELY AFFECTED.

(2) THE REGULATION IN QUESTION IS RESCINDED, REPEALED OR OTHERWISE ABROGATED AFTER SUIT HAS BEEN FILED UNDER SUBSECTION (A.2) BUT BEFORE THE FINAL DETERMINATION BY THE COURT.

(B) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SUBSECTION:

"DEALER." THE TERM SHALL INCLUDE ANY PERSON ENGAGED IN THE BUSINESS OF SELLING AT WHOLESALE OR RETAIL A FIREARM OR AMMUNITION.

"FIREARMS." THIS TERM SHALL HAVE THE MEANING GIVEN TO IT IN SECTION 5515 (RELATING TO PROHIBITING OF PARAMILITARY TRAINING) BUT SHALL NOT INCLUDE AIR RIFLES AS THAT TERM IS DEFINED IN SECTION 6304 (RELATING TO SALE AND USE OF AIR RIFLES).

"PERSON ADVERSELY AFFECTED." ANY OF THE FOLLOWING:

(1) A RESIDENT OF THIS COMMONWEALTH WHO MAY LEGALLY POSSESS A FIREARM UNDER FEDERAL AND STATE LAW.

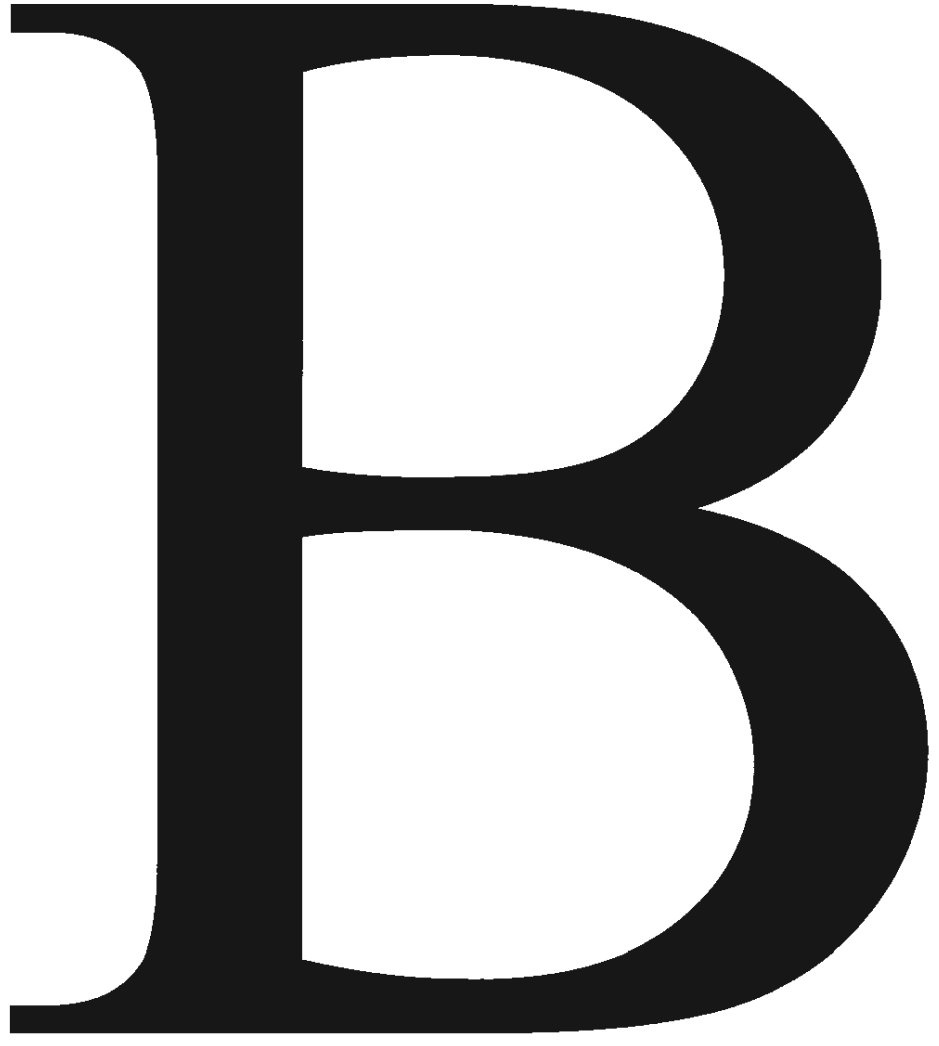
(2) A PERSON WHO OTHERWISE HAS STANDING UNDER THE LAWS OF THIS COMMONWEALTH TO BRING AN ACTION UNDER SUBSECTION (A.2).

(3) A MEMBERSHIP ORGANIZATION, IN WHICH A MEMBER IS A PERSON DESCRIBED UNDER PARAGRAPH (1) OR (2).

"POLITICAL SUBDIVISION." THE TERM SHALL INCLUDE ANY HOME RULE CHARTER MUNICIPALITY, COUNTY, CITY, BOROUGH, INCORPORATED TOWN, TOWNSHIP OR SCHOOL DISTRICT.

"REASONABLE EXPENSES." THE TERM INCLUDES, BUT IS NOT LIMITED TO, ATTORNEY FEES, EXPERT WITNESS FEES, COURT COSTS AND COMPENSATION FOR LOSS OF INCOME.

Section ~~2~~ ~~3~~ 5. This act shall take effect in 60 days. <--



Supreme Court of Pennsylvania

Appeal Docket Sheet

Docket Number: 61 MAP 2015

August 4, 2015

CAPTION

Daylin Leach, Minority Chairman of the Senate Judiciary Committee and Senator Representing the 17th Senatorial District, Vincent J. Hughes, Senator Representing the 7th Senatorial District, Lawrence M. Farnese, Senator Representing the 1st Senatorial District, Cherelle L. Parker, Representative for the 200th House District, Edward C. Gainey, Representative for the 24th House District, the City of Philadelphia, the City of Pittsburgh, and the City of Lancaster

v.

Commonwealth of Pennsylvania, Mike Turzai, Speaker of the House of Representatives, Joseph B. Scarnati, President Pro Tempore of the Senate, Michael J. Stack, III, Lieutenant Governor of the Commonwealth of Pennsylvania, and Tom Wolf, Governor of the Commonwealth of Pennsylvania

Appeal of: Mike Turzai, Speaker of the House of Representatives and Joseph B. Scarnati, President Pro Tempore of the Senate

CASE INFORMATION

Initiating Document:	Notice of Appeal		
Case Status:	Active		
Journal Number:			
Case Category:	Administrative Agency	Case Type(s):	Other

CONSOLIDATED CASES

RELATED CASES

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IFP Status:	

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IFP Status:	

Supreme Court of Pennsylvania

Appeal Docket Sheet

Docket Number: 61 MAP 2015

August 4, 2015

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Pro Se:	No
IFP Status:	

Supreme Court of Pennsylvania

Appeal Docket Sheet

Docket Number: 61 MAP 2015

August 4, 2015

SUPREME COURT INFORMATION

Appeal From: the Order of the Commonwealth Court at No. 585 MD 2014 dated June 25, 2015.
Appeal Filed Below: 7/20/2015 12:00:00AM

Probable Jurisdiction Noted:
Docketed Date: July 23, 2015
Allocatur/Miscellaneous Granted:
Allocatur/Miscellaneous Docket No.:
Allocatur/Miscellaneous Grant Order:

FEE INFORMATION

Fee Dt	Fee Name	Fee Amt	Receipt Dt	Receipt No	Receipt Amt
07/20/2015	Notice of Appeal	85.50	07/31/2015	2015-SUP-M-001154	85.50

INTERMEDIATE APPELLATE COURT INFORMATION

Court Name:
Date of Order:
Docket Number:
Rearg/Recon Disp Date:
Rearg/Recon Disposition:

Judge(s):
Intermediate Appellate Court Action:
Referring Court:

AGENCY/TRIAL COURT INFORMATION

Court Below: Commonwealth Court of Pennsylvania
County:
Division: Commonwealth Court of Pennsylvania
Date of Agency/Trial Court Order: June 25, 2015
Order Type: Order
OTN(s):

Lower Ct Docket No(s):	585 MD 2014 585 MD 2014 585 MD 2014 585 MD 2014	585 MD 2014 585 MD 2014 585 MD 2014
Lower Ct Judge(s):	Covey, Anne E. Judge	Leadbetter, Bonnie Brigance Judge
	Leavitt, Mary Hannah Judge	McCullough, Patricia A. Judge
	McGinley, Bernard L. Judge	Pellegrini, Dan President Judge
	Simpson, Robert E. Judge	

ORIGINAL RECORD CONTENT

Original Record Item	Filed Date	Content/Description

Record Remittal:

Supreme Court of Pennsylvania

Appeal Docket Sheet

Docket Number: 61 MAP 2015

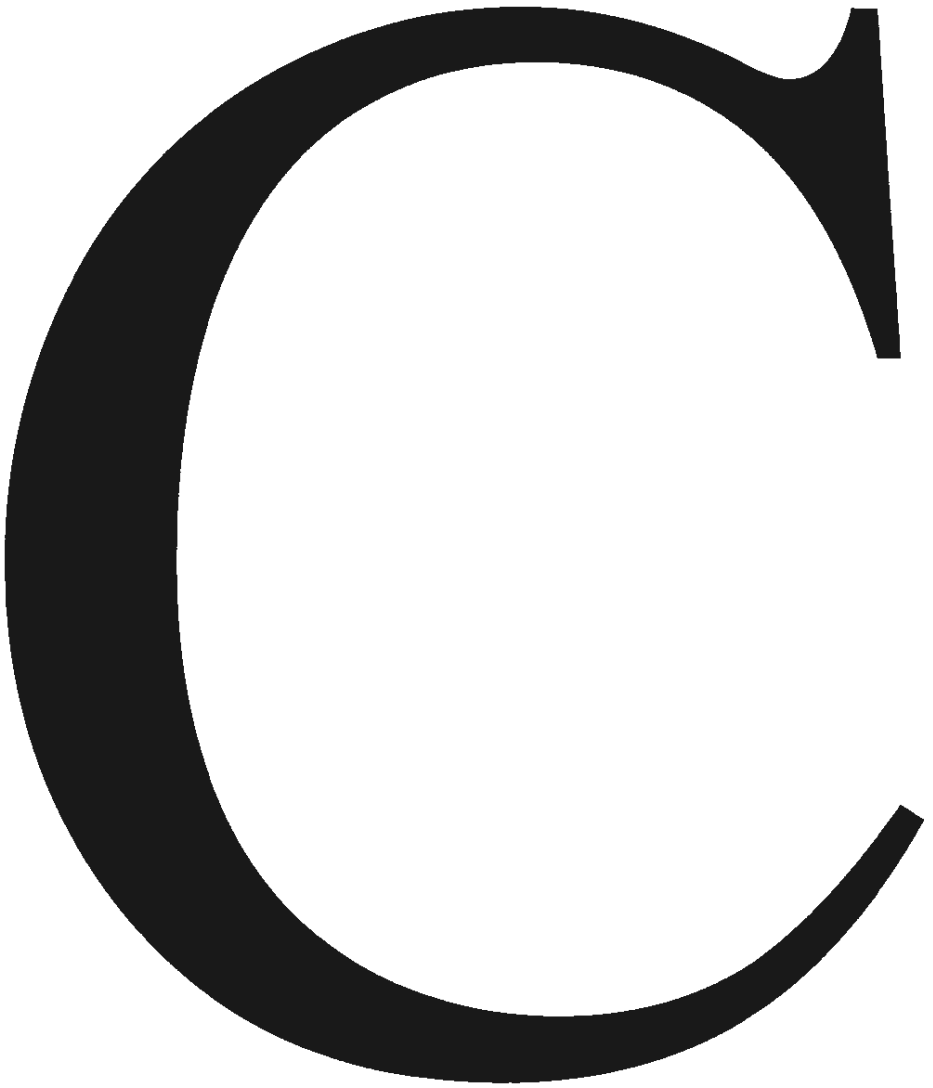
August 4, 2015

DOCKET ENTRY

Filed Date	Docket Entry / Representing	Participant Type	Filed By
July 20, 2015	**Notice of Appeal**	Appellant	Mike Turzai and Joseph B. Scarnati
July 20, 2015	**Jurisdictional Statement**	Appellant	Mike Turzai and Joseph B. Scarnati
August 3, 2015	**No Answer Letter to Notice of Appeal & Jurisdictional Statement**	Appellee	D. Leach, V. Hughes, L. Farnese, C. Parker, E. Gainey, City of PGH, City of Lancaster

CROSS COURT ACTIONS

Docket Number: 585 MD 2014



PRINTER'S NO. 68

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 80 Session of 2013

INTRODUCED BY METCALFE, CLYMER, D. COSTA, COX, GILLEN, GROVE, C. HARRIS, HESS, KAUFFMAN, KORTZ, LONGIETTI, MILLARD, O'NEILL, PASHINSKI, PETRI, READSHAW, ROCK, SAYLOR, SWANGER, TOEPEL AND WATSON, JANUARY 10, 2013

REFERRED TO COMMITEE ON JUDICIARY, JANUARY 10, 2013

AN ACT

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, defining the offense of theft of secondary metal; and prescribing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 18 of the Pennsylvania Consolidated Statutes is amended by adding a section to read:

§ 3935. Theft of secondary metal.

(a) Offense defined.--A person commits the offense of theft of secondary metal if the person unlawfully takes or attempts to take possession of, carries away or exercises unlawful control over any secondary metal with intent to deprive the rightful owner thereof.

(b) Grading.--Except as set forth in subsection (c):

(1) An offense under this section constitutes a misdemeanor of the third degree when the value of the secondary metal unlawfully obtained is less than $50.

(2) When the value of the secondary metal unlawfully obtained is $50 or more but less than $200 the offense constitutes a misdemeanor of the second degree.

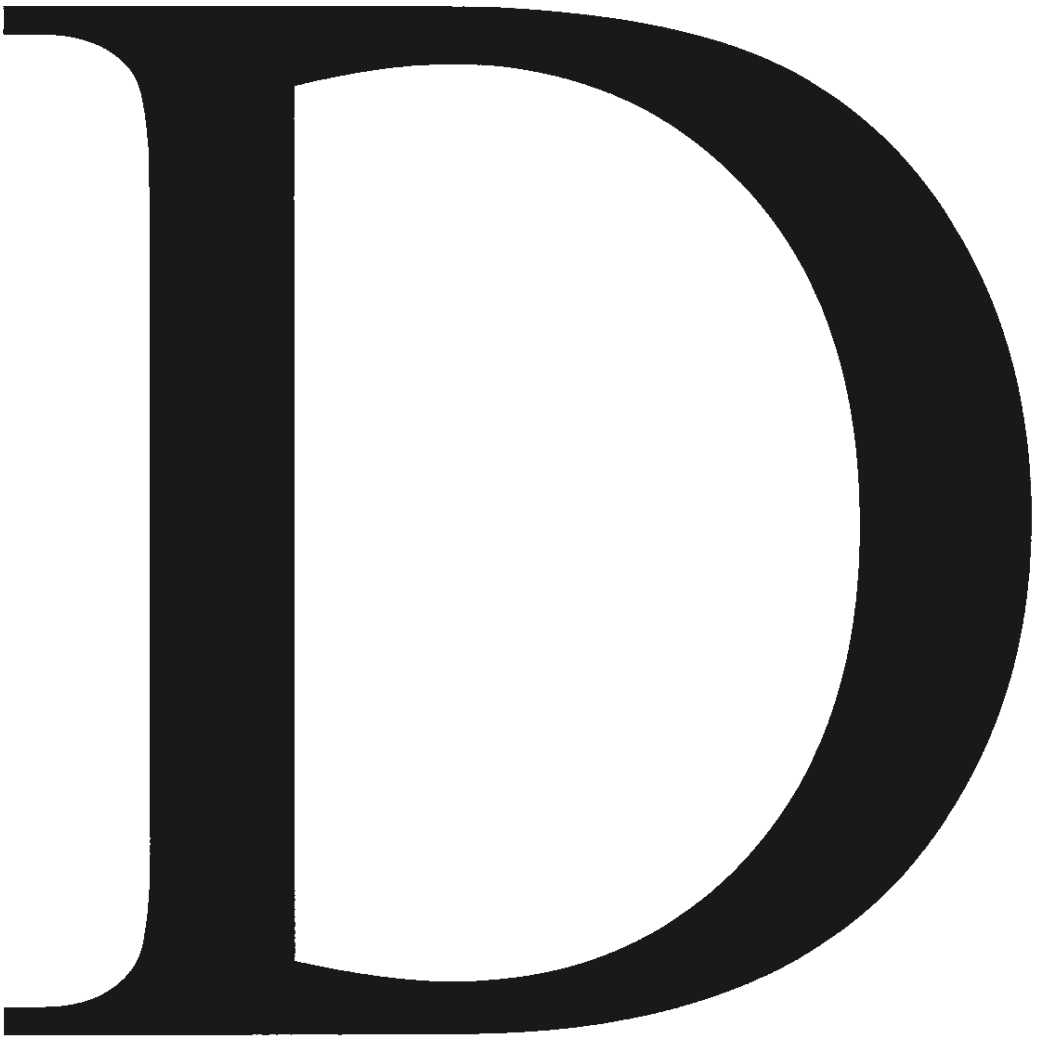
(3) When the value of the secondary metal unlawfully obtained is $200 or more but less than $1,000 the offense constitutes a misdemeanor of the first degree.

(4) When the value of the secondary metal unlawfully obtained is $1,000 or more, the offense constitutes a felony of the third degree.

(c) Third or subsequent offenses.--An offense under this section constitutes a felony of the third degree when the offense is a third or subsequent offense, regardless of the value of the secondary metal. For purposes of this subsection, a first offense includes a conviction, acceptance of Accelerated Rehabilitative Disposition or other form of preliminary disposition before the sentencing on the present violation for an offense under this section or an offense substantially similar to an offense under this section.

(d) Definition.--As used in this section, the term "secondary metal" means wire, pipe or cable commonly used by communications, gas and electrical utilities and railroads and mass transit or commuter rail agencies, copper, aluminum or other metal, or a combination of metals, that is valuable for recycling or reuse as raw material.

Section 2. This act shall take effect in 60 days.



PRIOR PRINTER'S NO. 68 PRINTER'S NO. 2066

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 80 Session of 2013

INTRODUCED BY METCALFE, CLYMER, D. COSTA, COX, GILLEN, GROVE, C. HARRIS, HESS, KAUFFMAN, KORTZ, LONGIETTI, MILLARD, O'NEILL, PASHINSKI, PETRI, READSHAW, ROCK, SAYLOR, SWANGER, TOEPEL, WATSON, FREEMAN, R. MILLER, MULLERY, GABLER, FARRY, EVANKOVICH, TOOHIL AND MARSHALL, JANUARY 10, 2013

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 18, 2013

AN ACT

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, defining the offense of theft of secondary metal; and prescribing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 18 of the Pennsylvania Consolidated Statutes is amended by adding a section to read:

§ 3935. Theft of secondary metal.

(a) Offense defined.--A person commits the offense of theft of secondary metal if the person unlawfully takes or attempts to take possession of, carries away or exercises unlawful control over any secondary metal with intent to deprive the rightful owner thereof.

(b) Grading.--Except as set forth in subsection (c):

(1) An offense under this section constitutes a misdemeanor of the third degree when the value of the

secondary metal unlawfully obtained is less than $50.

(2) When the value of the secondary metal unlawfully obtained is $50 or more but less than $200 the offense constitutes a misdemeanor of the second degree.

(3) When the value of the secondary metal unlawfully obtained is $200 or more but less than $1,000 the offense constitutes a misdemeanor of the first degree.

(4) When the value of the secondary metal unlawfully obtained is $1,000 or more, the offense constitutes a felony of the third degree.

(c) Third or subsequent offenses.--An offense under this section constitutes a felony of the third degree when the offense is a third or subsequent offense, regardless of the value of the secondary metal. For purposes of this subsection, a first AND SECOND offense includes a conviction, acceptance of <-- Accelerated Rehabilitative Disposition or other form of preliminary disposition before the sentencing on the present violation for an offense under this section or an offense ~~substantially similar to an offense under this section~~ UNDER <-- SECTION 3921 (RELATING TO THEFT BY UNLAWFUL TAKING OR DISPOSITION).

(d) Definition.--As used in this section, the term "secondary metal" means wire, pipe or cable commonly used by communications, gas and electrical utilities and railroads and mass transit or commuter rail agencies, copper, aluminum or other metal, or a combination of metals, that is valuable for recycling or reuse as raw material.

Section 2. This act shall take effect in 60 days.

SENATE AMENDED

PRIOR PRINTER'S NOS. 68, 2066 PRINTER'S NO. 3831

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 80 Session of 2013

INTRODUCED BY METCALFE, CLYMER, D. COSTA, COX, GILLEN, GROVE, C. HARRIS, HESS, KAUFFMAN, KORTZ, LONGIETTI, MILLARD, O'NEILL, PASHINSKI, PETRI, READSHAW, ROCK, SAYLOR, SWANGER, TOEPEL, WATSON, FREEMAN, R. MILLER, MULLERY, GABLER, FARRY, EVANKOVICH, TOOHIL, MARSHALL AND CALTAGIRONE, JANUARY 10, 2013

SENATOR GREENLEAF, JUDICIARY, IN SENATE, AS AMENDED, JUNE 24, 2014

AN ACT

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, FURTHER PROVIDING FOR THE OFFENSE OF CRIMINAL TRESPASS; defining the offense of theft of secondary metal; and prescribing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

~~Section 1. Title 18 of the Pennsylvania Consolidated Statutes is amended by adding a section to read:~~

SECTION 1. SECTION 3503(B.1) OF TITLE 18 OF THE PENNSYLVANIA CONSOLIDATED STATUTES IS AMENDED TO READ:

§ 3503. CRIMINAL TRESPASS.

* * *

(B.1) SIMPLE TRESPASSER.--

(1) A PERSON COMMITS AN OFFENSE IF, KNOWING THAT HE IS NOT LICENSED OR PRIVILEGED TO DO SO, HE ENTERS OR REMAINS IN

ANY PLACE FOR THE PURPOSE OF:

(I) THREATENING OR TERRORIZING THE OWNER OR OCCUPANT OF THE PREMISES;

(II) STARTING OR CAUSING TO BE STARTED ANY FIRE UPON THE PREMISES; [OR]

(III) DEFACING OR DAMAGING THE PREMISES[.]; OR

(IV) UNLAWFULLY TAKING SECONDARY METAL FROM THE PREMISES.

(2) AN OFFENSE UNDER [THIS SUBSECTION] PARAGRAPH (1)(IV) CONSTITUTES A FIRST DEGREE MISDEMEANOR. AN OFFENSE UNDER PARAGRAPH (1)(I), (II) OR (III) CONSTITUTES A SUMMARY OFFENSE.

* * *

SECTION 2. TITLE 18 IS AMENDED BY ADDING A SECTION TO READ:

§ 3935. Theft of secondary metal.

(a) Offense defined.--A person commits the offense of theft of secondary metal if the person unlawfully takes or attempts to take possession of, carries away or exercises unlawful control over any secondary metal with intent to deprive the rightful owner thereof.

(b) Grading.--Except as set forth in subsection (c):

(1) An offense under this section constitutes a misdemeanor of the third degree when the value of the secondary metal unlawfully obtained is less than $50.

(2) When the value of the secondary metal unlawfully obtained is $50 or more but less than $200 the offense constitutes a misdemeanor of the second degree.

(3) When the value of the secondary metal unlawfully obtained is $200 or more but less than $1,000 the offense

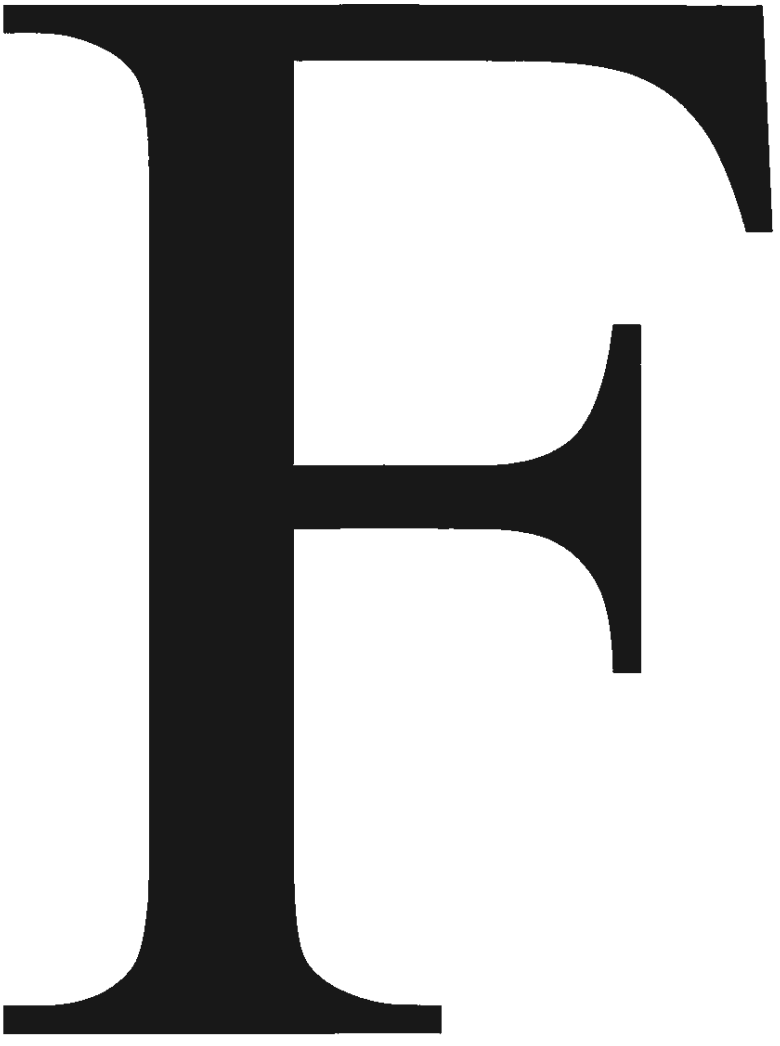
constitutes a misdemeanor of the first degree.

(4) When the value of the secondary metal unlawfully obtained is $1,000 or more, the offense constitutes a felony of the third degree.

(c) Third or subsequent offenses.--An offense under this section constitutes a felony of the third degree when the offense is a third or subsequent offense, regardless of the value of the secondary metal. For purposes of this subsection, a first and second offense includes a conviction, acceptance of Accelerated Rehabilitative Disposition or other form of preliminary disposition before the sentencing on the present violation for an offense under this section or an offense under section 3921 (relating to theft by unlawful taking or disposition).

(d) Definition.--As used in this section, the term "secondary metal" means wire, pipe or cable commonly used by communications, gas and electrical utilities and railroads and mass transit or commuter rail agencies, copper, aluminum or other metal, or a combination of metals, that is valuable for recycling or reuse as raw material.

Section ~~2~~ 3. This act shall take effect in 60 days.



SENATE AMENDED

PRIOR PRINTER'S NOS. 68, 2066, 3831 PRINTER'S NO. 4248

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 80 Session of 2013

INTRODUCED BY METCALFE, CLYMER, D. COSTA, COX, GILLEN, GROVE, C. HARRIS, HESS, KAUFFMAN, KORTZ, LONGIETTI, MILLARD, O'NEILL, PASHINSKI, PETRI, READSHAW, ROCK, SAYLOR, SWANGER, TOEPEL, WATSON, FREEMAN, R. MILLER, MULLERY, GABLER, FARRY, EVANKOVICH, TOOHIL, MARSHALL AND CALTAGIRONE, JANUARY 10, 2013

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, OCTOBER 6, 2014

AN ACT

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, FURTHER PROVIDING FOR THE OFFENSE OF CRIMINAL TRESPASS; defining the offense of theft of secondary metal; and prescribing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

~~Section 1. Title 18 of the Pennsylvania Consolidated Statutes is amended by adding a section to read:~~

~~SECTION 1. SECTION 3503(B.1) OF TITLE 18 OF THE PENNSYLVANIA CONSOLIDATED STATUTES IS AMENDED TO READ:~~

SECTION 1. SECTION 3503(B.1) AND (D) OF TITLE 18 OF THE PENNSYLVANIA CONSOLIDATED STATUTES ARE AMENDED TO READ:

§ 3503. CRIMINAL TRESPASS.

* * *

(B.1) SIMPLE TRESPASSER.--

(1) A PERSON COMMITS AN OFFENSE IF, KNOWING THAT HE IS

NOT LICENSED OR PRIVILEGED TO DO SO, HE ENTERS OR REMAINS IN ANY PLACE FOR THE PURPOSE OF:

(I) THREATENING OR TERRORIZING THE OWNER OR OCCUPANT OF THE PREMISES;

(II) STARTING OR CAUSING TO BE STARTED ANY FIRE UPON THE PREMISES; [OR]

(III) DEFACING OR DAMAGING THE PREMISES[.]; OR

(IV) UNLAWFULLY TAKING SECONDARY METAL FROM THE PREMISES.

(2) AN OFFENSE UNDER [THIS SUBSECTION] PARAGRAPH (1)(IV) CONSTITUTES A FIRST DEGREE MISDEMEANOR. AN OFFENSE UNDER PARAGRAPH (1)(I), (II) OR (III) CONSTITUTES A SUMMARY OFFENSE.

* * *

(D) [DEFINITION.--AS USED IN THIS SECTION, THE TERM "SCHOOL GROUNDS" MEANS ANY] DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SUBSECTION:

"SCHOOL GROUNDS." ANY BUILDING OF OR GROUNDS OF ANY ELEMENTARY OR SECONDARY PUBLICLY FUNDED EDUCATIONAL INSTITUTION, ANY ELEMENTARY OR SECONDARY PRIVATE SCHOOL LICENSED BY THE DEPARTMENT OF EDUCATION, ANY ELEMENTARY OR SECONDARY PAROCHIAL SCHOOL, ANY CERTIFIED DAY-CARE CENTER OR ANY LICENSED PRESCHOOL PROGRAM.

"SECONDARY METAL." AS DEFINED IN SECTION 3935 (RELATING TO THEFT OF SECONDARY METAL).

SECTION 2. TITLE 18 IS AMENDED BY ADDING A SECTION TO READ:

§ 3935. Theft of secondary metal.

(a) Offense defined.--A person commits the offense of theft

of secondary metal if the person unlawfully takes or attempts to take possession of, carries away or exercises unlawful control over any secondary metal with intent to deprive the rightful owner thereof.

(b) Grading.--Except as set forth in subsection (c):

(1) An offense under this section constitutes a misdemeanor of the third degree when the value of the secondary metal unlawfully obtained is less than $50.

(2) When the value of the secondary metal unlawfully obtained is $50 or more but less than $200 the offense constitutes a misdemeanor of the second degree.

(3) When the value of the secondary metal unlawfully obtained is $200 or more but less than $1,000 the offense constitutes a misdemeanor of the first degree.

(4) When the value of the secondary metal unlawfully obtained is $1,000 or more, the offense constitutes a felony of the third degree.

(c) Third or subsequent offenses.--An offense under this section constitutes a felony of the third degree when the offense is a third or subsequent offense, regardless of the value of the secondary metal. For purposes of this subsection, a first and second offense includes a conviction, acceptance of Accelerated Rehabilitative Disposition or other form of preliminary disposition before the sentencing on the present violation for an offense under this section or an offense under section 3921 (relating to theft by unlawful taking or disposition).

(d) Definition.--As used in this section, the term "secondary metal" means wire, pipe or cable commonly used by

communications, gas and electrical utilities and railroads and mass transit or commuter rail agencies, copper, aluminum or other metal, or a combination of metals, that is valuable for recycling or reuse as raw material.

Section ~~2~~ 3. This act shall take effect in 60 days.

RCS# 811

Senate of
Pennsylvania
2013-2014 Regular Session

10/15/:

HB 80 PN 4248

Leach Amendment No. A-10492

Yea: 17 Nay: 31 FAILE

Yea: 17

Blake	Greenleaf	Stack
Boscola	Hughes	Tartaglione
Costa	Kitchen	Teplitz
Dinniman	Leach	Wiley
Farnese	Schwank	Williams
Fontana	Smith	

Nay: 31

Alloway	Gordner	Vance
Argall	Hutchinson	Vogel
Baker	Kasunic	Vulakovich
Brewster	Mensch	Wagner
Browne	Pileggi	Ward
Brubaker	Rafferty	White
Corman	Robbins	Wozniak
Eichelberger	Scarnati	Yaw
Erickson	Smucker	Yudichak
Ferlo	Solobay	
Folmer	Tomlinson	

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

Senate of Pennsylvania Roll Calls
Session of 2013 - 2014

Details for RCS# 811

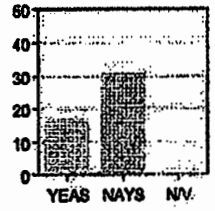
Wednesday Oct. 15, 2014

House Bill 80 PN 4248

A10492 LEACH AMENDMENT NO. A-10492

Summary

YEAS	17
NAYS	31
LVE	0
N/V	2
TOTAL	50



Prime Sponsor

METCALFE

Short Title

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, in burglary and other criminal intrusion, further providing ...

Related floor votes

Senate Floor Roll Call

House Floor Roll Call

Related committee votes

(S) JUDICIARY

(H) APPROPRIATIONS

(H) JUDICIARY

(H) RULES

N ALLOWAY	N GORDNER	Y STACK
N ARGALL	Y GREENLEAF	Y TARTAGLIONE
N BAKER	Y HUGHES	Y TEPLITZ
Y BLAKE	N HUTCHINSON	N TOMLINSON
Y BOSCOLA	N KASUNIC	N VANCE
N BREWSTER	Y KITCHEN	N VOGEL
N BROWNE	Y LEACH	N VULAKOVICH
N BRUBAKER	X MCILHINNEY	N WAGNER
N CORMAN	N MENSCH	N WARD
Y COSTA	N PILEGGI	X WASHINGTON
Y DINNIMAN	N RAFFERTY	N WHITE
N EICHELBERGER	N ROBBINS	Y WILEY
N ERICKSON	N SCARNATI	Y WILLIAMS
Y FARNESE	Y SCHWANK	N WOZNIAK
N FERLO	Y SMITH	N YAW
N FOLMER	N SMUCKER	N YUDICHAK
Y FONTANA	N SOLOBAY	

Defective 10-15-14 11-31

LEGISLATIVE REFERENCE BUREAU

AMENDMENTS TO HOUSE BILL NO. 80

Sponsor: Leach

Printer's No. 4248

Amend Bill, page 1, line 1, by striking out "Title" and inserting

Titles

Amend Bill, page 1, line 1, by inserting after "Offenses)" and 23 (Domestic Relations)

Amend Bill, page 1, line 4, by inserting after "metal; " in protection from abuse, further providing for relief; in firearms and other dangerous articles, further providing for limitation on the regulation of firearms and ammunition;

Amend Bill, page 4, by inserting between lines 2 and 3

Section 3. Section 6120(a) of Title 18 is amended and the section is amended by adding a subsection to read:

§ 6120. Limitation on the regulation of firearms and ammunition.

(a) General rule.--[No] Except as provided in subsection (a.2), no county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.

* * *

(a.2) If a political subdivision that has enacted an ordinance relating to lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition pursuant to its general authority granted by 53 Pa.C.S. (relating to municipalities) and the municipality prevails in any action it is entitled to reasonable expenses associated with the litigation to defend the ordinance and damages the court finds reasonably necessary.

* * *

Section 4. Section 6108(a)(7) and (7.1) of Title 23 are amended and the section is amended by adding a subsection to read:

§ 6108. Relief.

(a) General rule.--The court may grant any protection order or approve any consent agreement to bring about a cessation of abuse of the plaintiff or minor children. The order or agreement may include:

* * *

[(7) Ordering the defendant to temporarily relinquish to the sheriff the defendant's other weapons and ammunition which have been used or been threatened to be used in an incident of abuse against the plaintiff or the minor children and the defendant's firearms and prohibiting the defendant from acquiring or possessing any firearm for the duration of the order and requiring the defendant to relinquish to the sheriff any firearm license issued under section 6108.3 (relating to relinquishment to third party for safekeeping) or 18 Pa.C.S. § 6106 (relating to firearms not to be carried without a license) or § 6109 (relating to licenses) the defendant may possess. A copy of the court's order shall be transmitted to the chief or head of the police force or police department of the municipality and to the sheriff of the county of which the defendant is a resident. When relinquishment is ordered, the following shall apply:

(i) (A) The court's order shall require the defendant to relinquish such firearms, other weapons, ammunition and any firearm license pursuant to the provisions of this chapter within 24 hours of service of a temporary order or the entry of a final order or the close of the next business day as necessary by closure of the sheriffs' offices, except for cause shown at the hearing, in which case the court shall specify the time for relinquishment of any or all of the defendant's firearms.

(B) A defendant subject to a temporary order requiring the relinquishment of firearms, other weapons or ammunition shall, in lieu of relinquishing specific firearms, other weapons or ammunition which cannot reasonably be retrieved within the time for relinquishment in clause (A) due to their current location, provide the sheriff with an affidavit listing the firearms, other weapons or ammunition and their current location. If the defendant, within the time for relinquishment in clause (A), fails to provide the affidavit or fails to relinquish, pursuant to this chapter, any firearms, other weapons or ammunition ordered to be relinquished which are not specified in the affidavit, the sheriff shall, at a minimum, provide immediate notice to the court, the plaintiff and appropriate law enforcement authorities. The defendant shall not possess any firearms, other weapons or ammunition specifically listed in the affidavit provided to the sheriff pursuant to this clause for the duration of the

temporary order.

(C) As used in this subparagraph, the term "cause" shall be limited to facts relating to the inability of the defendant to retrieve a specific firearm within 24 hours due to the current location of the firearm.

(ii) The court's order shall contain a list of any firearm, other weapon or ammunition ordered relinquished. Upon the entry of a final order, the defendant shall inform the court in what manner the defendant is going to relinquish any firearm, other weapon or ammunition ordered relinquished. Relinquishment may occur pursuant to section 6108.2 (relating to relinquishment for consignment sale, lawful transfer or safekeeping) or 6108.3 or to the sheriff pursuant to this paragraph. Where the sheriff is designated, the sheriff shall secure custody of the defendant's firearms, other weapons or ammunition and any firearm license listed in the court's order for the duration of the order or until otherwise directed by court order. In securing custody of the defendant's relinquished firearms, the sheriff shall comply with 18 Pa.C.S. § 6105(f)(4) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms). In securing custody of the defendant's other weapons and ammunition, the sheriff shall provide the defendant with a signed and dated written receipt which shall include a detailed description of the other weapon or ammunition and its condition.

(iii) The sheriff shall provide the plaintiff with the name of the person to which any firearm, other weapon or ammunition was relinquished.

(iv) Unless the defendant has complied with subparagraph (i)(B) or section 6108.2 or 6108.3, if the defendant fails to relinquish any firearm, other weapon, ammunition or firearm license within 24 hours or upon the close of the next business day due to closure of sheriffs' offices or within the time ordered by the court upon cause being shown at the hearing, the sheriff shall, at a minimum, provide immediate notice to the court, the plaintiff and appropriate law enforcement agencies.

(v) Any portion of any order or any petition or other paper which includes a list of any firearm, other weapon or ammunition ordered relinquished shall be kept in the files of the court as a permanent record thereof and withheld from public inspection except:

(A) upon an order of the court granted upon cause shown;

(B) as necessary, by law enforcement and court personnel; or

(C) after redaction of information listing any

firearm, other weapon or ammunition.

(vi) As used in this paragraph, the term "defendant's firearms" shall, if the defendant is a licensed firearms dealer, only include firearms in the defendant's personal firearms collection pursuant to 27 CFR § 478.125a (relating to personal firearms collection).

(7.1) If the defendant is a licensed firearms dealer, ordering the defendant to follow such restrictions as the court may require concerning the conduct of his business, which may include ordering the defendant to relinquish any Federal or State license for the sale, manufacture or importation of firearms as well as firearms in the defendant's business inventory. In restricting the defendant pursuant to this paragraph, the court shall make a reasonable effort to preserve the financial assets of the defendant's business while fulfilling the goals of this chapter.]

* * *

(a.1) Relinquishing firearms.--Any protection order or consent agreement to bring about a cessation of abuse of the plaintiff or minor children under subsection (a) shall include all of the following:

(1) Ordering the defendant to temporarily relinquish to the sheriff the defendant's other weapons and ammunition which have been used or been threatened to be used in an incident of abuse against the plaintiff or the minor children and the defendant's firearms and prohibiting the defendant from acquiring or possessing any firearm for the duration of the order and requiring the defendant to relinquish to the sheriff any firearm license issued under section 6108.3 (relating to relinquishment to third party for safekeeping) or 18 Pa.C.S. § 6106 (relating to firearms not to be carried without a license) or 6109 (relating to licenses) the defendant may possess. A copy of the court's order shall be transmitted to the chief or head of the police force or police department of the municipality and to the sheriff of the county of which the defendant is a resident. When relinquishment is ordered, the following shall apply:

(i) (A) The court's order shall require the defendant to relinquish such firearms, other weapons, ammunition and any firearm license pursuant to the provisions of this chapter within 24 hours of service of a temporary order or the entry of a final order or the close of the next business day as necessary by closure of the sheriffs' offices, except for cause shown at the hearing, in which case the court shall specify the time for relinquishment of any or all of the defendant's firearms.

(B) A defendant subject to a temporary order requiring the relinquishment of firearms, other weapons or ammunition shall, in lieu of relinquishing

specific firearms, other weapons or ammunition which cannot reasonably be retrieved within the time for relinquishment in clause (A) due to their current location, provide the sheriff with an affidavit listing the firearms, other weapons or ammunition and their current location. If the defendant, within the time for relinquishment in clause (A), fails to provide the affidavit or fails to relinquish, pursuant to this chapter, any firearms, other weapons or ammunition ordered to be relinquished which are not specified in the affidavit, the sheriff shall, at a minimum, provide immediate notice to the court, the plaintiff and appropriate law enforcement authorities. The defendant shall not possess any firearms, other weapons or ammunition specifically listed in the affidavit provided to the sheriff pursuant to this clause for the duration of the temporary order.

(C) As used in this subparagraph, the term "cause" shall be limited to facts relating to the inability of the defendant to retrieve a specific firearm within 24 hours due to the current location of the firearm.

(ii) The court's order shall contain a list of any firearm, other weapon or ammunition ordered relinquished. Upon the entry of a final order, the defendant shall inform the court in what manner the defendant is going to relinquish any firearm, other weapon or ammunition ordered relinquished. Relinquishment may occur pursuant to section 6108.2 (relating to relinquishment for consignment sale, lawful transfer or safekeeping) or 6108.3 or to the sheriff pursuant to this paragraph. Where the sheriff is designated, the sheriff shall secure custody of the defendant's firearms, other weapons or ammunition and any firearm license listed in the court's order for the duration of the order or until otherwise directed by court order. In securing custody of the defendant's relinquished firearms, the sheriff shall comply with 18 Pa.C.S. § 6105(f)(4) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms). In securing custody of the defendant's other weapons and ammunition, the sheriff shall provide the defendant with a signed and dated written receipt which shall include a detailed description of the other weapon or ammunition and its condition.

(iii) The sheriff shall provide the plaintiff with the name of the person to which any firearm, other weapon or ammunition was relinquished.

(iv) Unless the defendant has complied with subparagraph (i)(B) or section 6108.2 or 6108.3, if the

defendant fails to relinquish any firearm, other weapon, ammunition or firearm license within 24 hours or upon the close of the next business day due to closure of sheriffs' offices or within the time ordered by the court upon cause being shown at the hearing, the sheriff shall, at a minimum, provide immediate notice to the court, the plaintiff and appropriate law enforcement agencies.

(v) Any portion of any order or any petition or other paper which includes a list of any firearm, other weapon or ammunition ordered relinquished shall be kept in the files of the court as a permanent record thereof and withheld from public inspection except:

(A) upon an order of the court granted upon cause shown;

(B) as necessary, by law enforcement and court personnel; or

(C) after redaction of information listing any firearm, other weapon or ammunition.

(vi) As used in this paragraph, the term "defendant's firearms" shall, if the defendant is a licensed firearms dealer, only include firearms in the defendant's personal firearms collection pursuant to 27 CFR § 478.125a (relating to personal firearms collection).

(2) If the defendant is a licensed firearms dealer, ordering the defendant to follow such restrictions as the court may require concerning the conduct of his business, which may include ordering the defendant to relinquish any Federal or State license for the sale, manufacture or importation of firearms as well as firearms in the defendant's business inventory. In restricting the defendant pursuant to this paragraph, the court shall make a reasonable effort to preserve the financial assets of the defendant's business while fulfilling the goals of this chapter.

* * *

Section 5. Any statute that impairs the authority of a municipality to enact an ordinance that pursuant to 53 Pa.C.S., or any other statute, shall not apply to an ordinance adopted by a municipality prior to the effective date of this section and such an ordinance shall continue in full force and effect.

Amend Bill, page 4, line 3, by striking out "3" and inserting

RCS# 812

Senate of
Pennsylvania
2013-2014 Regular Session

10/15/:

HB 80 PN 4248

Farnese Amendment No. A-10461

Yea: 22 Nay: 26 FAILE

Yea: 22

Blake	Hughes	Teplitz
Boscola	Kitchen	Tomlinson
Brewster	Leach	Wiley
Costa	Rafferty	Williams
Dinniman	Schwank	Wozniak
Farnese	Smith	Yudichak
Ferlo	Stack	
Fontana	Tartaglione	

Nay: 26

Alloway	Gordner	Solobay
Argall	Greenleaf	Vance
Baker	Hutchinson	Vogel
Browne	Kasunic	Vulakovich
Brubaker	Mensch	Wagner
Corman	Pileggi	Ward
Eichelberger	Robbins	White
Erickson	Scarnati	Yaw
Folmer	Smucker	

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

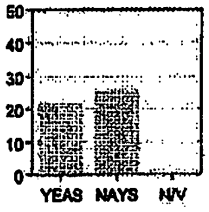
Senate of Pennsylvania Roll Calls
Session of 2013 - 2014

Details for RCS# 812

Wednesday Oct. 15, 2014
House Bill 80 PN 4248
A10461 FARNESE AMENDMENT NO. A-10461

Summary

YEAS	22
NAYS	26
LVE	0
N/V	2
TOTAL	50



Prime Sponsor

METCALFE

Short Title

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, in burglary and other criminal intrusion, further providing ...

Related floor votes

Senate Floor Roll Call

House Floor Roll Call

Related committee votes

(S) JUDICIARY

(H) APPROPRIATIONS

(H) JUDICIARY

(H) RULES

N ALLOWAY	N GORDNER	Y STACK
N ARGALL	N GREENLEAF	Y TARTAGLIONE
N BAKER	Y HUGHES	Y TEPLITZ
Y BLAKE	N HUTCHINSON	Y TOMLINSON
Y BOSCOLA	N KASUNIC	N VANCE
Y BREWSTER	Y KITCHEN	N VOGEL
N BROWNE	Y LEACH	N VULAKOVICH
N BRUBAKER	X MCILHINNEY	N WAGNER
N CORMAN	N MENSCH	N WARD
Y COSTA	N PILEGGI	X WASHINGTON
Y DINNIMAN	Y RAFFERTY	N WHITE
N EICHELBERGER	N ROBBINS	Y WILEY
N ERICKSON	N SCARNATI	Y WILLIAMS
Y FARNESE	Y SCHWANK	Y WOZNIAK
Y FERLO	Y SMITH	N YAW
N FOLMER	N SMUCKER	Y YUDICHAK
Y FONTANA	N SOLOBAY	

Amendments - failed

Defeated 10-15-14 22-26

LEGISLATIVE REFERENCE BUREAU

AMENDMENTS TO HOUSE BILL NO. 80

Sponsor: Farnese

Printer's No. 4248

Amend Bill, page 1, line 4, by inserting after "metal;"

further providing for the offense of carrying firearms on public streets or public property in Philadelphia

Amend Bill, page 4, by inserting between lines 2 and 3

Section 3. Section 6108 of Title 18 is amended to read:

§ 6108. Carrying firearms on public streets or public property in Philadelphia.

(a) General rule.--No person shall carry a firearm[, rifle or shotgun] at any time upon the public streets or upon any public property in a city of the first class unless:

(1) [such] the person is licensed to carry a firearm; or

(2) [such] the person is exempt from licensing under section 6106(b) of this title (relating to firearms not to be carried without a license).

(b) Mandatory sentence.--

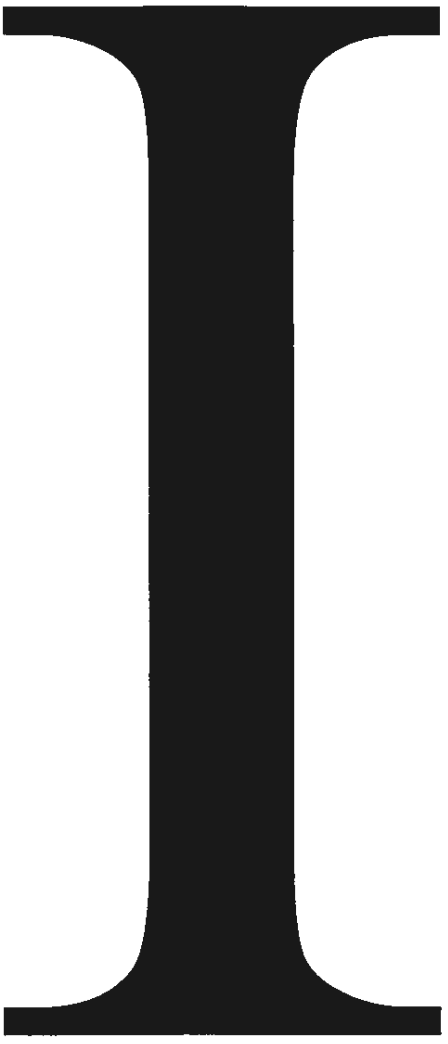
(1) Notwithstanding any other provision of law, if the person in possession of a firearm at the time of arrest for a violation of this section is not the lawful owner of the firearm, then the offense shall be graded as a felony of the third degree and, upon conviction, the person shall be sentenced to a minimum sentence of at least two years of total confinement.

(2) A person sentenced under this subsection shall not be eligible for parole, probation, work release or furlough.

(3) This subsection shall not apply to any person who is otherwise eligible to possess a firearm under this chapter and who is operating a motor vehicle which is registered in the person's name or the name of a spouse or parent and which contains a firearm for which a valid license has been issued pursuant to section 6109 (relating to licenses) to the spouse or parent owning the firearm.

(c) Definition.--For the purposes of this section, the term "firearm" shall include any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of the weapon.

Amend Bill, page 4, line 3, by striking out "3" and inserting



RCS# 810

Senate of
Pennsylvania
2013-2014 Regular Session

10/15/

HB 80 PN 4248

Alloway Amendment No. A-10397

Yea: 32 Nay: 16 PASSI

Yea: 32

Alloway	Folmer	Tomlinson
Argall	Gordner	Vance
Baker	Hutchinson	Vogel
Boscola	Kasunic	Vulakovich
Brewster	Mensch	Wagner
Browne	Pileggi	Ward
Brubaker	Rafferty	White
Corman	Robbins	Wozniak
Eichelberger	Scarnati	Yaw
Erickson	Smucker	Yudichak
Ferlo	Solobay	

Nay: 16

Blake	Hughes	Tartaglione
Costa	Kitchen	Teplitz
Dinniman	Leach	Wiley
Farnese	Schwank	Williams
Fontana	Smith	
Greenleaf	Stack	

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

Senate of Pennsylvania Roll Calls
Session of 2013 - 2014

Details for RCS# 810

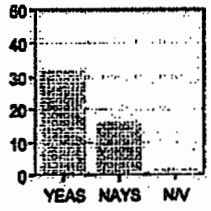
Wednesday Oct. 15, 2014

House Bill 80 PN 4248

A10397 ALLOWAY
AMENDMENT NO. A-10397

Summary

YEAS	32
NAYS	16
LVE	0
N/V	2
TOTAL	50



Prime Sponsor

METCALFE

Short Title

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, in burglary and other criminal intrusion, further providing ...

Related floor votes

Senate Floor Roll Call

House Floor Roll Call

Related committee votes

(S) JUDICIARY

(H) APPROPRIATIONS

(H) JUDICIARY

(H) RULES

Y ALLOWAY	Y GORDNER	N STACK
Y ARGALL	N GREENLEAF	N TARTAGLIONE
Y BAKER	N HUGHES	N TEPLITZ
N BLAKE	Y HUTCHINSON	Y TOMLINSON
Y BOSCOLA	Y KASUNIC	Y VANCE
Y BREWSTER	N KITCHEN	Y VOGEL
Y BROWNE	N LEACH	Y VULAKOVICH
Y BRUBAKER	X MCILHINNEY	Y WAGNER
Y CORMAN	Y MENSCH	Y WARD
N COSTA	Y PILEGGI	X WASHINGTON
N DINNIMAN	Y RAFFERTY	Y WHITE
Y EICHELBERGER	Y ROBBINS	N WILEY
Y ERICKSON	Y SCARNATI	N WILLIAMS
N FARNESE	N SCHWANK	Y WOZNIAK
Y FERLO	X SMITH	Y YAW
Y FOLMER	Y SMUCKER	Y YUDICHAK
N FONTANA	Y SOLOBAY	

Adopted
10-15-14
32-16
#1

AMENDMENTS TO HOUSE BILL NO. 80

Sponsor: Alloway

Printer's No. 4248

Amend Bill, page 1, line 2, by inserting after "Statutes,"
in burglary and other criminal intrusion,
Amend Bill, page 1, line 4, by striking out "and"
Amend Bill, page 1, line 4, by inserting after "penalties"
; and, in firearms and other dangerous articles, further providing for Pennsylvania State Police and for limitation on the regulation of firearms and ammunition
Amend Bill, page 4, by inserting between lines 2 and 3
Section 3. Section 6111.1(f)(3) and (g)(1) and (3) of Title 18 are amended to read:
§ 6111.1. Pennsylvania State Police.
* * *
(f) Notification of mental health adjudication, treatment, commitment, drug use or addiction.--
* * *
(3) Notwithstanding any law to the contrary, the Pennsylvania State Police [may] shall, within 72 hours of receipt, disclose, electronically or otherwise, to the United States Attorney General or a designee, any record relevant to a determination of whether a person is disqualified from possessing or receiving a firearm under 18 U.S.C. § 922 (g)(3) or (4) or an applicable state statute[.], and any record relevant to a determination of whether a person is not disqualified or is no longer disqualified from possessing or receiving a firearm under 18 U.S.C. § 922(g)(3) or (4) or an applicable state statute.
(g) Review by court.--
(1) Upon receipt of a copy of the order of a court of competent jurisdiction which vacates a final order or an involuntary certification issued by a mental health review officer, the Pennsylvania State Police shall, after disclosing relevant records under subsection (f)(3), expunge all records of the involuntary treatment received under subsection (f).
* * *

(3) The Pennsylvania State Police, after disclosing relevant records under subsection (f)(3), shall expunge all records of an involuntary commitment of an individual who is discharged from a mental health facility based upon the initial review by the physician occurring within two hours of arrival under section 302(b) of the Mental Health Procedures Act and the physician's determination that no severe mental disability existed pursuant to section 302(b) of the Mental Health Procedures Act. The physician shall provide signed confirmation of the determination of the lack of severe mental disability following the initial examination under section 302(b) of the Mental Health Procedures Act to the Pennsylvania State Police.

* * *

Section 4. Section 6120(b) of Title 18 is amended and the section is amended by adding subsections to read:

§ 6120. Limitation on the regulation of firearms and ammunition.

* * *

(a.2) Relief.--A person adversely affected by an ordinance, a resolution, regulation, rule, practice or any other action promulgated or enforced by a county, municipality or township prohibited under subsection (a) or 53 Pa.C.S. § 2962(g) (relating to limitation on municipal powers) may seek declaratory or injunctive relief and actual damages in an appropriate court.

(a.3) Reasonable expenses.--A court shall award reasonable expenses to a person adversely affected in an action under subsection (a.2) for any of the following:

(1) A final determination by the court is granted in favor of the person adversely affected.

(2) The regulation in question is rescinded, repealed or otherwise abrogated after suit has been filed under subsection (a.2) but before the final determination by the court.

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

"Dealer." The term shall include any person engaged in the business of selling at wholesale or retail a firearm or ammunition.

"Firearms." This term shall have the meaning given to it in section 5515 (relating to prohibiting of paramilitary training) but shall not include air rifles as that term is defined in section 6304 (relating to sale and use of air rifles).

"Person adversely affected." Any of the following:

(1) A resident of this Commonwealth who may legally possess a firearm under Federal and State law.

(2) A person who otherwise has standing under the laws of this Commonwealth to bring an action under subsection (a.2).

(3) A membership organization, in which a member is a person described under paragraphs (1) or (2).

"Political subdivision." The term shall include any home rule charter municipality, county, city, borough, incorporated town, township or school district.

"Reasonable expenses." The term includes, but is not limited to, attorney fees, expert witness fees, court costs and compensation for loss of income.

Amend Bill, page 4, line 3, by striking out "3" and inserting

5

HRC-AOo4

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE CHIEF CLERK

Committee Roll Call

Date October 20, 2014

Committee	Rules	Date & Time	October 20, 2014 – 3:15PM
Bill or Resolution No.	HB 80	Type of Motion	Adopt A10507
Sponsor of Motion	Parker	Seconded by	Mundy
Brief Description	Includes mandatory reporting of lost and stolen weapons to schools and police and imposes civil liability.		

Yeas 7 Nays 25 Not Voting 1 Passed Failed X

MAJORITY MEMBERS	YEAS	NAYS	N-V	MINORITY MEMBERS	YEAS	NAYS	N-V
Turzai, Michael, Chairman		X		Dermody, Frank, Chairman		X	
Adolph, William	X			Costa, Dom		X	
Baker, Matthew		X		Frankel, Dan	X		
Christiana, Jim		P		Goodman, Neal		X	
Ellis, Brian		X		Hanna, Michael		X	
Gingrich, Mauree		X		Kula, Deberah		X	
Godshall, Robert		X		Markosek, Joseph		X	
Grove, Seth		X		Matzie, Rob		X	
Killion, Thomas	X			Mundy, Phyllis	X		
Marsico, Ron		X		Neuman, Brandon		X	
Masser, Kurt		X		Parker, Cherelle	X		
Mustio, Mark		X		Sabatina, John	X		
Pickett, Tina		X		Sturla, Michael	X		
Reese, Mike		X		Waters, Ron		X	
Saylor, Stan		X		Wheatley, Jake			X
Scavello, Mario		X					
Smith, Samuel		P					
Watson, Kathy		X					

Majority Chairman

Minority Chairman

AMENDMENTS TO HOUSE BILL NO. 80

Sponsor: Parker, 200th

Printer's No. 4318

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

Amend Bill, page 1, line 7, by striking out "AND" where it occurs the first time and inserting

; providing for duty to report lost or stolen weapon; and further providing

Amend Bill, page 5, by inserting between lines 15 and 16

Section 4. Title 18 is amended by adding a section to read:

§ 6111.7. Duty to report lost or stolen weapon.

(a) Duty to designate.--A school entity and institution of higher education shall designate a person or persons to whom a lost or stolen weapon is to be reported as required by subsection (b).

(b) Duty to report.--If a weapon that the parent or guardian owns, possesses or has custody or control over is lost or stolen, the parent, guardian or other person having control or charge of a student who is enrolled in a school entity or institution of higher education shall report the loss or theft to:

(1) a person designated under subsection (a) at the school entity or institution of higher education in which the student is enrolled; and

(2) the municipal police force or, if the municipality does not have a police force, the Pennsylvania State Police.

(c) Liability.--Notwithstanding the monetary limits of liability specified in 23 Pa.C.S. § 5505 (relating to monetary limits of liability), a parent, guardian or other person who has control or charge of a student and who fails to report as required by subsection (b) shall be liable, without monetary limitation, for the injuries sustained by another student or a professional or other employee of the school entity or institution of higher education in which the student is enrolled as a result of the failure to report if the student:

(1) inflicted the injuries with the lost or stolen weapon; or

(2) permitted another person to inflict the injuries

with the lost or stolen weapon.

(d) Applicability and presumption.--The following apply:

(1) This section shall not apply to a parent, guardian or other person having control or charge of a student enrolled at an institution of higher education where the student is emancipated from the parent, custodian or other person.

(2) It shall be presumed that a student is emancipated from a parent if a court has issued an order or otherwise determined that the parent is not responsible for the postsecondary educational costs of the student under 23 Pa.C.S. § 4327 (relating to postsecondary educational costs).

(e) Regulations.--The Secretary of Education shall promulgate regulations to carry out the provisions of this section.

(f) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Institution of higher education." As defined in section 118 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

"School entity." As defined in section 1301-A of the Public School Code of 1949.

Amend Bill, page 5, line 16, by striking out "4" and inserting

5

Amend Bill, page 7, line 1, by striking out "5" and inserting

6

HRC-AOc4

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE CHIEF CLERK

Committee Roll Call

Date October 20, 2014

Committee Rules | Date & Time October 20, 2014 – 3:15PM

Bill or Resolution No. HB 80 | Type of Motion Adopt A10508

Sponsor of Motion Parker | Seconded by Frankel

Brief Description Requires notice of limits on lending of firearms, mandates reporting of lost or stolen guns.

Yeas 8 Nays 24 Not Voting 1 Passed Failed X

MAJORITY MEMBERS	YEAS	NAYS	N-V	MINORITY MEMBERS	YEAS	NAYS	N-V
Turzai, Michael, Chairman		X		Dermody, Frank, Chairman		X	
Adolph, William	X			Costa, Dom		X	
Baker, Matthew		X		Frankel, Dan	X		
Christiana, Jim		P		Goodman, Neal		X	
Ellis, Brian		X		Hanna, Michael		X	
Gingrich, Mauree		X		Kula, Deberah		X	
Godshall, Robert		X		Markosek, Joseph		X	
Grove, Seth		X		Matzie, Rob		X	
Killion, Thomas	X			Mundy, Phyllis	X		
Marsico, Ron		X		Neuman, Brandon		X	
Masser, Kurt		X		Parker, Cherelle	X		
Mustio, Mark		X		Sabatina, John	X		
Pickett, Tina		X		Sturla, Michael	X		
Reese, Mike		X		Waters, Ron	X		
Saylor, Stan		X		Wheatley, Jake			X
Scavello, Mario		X					
Smith, Samuel		P					
Watson, Kathy		X					

Mike Turzai
Majority Chairman

Minority Chairman

AMENDMENTS TO HOUSE BILL NO. 80

Sponsor: Parker, 200th

Printer's No. 4318

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

Amend Bill, page 1, line 7, by striking out "AND" where it occurs the first time and inserting

; providing for notice of limits on lending or transferring a firearm; further providing

Amend Bill, page 1, line 8, by inserting after "AMMUNITION"

; and providing for reporting lost or stolen firearms

Amend Bill, page 4, line 5, by striking out "6111.1(F)(3)" and inserting

6111.1(d), (f)(3)

Amend Bill, page 4, by inserting between lines 8 and 9

(d) Distribution.--The Pennsylvania State Police shall provide, without charge[,]:

(1) summaries of uniform firearm laws and firearm safety brochures pursuant to section 6125 (relating to distribution of uniform firearm laws and firearm safety brochures)[.]; and

(2) notices of limits pursuant to section 6111.6 (relating to notice of limits on lending or transferring a firearm).

* * *

Amend Bill, page 5, by inserting between lines 15 and 16

Section 4. Title 18 is amended by adding a section to read:

§ 6111.6. Notice of limits on lending or transferring a firearm.

(a) Duty of Pennsylvania State Police.--It shall be the duty of the Pennsylvania State Police to distribute a notice about lending or transferring a firearm to every licensed firearm dealer in this Commonwealth. The notice shall be written by the Pennsylvania State Police, shall be provided at no cost and shall contain the following:

NOTICE OF LIMITS ON LENDING

OR TRANSFERRING A FIREARM

As the owner of a firearm, you are required to comply with the following legal obligations and restrictions:

(1) You may not lend or give a firearm to any person, except as provided in 18 Pa.C.S. § 6115(b).

(2) You may not sell or transfer a firearm to another person unless the sale or transfer occurs at a licensed dealer or the office of the county sheriff. Limited transfers between certain family members are permissible. See 18 Pa.C.S. § 6111(c).

(3) You must notify law enforcement within three days of discovering that your firearm is lost or stolen. See 18 Pa.C.S. § 6128(a).

(4) You could be held criminally and civilly liable for any crime committed with a firearm you purchase. See 18 Pa.C.S. § 6111(q).

(b) Distribution without charge.--The notice or a copy thereof shall be provided without charge to each purchaser of a firearm.

(c) Duty of firearms dealer.--It shall be the duty of the firearms dealer:

(1) to provide a copy of the notice and to review the text of the notice with the buyer of the firearm; and

(2) to prominently display a copy of the notice where the purchaser of a firearm can read it.

Amend Bill, page 5, line 16, by striking out "4" and inserting

5

Amend Bill, page 6, by inserting after line 30

Section 6. Title 18 is amended by adding a section to read:

§ 6128. Reporting lost or stolen firearms.

(a) Duty defined.--The owner of a firearm, upon discovering that the firearm is lost or stolen, shall report the loss or theft within three days to an appropriate law enforcement official of the municipality in which the loss or theft occurred, or if the municipality does not have a police force, to the Pennsylvania State Police. If the owner of the firearm does not know where the loss or theft occurred, the owner shall report the loss or theft within three days to the municipality where the owner resides or to the Pennsylvania State Police.

(b) Penalties.--If, after an investigation by law enforcement officials, it is determined that a firearm was recovered during a criminal investigation, that the owner of that firearm knew his firearm was lost or stolen and that the owner failed to report the loss or theft of the firearm, that person commits:

(1) A summary offense for a first violation of this

section.

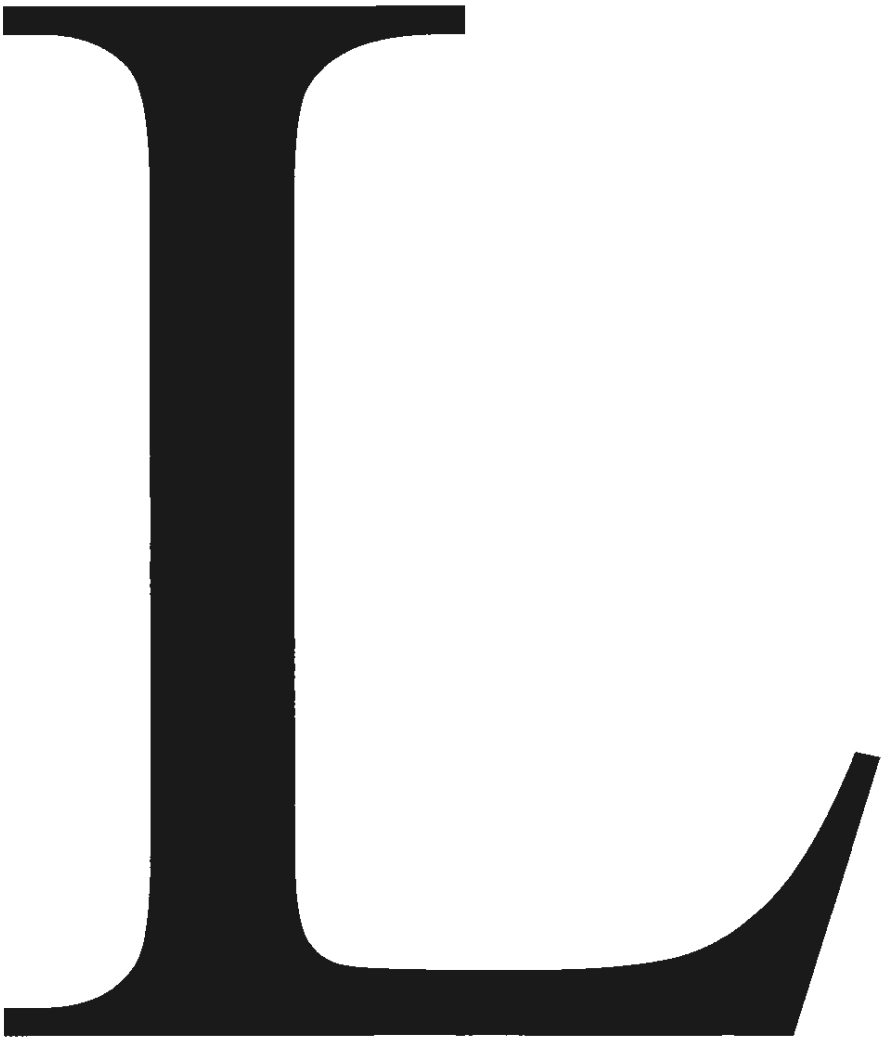
(2) A misdemeanor of the first degree for a second offense.

(3) A felony of the third degree for a third or subsequent offense.

(c) Fingerprinting.--Prior to the commencement of trial or entry of plea of a defendant accused of the summary offense of reporting lost or stolen firearms, the issuing authority shall order the defendant to submit within five days of such order for fingerprinting by the municipal police of the jurisdiction in which the offense allegedly was committed or the Pennsylvania State Police. Fingerprints so obtained shall be forwarded immediately to the Pennsylvania State Police for determination as to whether or not the defendant previously has been convicted of the offense of reporting lost or stolen firearms under this section. The results of the determination shall be forwarded to the police department obtaining the fingerprints if the department is the prosecutor, or to the issuing authority if the prosecutor is other than a police officer. The issuing authority shall not proceed with the trial or plea in summary cases until in receipt of the determination made by the Pennsylvania State Police.

Amend Bill, page 7, line 1, by striking out "5" and inserting

7



HRC-AOc4

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE CHIEF CLERK

Committee Roll Call

Date October 20, 2014

Committee	Rules	Date & Time	October 20, 2014 – 3:15PM
Bill or Resolution No.	HB 80	Type of Motion	Adopt A10509
Sponsor of Motion	Parker	Seconded by	Mundy
Brief Description	Exempts existing Philly ordinances from new remedies for pre-emption violation. This does not change the underlying prohibition against such ordinances, just precludes remedies.		

Yeas 6 Nays 26 Not Voting 1 Passed Failed X

MAJORITY MEMBERS	YEAS	NAYS	N-V	MINORITY MEMBERS	YEAS	NAYS	N-V
Turzai, Michael, Chairman		X		Dermody, Frank, Chairman		X	
Adolph, William		X		Costa, Dom		X	
Baker, Matthew		X		Frankel, Dan	X		
Christiana, Jim		P		Goodman, Neal		X	
Ellis, Brian		X		Hanna, Michael		X	
Gingrich, Mauree		X		Kula, Deberah		X	
Godshall, Robert		X		Markosek, Joseph		X	
Grove, Seth		X		Matzie, Rob		X	
Killion, Thomas		X		Mundy, Phyllis	X		
Marsico, Ron		X		Neuman, Brandon		X	
Masser, Kurt		X		Parker, Cherelle	X		
Mustio, Mark		X		Sabatina, John	X		
Pickett, Tina		X		Sturla, Michael	X		
Reese, Mike		X		Waters, Ron	X		
Saylor, Stan		X		Wheatley, Jake			X
Scavello, Mario		X					
Smith, Samuel		P					
Watson, Kathy		X					

Mike Turzai
Majority Chairman

Minority Chairman

AMENDMENTS TO HOUSE BILL NO. 80

Sponsor: Parker, 200th

Printer's No. 4318

Amend Bill, page 5, line 21, by striking out "A" and inserting

Except as provided in subsection (a.3), a

Amend Bill, page 5, by inserting between lines 27 and 28

(a.3) Exception.--Subsection (a.2) shall not apply to an ordinance, a resolution, regulation, rule, practice or any other action promulgated or enforced by a city of the first class before the effective date of this subsection.

Amend Bill, page 5, line 28, by striking out "(A.3)" and inserting

(a.4)

HRC-AOc4

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE CHIEF CLERK

Committee Roll Call

Date October 20, 2014

Committee	Rules	Date & Time	October 20, 2014 – 3:15PM
Bill or Resolution No.	HB 80	Type of Motion	Bill is not Constitutional
Sponsor of Motion	Parker	Seconded by	Mundy
Brief Description	Bill is not constitutional		

Yeas 7 Nays 25 Not Voting 1 Passed Failed X

MAJORITY MEMBERS	YEAS	NAYS	N-V	MINORITY MEMBERS	YEAS	NAYS	N-V
Turzai, Michael, Chairman		X		Dermody, Frank, Chairman		X	
Adolph, William		X		Costa, Dom		X	
Baker, Matthew		X		Frankel, Dan	X		
Christiana, Jim		X		Goodman, Neal		X	
Ellis, Brian		X		Hanna, Michael		X	
Gingrich, Mauree		X		Kula, Deberah		X	
Godshall, Robert	X			Markosek, Joseph		X	
Grove, Seth		X		Matzie, Rob		X	
Killion, Thomas		X		Mundy, Phyllis	X		
Marsico, Ron		X		Neuman, Brandon		X	
Masser, Kurt		X		Parker, Cherelle	X		
Mustio, Mark		X		Sabatina, John	X		
Pickett, Tina		X		Sturla, Michael	X		
Reese, Mike		X		Waters, Ron	X		
Saylor, Stan		X		Wheatley, Jake			X
Scavello, Mario		X					
Smith, Samuel		P					
Watson, Kathy		X					

Mike Turzai
Majority Chairman

Minority Chairman

HRC-AOc4

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE CHIEF CLERK

Committee Roll Call

Date October 20, 2014

Committee	Rules	Date & Time	October 20, 2014 – 3:15PM
Bill or Resolution No.	HB 80	Type of Motion	Adopt A10515
Sponsor of Motion	Waters	Seconded by	Parker
Brief Description	Requires $1,000,000 firearm liability insurance to get a license to carry.		

Yeas 2 Nays 30 Not Voting 1 Passed Failed X

MAJORITY MEMBERS	YEAS	NAYS	N-V	MINORITY MEMBERS	YEAS	NAYS	N-V
Turzai, Michael, Chairman		X		Dermody, Frank, Chairman		X	
Adolph, William		X		Costa, Dom		X	
Baker, Matthew		X		Frankel, Dan		X	
Christiana, Jim		P		Goodman, Neal		X	
Ellis, Brian		X		Hanna, Michael		X	
Gingrich, Mauree		X		Kula, Deberah		X	
Godshall, Robert		X		Markosek, Joseph		X	
Grove, Seth		X		Matzie, Rob		X	
Killion, Thomas		X		Mundy, Phyllis		X	
Marsico, Ron		X		Neuman, Brandon		X	
Masser, Kurt		X		Parker, Cherelle	X		
Mustio, Mark		X	/	Sabatina, John		X	
Pickett, Tina		X		Sturla, Michael		X	
Reese, Mike		X		Waters, Ron	X		
Saylor, Stan		X		Wheatley, Jake			X
Scavello, Mario		X					
Smith, Samuel		P					
Watson, Kathy		X					

Mike Turzai
Majority Chairman

Minority Chairman

AMENDMENTS TO HOUSE BILL NO. 80

Sponsor: Waters 191

Printer's No. 4318

Amend Bill, page 1, line 6, by inserting after "FOR"

licenses, for

Amend Bill, page 4, by inserting between lines 4 and 5

Section 2.1. Section 6109(e) of Title 18 is amended and the section is amended by adding a subsection to read:

§ 6109. Licenses.

* * *

(e) Issuance of license.--

(1) A license to carry a firearm shall be for the purpose of carrying a firearm concealed on or about one's person or in a vehicle and shall be issued if, after an investigation not to exceed 45 days, it appears that the applicant is an individual concerning whom no good cause exists to deny the license, and the applicant has obtained firearm liability insurance as provided under subsection (e.1). A license shall not be issued to any of the following:

(i) An individual whose character and reputation is such that the individual would be likely to act in a manner dangerous to public safety.

(ii) An individual who has been convicted of an offense under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

(iii) An individual convicted of a crime enumerated in section 6105.

(iv) An individual who, within the past ten years, has been adjudicated delinquent for a crime enumerated in section 6105 or for an offense under The Controlled Substance, Drug, Device and Cosmetic Act.

(v) An individual who is not of sound mind or who has ever been committed to a mental institution.

(vi) An individual who is addicted to or is an unlawful user of marijuana or a stimulant, depressant or narcotic drug.

(vii) An individual who is a habitual drunkard.

(viii) An individual who is charged with or has been convicted of a crime punishable by imprisonment for a

term exceeding one year except as provided for in section 6123 (relating to waiver of disability or pardons).

(ix) A resident of another state who does not possess a current license or permit or similar document to carry a firearm issued by that state if a license is provided for by the laws of that state, as published annually in the Federal Register by the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury under 18 U.S.C. § 921(a)(19) (relating to definitions).

(x) An alien who is illegally in the United States.

(xi) An individual who has been discharged from the armed forces of the United States under dishonorable conditions.

(xii) An individual who is a fugitive from justice. This subparagraph does not apply to an individual whose fugitive status is based upon nonmoving or moving summary offense under Title 75 (relating to vehicles).

(xiii) An individual who is otherwise prohibited from possessing, using, manufacturing, controlling, purchasing, selling or transferring a firearm as provided by section 6105.

(xiv) An individual who is prohibited from possessing or acquiring a firearm under the statutes of the United States.

(xv) An individual who has failed to obtain firearm liability insurance as provided under subsection (e.1).

(3) The license to carry a firearm shall be designed to be uniform throughout this Commonwealth and shall be in a form prescribed by the Pennsylvania State Police. The license shall bear the following:

(i) The name, address, date of birth, race, sex, citizenship, height, weight, color of hair, color of eyes and signature of the licensee.

(ii) The signature of the sheriff issuing the license.

(iii) A license number of which the first two numbers shall be a county location code followed by numbers issued in numerical sequence.

(iv) The point-of-contact telephone number designated by the Pennsylvania State Police under subsection (l).

(v) The reason for issuance.

(vi) The period of validation.

(4) The sheriff shall require a photograph of the licensee on the license. The photograph shall be in a form compatible with the Commonwealth Photo Imaging Network.

(5) The original license shall be issued to the applicant. The first copy of the license shall be forwarded to the Pennsylvania State Police within seven days of the date of issue. The second copy shall be retained by the

issuing authority for a period of seven years. Except pursuant to court order, both copies and the application shall, at the end of the seven-year period, be destroyed unless the license has been renewed within the seven-year period.

(e.1) Liability insurance.--

(1) No individual shall be issued a license under subsection (e) without providing the licensing authority with a certificate of liability insurance verifying that the applicant has a valid insurance policy insuring against harm or damage that may arise out of the use of a firearm covered by the license.

(2) The insurance policy shall meet all of the following:

(i) Be in an amount of at least $1,000,000.

(ii) Satisfy any judgment for personal injuries or property damages arising out of negligent or willful acts involving the use of an insured firearm.

(iii) May not cover any unlawful acts.

(3) An insurer who has issued a contract of firearm liability insurance, or any approved self-insurance entity, shall do all the following:

(i) Notify the licensing authority of the county in which the insured resides if the firearm liability insurance has been canceled or terminated. An insurer shall provide a copy of the notice of cancellation or a copy of the insurer's filing procedures with proof that the notice was written in the normal course of business and placed in the normal course of mailing.

(ii) Provide insurance identification certificates to the insured which shall be valid only for the period for which coverage has been paid by the insured. Insurance identification certificates must disclose the period for which coverage has been paid by the insured. If the insured has financed premiums through a premium finance company or is on an insurer-sponsored or agency-sponsored payment plan, insurance identification certificates may be issued for periods of six months notwithstanding that the payment by the insured may be for a period of less than six months.

(4) A licensing authority shall not be required to produce proof that notice of termination, lapse or cancellation was provided to the insured in order to revoke the license to carry a firearm. A licensing authority shall immediately revoke a licensee's license if the licensing authority receives notice that a licensee's firearm liability insurance has been canceled or terminated.

(5) The insurer's insurance identification certificate shall be carried simultaneously with the insured firearm and shall be exhibited to any law enforcement officer upon demand for inspection. Failure to produce the insurance

identification certification shall result in the following:

(i) The law enforcement officer shall confiscate the firearm.

(ii) The owner of the confiscated firearm shall be provided with a signed and dated written receipt by the law enforcement officer. This receipt shall include a detailed identifying description indicating the serial number and condition of the firearm.

(iii) If, within ten days, the law enforcement officer does not receive proof from the owner of the confiscated firearm that the owner has a valid firearm liability insurance policy, the law enforcement officer shall notify the licensing authority of the county in which the individual resides that proof of insurance was not provided and the firearm was confiscated. Upon receipt of the notification, the licensing authority shall immediately revoke the licensee's license to carry a firearm and immediately notify the law enforcement officer of the revocation.

(iv) A confiscated firearm shall be released to an owner as follows:

(A) after confirmation has been received that the owner's license to carry has been revoked and the law enforcement officer has notified the owner that the license has been revoked and that the owner may no longer carry the firearm in public; or

(B) the law enforcement officer has received proof from the owner of the confiscated firearm that the owner has a valid firearm liability insurance policy.

(6) If a licensing authority revokes a licensee's license to carry a firearm, the licensing authority may not reissue the license to carry until the person furnishes proof of insurance. The licensing authority shall charge a fee of $50 to reissue a license to carry following a revocation.

(7) An individual who is in this Commonwealth with a concealed firearm and possesses a valid and lawfully issued license or permit to carry that firearm which has been issued under the laws of another state as provided under section 6106(b)(15) (relating to firearms not to be carried without a license) shall be required to obtain firearm liability insurance as provided in this section within 30 days of arriving in this Commonwealth.

(8) An individual who fails to maintain liability insurance as provided under this subsection shall be subject to the following:

(i) For a first offense, the individual shall be subject to a fine of at least $1,000.

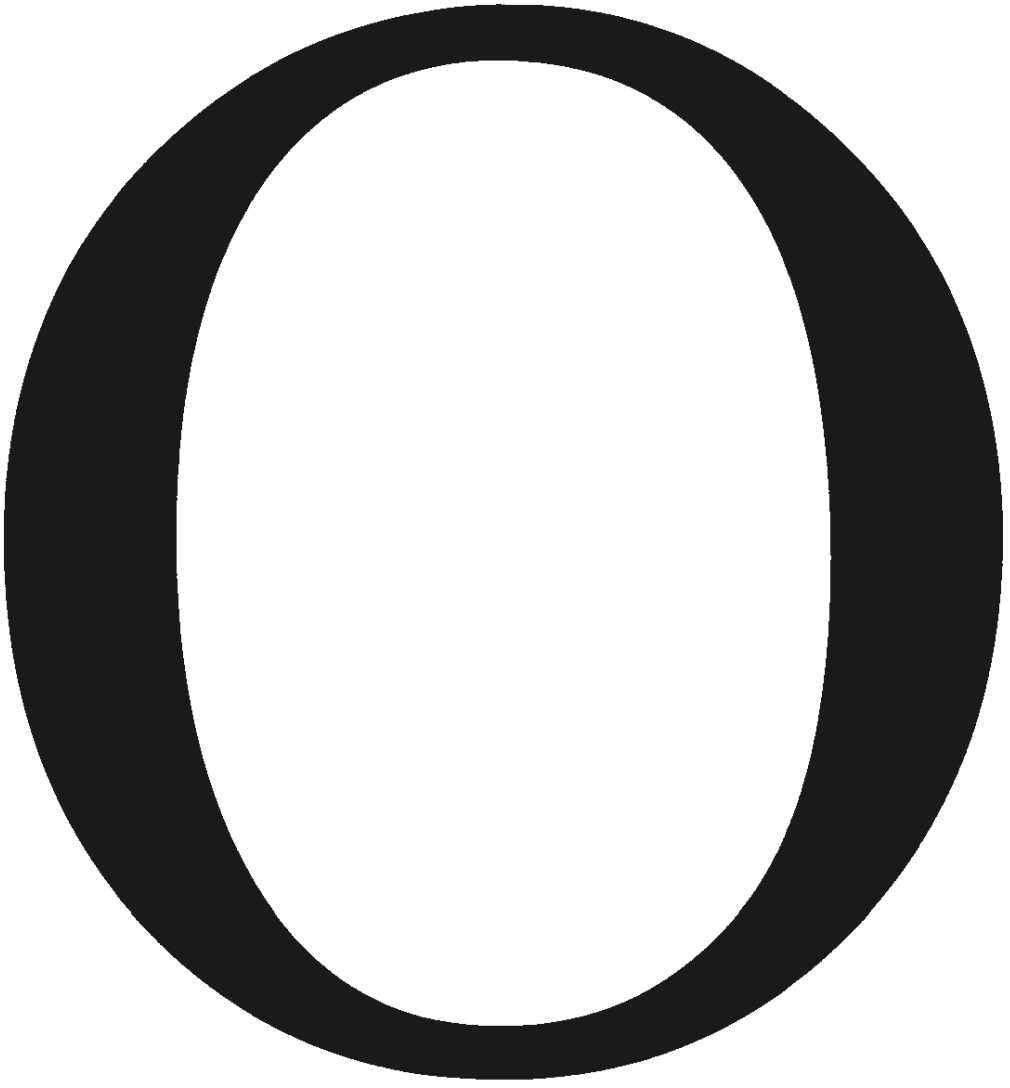
(ii) For a second offense, the individual shall be subject to a fine of at least $5,000.

(iii) For a third offense, the individual commits a

a misdemeanor of the third degree and shall be subject to a fine of at least $10,000.

(iv) For a fourth and subsequent offense, the individual commits a misdemeanor of the second degree and shall be subject to a fine of at least $15,000.

* * *



HRC-AOc4

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE CHIEF CLERK

Committee Roll Call

Date October 20, 2014

Committee	Rules	Date & Time	October 20, 2014 – 3:15PM
Bill or Resolution No.	HB 80	Type of Motion	Adopt A10512
Sponsor of Motion	Mundy	Seconded by	Parker
Brief Description	A shift from PA Instant Check System to Nation al Instant Check System.		

Yeas 1 Nays 31 Not Voting 1 Passed Failed X

MAJORITY MEMBERS	YEAS	NAYS	N-V	MINORITY MEMBERS	YEAS	NAYS	N-V
Turzai, Michael, Chairman		X		Dermody, Frank, Chairman		X	
Adolph, William		X		Costa, Dom		X	
Baker, Matthew		X		Frankel, Dan		X	
Christiana, Jim		P		Goodman, Neal		X	
Ellis, Brian		X		Hanna, Michael	X		
Gingrich, Mauree		X		Kula, Deberah		X	
Godshall, Robert		X		Markosek, Joseph		X	
Grove, Seth		X		Matzie, Rob		X	
Killion, Thomas		X		Mundy, Phyllis		X	
Marsico, Ron		X		Neuman, Brandon		X	
Masser, Kurt		X		Parker, Cherelle		X	
Mustio, Mark		X		Sabatina, John		X	
Pickett, Tina		X		Sturla, Michael		X	
Reese, Mike		X		Waters, Ron		X	
Saylor, Stan		X		Wheatley, Jake			X
Scavello, Mario		X					
Smith, Samuel		P					
Watson, Kathy		X					

Mike Turzai
Majority Chairman

Minority Chairman

AMENDMENTS TO HOUSE BILL NO. 80

Sponsor: Mundy

Printer's No. 4318

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

Amend Bill, page 1, line 6, by inserting after "FOR "

definitions, for licenses, for sale or transfer of firearms and for

Amend Bill, page 1, line 7, by striking out "AND" where it occurs the first time and inserting

; repealing provisions relating to firearms sales surcharge and firearm records check fund; further providing for licensing of dealers,

Amend Bill, page 1, line 8, by striking out the period after "AMMUNITION" and inserting

and for administrative regulations; and repealing provisions relating to Firearms Background Check Advisory Committee.

Amend Bill, page 4, by inserting between lines 4 and 5

Section 3. Section 6102 of Title 18 is amended by adding a definition to read:

§ 6102. Definitions.

Subject to additional definitions contained in subsequent provisions of this subchapter which are applicable to specific provisions of this subchapter, the following words and phrases, when used in this subchapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

* * *

"NICS." The National Instant Criminal Background Check System maintained by the Federal Bureau of Investigation in accordance with the Brady Handgun Violence Prevention Act (Public Law 103-159, 107 Stat. 1536).

* * *

Amend Bill, page 4, line 5, by striking out "3" and inserting

4

Amend Bill, page 4, line 5, by striking out "SECTION 6111.1(F)(3) AND (G)(1) AND (3)" and inserting

Sections 6109(d)(5) and 6111(a), (b), (f), (g)(3) and (j)

Amend Bill, page 4, by inserting between lines 6 and 7

§ 6109. Licenses.

* * *

(d) Sheriff to conduct investigation.--The sheriff to whom the application is made shall:

* * *

(5) [conduct a criminal background, juvenile delinquency and mental health check following the procedures set forth in section 6111 (relating to sale or transfer of firearms), receive a unique approval number for that inquiry and record the date and number on the application] contact the NICS and comply with the requirements of 18 U.S.C. § 922(t) (relating to unlawful acts).

* * *

§ 6111. Sale or transfer of firearms.

[(a) Time and manner of delivery.--

(1) Except as provided in paragraph (2), no seller shall deliver a firearm to the purchaser or transferee thereof until 48 hours shall have elapsed from the time of the application for the purchase thereof, and, when delivered, the firearm shall be securely wrapped and shall be unloaded.

(2) Thirty days after publication in the Pennsylvania Bulletin that the Instantaneous Criminal History Records Check System has been established in accordance with the Brady Handgun Violence Prevention Act (Public Law 103-159, 18 U.S.C. § 921 et seq.), no seller shall deliver a firearm to the purchaser thereof until the provisions of this section have been satisfied, and, when delivered, the firearm shall be securely wrapped and shall be unloaded.]

(b) Duty of seller.--No licensed importer, licensed manufacturer or licensed dealer shall sell or deliver any firearm to another person, other than a licensed importer, licensed manufacturer, licensed dealer or licensed collector, [until the conditions of subsection (a) have been satisfied and] until he has:

[(1) For purposes of a firearm as defined in section 6102 (relating to definitions), obtained a completed application/record of sale from the potential buyer or transferee to be filled out in triplicate, the original copy to be sent to the Pennsylvania State Police, postmarked via first class mail, within 14 days of the sale, one copy to be retained by the licensed importer, licensed manufacturer or licensed dealer for a period of 20 years and one copy to be provided to the purchaser or transferee. The form of this

application/record of sale shall be no more than one page in length and shall be promulgated by the Pennsylvania State Police and provided by the licensed importer, licensed manufacturer or licensed dealer. The application/record of sale shall include the name, address, birthdate, gender, race, physical description and Social Security number of the purchaser or transferee, the date of the application and the caliber, length of barrel, make, model and manufacturer's number of the firearm to be purchased or transferred. The application/record of sale shall also contain the following question:

Are you the actual buyer of the firearm(s), as defined under 18 Pa.C.S. § 6102 (relating to definitions), listed on this application/record of sale? Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person, unless you are legitimately acquiring the firearm as a gift for any of the following individuals who are legally eligible to own a firearm:

(1) spouse;
(2) parent;
(3) child;
(4) grandparent; or
(5) grandchild.

(1.1) On the date of publication in the Pennsylvania Bulletin of a notice by the Pennsylvania State Police that the instantaneous records check has been implemented, all of the following shall apply:

(i) In the event of an electronic failure under section 6111.1(b)(2) (relating to Pennsylvania State Police) for purposes of a firearm which exceeds the barrel and related lengths set forth in section 6102, obtained a completed application/record of sale from the potential buyer or transferee to be filled out in triplicate, the original copy to be sent to the Pennsylvania State Police, postmarked via first class mail, within 14 days of sale, one copy to be retained by the licensed importer, licensed manufacturer or licensed dealer for a period of 20 years and one copy to be provided to the purchaser or transferee.

(ii) The form of the application/record of sale shall be no more than one page in length and shall be promulgated by the Pennsylvania State Police and provided by the licensed importer, licensed manufacturer or licensed dealer.

(iii) For purposes of conducting the criminal history, juvenile delinquency and mental health records background check which shall be completed within ten days of receipt of the information from the dealer, the application/record of sale shall include the name, address, birthdate, gender, race, physical description and Social Security number of the purchaser or transferee

and the date of application.

(iv) No information regarding the type of firearm need be included other than an indication that the firearm exceeds the barrel lengths set forth in section 6102.

(v) Unless it has been discovered pursuant to a criminal history, juvenile delinquency and mental health records background check that the potential purchaser or transferee is prohibited from possessing a firearm pursuant to section 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms), no information on the application/record of sale provided pursuant to this subsection shall be retained as precluded by section 6111.4 (relating to registration of firearms) by the Pennsylvania State Police either through retention of the application/record of sale or by entering the information onto a computer, and, further, an application/record of sale received by the Pennsylvania State Police pursuant to this subsection shall be destroyed within 72 hours of the completion of the criminal history, juvenile delinquency and mental health records background check.

(1.2) Fees collected under paragraph (3) and section 6111.2 (relating to firearm sales surcharge) shall be transmitted to the Pennsylvania State Police within 14 days of collection.]

(1) (Reserved).

(1.1) (Reserved).

(1.2) (Reserved).

(1.3) In addition to the criminal penalty under section 6119 (relating to violation penalty), any person who knowingly and intentionally [maintains or fails to destroy any information submitted to the Pennsylvania State Police for purposes of a background check pursuant to paragraphs (1.1) and (1.4) or] violates section 6111.4 shall be subject to a civil penalty of $250 per violation. [, entry or failure to destroy.

(1.4) Following implementation of the instantaneous records check by the Pennsylvania State Police on or before December 1, 1998, no application/record of sale shall be completed for the purchase or transfer of a firearm which exceeds the barrel lengths set forth in section 6102. A statement shall be submitted by the dealer to the Pennsylvania State Police, postmarked via first class mail, within 14 days of the sale, containing the number of firearms sold which exceed the barrel and related lengths set forth in section 6102, the amount of surcharge and other fees remitted and a list of the unique approval numbers given pursuant to paragraph (4), together with a statement that the background checks have been performed on the firearms contained in the statement. The form of the statement relating to performance

of background checks shall be promulgated by the Pennsylvania State Police.]

(1.5) Contacted the NICS and complied with the requirements of 18 U.S.C. § 922(t) (relating to unlawful acts).

(2) Inspected photoidentification of the potential purchaser or transferee, including, but not limited to, a driver's license, official Pennsylvania photoidentification card or official government photoidentification card. In the case of a potential buyer or transferee who is a member of a recognized religious sect or community whose tenets forbid or discourage the taking of photographs of members of that sect or community, a seller shall accept a valid-without-photo driver's license or a combination of documents, as prescribed by the Pennsylvania State Police, containing the applicant's name, address, date of birth and the signature of the applicant.

[(3) Requested by means of a telephone call that the Pennsylvania State Police conduct a criminal history, juvenile delinquency history and a mental health record check. The purchaser and the licensed dealer shall provide such information as is necessary to accurately identify the purchaser. The requester shall be charged a fee equivalent to the cost of providing the service but not to exceed $2 per buyer or transferee.

(4) Received a unique approval number for that inquiry from the Pennsylvania State Police and recorded the date and the number on the application/record of sale form.

(5) Issued a receipt containing the information from paragraph (4), including the unique approval number of the purchaser. This receipt shall be prima facie evidence of the purchaser's or transferee's compliance with the provisions of this section.

(6) Unless it has been discovered pursuant to a criminal history, juvenile delinquency and mental health records background check that the potential purchaser or transferee is prohibited from possessing a firearm pursuant to section 6105, no information received via telephone following the implementation of the instantaneous background check system from a purchaser or transferee who has received a unique approval number shall be retained by the Pennsylvania State Police.

(7) For purposes of the enforcement of 18 U.S.C. § 922(d)(9), (g)(1) and (s)(1) (relating to unlawful acts), in the event the criminal history or juvenile delinquency background check indicates a conviction for a misdemeanor that the Pennsylvania State Police cannot determine is or is not related to an act of domestic violence, the Pennsylvania State Police shall issue a temporary delay of the approval of the purchase or transfer. During the temporary delay, the Pennsylvania State Police shall conduct a review or

investigation of the conviction with courts, local police departments, district attorneys and other law enforcement or related institutions as necessary to determine whether or not the misdemeanor conviction involved an act of domestic violence. The Pennsylvania State Police shall conduct the review or investigation as expeditiously as possible. No firearm may be transferred by the dealer to the purchaser who is the subject of the investigation during the temporary delay. The Pennsylvania State Police shall notify the dealer of the termination of the temporary delay and either deny the sale or provide the unique approval number under paragraph (4).]

* * *

(f) Application of section.--

(1) For the purposes of this section only, except as provided by paragraph (2), "firearm" shall mean any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon.

(2) The provisions contained in [subsections (a) and] subsection (c) shall only apply to pistols or revolvers with a barrel length of less than 15 inches, any shotgun with a barrel length of less than 18 inches, any rifle with a barrel length of less than 16 inches or any firearm with an overall length of less than 26 inches.

(3) The provisions contained in subsection [(a)] (b) (1.5) shall not apply to any law enforcement officer whose current identification as a law enforcement officer shall be construed as a valid license to carry a firearm or any person who possesses a valid license to carry a firearm under section 6109 (relating to licenses).

[(4) (i) The provisions of subsection (a) shall not apply to any person who presents to the seller or transferor a written statement issued by the official described in subparagraph (iii) during the ten-day period ending on the date of the most recent proposal of such transfer or sale by the transferee or purchaser stating that the transferee or purchaser requires access to a firearm because of a threat to the life of the transferee or purchaser or any member of the household of that transferee or purchaser.

(ii) The issuing official shall notify the applicant's local police authority that such a statement has been issued. In counties of the first class the chief of police shall notify the police station or substation closest to the applicant's residence.

(iii) The statement issued under subparagraph (ii) shall be issued by the district attorney, or his designee, of the county of residence if the transferee or purchaser resides in a municipality where there is no chief of police. Otherwise, the statement shall be issued

by the chief of police in the municipality in which the purchaser or transferee resides.]

(g) Penalties.--

* * *

(3) Any person, licensed dealer, licensed manufacturer or licensed importer who knowingly and intentionally requests a [criminal history, juvenile delinquency or mental health record check or other confidential information from the Pennsylvania State Police under this chapter] NICS check for any purpose other than compliance with this chapter or knowingly and intentionally disseminates any [criminal history, juvenile delinquency or mental health record] information obtained from a NICS check or other confidential information to any person other than the subject of the information commits a felony of the third degree.

* * *

(j) Exemption.--

(1) The provisions of [subsections (a) and] subsection (b) shall not apply to:

(i) sales between Federal firearms licensees; or

(ii) the purchase of firearms by a chief law enforcement officer or his designee, for the official use of law enforcement officers.

(2) For the purposes of this subsection, the term "chief law enforcement officer" shall include the Commissioner of the Pennsylvania State Police, the chief or head of a police department, a county sheriff or any equivalent law enforcement official.

Section 5. Section 6111.1(b)(1), (2) and (3), (c), (e), (f)(3), (g)(1) and (3), (i), (j.1), (j.2) and (j.3) of Title 18 are amended and the section is amended by adding a subsection to read:

Amend Bill, page 4, by inserting between lines 8 and 9

(b) Duty of Pennsylvania State Police.--

[(1) Upon receipt of a request for a criminal history, juvenile delinquency history and mental health record check of the potential purchaser or transferee, the Pennsylvania State Police shall immediately during the licensee's call or by return call forthwith:

(i) review the Pennsylvania State Police criminal history and fingerprint records to determine if the potential purchaser or transferee is prohibited from receipt or possession of a firearm under Federal or State law;

(ii) review the juvenile delinquency and mental health records of the Pennsylvania State Police to determine whether the potential purchaser or transferee is prohibited from receipt or possession of a firearm under Federal or State law; and

(iii) inform the licensee making the inquiry either:

(A) that the potential purchase or transfer is prohibited; or

(B) provide the licensee with a unique approval number.

(2) In the event of electronic failure, scheduled computer downtime or similar event beyond the control of the Pennsylvania State Police, the Pennsylvania State Police shall immediately notify the requesting licensee of the reason for and estimated length of the delay. If the failure or event lasts for a period exceeding 48 hours, the dealer shall not be subject to any penalty for completing a transaction absent the completion of an instantaneous records check for the remainder of the failure or similar event, but the dealer shall obtain a completed application/record of sale following the provisions of section 6111(b)(1) and (1.1) (relating to sale or transfer of firearms) as if an instantaneous records check has not been established for any sale or transfer of a firearm for the purpose of a subsequent background check.

(3) The Pennsylvania State Police shall fully comply, execute and enforce the directives of this section as follows:

(i) The instantaneous background check for firearms as defined in section 6102 (relating to definitions) shall begin on July 1, 1998.

(ii) The instantaneous background check for firearms that exceed the barrel lengths set forth in section 6102 shall begin on the later of:

(A) the date of publication of the notice under section 6111(a)(2); or

(B) December 31, 1998.]

* * *

[(c) Establish a telephone number.--The Pennsylvania State Police shall establish a telephone number which shall be operational seven days a week between the hours of 8 a.m. and 10 p.m. local time for purposes of responding to inquiries as described in this section from licensed manufacturers, licensed importers and licensed dealers. The Pennsylvania State Police shall employ and train such personnel as are necessary to administer expeditiously the provisions of this section.]

* * *

(e) Challenge to records.--

(1) Any person who is denied the right to receive, sell, transfer, possess, carry, manufacture or purchase a firearm as a result of the [procedures established by this section] <u>information recorded in a registry of the Pennsylvania State Police</u> may challenge the accuracy of that person's criminal history, juvenile delinquency history or mental health record [pursuant to a denial by the instantaneous records check] by submitting a challenge to the Pennsylvania State Police

within 30 days from the date of the denial.

(2) The Pennsylvania State Police shall conduct a review of the accuracy of the information forming the basis for the denial and shall have the burden of proving the accuracy of the record. Within 20 days after receiving a challenge, the Pennsylvania State Police shall notify the challenger of the basis for the denial, including, but not limited to, the jurisdiction and docket number of any relevant court decision and provide the challenger an opportunity to provide additional information for the purposes of the review. The Pennsylvania State Police shall communicate its final decision to the challenger within 60 days of the receipt of the challenge. The decision of the Pennsylvania State Police shall include all information which formed a basis for the decision.

(3) If the challenge is ruled invalid, the person shall have the right to appeal the decision to the Attorney General within 30 days of the decision. The Attorney General shall conduct a hearing de novo in accordance with the Administrative Agency Law. The burden of proof shall be upon the Commonwealth.

(4) The decision of the Attorney General may be appealed to the Commonwealth Court by an aggrieved party.

(5) Pursuant to the memorandum of understanding under subsection (j.4), the Pennsylvania State Police shall report to the National Instant Criminal Background Check System Index, Denied Persons Files, the name, date of birth and physical description of any person who successfully challenges the accuracy of that person's criminal history, juvenile delinquency history or mental health record under this subsection.

* * *

Amend Bill, page 5, by inserting between lines 15 and 16

[(i) Reports.--The Pennsylvania State Police shall annually compile and report to the General Assembly, on or before December 31, the following information for the previous year:

(1) number of firearm sales, including the types of firearms;

(2) number of applications for sale of firearms denied, number of challenges of the denials and number of final reversals of initial denials;

(3) summary of the Pennsylvania State Police's activities, including the average time taken to complete a criminal history, juvenile delinquency history or mental health record check; and

(4) uniform crime reporting statistics compiled by the Pennsylvania State Police based on the National Incident-based Reporting System.]

* * *

[(j.1) Delinquency and mental health records.--The provisions of this section which relate to juvenile delinquency and mental health records checks shall be applicable when the data has been made available to the Pennsylvania State Police but not later than October 11, 1999.

(j.2) Records check.--The provisions of this section which relate to the instantaneous records check conducted by telephone shall be applicable 30 days following notice by the Pennsylvania State Police pursuant to section 6111(a)(2).]

(j.3) Immunity.--[The Pennsylvania State Police and its employees shall be immune from actions for damages for the use of a firearm by a purchaser or for the unlawful transfer of a firearm by a dealer unless the act of the Pennsylvania State Police or its employees constitutes a crime, actual fraud, actual malice or willful misconduct.] Unless the act of the Pennsylvania State Police or its employees constitutes a crime, actual fraud, actual malice or willful misconduct, the Pennsylvania State Police and its employees shall be immune from actions for damages for:

(1) the use of a firearm by a purchaser or lawful owner; or

(2) the unlawful transfer of a firearm by a dealer.

(j.4) Report to NICS.--The Pennsylvania State Police shall, in accordance with Federal and State law regarding confidentiality, enter into a memorandum of understanding with the Federal Bureau of Investigation for the purpose of implementing the NICS in this Commonwealth. As soon as practicable after entering into the memorandum of understanding, the Pennsylvania State Police shall forward a notice of same to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin. The Pennsylvania State Police shall report to the National Instant Criminal Background Check System Index, Denied Persons Files, the name, date of birth and physical description of any person who:

(1) under section 6105, may not possess, use, control, sell, transfer or manufacture a firearm in this Commonwealth; or

(2) was previously reported under paragraph (1) or any predecessor statute or agreement and may currently possess, use, control, sell, transfer or manufacture a firearm in this Commonwealth.

* * *

Section 6. Sections 6111.2 and 6111.3 of Title 18 are repealed:

[§ 6111.2. Firearm sales surcharge.

(a) Surcharge imposed.--There is hereby imposed on each sale of a firearm subject to tax under Article II of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, an additional surcharge of $3. This shall be referred to as the Firearm Sale Surcharge. All moneys received from this surcharge shall be deposited in the Firearm Instant Records Check Fund.

(b) Increases or decreases.--Five years from the effective date of this subsection, and every five years thereafter, the Pennsylvania State Police shall provide such information as necessary to the Legislative Budget and Finance Committee for the purpose of reviewing the need to increase or decrease the instant check fee. The committee shall issue a report of its findings and recommendations to the General Assembly for a statutory change in the fee.

(c) Revenue sources.--Funds received under the provisions of this section and section 6111(b)(3) (relating to sale or transfer of firearms), as estimated and certified by the Secretary of Revenue, shall be deposited within five days of the end of each quarter into the fund.

(d) Definition.--As used in this section only, the term "firearm" shall mean any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosion or the frame or receiver of any such weapon.

§ 6111.3. Firearm Records Check Fund.

(a) Establishment.--The Firearm Records Check Fund is hereby established as a restricted account in the State Treasury, separate and apart from all other public money or funds of the Commonwealth, to be appropriated annually by the General Assembly, for use in carrying out the provisions of section 6111 (relating to firearm ownership). The moneys in the fund on June 1, 1998, are hereby appropriated to the Pennsylvania State Police.

(b) Source.--The source of the fund shall be moneys collected and transferred under section 6111.2 (relating to firearm sales surcharge) and moneys collected and transferred under section 6111(b)(3).]

Section 7. Section 6113(a) of Title 18 is amended to read:

§ 6113. Licensing of dealers.

(a) General rule.--The chief or head of any police force or police department of a city, and, elsewhere, the sheriff of the county, shall grant to reputable applicants licenses, in form prescribed by the Pennsylvania State Police, effective for three years from date of issue, permitting the licensee to sell firearms direct to the consumer, subject to the following conditions in addition to those specified in section 6111 (relating to sale or transfer of firearms), for breach of any of which the license shall be forfeited and the licensee subject to punishment as provided in this subchapter:

(1) The business shall be carried on only upon the premises designated in the license or at a lawful gun show or meet.

(2) The license, or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be read.

(3) No firearm shall be sold in violation of any provision of this subchapter.

(4) No firearm shall be sold under any circumstances

unless the purchaser is personally known to the seller or shall present clear evidence of the purchaser's identity.

(5) [A true record in triplicate shall be made of every firearm sold, in a book kept for the purpose, the form of which may be prescribed by the Pennsylvania State Police, and shall be personally signed by the purchaser and by the person effecting the sale, each in the presence of the other, and shall contain the information required by section 6111. The record shall be maintained by the licensee for a period of 20 years.] (Reserved).

(6) No firearm as defined in section 6102 (relating to definitions) shall be displayed in any part of any premises where it can readily be seen from the outside. In the event that the Commissioner of the Pennsylvania State Police shall find a clear and present danger to public safety within this Commonwealth or any area thereof, firearms shall be stored and safeguarded pursuant to regulations to be established by the Pennsylvania State Police by the licensee during the hours when the licensee is closed for business.

(7) The dealer shall possess all applicable current revenue licenses.

* * *

Amend Bill, page 5, line 16, by striking out "4" and inserting

8

Amend Bill, page 6, by inserting after line 30

Section 9. Section 6124 of Title 18 is amended to read:

§ 6124. Administrative regulations.

The commissioner may establish form specifications and regulations, consistent with section 6109(c) (relating to licenses), with respect to uniform forms control, including the following:

(1) License to carry firearms.

(2) Firearm registration.

(3) Dealer's license.

[(4) Application for purchase of a firearm.

(5) Record of sale of firearms.]

Section 10. Section 6126 of Title 18 is repealed:

[§ 6126. Firearms Background Check Advisory Committee.

(a) Establishment.--There is hereby established the Firearms Background Check Advisory Committee which shall consist of six members as follows:

(1) The Governor or a designee.

(2) The Attorney General or a designee.

(3) The Majority Leader of the Senate or a designee.

(4) The Minority Leader of the Senate or a designee.

(5) The Majority Leader of the House of Representatives

or a designee.

(6) The Minority Leader of the House of Representatives or a designee.

(b) Duties.--To facilitate compliance with this chapter and the intent thereof, the Firearms Background Check Advisory Committee shall, as follows:

(1) Review the operations and procedures of the Pennsylvania State Police relating to the implementation and administration of the criminal history, juvenile delinquency and mental health records background checks.

(2) Advise the Pennsylvania State Police relating to the development and maintenance of the instantaneous records check system.

(3) Provide annual reports to the Governor and the General Assembly on the advisory committee's findings and recommendations, including discussions concerning conformance with the preamble of the act of June 13, 1995 (1st Sp.Sess., P.L.1024, No.17), entitled, "An act amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for the possession of firearms; establishing a selected Statewide juvenile offender registry; and making an appropriation."

(c) Terms.--Members or their designees shall serve a term of office concurrent with the term of office for which the member was elected. Any vacancy shall be filled by the appointing authority.

(d) Chairperson.--The Governor shall appoint the chairperson of the advisory committee.

(e) Expiration.--This section shall expire November 30, 2002.]

Amend Bill, page 7, line 1, by striking out "5" and inserting

11

Amend Bill, page 7, line 1, by striking out "in 60 days." and inserting

as follows:

(1) The following shall take effect 30 days after notice is published in the Pennsylvania Bulletin that a memorandum of understanding has been entered into under section 6111.1(j.4):

(i) The amendment of 18 Pa.C.S. §§ 6109(d) and 6111.

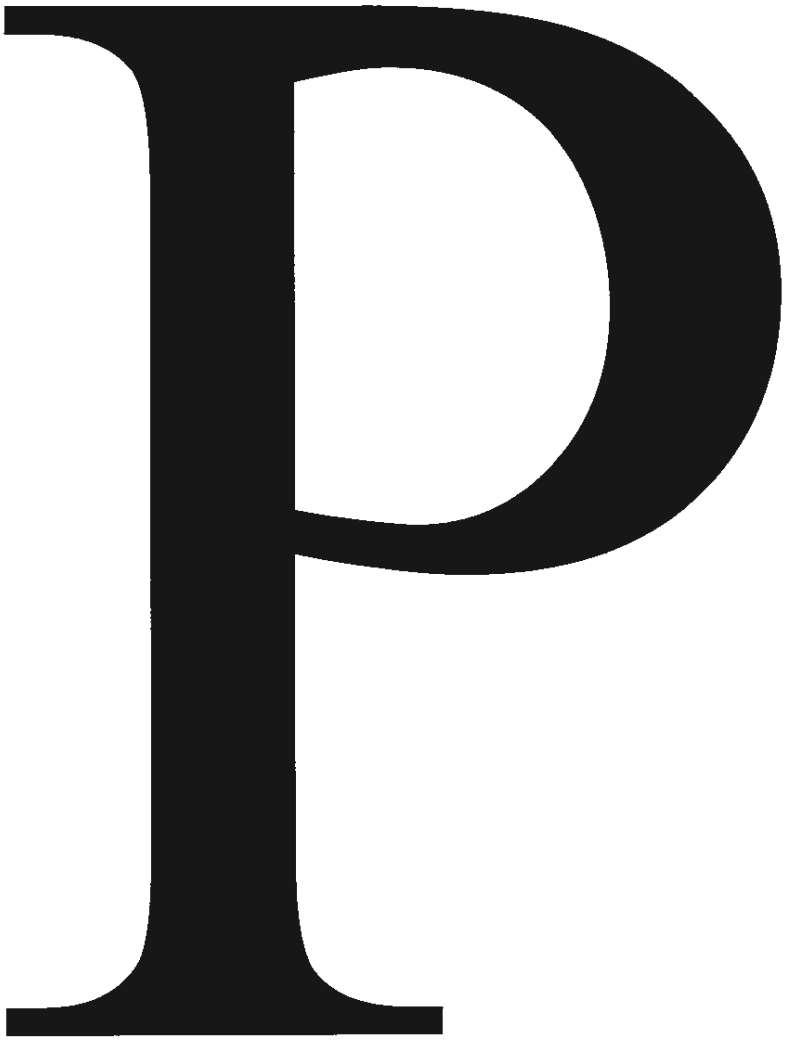
(ii) The repeal of 18 Pa.C.S. §§ 6111.2, 6111.3 and 6126.

(2) The following shall take effect immediately:

(i) This section.

(ii) The amendment or addition of 18 Pa.C.S. § 6111.1(e)(5) and (j.4).

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



HRC-AOc4

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE CHIEF CLERK

Committee Roll Call

Date October 20, 2014

Committee	Rules	Date & Time	October 20, 2014 – 3:15PM
Bill or Resolution No.	HB 80	Type of Motion	Adopt A10510
Sponsor of Motion	Sturla	Seconded by	Mundy
Brief Description	Exempts existing local ordinances from pre-emption remedies. This does not change the underlying prohibition against such ordinances, just precludes remedies.		

Yeas 7 Nays 25 Not Voting 1 Passed Failed X

MAJORITY MEMBERS	YEAS	NAYS	N-V	MINORITY MEMBERS	YEAS	NAYS	N-V
Turzai, Michael, Chairman		X		Dermody, Frank, Chairman		X	
Adolph, William	X			Costa, Dom		X	
Baker, Matthew		X		Frankel, Dan	X		
Christiana, Jim		P		Goodman, Neal		X	
Ellis, Brian		X		Hanna, Michael		X	
Gingrich, Mauree		X		Kula, Deberah		X	
Godshall, Robert		X		Markosek, Joseph		X	
Grove, Seth		X		Matzie, Rob		X	
Killion, Thomas		X		Mundy, Phyllis	X		
Marsico, Ron		X		Neuman, Brandon		X	
Masser, Kurt		X		Parker, Cherelle	X		
Mustio, Mark		X		Sabatina, John	X		
Pickett, Tina		X		Sturla, Michael	X		
Reese, Mike		X		Waters, Ron	X		
Saylor, Stan		X		Wheatley, Jake			X
Scavello, Mario		X					
Smith, Samuel		P					
Watson, Kathy		X					

Mike Turzai
Majority Chairman

Minority Chairman

AMENDMENTS TO HOUSE BILL NO. 80

Sponsor: Sturla, 96th

Printer's No. 4318

Amend Bill, page 5, line 21, by striking out "A" where it occurs the second time and inserting

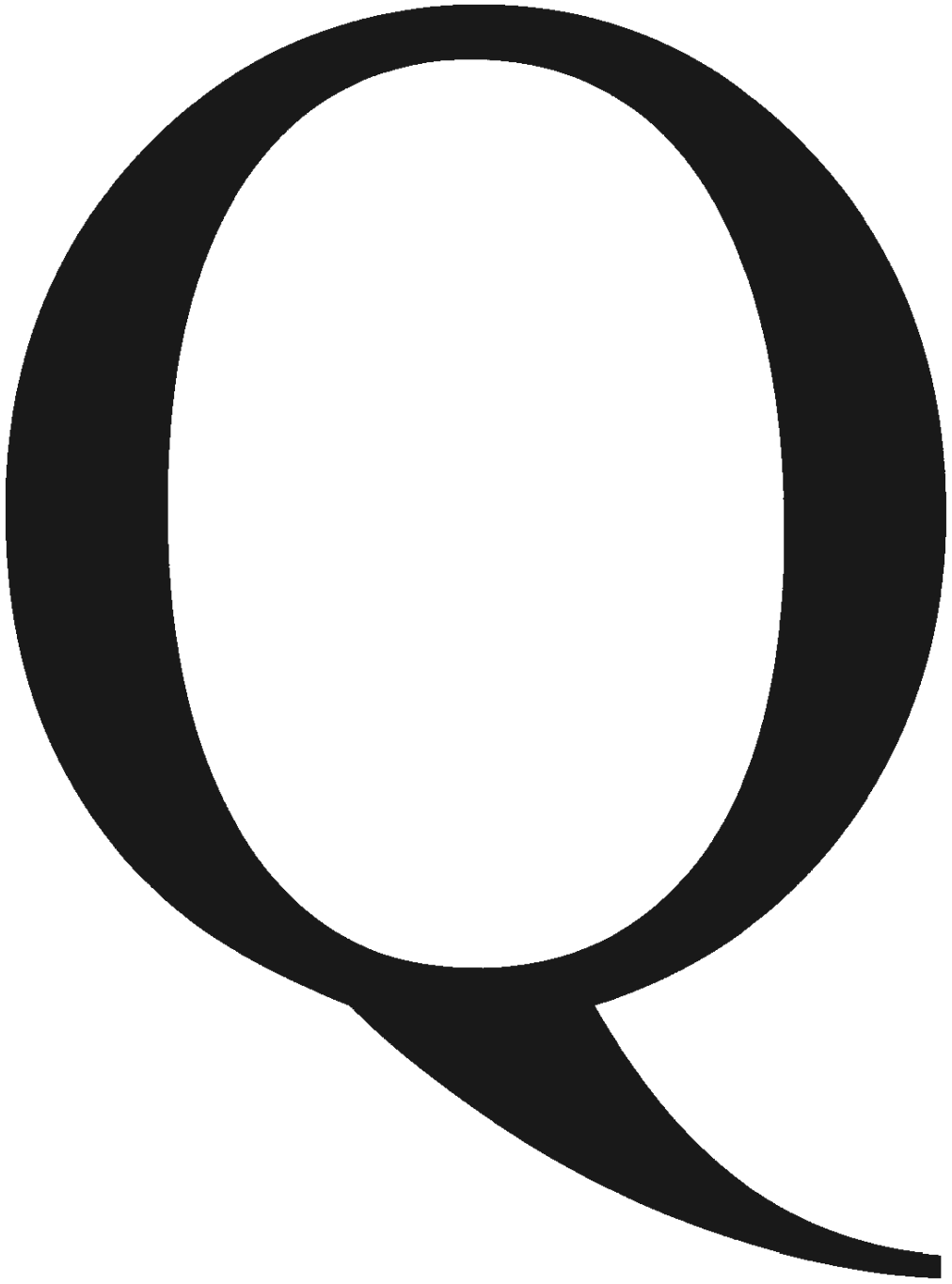
Except as provided in subsection (a.3), a

Amend Bill, page 5, by inserting between lines 27 and 28

(a.3) Exception.--Subsection (a.2) shall not apply to an ordinance, a resolution, regulation, rule, practice or any other action promulgated or enforced by a political subdivision before the effective date of this subsection.

Amend Bill, page 5, line 28, by striking out "(a.3)" and inserting

(a.4)



HB 80
10/20/2014

The House proceeded to consideration of concurrence in Senate amendments to **HB 80, PN 4318,** entitled:

On the question,
Will the House concur in Senate amendments?

The SPEAKER. Moved by the gentleman, Mr. Metcalfe, that the House concur in the amendments inserted by the Senate.

The Speaker recognizes the gentleman, Mr. Metcalfe, for a brief description of the Senate amendments.

Mr. METCALFE. Thank you, Mr. Speaker.

Mr. Speaker, the Senate amended the bill substantially. Those amendments include language to amend section 3503 of Title 18 relating to criminal trespass in order to add the offense of trespassing in order to steal a secondary medal. It also includes, and has been amended into it, the language from HB 1243, which the House passed 143-to-54 on October 6, 2014. That language does two things. First, it requires the State Police to send mental health data to the National Instant Criminal Background Check System, and it provides remedies for the unlawful regulation of firearms, Mr. Speaker.

Thank you, Mr. Speaker.

The SPEAKER. The question is, will the House concur in the amendments inserted by the Senate?

On that question, the Speaker recognizes the gentleman from Allegheny County, Mr. Frankel.

Mr. FRANKEL. Thank you, Mr. Speaker.

I rise to oppose this bill because HB 80 contains a couple of very bad ideas. As it was amended in the Senate to incorporate a preemption of our local governments from being able to pass legislation that would provide the tools to their law enforcement agencies that they so desperately want to combat the scourge of illegal guns on their streets. Primarily, and I have said this before, it deals with the issue of local governments mandating that their citizens report the loss of a weapon or a weapon being stolen from their homes. A simple idea, a reasonable idea, a commonsense idea that is supported by so many of our municipalities across Pennsylvania because they believe that this tool will help them keep weapons from getting into the hands of felons and juveniles who use them to perpetrate crimes.

We should support those local governments because we have not been able to do it here. We have -- as I have said before, we have been trying for over a decade to pass this bill, to get this bill considered, to mandate the reporting of lost and stolen weapons. Other States have done that. We should do that. But if we are not going to do it, let us not handicap our local governments from being able to pass legislation that their law enforcement agencies want, and that quite frankly, the citizens of this State, when polled, want.

The other bad idea in this bill is that it gives standing to the NRA to bring lawsuits against those local governments. Many of those local governments who are struggling financially would have to defend and pay damages if the lawsuits by the NRA were successful. This is not a great idea. I mean since when does an organization have standing to sue a local government? This is a bad precedent that we are setting here. And particularly, because the NRA has been marketing this and walking around with this piece of legislation for months, it is their bill to give them standing in their enormous resources to go after our local governments. We should not allow that to happen. It is a bad precedent.

So I would ask my colleagues to take a reasonable approach here. I know what is likely to happen. We all have to represent our districts. But those of us who represent districts that are struggling to combat crime on our streets and illegal guns used to perpetrate those crimes, need some assistance. And if we are not going to provide it here, let us allow those governments to do what is in the best interest of the citizens of those municipalities.

I urge a "no" vote. Thank you, Mr. Speaker.

The SPEAKER. The question is, will the House concur in the amendments inserted by the Senate?

On that question, the Speaker recognizes the gentleman from Philadelphia County, Mr. Thomas.

Mr. THOMAS. Thank you, Mr. Speaker.

Mr. Speaker, I rise to nonconcur on HB 80 for the following reasons. Number one, my colleague from Pittsburgh, Allegheny County, laid out a very credible argument dealing with the cost that will be borne by local municipalities if this bill becomes law. The way the bill is drafted, municipalities are going to have to put money out one way or the other, whether they win or lose. And so, Mr. Speaker, taxpayers in our local municipalities are already overburdened. This is a bad bill for the financial stability of our local communities.

Secondly, Mr. Speaker, there is this scripture, I believe in Galatians, which talks about the need for us to never engage in creating dissension amongst our brothers. This bill is going to create dissension between local officials and people in local communities because there are people in our local communities who want our local elected officials to do something about the scourge of gun violence in our communities.

Every poll that has been taken, every poll that has been taken, over 85 percent of the people that responded to those polls at the local level, have said that they are okay with reasonable restrictions on guns, reasonable restrictions, like lost and stolen, straw purchases, people who break in to commit a crime in order to get guns. Mr. Speaker, people have said that they are okay with some restrictions, and it will not be tantamount to an infringement on the Second Amendment.

So, Mr. Speaker, we have the financial consequences associated to this. We have the moral consequences associated with this. We are creating dissension at the local level. Thirdly, Mr. Speaker, we need to deal with this whole – this Second Amendment. The National Rifle Association has repeatedly said that we cannot tolerate any infringement on their right to access guns, as articulated or as interpreted by them of the Second Amendment.

So, Mr. Speaker, my primary concern, we have two colleagues who were faced with a very tragic situation last week. If one of my colleagues had not been legally armed, he and my other colleague would not be here today. But thankfully, they were legally carrying a weapon and were able to thwart their perpetrators. But, Mr. Speaker, my colleagues will tell you that if the mayor of Harrisburg, if the county commissioner of Dauphin County, if their hands were not tied and could do what was in the best interest of the people of Harrisburg, of Dauphin County, that 17-year-old punk would not have had a gun in his hand. That 17-year-old punk would not have had a gun in his hand because he possessed the gun illegally. He should not have had the gun. But because of all of the stolen guns that take place, all of the straw purchases that are being made, this young man was able to put his hand on a gun. And therefore, we should not tie the hands of the mayor of Harrisburg or the county commissioner or the elected officials of Dauphin County. They should be able to do what is reasonably necessary to bring an end to the scourge of gun violence in this community and people having access to guns.

Mr. Speaker, if I did not know any different, because I talked to a lot of these young people, young people who are able to get guns before they can even get a book. And, Mr. Speaker, the first thing that a 12-year-old— I had a teen summit last Saturday. Over 125 young people were out from 9 years old on up at 9 o'clock in the morning. And one of the things that I talked about with these young people, I asked a 12-year-old, a 12-year-old, I asked him why would you take a gun to settle a dispute that you have with a friend. You know what he told me? You know what he told me? He told me, because I have got a right under the Second Amendment of the Constitution. I have a right to use a gun to defend myself against other 10-years-olds that might be bullying him or might be trying to hurt him. He was never intended, he was never intended under the Second Amendment.

You and I know, a 10-year-old, 11-year-old, 12-year-old cannot go out here and buy a gun and get a permit like you and I. The other thing is, 10-, 11-, 12-year olds, they cannot get any training for the guns that they are able to get from friends and they are able to steal out of homes. Law-abiding members of this General Assembly, you teach your kids how to use weapons. Your kids are able to responsibly deal with guns that they have access to. This is not the case in many parts of Pennsylvania. Kids are getting guns and doing whatever they want with them because they think they have a right under the Second Amendment.

So, Mr. Speaker, I say today is the day to draw the line in the sand. Let us separate the bad people from the good people. The good people who have a right to guns under the Second Amendment, they should be protected, but these little 9-, 10-, 11-, 12-year-olds, folks who would beat their wives in domestic situations. Mr. Speaker, gun violence happens in our homes and in our communities. Give our local communities an opportunity to deal with this issue in our local communities. Let us not go home today and tie the hands of our local officials. Let us not go home today and put addition financial burdens on local municipalities. Let us not go home today and create dissension and an adversarial climate in our local communities. Let us not go home today, letting the bad people think that they have the same rights that you and I have. Let us send a clear message to the bad people that we are going to empower our local communities to do what they need to do to make sure that babies get books not guns, to make sure that bad people do not use guns to continue their bad habits.

Let us do that today. Nonconcur on HB 80, Mr. Speaker. Thank you.

The SPEAKER. The question is, will the House concur in the amendments inserted by the Senate?

On that question, the Speaker recognizes the gentleman from Armstrong County, Mr. Pyle.

Mr. PYLE. Thank you, Mr. Speaker.

Mr. Speaker, I am not sure if this is a parliamentary inquiry or not, but I need to ask of the Speaker a definition.

The SPEAKER. The gentleman may state his parliamentary inquiry.

Mr. PYLE. Mr. Speaker, I am not sure I understand what exactly this phrase "illegal gun" means. The last I

checked, they are inanimate objects that cannot think for themselves and therefore incapable of creating actions by themselves.

The SPEAKER. The gentleman— That would not be a parliamentary inquiry. The interpretation of the definition of words used in a bill would have to be defined by the bill. The interpretation of the definition of words used by members in a debate or in a public domain is subject to your own interpretation.

Mr. PYLE. Well, thank you very much for that explanation.

The SPEAKER. Is the gentleman seeking further recognition on the bill?

Mr. PYLE. May I speak on the bill, Mr. Speaker?

The SPEAKER. The gentleman is in order on the bill.

Mr. PYLE. Mr. Speaker, the point I was making is this. Quite simply, there is no such thing as an illegal gun. There are about as many illegal guns as there are illegal manhole covers. They are inanimate, incapable of creating their own thoughts or actions.

Mr. Speaker, I feel for the gentleman for the city of the first class. I understand they have a lot of problems we in the backwater countries do not really have. But here is my question toward this bill, if I leave Harrisburg today and I drive to my friend Tommy Killion's district in Delaware County, I will pass through 11 legislative districts. My question is, being somebody who is legally allowed to own guns, holds a concealed carry permit, and am federally empowered to cross county lines holding a firearm, at which point do I go from legal to illegal to legal to illegal to legal to illegal, not being privy to all the local firearm statutes in counties between here and New Jersey.

Mr. Speaker, we must vote concurrence on HB 80. To have a crazy quilt of now you see it, now you do not going on across 300 miles east to west, 110 miles north to south, would turn criminals, well would turn law-abiding citizens unknowingly into criminals. And I know the old adage is, ignorance is not above the law. No, it is not. But in assessing the problems of the city of the first class, and of Squirrel Hill and of Pittsburgh, you know, it is funny, and I am happy that somebody brought up Squirrel Hill because I live about 20 miles from it. We do not have these issues with quote, unquote "illegal guns." We do not have them. Maybe it is because our population density is much less than the city of the second class. We are only a county of the sixth class.

But what I can tell you about where we are a little bit ahead of the curve, Mr. Speaker, is we respect people's rights. And if you think we are fighting hard for the second, you should hear us fight for the first. Because we feel freedom of speech and freedom of press and freedom to assemble and of religion are just as important. Mr. Speaker, we must concur with HB 80.

Mr. Speaker, I do have a parliamentary inquiry.

Mr. Speaker, not too long ago the Supreme Court of the land held down *Heller v. DC*, that said localities cannot make their own gun laws beyond that of the ruling home State. This is a moot conversation; I appreciate the gentleman from Cranberry making it. We must concur with HB 80. To do anything less would be unconstitutional.

Thank you, Mr. Speaker.

The SPEAKER. The question is, will the House concur in the amendments inserted by the Senate?

On that question, the Speaker recognizes the lady from Montgomery County, Mrs. Dean.

Mrs. DEAN. Thank you, Mr. Speaker.

I rise today in opposition to HB 80 yet again. Talk about some sausage making. HB 80 as we see it today is really a compilation, as you all know, of three earlier House bills. The first part: Theft of secondary metal and trespass is a concept I support in its promotion of public safety. The second part of this bill, directing that the State Police report mental health data to the National Instant Criminal Background Check System, (NICS), is another thing I support. Yet the third part of this bill, allowing membership organizations and other persons to sue municipalities to block or overturn local ordinances, I cannot support. And in the same breath, you would be able to, the membership organizations would be able to collect attorneys' fees and costs and expenses, and even lost income from employment.

This is a dangerous provision that threatens our municipalities' financial stability. And just as alarming, it will hamper our local towns and cities from taking action to protect their own citizens, where the State has failed to do that. My own township, Abington Township, has passed a lost and stolen ordinance like 48 other municipalities responding to the problem of illegal drugs, excuse me guns.

Our own State government task force on violence recommended, recommended lost and stolen legislation, but we failed to do it as a State. HB 80 puts our own citizens at risk, both in their pocketbooks when their municipalities need to defend themselves from litigation and also in their persons as important protective ordinances, as some of my colleagues have talked about, and laws will be put in jeopardy. In addition, the absurdly broad definition of "membership organization," as was revealed in House debate, in this bill, could force our local taxpayers' town or city to defend themselves from membership organizations such as the KKK (Ku Klux Klan) or the Aryan Nations or ISIS (Islamic State of Iraq and Syria), criminal gangs, the Mafia. Is that really the kind of

legislation we want to pass? Is that really the responsible thing for us to do here this last day of session? We know where this is coming from. One group has pushed this, has ushered this, has shuttled this around this Capitol. And soon, they will be suing a town near you.

Finally, since this is a compilation of three separate bills, I have serious concerns on how they are germane to each other. You have got to wonder about that. How do they meet the single-subject rule that we hold so dear? While all the provisions are contained within Title 18, it fails me to identify the unifying theme among them, among all three: Theft of metals, State Police disclosure of records, relief for persons – i.e. the NRA – adversely affected by an ordinance to protect our towns and cities from costly litigation and this special standing that I cannot understand, we have to point out the flaws of this legislation and I urge that we vote "no" in concurrence on HB 80.

Thank you very much, Mr. Speaker.

The SPEAKER. The question is, will the House concur in the amendments inserted by the Senate?

On that question, the Speaker recognizes the lady from Philadelphia County, Mrs. Parker.

Mrs. PARKER. Thank you, Mr. Speaker.

Mr. Speaker, in 2013, the city of Philadelphia witnessed 247 murders. When a murder occurred in the context of domestic violence, a gun was the most frequently used weapon, about 41 percent of the time. In addition to that, Mr. Speaker, that really does not say much compared to the 1,128 people who were actually wounded and/or killed by gunshots in 2013 in our great city. I rise to ask my colleagues to not concur with HB 80 because those alarming or what should be alarming statistics that I just shared with you about the unfortunate cases of violence that results in the loss of life, which includes use of an illegally-acquired firearm has not only impacted the city of Philadelphia, but it has impacted municipalities across the Commonwealth of Pennsylvania, which is why so many have passed laws commonly referred to as "the mandatory reporting requirement" for lost and stolen handguns in particular.

Now, Mr. Speaker, I was not going to reference this, but the gentlelady on my side of the aisle from Montgomery who spoke before I did, she referenced the Mafia during her remarks. And as she referenced the Mafia – I am somewhat of a movie buff – I could not help but to have a scene run through my mind from the movie called "The Godfather," in which someone responds that they are going to convince someone to act in a certain way because they are going to quote, unquote make them an offer that they cannot refuse.

Well today, Mr. Speaker, HB 80, as amended by the Senate, makes an offer that local municipalities across the Commonwealth will not be able to refuse because they cannot afford to pay the penalties, Mr. Speaker, the financial penalties, associated with HB 80 when in fact they are only attempting to respond to the crisis of public safety in their respective municipalities. I heard one of my colleagues on the other side of the aisle who spoke before me who talked about the importance of the First Amendment and the importance of the Second Amendment. And with all due respect, Mr. Speaker, I do not think that there are any in this 203-member body who do not firmly support our First and Second Amendment rights. Mr. Speaker, they are the very items that make our democracy, that make our country, that make others across the world hold us in such high esteem. But, Mr. Speaker, even those things had to be amended. They were not perfect. They did not get it right the first time around, which is why they had to make some adjustments as they went along in the process so that we can continue to make our democracy more perfect and in a way that our founders would have had it.

In addition, Mr. Speaker, I want to note that HB 80 does not make dollars and it does not make cents for municipalities across the Commonwealth. Why do I say this, Mr. Speaker? I do not know. It is an old adage from my grandmother. And I know I am pretty old-fashioned, but she would say that, "If an issue doesn't make dollars and it doesn't make cents, why would you even entertain it?" This bill does not make dollars and it does not make cents for cash-strapped municipalities, Mr. Speaker, who are attempting to address their own issues associated with public safety because we as a General Assembly have failed, and we have not been able to come together to reach some consensus agreement to help those municipalities who look to State government for their help.

So instead, Mr. Speaker, I want us to think about this offer that the local municipalities cannot refuse. A rise in costs in property taxes, they talked about education, the basic providing of services in municipalities across the Commonwealth of Pennsylvania. It is something that is of grave importance. And Philadelphia is not alone. Everywhere you go, municipalities are struggling to generate the revenue that they need to take care of their own house.

But now, but now, the most powerful lobby, Mr. Speaker, and I would not just say in the Commonwealth of Pennsylvania, but one of the most powerful lobbying groups in our nation, Mr. Speaker, has said to those municipalities, that you cannot, and if you do decide that in absence of the State responding to give you the power that you need to address the public violence and public safety crisis that you are actually feeling on a daily basis, if you attempt to use the legislative process to do that, we are going to make you pay and we are going to hit you where it hurts, and that is in the form of rare taxpayer dollars.

Finally, Mr. Speaker, I want to say to you, and I want to say to members of the listening audience that this is a perfect example of the majority having its way and the minority having its say, because when you are in the majority, Mr. Speaker, you do not have to stand up on the floor and give this explanation about why you should not concur in this bill because all we have to do is press a button and say, "yes." But what I want the public to know that when it comes to controlling the flow of illegal guns in the Commonwealth of Pennsylvania, this is not a partisan issue. No one can lay blame and say well this bill passed because of Republicans or this bill passed because of Democrats. We have some philosophical differences here, Mr. Speaker, and there will be bipartisan support for and there will be bipartisan support against, but if this bill does anything, Mr. Speaker, it should do what it has done for me. And I hope it motivates and inspires the electorate who are watching to – I do not care if it is rain, sleet, or snow, when they have the opportunity to exercise their right, they better make it to where it is going to count, to the polls on November the 4th because that is the only way that we are going to ensure that bills which I believe are unconstitutional, like HB 80, because it violates the single-subject rule – and I did make that motion in committee, but again because I am part of the minority, it failed.

Democracy works when people participate, when people are active. I hope the people of the Commonwealth of Pennsylvania, particularly in those municipalities where they have passed some version of the lost and stolen gun reporting requirement, I hope they are paying attention to these votes. I hope they are paying attention to what we are doing here today and that they go and give us our response where it matters most, and that is on November the 4th in the election.

Thank you, Mr. Speaker.

The SPEAKER. The question is, will the House concur in the amendments inserted by the Senate?

On that question, the Speaker recognizes the gentleman from Allegheny County, Mr. Saccone.

Mr. SACCONE. Thank you, Mr. Speaker.

I rise in support of HB 80. I would like to add some perspective to some of the comments I have heard by my colleagues on this bill. The last time we debated this bill and this time – I have heard it many, many times now today – the repeated objection to membership organizations having standing. No, I stand corrected. I have heard the repeated objection to the NRA having standing to be able to sue municipalities in these cases. And I say, "oh really, is that right? That is your objection?" Sounds really peculiar to me because when it is the ACLU (American Civil Liberties Union) or the Sierra Club or the Freedom from Religion Foundation, all the way from Wisconsin coming in here and intimidating and suing municipalities, I hear an eerie silence from the left in those cases. You know, Mr. Speaker, the well-funded antigun lobby and its minions, their solution to gun violence is to disarm law-abiding citizens by adding these local hurdles to their ability to keep and bear harms.

Mr. Speaker, I just want to say to all my colleagues and the antigun lobby, we are not the problem. Law-abiding citizens carrying their weapon are not the problem. Quit directing your solutions at us. What we need to do is stop excusing the criminals and start prosecuting them. Mr. Speaker, not one of the 247 homicides committed in Philadelphia last year was committed with a lawfully-purchased gun. Disarming responsible citizens merely makes them targets and victims. We have a right to defend ourselves and our families. As I said, we are not the problem. Most Pennsylvanians understand this. And we saw that represented in the vote we took two weeks ago. So I say let us pass this bill finally and stop local municipalities from infringing on our constitutional rights.

Thank you, Mr. Speaker.

The SPEAKER. The question is, will the House concur in the amendments inserted by the Senate?

On that question, the Speaker recognizes the gentleman from Philadelphia County, Mr. Jordan Harris.

Mr. J. HARRIS. Thank you, Mr. Speaker.

Mr. Speaker, will the maker of the bill please stand for brief interrogation?

The SPEAKER. The gentleman, Mr. Metcalfe, indicates he will stand for interrogation. You may proceed.

Mr. J. HARRIS. Thank you, Mr. Speaker.

Mr. Speaker, I wanted to know, does the Attorney General of our Commonwealth currently have standing to sue local governments over gun laws that they believe to be unconstitutional?

Mr. METCALFE. Our legal counsel is telling me that we are not aware that she has that standing or has the ability to do that.

Mr. J. HARRIS. Really. Thank you, Mr. Speaker.

Mr. Speaker, would you please explain the clause that gives organizations standing to sue local governments.

Mr. METCALFE. So as long as the organization, as long as the membership organization, has a member in its organization that could sue, then the membership organization is allowed to sue.

Mr. J. HARRIS. Okay. Mr. Speaker, could you give me an example of a few organizations that would meet that qualification?

Mr. METCALFE. Well Allegheny County Sportsmen's League is one of the organizations that has brought a suit in the past related to the illegal firearms registry that is currently being kept by our State Police. And of course the court's harsh words and split hairs and claimed the registry was not a registry because it was not fully inclusive. That is one organization I am aware of that has brought a suit in the past.

Mr. J. HARRIS. Okay. Thank you, Mr. Speaker.

I know this, I believe this question was asked before and was a little inflammatory, but I am going to ask again. Could the Ku Klux Klan sue if they had a member who was harmed by this law?

Mr. METCALFE. No, they are a terrorist organization, do not have standing. But related to the membership organization question, this is no different than what we have currently for Wage Payment and Collection Law, which allows a civil action to be commenced by a labor organization. So it recognizes associational standing in a particular situation that is not a new concept to the law. So your labor unions are already able to do this. So this is just adding into another section of law.

Mr. J. HARRIS. Great. Thank you.

Mr. Speaker, also, do local governments have the opportunity to repeal these laws that they may have on the books before being sued?

Mr. METCALFE. Yes, they do. They would have 60 days.

Mr. J. HARRIS. Okay. Thank you, Mr. Speaker.

That concludes my interrogation.

Mr. METCALFE. Thank you.

Mr. J. HARRIS. On the bill, Mr. Speaker.

The SPEAKER. The gentleman is in order on the question, which is concurrence in Senate amendments.

Mr. J. HARRIS. Mr. Speaker, today I came to Harrisburg with a sense of excitement. As a freshman, today would be one of the last session days of my freshman term. And as an unopposed freshman, it would seem as though I would go onto a second term come January. It was a day of excitement for me, Mr. Speaker, to come to the Capitol to close out what has definitely been 2 of the best years of my life. That excitement quickly turned to sadness as we began to talk about the last-minute movements that have happened to HB 80.

Mr. Speaker, I own a firearm. So this is not for me about the Second Amendment. I legally own a firearm in this Commonwealth and understand, on both sides of the aisles, folks' desire to legally own firearms. That is not what this argument is about, Mr. Speaker. What we are opposed to do today is to allow membership organizations to sue local governments, local governments who all they have tried to do is to protect their citizens. So let us remove the Second Amendment, let us remove the pro-gun lobby and the antigun lobby from the conversation because that is not what the conversation is about. Nobody is saying that you should not have a right to own a gun. I think you should have that right. But what I do not think we should be doing is giving outside organizations the opportunity to sue our local governments. We have an Attorney General here, Mr. Speaker, and if we were really concerned about local governments adhering to State law, we could give the Attorney General the authority to make municipalities conform to the State law. We do not need this legislation to give outside organizations the opportunity to sue our local governments.

Mr. Speaker, what we are doing today, we will draw back on services that many of our young people receive from different departments of human services throughout this Commonwealth. In Philadelphia County, many young people who are in custody of the city will no longer have certain services because if our city is sued and found guilty, there will be financial ramifications. Not only will there be financial ramifications, but, Mr. Speaker, the city could be sued to pay the legal costs of the petitioner.

I said it once before, and I will say it again. This legislation is not bad, it is morally bankrupt. It is morally bankrupt as we try to bankrupt our local governments. Mr. Speaker, on my last day as a freshman in this chamber, I did not expect for us to look for ways to bankrupt our local governments. I did not expect for us to look for ways to revert and shift money from our local government coffers to the coffers of these membership organizations. I did not expect us to do this. I did not expect for us to take the most valuable resources that we have, the rare resources that we have in a local government and diverting them to these membership organizations.

![AMOTION TO TABLE!]A

Mr. J. HARRIS. And since I did not expect to do that, Mr. Speaker, I now make a motion, Mr. Speaker, that we table this bill.

The SPEAKER. The gentleman from Philadelphia, Mr. Harris, has moved to table HB 80, PN 4318.

On the question,

Will the House agree to the motion?

The SPEAKER. The only people eligible to debate the motion to table are the two floor leaders, the maker of the motion, and the maker of the bill.

The practice of the House is to allow someone to stand in for the majority leader or the minority leader.

With that, I recognize the gentleman from Montgomery County, Mr. Vereb, on the motion to table.

Mr. VEREB, Mr. Speaker, I respectfully request that we oppose the motion to table.

Thank you.

![ALEAVE OF ABSENCE!]A

The SPEAKER. The Speaker turns to leaves of absence and recognizes the minority whip, who requests a leave of absence for the gentleman from Fayette County, Mr. MAHONEY, for the remainder of the day. Without objection, the leave will be granted.

![ACONSIDERATION OF HB 80 CONINTUED!]A

On the question recurring,

Will the House agree to the motion?

The SPEAKER. On the motion to table, again, the same thing applies.

I will recognize the gentleman, Mr. Frankel, from Allegheny County instead of the minority leader.

The gentleman is in order on the motion.

Mr. FRANKEL. Thank you, Mr. Speaker.

I rise to support the gentleman's motion. I think it is reasonable. I think some of what we have heard today in terms of this debate reflects the deep concerns our municipal governments have with respect to having to defend actions in an unprecedented move by empowering an organization. And I should say, in response to an earlier comment, those other, the ACLUs and others of this world bring an individual plaintiff. They do not do it as an organization.

This is unprecedented. I think we ought to be careful in terms of discussing this and it should be tabled to be considered in the next session of the legislature. Thank you very much.

On the question recurring,

Will the House agree to the motion?

The following roll call was recorded:

RC: 54 — 141

On the question recurring,

Will the House concur in Senate amendments?

The SPEAKER. Is the gentleman seeking further recognition on the question?

Mr. J. HARRIS. Yes, Mr. Speaker.

The SPEAKER. The gentleman is in order and may proceed.

![AMOTION TO REVERT
TO PRIOR PRINTER'S NUMBER!]A

Mr. J. HARRIS. Mr. Speaker, I would like to make a motion to suspend the rules to revert to the prior printer's number.

The SPEAKER. Will the gentleman state the prior printer's number, which he would seek to refer to.

Mr. J. HARRIS. One second; 2248. Say it again; 4248.

The SPEAKER. The gentleman from Philadelphia, Mr. Harris, moves to suspend the rules to seek to revert HB 80 to PN 4248.

On the question,

Will the House agree to the motion?

The SPEAKER. On the question of suspending the rules— On the question of suspension of the rules, the Speaker recognizes the gentleman from Allegheny County, Mr. Turzai.

Mr. TURZAI. Thank you very much, Mr. Speaker.

I would ask the members to oppose the motion to revert to a prior printer's number. This legislation has come over from the Senate. There is a strong consensus within the chamber to pass the legislation and get it to the Governor's desk. And I would ask the members to please vote against the motion, with all due respect to the good

member from Philadelphia.

The SPEAKER. On the motion to suspend the rules, the Speaker recognizes the gentleman from Allegheny County, Mr. Frankel.

Mr. FRANKEL. Thank you, Mr. Speaker.

I respectfully urge my colleagues to support the gentleman's motion to suspend.

This bill, HB 80, is far afield from its original intent. The amendments in the Senate are insignificant, I think conflict with what the original intent of this legislation was. Reverting to HB 80 in its original form would give us a clean vote to deal with the whole committee process that went into this bill. We should support the motion to revert to a prior printer's number.

Thank you, Mr. Speaker.

On the question recurring,
Will the House agree to the motion?

The following roll call was recorded:

RC: 51 — 144

On the question recurring,
Will the House concur in Senate amendments?

The SPEAKER. The question is, will the House concur in the amendments inserted by the Senate?

On that question, the Speaker recognizes the gentleman from Bucks County, Mr. Santarsiero.

Mr. SANTARSIERO. Thank you, Mr. Speaker.

Mr. Speaker, there is no other area of policy where a constitutional right that receives an absolutist approach as we often hear with respect to the Second Amendment. Mr. Speaker, I support the Second Amendment. I support the Third Amendment. I support all of the Bill of Rights. But, Mr. Speaker, we recognize as a nation, and our courts have held repeatedly over time that the rights enumerated in our Constitution, both at the Federal and State level, have limitations. And when I hear our colleagues rise on the floor of the House and repeatedly tell us that because a city or town in this Commonwealth passes a law to require that gun owners report to the police if their firearm is lost or stolen that that somehow infringes upon that gun owner's Second Amendment rights, I am bewildered. How in fact does that infringe on anyone's rights?

It is a public safety issue, Mr. Speaker, no less than prohibiting someone from yelling "fire" in a crowded theater, the famous example used to illustrate the fact that our First Amendment speech rights in fact do have limitations, no less so with the Second Amendment.

Requiring that kind of public safety in those towns and cities across the Commonwealth that choose to do so does not infringe on anyone's rights. And yet we are poised today, Mr. Speaker, we are poised to allow the National Rifle Association to sue those towns and cities that have the courage to act on behalf of their citizens in the absence of action by this legislature and our Governor here in Harrisburg.

Mr. Speaker, it is wrong. And we should not be supporting a bill that does that. But there is a more fundamental problem with this particular bill, Mr. Speaker. And that more fundamental problem is the way in which this particular vehicle, this particular bill, was amended in the Senate. This bill started out life as many of the previous speakers have noted, as a bill that dealt with the crime of theft of secondary metals. And now suddenly, Mr. Speaker, it includes provisions dealing with the ability of an organization like the NRA to sue towns and other and cities throughout the Commonwealth that choose to pass reasonable gun safety legislation. Moreover, the title of this bill, Mr. Speaker, has nothing to do with that ability to go and sue our towns and cities.

![CONSTITUTIONAL POINT OF ORDER!]A

Mr. SANTARSIERO. So, Mr. Speaker, it is clear to me, and I trust if this bill passes today it will be clear to the courts in Pennsylvania, that this bill as currently composed violates Article 1, section 3, of the Pennsylvania Constitution, the single-subject rule, and as a consequence, is unconstitutional.

And so, Mr. Speaker, I move that under Article 1, section 3, of the Pennsylvania Constitution that HB 80 is in fact unconstitutional.

The SPEAKER. The gentleman, Mr. Santarsiero, raises the point of order that HB 80, PN 4318, is unconstitutional.

The Speaker, under rule 4, is required to submit the question affecting the constitutionality of a bill to the House for decision, which the Chair now does.

On the question,

Will the House sustain the constitutionality of the Senate amendments?

The SPEAKER. The Speaker recognizes the gentleman, Mr. Santarsiero, on the question of constitutionality.

Mr. SANTARSIERO. Thank you, Mr. Speaker.

As I just said a moment ago, there are two prongs to the test of the single-subject rule under Article 1, section 3, of the Pennsylvania Constitution. The first one is that all the subject matters contained in the particular piece of legislation are germane to one another. Mr. Speaker, there is no question that the proposal to allow organizations like the NRA to sue our municipalities because they pass gun safety legislation is not germane to the provision, the original provision of the bill, regarding the theft of secondary metals.

The second prong, Mr. Speaker, has to do with whether the title of the original bill has anything to do with that new subject matter. And there is nothing in the title of HB 80, Mr. Speaker, that has anything to do with allowing organizations like the NRA to sue our municipalities that pass gun safety legislation.

So for both of those reasons, Mr. Speaker, this bill, as currently composed, fails the single-subject test and is in fact unconstitutional under Article 1, section 3, of the Pennsylvania Constitution.

The SPEAKER. On the question of constitutionality, the Speaker recognizes the gentleman from Lancaster County, Mr. Cutler.

Mr. CUTLER. Thank you, Mr. Speaker.

Mr. Speaker, the gentleman raises the issue of constitutionality. And I would like to highlight some of the already-existing case law to this point. Mr. Speaker, in Pennsylvanians Against Gambling Expansion, also known as the PAGE case, the Pennsylvania Supreme Court found that the subject of gaming, with several minor exceptions complied with the single-subject rule. In other words, does it have a single unifying theme? And I would answer that it does.

Furthermore, and more recently, in Washington versus the Department of Public Welfare, the theme of improving the effectiveness and efficiency of delivery of human service programs to people in need was determined to be a single subject. And the Commonwealth Court went on to explain that the subject – and this is very important – that the subject should not be confused with the content of the underlying issues.

A single subject can in fact encompass many subtopics. And, Mr. Speaker, we have one of those cases before us in this bill. HB 80 has a single subject. It deals with crimes and regulations which affect the ability to own firearms, which directly involves the Second Amendment. Within that subject, there are several subtopics including the creation of two new offenses which can preclude the purchase or possession of firearms under Federal law, because under Federal law, a misdemeanor of the first degree or above can implicate your right to own a firearm.

Providing firearms information is also included in this bill as it relates to mental health records. That is also an important distinction relating to the ownership of a firearm. That is something that this administration undertook in 2013 under the leadership of the gentleman from Montgomery County. And I think it is important that we recognize that that also deals with the ownership and the rights of those who can own firearms. And furthermore, it does provide remedies for unauthorized local regulations of firearms.

If we look at the Washington versus the Department of Welfare case, I believe that they do a very good job of summing it up. "To satisfy the single subject rule, a bill may amend several statutes so long as the amendments pertain to the same subject,..." and they reference the PAGE case. "...On the other hand, having all amendments apply to a single codified statute does not, in and of itself, satisfy the single subject rule...." That is the test that we have before us, and in that particular case, "...Act 80 did not confine its statutory changes solely to the Public Welfare Code. What matters," again quoting from the court, "what matters, however, is whether a single unifying theme can be found. Our job," this is the Court speaking, "our job is not to micromanage the legislature but to give effect, if possible, to the presumption of constitutionality" that is "enjoyed by Act 80." Mr. Speaker, what we are dealing with here is precisely that. It is a conglomeration of several ideas all dealing with the ownership of firearms, and for that reason this motion should be defeated.

Furthermore, I think it is worth highlighting but in the Spawn versus Zoning Board of Adjustment case, they explained the subject should not be confused with content and any single subject can encompass many subtopics. That is precisely what this case does and precisely why the bill is in order and should be supported. Thank you, Mr. Speaker.

The SPEAKER. On the question of constitutionality, the Speaker recognizes the gentleman from Lancaster County, Mr. Sturla.

Mr. STURLA. Thank you, Mr. Speaker.

Mr. Speaker, would the majority leader rise for a brief interrogation because he also made this same

argument about Constitutionality in the Rules Committee, and I would like to get something verified on the record.

The SPEAKER. Will the gentleman state, whom are you asking to interrogate?

Mr. STURLA. The majority leader.

The SPEAKER. The gentleman, Mr. Turzai, indicates he will stand for interrogation. You may proceed.

Mr. STURLA. Thank you.

Mr. Speaker, in the Rules Committee today, you made the same argument as to why you thought this did not violate the single-subject rule as was just made from the gentleman from Lancaster County. And I guess what I want for a clarification standpoint so that, you know, I also believe that the courts will find that this does violate the single-subject rule. However, in the event that they do not, as we move forward with future proceedings in the House, would it be my understanding that because of the way you interpret this as to say that because the initial bill, even though I do not believe its purpose was to restrict gun ownership by amending the scrap metal bill but because it did increase penalties, therefore it could affect gun ownership therefore the unifying theme was that an increased penalty was the single subject. Is that correct? Is that my interpretation of what is being said?

Mr. TURZAI. Sir, we concur in the remarks put on the record by the good gentleman from Lancaster County.

Mr. STURLA. So then I guess my question is, if increased penalties affect, say, someone's ability to stand for office, that then Election Code bills would in fact be a part or would be fair game or would have, had they been introduced in an appropriate and timely manner, would have been able to be included in this bill and still be part of a single subject because after all the increased penalty affects someone's ability to stand for elected office?

Mr. TURZAI. Sir, we do not engage in hypotheticals or in speculation. Before us is HB 80, and in speaking to the specifics of HB 80, we would concur in the remarks by the good gentleman from Lancaster County that has already spoken on constitutionality.

Mr. STURLA. Thank you, Mr. Speaker.

If I could, on the bill.

The SPEAKER. The gentleman is in order on the question of Constitutionality.

Mr. STURLA. Thank you, Mr. Speaker.

Mr. Speaker, as I said before, I believe that the courts will find that this does violate the single-subject rule, because the premise here, at least as it was described, was that simply the fact that there is an increased penalty constitutes the single subject of therefore you cannot own a gun, therefore gun laws come into play here. It also would affect Election Code bills, because you cannot stand for office if you have certain offenses against you. It would also open up the ability to talk about daycare laws in legislation like this because you cannot become a daycare worker if you have certain offenses against you. Mr. Speaker, it is at best a far, far stretch to claim that this is a single subject. And it also implies that the original intent of the secondary metals bill was to preclude someone from owning a weapon by increasing the offense. I will contend that that was never a discussion when we discussed that bill originally, that it was never a discussion or listed as an intent in the legislation itself when it was never discussed or listed as an intent in the cosponsorship memo that got circulated. You know, if in fact that was the intent, then it should have been expressed as an intent as to why the secondary metals bill was being amended in that fashion. I believe it was to prevent the theft of secondary metals and that that was the intent of that initial bill. I am not sure that passing laws about guns necessarily affect the intent to steal secondary metals.

So for that reason I believe that this bill does violate the single-subject rule, but I also think that if in fact we contend that it does not, that we set a rather scary precedent around here about what does and does not violate the single-subject rule, because I think you can, as was pointed out here, make sure that just about anything would meet the standard that is being held up here today as not violating the single-subject rule.

![APARLIAMENTARY INQUIRY!]A

Mr. STURLA. I encourage a— Would it be a "yes" or a "no" vote to say that this is not constitutional? Mr. Speaker, a parliamentary inquiry. Would a "yes" or "no" vote—

The SPEAKER. Those voting "aye"— The way I will read the question is, those voting "aye" will vote to declare the bill to be constitutional; those voting "no" will vote to declare the bill to be unconstitutional.

Mr. STURLA. Okay. Thank you, Mr. Speaker.

Then in that case I encourage a "no" vote. Thank you, Mr. Speaker.

The SPEAKER. On the question of constitutionality, the Speaker recognizes the gentleman from Philadelphia County, Mr. Cohen.

Mr. COHEN. Mr. Speaker, I also urge a "no" vote on the constitutionality of this. It is a violation of the single-subject law. It is certainly possible the court can do anything, but if the single-subject rule is to mean anything, then the court will have no choice but to rule it unconstitutional.

For the life of me I do not understand why the solid pro-NRA majority in this House and the State Senate gave people the opportunity to raise the single-subject rule here. Obviously, this is going to be well litigated. I would think that the best course of action for those people who support this legislation will be to join with those of us who oppose it and rule this version of this bill unconstitutional. There will be plenty of time the next session to pass a constitutional version of the legislation if you desire to pass.

Again, I would urge a "no" vote on constitutionality.

The SPEAKER. On the question of constitutionality, the Speaker recognizes the gentleman from Cumberland County, Mr. Bloom.

Mr. BLOOM. Thank you, Mr. Speaker.

I rise to oppose the motion to find the bill unconstitutional, and I simply wanted to point out that the maker of the motion indicated that perhaps the bill in its current form would violate the clear title provision of the Constitution that requires that the subject be clearly expressed in the title of the bill, and I just wanted to briefly go over the requirements for clear title.

Under the PAGE case that was cited earlier by the gentleman from Lancaster County, Mr. Cutler, the purpose of the clear title requirement is to put the members of the assembly and others on notice by the title of the bill so that they might vote on it with circumspection. Only reasonable notice is required. It is not required to be an index or a synopsis of the bill. And in order to violate the clear title provisions of the Constitution, a party would have to demonstrate that either the legislators or the public were actually deceived as to the bill's contents or the title would have to be so deficient that no reasonable person would have been on notice as to the bill's contents.

Mr. Speaker, the title of the bill now as it is stated in its current printer's number states, "Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, IN BURGLARY AND OTHER CRIMINAL INTRUSION, FURTHER PROVIDING FOR THE OFFENSE OF CRIMINAL TRESPASS, defining the offense of theft of secondary metal...prescribing penalties; AND, IN FIREARMS AND OTHER DANGEROUS ARTICLES, FURTHER PROVIDING FOR PENNSYLVANIA STATE POLICE AND FOR LIMITATION ON THE REGULATION OF FIREARMS AND AMMUNITION." Mr. Speaker, clearly this provides adequate notice that there would be no deception as to what the contents of this bill are and there would be no deficiency in the ability of a reasonable person to be on notice as to the bill's contents.

Therefore, I would urge a "no" vote on the motion to declare the bill unconstitutional. Thank you, Mr. Speaker.

The SPEAKER. On the question of constitutionality, those voting "aye" will vote to declare the bill to be constitutional; those voting "no" will vote to declare the bill to be unconstitutional.

On the question recurring,

Will the House sustain the constitutionality of the bill?

The following roll call was recorded:

(141--54)

On the question recurring,

Will the House concur in Senate amendments?

![CONSTITUTIONAL POINT OF ORDER!]A

The SPEAKER. Is the gentleman from Bucks County, Mr. Santarsiero, seeking further recognition on the question?

Mr. SANTARSIERO. I am, Mr. Speaker. Thank you.

The SPEAKER. The gentleman is in order and may proceed.

Mr. SANTARSIERO. Thank you, Mr. Speaker.

Notwithstanding that vote, Mr. Speaker, I know I feel very strongly will be vindicated in the courts as we were with Act 13. It is not the first time that this legislature, unfortunately, in the last 4 years has passed unconstitutional legislation as we are poised to do tonight, but there is yet another basis for finding that this proposed piece of legislation is unconstitutional.

In addition to the one we just debated under Article III, section 3, under Article III, section 1, the original purpose of HB 80 has been changed by the additional language that was inserted in the Senate with respect to the ability to sue our municipalities for passing reasonable gun safety legislation.

And so, therefore, I move to find HB 80 unconstitutional under Article III, section 1, of the Pennsylvania Constitution.

The SPEAKER. The gentleman from Bucks County, Mr. Santarsiero, raises an additional point of order

that HB 80, PN 4318, is unconstitutional.

The Speaker, under rule 4, is required to submit questions affecting the constitutionality of a bill to the House for decision, which the Chair now does.

On the question,
Will the House sustain the constitutionality of the bill?

The SPEAKER. Is the gentleman seeking recognition?

On the question of constitutionality, the Speaker recognizes the gentleman from Lancaster County, Mr. Cutler.

Mr. CUTLER. Thank you, Mr. Speaker.

For those of us here in the chamber tonight and those who are listening will recognize that the arguments are very similar. Mr. Speaker, any time that we deal with the idea of single subject or clear title and, in this case, original purpose, the arguments are essentially the same.

The bill as amended conforms with the original purpose of the bill as it was introduced. Both the original bill as well as the subsequent amendments deal with an address crimes and regulations which affect the ability to own a firearm, which also affects the Second Amendment or Article I, section 21, of our own Constitution.

It established, the original bill established the offense of theft of secondary metals, graded the offense as a misdemeanor of the first degree, $200 to $1,000 fine or a felony, $1,000 or more for third or subsequent offenses, and these penalties in and of themselves by definition under Federal law preclude firearm ownership.

Currently the bill contains language concerning the theft of secondary metals and also contains a provision regarding the trespass with the intent to steal secondary metals, which is a misdemeanor of the first degree, which also precludes firearm ownership under Federal law as well as language requiring firearms information be provided to the Federal government regarding mental health records, which also precludes firearm ownership and it does provide remedies for unauthorized local regulation of firearms.

Mr. Speaker, it is very clear, just as the House previously voted, for the bill did not violate the single subject or the clear title. I would also urge that we oppose this motion and uphold the original purpose of the bill. Thank you.

The SPEAKER. On the question of constitutionality, the Speaker recognizes the gentleman from Bucks County, Mr. Santarsiero.

Mr. SANTARSIERO. Thank you, Mr. Speaker.

Mr. Speaker, it is tortured logic to argue that a bill dealing with the theft of secondary metals has anything to do with firearm ownership, and it is completely circular to come back and say, well, we also amended HB 80 from its original form to include a provision with respect to providing mental-health records with respect to firearm ownership and therefore it is all the same. HB 80 did not have that provision in it either, Mr. Speaker, so that cannot be used as the basis for arguing that in fact the subject matter has not been changed.

Mr. Speaker, this bill as written is clearly unconstitutional as the gentleman from Philadelphia argued earlier. If those who are seeking to have the prohibition for municipalities to pass gun safety legislation enacted in law in Pennsylvania, what was previously HB 2011, then they should wait until the next session and do it then without proposing a constitutionally infirm bill.

I urge the members to recognize the constitutional problems in this bill and vote "no" that it is not constitutional, but I am confident that if we are not successful tonight on that vote, that Pennsylvania courts will reach that conclusion. Thank you.

The SPEAKER. On the question of constitutionality, those voting "aye" will vote to declare the bill to be constitutional; those voting "no" will vote to declare the bill to be unconstitutional.

On the question recurring,
Will the House sustain the constitutionality of the bill?

The following roll call was recorded:
(140–55)

On the question recurring,
Will the House concur in Senate amendments?

The SPEAKER. On that question, the Speaker recognizes the lady from Philadelphia County, Ms.

DeLissio.

Ms. DeLISSIO. Thank you, Mr. Speaker.

Mr. Speaker, on the bill?

The SPEAKER. The lady is in order on the question of concurrence in Senate amendments.

Ms. DeLISSIO. Correct, Mr. Speaker. Thank you.

On concurrence.

The SPEAKER. Correct.

Ms. DeLISSIO. Mr. Speaker, one argument I hear often is that if we simply enforce the State laws that are on the books, we would not have this problem, and I maintain, Mr. Speaker, that this problem is not that simple. That statement really oversimplifies this because if indeed by just enforcing what was already State law, none of the local municipalities – and I understand there are several dozen of them – would have taken the actions that they have taken over the past years in order to put local ordinances on their books as it pertains to public safety of their citizens. So, Mr. Speaker, that is the first point that I would like to make. This argument is not that simple.

Number two, the Commonwealth, Mr. Speaker, has the obligation to protect all of its citizens, and to that end, Mr. Speaker, I maintain that there is nobody being adversely impacted by these local ordinances that are on the books for the reasons of public safety, but most definitely, Mr. Speaker, we can point to many, many, many instances of our citizens who have been hurt by illegal guns in particular, and since it is our obligation to ensure the safety of all of our citizens, we are favoring one set of citizens over the other. So I maintain that clearly one group has been harmed when in fact the other group really has not because nobody's second amendment rights have been violated even though that is a refrain that is made consistently but with no real evidence of what that harm has been.

And number three, Mr. Speaker, if this is indeed about standing, when this was originally HB 1243 and I asked the question about why we were allowing a private membership organization to have standing, as you may recall, I got sort of not a great answer but subsequently got maybe a little bit of a better answer, and if this is indeed about giving somebody standing so they can file suit, I do not understand, Mr. Speaker, and I have really tried to understand how we would award that standing to a third party, private membership organization versus a government entity, something like the Attorneys General Office, because indeed then a government entity has the responsibility of ensuring that all of our citizens, the welfare of all of our citizens is taken into consideration. And for those three reasons, Mr. Speaker, I am a "no" vote on concurrence and sincerely hope that the majority of my colleagues will vote similarly.

The SPEAKER. The question is, will the House concur in the amendments inserted by the Senate?

On that question, the Speaker recognizes the gentleman from Philadelphia County, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Speaker.

Mr. Speaker, one of the best statements on the folly of this bill was made by Mayor Michael Nutter, and it was sent to the members of the Philadelphia delegation. Mayor Nutter ran for office on a pledge to reduce crime, and certainly crime has gone down in his administration. He is very focused on this subject. Mayor Nutter writes, "I am writing to express profound disturbance at the provisions added in the Senate to HB 80 regarding standing and various monetary costs in lawsuits to invalidate firearms ordinances believed by plaintiffs to violate preemption provisions in 53 Pa...." Commonwealth statutes "...2962(g). This Bill is now before the House.... Respectfully, but in the strongest possible terms, I urge the House not to concur in these amendments.

"Gun violence represents a particularly tragic epidemic in poorer communities in cities like Philadelphia. Of the 247 murders Philadelphia witnessed in 2013, 201 of them, (81.4) percent were by gunshot. And among all murders, 191 of the victims were black, 224 were male, and 160 were under age 34. Where a murder occurred in the domestic violence context, a gun was the most frequently-used weapon, used about 41% of the time. And this says nothing of the overall terror wrought on our communities by gunfire; in 2013, there were a total of 1,128 people wounded or killed by gunshots.

"Parents, family members, and leaders are naturally compelled by their concern for their children, loved ones, and fellow community members to do everything in their power to combat some of the shootings that destroy lives and hollow out communities. It is squarely at some of these responses by the community that HB 80 is now aimed. The standing and attorneys' fees provision of HB 80 simply raises stakes for local governments, and the communities they serve, for trying to do something about illegal gun violence.

"In Philadelphia, we have implemented ordinances and policies such as requirements regarding lost or stolen firearms, and possession of firearms in City properties, that addressed the issue of proliferation of unlawful guns, while, we believe, staying within the statutory framework set out by the General Assembly. While any law can be conducted in court, no one, much less resource-strapped municipalities and their taxpayers should be singled out to bear markedly increased risk for trying to protect human life. Indeed, under HB 80, it will be riskier for the city to act on matters of unlawful gun possession and violence than to act on zoning. No one would reasonably argue that

human life should be riskier to defend than a setback" in zoning.

"All must concede that there is a balance to be struck between the right of law-abiding citizens to keep and bear arms and reducing the proliferation of illegal firearms and the deaths that they cause. The General Assembly should not facilitate lawsuits against local governments simply to thwart their modest attempts at striking a balance that may save lives. Article I, Section II of the Constitution of Pennsylvania provides that a court shall be open to all and provides the remedies in due course of the law. No more is necessary to settle disputes about the validity of ordinances and yet this bill would give certain litigants special treatment, and impose new costs on taxpayers. And it seeks to do so where our local communities have acted only to protect their sons and daughters.

"I therefore respectfully urge the House not pass HB 80 with these onerous provisions in it."

Mr. Speaker, Mayor Nutter is certainly an expert witness on crime. He has been in city government for about 30 years now. His administration has done everything it can to reduce crime. I would urge that his words be heeded and that all members carefully consider their actions and that hopefully more people will vote "no" on HB 80. Thank you, Mr. Speaker.

The SPEAKER. The question is, will the House concur in the amendments inserted by the Senate?

On that question, the Speaker recognizes the gentleman from Lancaster County, Mr. Cutler.

Mr. CUTLER. Thank you, Mr. Speaker.

Mr. Speaker, one of the previous speakers spoke regarding the limitations on constitutional rights and specifically used the example of whether or not you can yell "fire" in a theater. I believe that is an excellent example, because in that particular case we punish the offender, we punish the individual who screams fire by having laws in place that discourage that conduct, and I would offer that we should attack the issue of gun violence in the same way. Those individuals who break the law using firearms should be punished to the fullest extent of the law.

Mr. Speaker, while it is accurate that there are limitations on constitutional rights in some cases, we overwhelmingly seek to encourage individuals through punishment not to engage in that activity. We do not adversely impact the rights of every other individual in the room.

Furthermore, I think that there is an important piece of this debate that has been missed. Up until this point there has been failure to recognize the limitations that have been placed on municipalities by this General Assembly regarding the breadth of their authority. Furthermore, we are failing to recognize those instances or ordinances such as are being argued for today are in fact already declared unconstitutional. The gentleman from Armstrong County referenced the Heller case, which was a United States Supreme Court case, and I think it is important again to revisit the current status of the law.

Mr. Speaker, this bill as proposed would amend the Uniform Firearms Act to require that the Pennsylvania State Police transmit the mental health data within 72 hours of receipt. I think it is an excellent improvement. Currently the State Police only may share, it is not a shall, it is a may, and it is not required. Until recently this data was not even shared. In early 2013, at the encouragement of our colleague from Montgomery County and through his efforts, this information is now being uploaded. It is important that we codify this so that future administrations do not again neglect this important duty.

Furthermore, the bill amends section 6120 of the Uniform Firearms Act to provide a remedy if the party prevails in a civil action against a municipality that has unlawfully promulgated local firearm regulations. Mr. Speaker, right now under existing law these municipalities cannot promulgate these ordinances. They have been prohibited to do such since 1974, and this bill does not in any way modify the scope of preemption that already exists under existing law.

Mr. Speaker, municipalities have limitations to their authority and this is one of them, but this preemption is not self-enforcing. In fact, many of us have heard the statement you cannot fight city hall because they have the mass resources of the taxpayers behind it. Mr. Speaker, in this case citizens can already challenge unconstitutional ordinances based on their constitutionality if these ordinances are enforced at the local level. That remedy is also already available to each and every one of us as a citizen, but what this bill does change is it provides a remedy for the high cost involved in pursuing litigation, those very same high costs that the opponents of the bill have been arguing will bankrupt their communities.

Mr. Speaker, we as citizens must safeguard our constitutional rights particularly against those municipalities which knowingly and purposely violate the current statutory preemption. Mr. Speaker, this is not my own personal opinion, this is the opinion of our own Supreme Court. Quoting from the Ortiz case, Ortiz versus Commonwealth, they said in 1996 "Because the ownership of firearms is constitutionally protected, its regulation is a matter of statewide concern, The Constitution does not provide that the right to bear arms shall not be questioned in any part of the commonwealth except for Philadelphia and Pittsburgh, where it may be abridged at will, but that it shall not be questioned in any part of the commonwealth. Thus, regulation of firearms is a matter of concern in all of

Pennsylvania, not merely in Philadelphia and Pittsburgh, and the General Assembly, not city councils, is the proper forum for the imposition of such regulation." Mr. Speaker, this is the forum where these issues should be decided. We are the ones who will vote on that just as we have tonight.

And if you look a little further back in the Marbury versus Madison, which is, for many of us that went to law school, one of the first cases that we learned about, Justice Marshall said very clearly, "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of laws, whenever he receives an injury. One of the first duties of government is to afford that protection." This bill will provide that. "In Great Britain the king himself is sued in the respectful form of a petition and he never fails to comply with the judgment of his court." Justice Marshall later went on to explain, "The government of the United States has been emphatically termed the government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right." This is precisely what this bill does. It empowers us as individuals to challenge those ordinances which are unconstitutional, and, Mr. Speaker, for me, it highlights a more troubling trend, that in which public officials choose which laws they wish to enforce and not enforce.

Mr. Speaker, lastly and in closing, it has been raised that issue of attorneys' fees is inappropriate, but I think that the case law and existing laws that we already have on the books as interpreted by the courts clearly show that we as individuals have rights. It is not unheard of to offer attorneys' fees in cases involving constitutional rights. We already do that with the Americans With Disabilities Act and we already do that with the Civil Rights Act, to empower those individuals to go find legal representation so that they can adequately defend their rights in court.

For all of those reasons, I urge a concurrence vote on HB 80 and I ask for the support of the underlying bill and the protections of our liberties. Thank you.

The SPEAKER. The question is, will the House concur in the amendments inserted by the Senate?

On that question, the Speaker recognizes the gentleman from Allegheny County, Mr. Gainey.

Mr. GAINEY. Thank you, Mr. Speaker.

I rise today to oppose HB 80, and I rise for a couple of different reasons, but the number one reason is that we are asking – we are trying to do something to the local that we ask the Federal not to do to us and that is preempt laws. We always talk about State laws. When we talk about the health-care bill, we talk about the Federal government not preempting State laws and allowing us to do what we want to do in regards to health care. But today as I stand here, we want to preempt local laws for gun rights that do not make sense, that we are not even sure it is constitutional. We are in a situation right now where we know that the killings that are happening in Philadelphia and Pittsburgh and some of you all might think, just lock them up and throw away the key. It is not that easy. We have a situation where we can table this, as my other colleagues have said, and work on a bill that is beneficial to the people of Pennsylvania. We should not preempt local governments when we do not want the Federal government to preempt State rights. We have an opportunity to do something that is good for the people. We see what is going on, but we continue to serve big business instead of serving the people of Pennsylvania. We continue to look on the news and see no matter what happened, people are getting killed and we continue to do the same old same old because we want to serve a group. Give them the right to sue municipalities as if they know what is right for public safety and we know they have no clue, they have no clue to what they are talking about. And we as a General Assembly, we have the obligation to do what is right for the people of Pennsylvania. Let us not be hypocritical. If we do not want the Federal government to do that to us, let us not let us do that to local authorities. Give us the opportunity to protect our citizens. Give us the opportunity for public safety. If we are not sure if this is even Constitutional, let us go back to the table and work on something that will work for the people of Pennsylvania and not for big business, because if big business was for the people, they would make sure they do something that is not about death but about life. They would not call it God, guns, and glory. They will call it God, guns, and life. So let us get it correct. Let us do something for the people and vote "no" to HB 80.

The SPEAKER. The question is, will the House concur in the amendments inserted by the Senate?

On that question, the Speaker recognizes the gentleman from Montgomery County, Mr. Bradford.

Mr. BRADFORD. Thank you, Mr. Speaker.

I rise also in opposition to HB 80 and just want to make one clarifying point. I know the gentleman from Lancaster spoke eloquently going back through the judicial history of judicial review to Marbury versus Madison, and he talks about there is already a preemption law, but a law without recourse is no law at all. And that would be a good point except obviously there is the right of any individual who is an aggrieved individual to go into court. That exists today. That has existed since the existence of the preemption law in Pennsylvania. What is different about this bill, what is so insulting, what is so incendiary, what is so disrespectful to the communities like those that I represent that have these bills on the books is this is not about an individual citizen of that community coming forth who has been aggrieved, who has been wronged by, as the gentleman says, the sovereign or the king going back to old English law. This is not about old English law. This is about the reality of what is happening in our communities and

our cities and about gun violence. This is about communities trying to do the right thing. But the gentleman's description of the standing doctrine is so misguided, and again, I respect him deeply and tremendously and I think he is astute and knowledgeable, but I think he does understand that any aggrieved individual has the right to seek judicial review for a wrong and to have that wrong addressed. But what this bill does and again what is so incendiary is it allows third parties – and let us be clear, we all know who that third party is, and that is not questioning anyone's motives. It is as obvious as can be, it is big money special interests. Those interests who would gladly hammer our little municipalities who are trying to do right by their citizens and go in and seek attorneys' fees and court costs and so forth in order to scare them in order to doing what they feel is appropriate and right.

Now, there is recourse, but it is not recourse for the NRA, and that is what this is about. This is a special gift, a favor. This is a wrap it up in a bow on our final day of session and send it to our friends at the NRA and tell them you can sue any municipality in Pennsylvania and you can make that municipality pay. That is not just bad public policy, it is disgraceful, and for that reason, Mr. Speaker, I ask for a "no" vote on HB 80. Thank you so much.

The SPEAKER. The question is, will the House concur in the amendments inserted by the Senate?

On that question, the Speaker recognizes the gentleman from Delaware County, Mr. Kirkland.

Mr. KIRKLAND. Thank you, Mr. Speaker.

Mr. Speaker, I was not going to speak on this, but as I sat there and listened, what came to my mind was my 11 grandchildren.

Mr. Speaker, I rise in opposition to HB 80 on concurrence and this is the reason why. Mr. Speaker, I have lived in the city of Chester all my life. I have raised my family there. As a matter of fact, my sister continues to live in the House that we grew up in and I live right around the corner from her.

Many of you may or may not have heard in the latest news that the city in which I reside, Chester, Pennsylvania, was dubbed the most violent crime-ridden city per capita in the Commonwealth of Pennsylvania. Now, that is not a proud distinction that I like to wear. The fact of the matter is, Mr. Speaker, years ago, years ago in the city of 37,000 maybe 35,000 people that was not the case. Years ago I could walk the streets and my grandkids could walk the streets and you would see persons on their porches playing and playing jump rope and everything else, but that is not the case now, unfortunately. And many a time my family has asked me, why do you stay? Why do you stay in a city that has become so violent? And I tell them I stay because it was an inheritance given to me by my parents, an inheritance that I plan on keeping and restoring some calm to. And one of the ways that we can do that is when we work with our local governments and give them the tools that are needed so we can bring some peace to our communities.

Mr. Speaker, in my very community I have had the undesirable task of witnessing young men murdered on the streets and just recently a young lady by the age of 25, at the age of 25 gunned down on the streets.

Now, I heard one of my colleagues on the other side say there is no such thing as an illegal gun. Well, maybe when you purchase them in your part of the Commonwealth, it is not illegal, but when you put it in your car or put it in someone else's car and drive it to my city, in my county, and sell them out of that same car to young people 13, 14, 15, 16 years old, it is now illegal.

Mr. Speaker, I have been here 22 years, 22 years, and I heard my colleague from Philadelphia say that he thought that this would be his proudest day standing here behind the microphone being able to celebrate 2 years and saying, you know, he has had an excellent time and things were moving forward, but I concur with him when he says this is a sad day in the Commonwealth of Pennsylvania. And I am not trying to appeal to your political side. I am not trying to appeal to any of those sides. I am trying to appeal to your heart side. We are losing young people each and every day. Someone once said to me— Mr. Speaker, they need to hear this one right here, because I have got to say this. Could I get a little more quiet, Mr. Speaker?

The SPEAKER. Okay.

Mr. KIRKLAND. Thank you.

Someone once said to me, a legislator in this House some years ago, a Republican colleague of mine, said that if the shoe was on the other foot, if this were, if these were white children being gunned down on the streets, that this would be a national movement, a national issue. That is what one of my colleagues on the other side said to me. And guess what? I agree.

Mr. Speaker, this is wrong. This is bad for Pennsylvania. We are taking, we are taking the opportunity for our community such as Chester to right itself, to put in place laws that will disallow illegal guns to be purchased and handed out in our community, put in place laws that will stop the killing, and this body is saying no. Mr. Speaker, this is wrong. So I am not speaking to your political sense. I am hoping you have got some moral sense and vote "no" on HB 80 on concurrence.

The SPEAKER. The question is, will the House concur in the amendments inserted by the Senate?

On that question, the Speaker recognizes the gentleman from Philadelphia County, Mr. Thomas, for the

second time.

Mr. THOMAS. Mr. Speaker, I just stand to concur with my colleague from Delaware County, and this is not the way we want to close this session out. This is not the way we want to do it.

We all have to go back to our communities. I do not want to have to talk to another family this evening about his or her daughter or mom being gunned down on the street, and I know that in other parts of the State things are different, but, Mr. Speaker, I guess as Thomas Jefferson used to say it very eloquently, our primary role is the preservation of life not the destruction of life. And it should be possible suburban, rural, and urban Pennsylvania come together in a way that preserves life rather than results in the destruction of life, and if we move forward on HB 80 tonight, we will in effect create a climate of destruction in our local communities.

And, Mr. Speaker, this whole issue about constitutionality, we know if you look at your laptops and look at the thing, the subject of this bill, there is nothing in this subject, nothing in this subject about whether or not municipalities are complying with the uniform firearms law and scrap metal. That is not in there. And so we can just kind of realize that we made a mistake and it is possible to correct it before we leave here this evening. Let the people of Pennsylvania know that this General Assembly, whether you come from north, south, east, or west, whether you come from rural, urban, or suburban Pennsylvania, whether you are White, Black, yellow, brown, or green, let the people of Pennsylvania know that because my mama was not shot down or because I do not know of a baby that is dead today because of illegal guns – and somebody mentioned that there are laws that deal with illegal possession. Well, for those of you that do not know, in Pennsylvania if you are out on the street with a gun illegally and not involved in any other crime, do you know it is no more than a second-degree misdemeanor? It is no more than a second-degree misdemeanor in Pennsylvania. So there is no real key in the law about walking down the streets with an illegal gun.

But be it as it may, Mr. Speaker, let us close this term out with letting the people of Pennsylvania know that we care about the hardworking law officers, police officers, mayors, township managers, borough managers, county commissioners, let them know that we care about what they are trying to do in their communities because there are too many communities that are on fire right now as a result of gun violence. Do not leave here tonight saying to them that we do not care about what they are trying to do at the local level, and as soon as the next term starts, let them know that we are going to be a partner in helping to bring an end to the senseless gun violence that exists in the Commonwealth of Pennsylvania. But let us not close the night out by saying to the mayors and to these other leaders that they are not doing the right thing in trying to bring an end to senseless gun violence in their particular communities. Thank you, Mr. Speaker.

The SPEAKER. The question is, will the House concur in the amendments inserted by the Senate?

On that question, the Speaker recognizes the gentleman from Butler County, Mr. Metcalfe.

Mr. METCALFE. Thank you, Mr. Speaker.

Based on the body language of the chamber, I just ask for a "yes" vote. Thank you, Mr. Speaker.

On the question recurring,

Will the House concur in Senate amendments?

The SPEAKER. Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

(Members proceeded to vote.)

![ALEAVE OF ABSENCE!]A

The SPEAKER. The Speaker turns to leaves of absence and recognizes the majority whip, who requests a leave of absence for the gentleman from Bucks County, Mr. FARRY, for the remainder of the day. Without objection, the leave will be granted.

![ACONSIDERATION OF HB80 CONTINUED!]A

On the question recurring,

Will the House concur in Senate amendments?

The following roll call was recorded:

(138--56)

Pennsylvania House of Representatives Roll Calls
Session of 2013 - 2014

Details for RCS# 1818

Monday Oct. 20, 2014

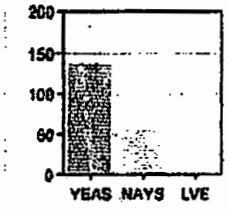
6:29PM

House Bill 80 PN 4318

CONCUR

Summary

YEAS	138
NAYS	56
LVE	8
N/V	0
TOTAL	202



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Short Title

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, in burglary and other criminal intrusion, further providing ...

Related floor votes

House Floor Roll Call

Senate Floor Roll Call

Related committee votes

(H) APPROPRIATIONS

(H) JUDICIARY

(H) RULES

(S) JUDICIARY

N	ADOLPH	N	KILLION	Y	TAYLOR	Y	HARHAI
Y	AUMENT	Y	KNOWLES	Y	TOBASH	Y	HARKINS
Y	BAKER	Y	KRIEGER	Y	TOEPEL	N	HARRIS, J.
Y	BARRAR	Y	LAWRENCE	Y	TOOHIL	Y	KAVULICH
Y	BENNINGHOFF	Y	LUCAS	Y	TOPPER	N	KELLER, W.
Y	BLOOM	Y	MACKENZIE	Y	TRUITT	N	KIM
E	BOBACK	Y	MAHER	Y	TURZAI	N	KINSEY
Y	BROOKS	Y	MAJOR	Y	VEREB	N	KIRKLAND
Y	BROWN, R.	Y	MALONEY	Y	WATSON	Y	KORTZ
Y	CAUSER	Y	MARSHALL	Y	BARBIN	Y	KOTIK
Y	CHRISTIANA	Y	MARSICO	N	BISHOP	Y	KULA
Y	CLYMER	Y	MASSER	Y	BIZZARRO	Y	LONGIETTI
Y	CORBIN	Y	MCGINNIS	N	BOYLE, B.	E	MAHONEY
Y	COX	Y	MENTZER	N	BOYLE, K.	Y	MARKOSEK
Y	CULVER	Y	METCALFE	N	BRADFORD	Y	MATZIE
Y	CUTLER	Y	METZGAR	N	BRIGGS	N	MCCARTER
Y	DAY	Y	MICCARELLI	N	BROWN, V.	E	MCGEEHAN
Y	DELOZIER	E	MICOZZIE	N	BROWNLEE	N	MCNEILL
Y	DENLINGER	Y	MILLARD	Y	BURNS	N	MILLER, D.
Y	DIGIROLAMO	Y	MILLER, R.	N	CALTAGIRONE	Y	MIRABITO
Y	DUNBAR	Y	MILNE	Y	CARROLL	N	MIRANDA
Y	ELLIS	Y	MOUL	N	CLAY	N	MOLCHANY
Y	EMRICK	Y	MURT	N	COHEN	Y	MULLERY
Y	ENGLISH	Y	MUSTIO	Y	CONKLIN	N	MUNDY
Y	EVANKOVICH	Y	O'NEILL	Y	COSTA, D.	Y	NEUMAN
Y	EVERETT	Y	OBERLANDER	Y	COSTA, P.	N	O'BRIEN
E	FARRY	Y	PAYNE	N	CRUZ	N	PAINTER
Y	FEE	Y	PEIFER	N	DALEY, M.	N	PARKER
E	FLECK	Y	PETRI	Y	DALEY, P.	Y	PASHINSKI
Y	GABLER	Y	PICKETT	N	DAVIDSON	Y	PETRARCA
Y	GILLEN	Y	PYLE	N	DAVIS	N	RAVENSTAHL
Y	GILLESPIE	Y	QUINN	N	DEAN	Y	READSHAW
Y	GINGRICH	Y	RAPP	Y	DEASY	N	ROEBUCK
Y	GODSHALL	Y	REED	N	DELISSIO	Y	ROZZI
Y	GREINER	Y	REESE	E	DELUCA	N	SABATINA
Y	GRELL	Y	REGAN	N	DERMODY	Y	SAINATO
Y	GROVE	Y	ROAE	N	DONATUCCI	N	SAMUELSON
Y	HACKETT	Y	ROCK	N	EVANS	N	SANTARSIERO
Y	HAHN	N	ROSS	Y	FABRIZIO	N	SCHLOSSBERG
Y	HARHART	Y	SACCONE	Y	FARINA	N	SCHREIBER
N	HARPER	Y	SANKEY	Y	FLYNN	N	SIMS
Y	HARRIS, A.	Y	SAYLOR	N	FRANKEL	Y	SNYDER
Y	HEFFLEY	Y	SCAVELLO	N	FREEMAN	N	STURLA
Y	HELM	Y	SIMMONS	N	GAINEY	N	THOMAS
Y	HENNESSEY	Y	SMITH	E	GALLOWAY	N	VITALI
Y	HICKERNELL	Y	SONNEY	Y	GERGELY	N	WATERS
Y	JAMES	Y	STEPHENS	Y	GIBBONS	N	WHEATLEY
N	KAMPF	Y	STERN	Y	GOODMAN	Y	WHITE
Y	KAUFFMAN	Y	STEVENSON	N	HAGGERTY	N	YOUNGBLOOD
Y	KELLER, F.	Y	SWANGER	Y	HALUSKA		
Y	KELLER, M.K.	Y	TALLMAN	Y	HANNA		