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THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1089 Session of 2001

INTRODUCED BY EARLL, M. WHITE, COSTA, THOMPSON, ORIE, TOMLINSON,
DENT, ROBBINS, BELL, GREENLEAF, LEMMOND, O'PAKE, LAVALLE,
BODACK, WAUGH, ERICKSON, HOLL AND BOSCOLA, OCTOBER 9, 2001

SENATE AMENDMENTS TO HOUSE AMENDMENTS, JUNE 12, 2002
AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, providing for DNA testing
3 of certain offenders; reestablishing the State DNA Data Base
4 and the State DNA Data Bank; further providing for duties of
5 the Pennsylvania State Police; imposing costs on certain
6 offenders; reestablishing the DNA Detection Fund; further
7 providing for the apportionment of liability and damages;
8 imposing penalties; and making a repeal.

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

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

13 CHAPTER 47
14 DNA DATA AND TESTING

15 Subchapter

- 16 A. Preliminary Provisions
- 17 B. General Provisions
- 18 C. Enforcement and Other Provisions
- 19 D. Miscellaneous Provisions

20 SUBCHAPTER A

1 Sec.

2 4701. Scope of chapter.

3 4702. Policy.

4 4703. Definitions.

5 § 4701. Scope of chapter.

6 This chapter provides for DNA detection of sexual and violent
7 offenders.

8 § 4702. Policy.

9 The General Assembly finds and declares that:

10 (1) DNA data banks are an important tool in criminal
11 investigations, in the exclusion of individuals who are the
12 subject of criminal investigations or prosecutions and in
13 deterring and detecting recidivist acts.

14 (2) Several states have enacted laws requiring persons
15 convicted of certain crimes, especially sex offenses, to
16 provide genetic samples for DNA profiling.

17 (3) Moreover, it is the policy of this Commonwealth to
 18 assist Federal, State and local criminal justice and law
 19 enforcement agencies in the identification and detection of
 20 individuals in criminal investigations.

21 (4) It is therefore in the best interest of the
 22 Commonwealth to establish a DNA data base and a DNA data bank
 23 containing DNA samples submitted by individuals convicted of
 24 felony sex offenses and other specified offenses.

25 § 4703. Definitions.

26 The following words and phrases when used in this chapter
 27 shall have the meanings given to them in this section unless the
 28 context clearly indicates otherwise:

29 "ARD." Accelerated Rehabilitative Disposition.

30 "CODIS." The term is derived from Combined DNA Index System,
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1 the Federal Bureau of Investigation's national DNA
 2 identification index system that allows the storage and exchange
 3 of DNA records submitted by state and local forensic DNA
 4 laboratories.

5 "Commissioner." The Commissioner of the Pennsylvania State
 6 Police.

7 "Criminal justice agency." A criminal justice agency as
 8 defined in 18 Pa.C.S. § 9102 (relating to definitions).

9 "DNA." Deoxyribonucleic acid. DNA is located in the cells
 10 and provides an individual's personal genetic blueprint. DNA
 11 encodes genetic information that is the basis of human heredity
 12 and forensic identification.

13 "DNA record." DNA identification information stored in the
 14 State DNA Data Base or the Combined DNA Index System for the
 15 purpose of generating investigative leads or supporting
 16 statistical interpretation of DNA test results. The DNA record
 17 is the result obtained from the DNA typing tests. The DNA record
 18 is comprised of the characteristics of a DNA sample which are of
 19 value in establishing the identity of individuals. The results
 20 of all DNA identification tests on an individual's DNA sample
 21 are also collectively referred to as the DNA profile of an
 22 individual.

23 "DNA sample." A blood or tissue sample provided by any
 24 person with respect to offenses covered by this chapter or
 25 submitted to the Pennsylvania State Police laboratory pursuant
 26 to the former act of May 28, 1995 (1st Sp.Sess., P.L.1009,
 27 No.14), known as the DNA Detection of Sexual and Violent
 28 Offenders Act, or to this chapter for analysis or storage, or
 29 both.

30 "FBI." The Federal Bureau of Investigation.

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1 "Felony sex offense." A felony offense or an attempt,
 2 conspiracy or solicitation to commit a felony offense under any
 3 of the following:

4 18 Pa.C.S. Ch. 31 (relating to sexual offenses).

5 18 Pa.C.S. § 4302 (relating to incest).

6 18 Pa.C.S. § 5902(c)(iii) and (iv) (relating to
 7 prostitution and related offenses).

8 18 Pa.C.S. § 5903(a) (relating to obscene and other
 9 sexual materials and performances) where the offense
 10 constitutes a felony.

11 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

12 18 Pa.C.S. § 6318 (relating to unlawful contact or
 13 communication with minor) where the most serious underlying
 14 offense for which the defendant contacted or communicated
 15 with the minor is graded as a felony.

16 18 Pa.C.S. § 6320 (relating to sexual exploitation of
 17 children).
 18 "Former DNA Act." The former act of May 28, 1995 (1st
 19 Sp.Sess., P.L.1009, No.14), known as the DNA Detection of Sexual
 20 and Violent Offenders Act.
 21 "Fund." The DNA Detection Fund reestablished in section 4735
 22 (relating to DNA Detection Fund).
 23 "Other specified offense." An offense or an attempt,
 24 conspiracy or solicitation to commit an offense under any of the
 25 following:
 26 18 Pa.C.S. § 2502 (relating to murder).
 27 18 Pa.C.S. § 2709(c) (2) (ii) (relating to harassment and
 28 stalking).
 29 18 Pa.C.S. § 2901 (relating to kidnapping).
 30 18 Pa.C.S. § 2910 (relating to luring a child into a
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 1 motor vehicle).
 2 18 Pa.C.S. § 3126 (relating to indecent assault).
 3 18 Pa.C.S. § 3502 (relating to burglary).
 4 18 Pa.C.S. § 3701 (relating to robbery).
 5 "State Police." The Pennsylvania State Police.

6 SUBCHAPTER B
 7 GENERAL PROVISIONS

8 Sec.
 9 4711. Powers and duties of State Police.
 10 4712. State DNA Data Base.
 11 4713. State DNA Data Bank.
 12 4714. State Police recommendations of additional offenses.
 13 4715. Procedural compatibility with FBI.
 14 4716. DNA sample required upon conviction, delinquency
 15 adjudication and certain ARD cases.
 16 4717. Procedures for withdrawal, collection and transmission.
 17 of DNA samples.
 18 4718. Procedures for conduct, disposition and use of DNA
 19 analysis.
 20 4719. DNA data base exchange.
 21 4720. Cancellation of authority to access or exchange DNA
 22 records.
 23 4721. Expungement.
 24 4722. Mandatory cost.
 25 § 4711. Powers and duties of State Police.
 26 In addition to any other powers and duties conferred by this
 27 chapter, the State Police shall:
 28 (1) Be responsible for the policy management and
 29 administration of the State DNA identification record system
 30 to support law enforcement agencies and other criminal
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1 justice agencies.
 2 (2) Promulgate rules and regulations to carry out the
 3 provisions of this chapter.
 4 (3) Provide for liaison with the FBI and other criminal
 5 justice agencies in regard to the Commonwealth's
 6 participation in CODIS or in any DNA data base designated by
 7 the State Police.
 8 § 4712. State DNA Data Base.
 9 The State DNA Data Base is reestablished. It shall be
 10 administered by the State Police and provide DNA records to the
 11 FBI for storage and maintenance by CODIS. The State DNA Data
 12 Base shall have the capability provided by computer software and
 13 procedures administered by the State Police to store and
 14 maintain DNA records related to:

- 15 (1) forensic casework;
- 16 (2) convicted offenders required to provide a DNA sample
- 17 under this chapter; and
- 18 (3) anonymous DNA records used for research or quality
- 19 control.

20 § 4713. State DNA Data Bank.

21 The State DNA Data Bank is reestablished. It shall serve as
 22 the repository of DNA samples collected under this chapter.

23 § 4714. State Police recommendation of additional offenses.

24 The State Police may recommend to the General Assembly that
 25 it enact legislation for the inclusion of additional offenses
 26 for which DNA samples shall be taken and otherwise subjected to
 27 the provisions of this chapter. In determining whether to
 28 recommend additional offenses, the State Police shall consider
 29 those offenses for which DNA testing will have a substantial
 30 impact on the detection and identification of sex offenders and

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1 violent offenders.

2 § 4715. Procedural compatibility with FBI.

3 The DNA identification system as established by the State
 4 Police shall be compatible with the procedures specified by the
 5 FBI, including use of comparable test procedures, laboratory
 6 equipment, supplies and computer software.

7 § 4716. DNA sample required upon conviction, delinquency
 8 adjudication and certain ARD cases.

9 (a) General rule.--A person who is convicted or adjudicated
 10 delinquent for a felony sex offense or other specified offense
 11 and is or remains incarcerated on or after the effective date of
 12 this chapter shall have a DNA sample drawn as follows:

13 (1) A person who is sentenced or receives a delinquency
 14 disposition to a term of confinement for an offense covered
 15 by this subsection shall have a DNA sample drawn upon intake
 16 to a prison, jail or juvenile detention facility or any other
 17 detention facility or institution. If the person is already
 18 confined at the time of sentencing or adjudication, the
 19 person shall have a DNA sample drawn immediately after the
 20 sentencing or adjudication. If a DNA sample is not timely
 21 drawn in accordance with this section, the DNA sample may be
 22 drawn any time thereafter by the prison, jail, juvenile
 23 detention facility, detention facility or institution.

24 (2) A person who is convicted or adjudicated delinquent
 25 for an offense covered by this subsection shall have a DNA
 26 sample drawn as a condition for any sentence or adjudication
 27 which disposition will not involve an intake into a prison,
 28 jail, juvenile detention facility or any other detention
 29 facility or institution.

30 (3) Under no circumstances shall a person who is

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1 convicted or adjudicated delinquent for an offense covered by
 2 this subsection be released in any manner after such
 3 disposition unless and until a DNA sample has been withdrawn.

4 (b) Condition of release.--

5 (1) A person who has been convicted or adjudicated
 6 delinquent for a felony sex offense or other specified
 7 offense and who serves a term of confinement in connection
 8 therewith on or after the effective date of this chapter
 9 shall not be released in any manner unless and until a DNA
 10 sample has been withdrawn.

11 (2) This act shall apply to incarcerated persons
 12 convicted or adjudicated delinquent for a felony sex offense
 13 prior to the effective date of this chapter.

14 (c) Certain ARD cases.--Acceptance into ARD as a result of a
 15 criminal charge for a felony sex offense or other specified
 16 offense filed on or after the effective date of this section may
 17 be conditioned upon the giving of a DNA sample.

18 (d) Supervision of DNA samples.--All DNA samples taken
 19 pursuant to this section shall be taken in accordance with
 20 regulations promulgated by the State Police in consultation with
 21 the Department of Corrections.

22 (e) Definition.--As used in this section, the term
 23 "released" means any release, parole, furlough, work release,
 24 prerelease or release in any other manner from a prison, jail,
 25 juvenile detention facility or any other place of confinement.
 26 § 4717. Procedures for withdrawal, collection and transmission
 27 of DNA samples.

28 (a) Drawing of DNA samples.--

29 (1) Each DNA sample required to be drawn pursuant to
 30 section 4716 (relating to DNA sample required upon
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1 conviction, delinquency adjudication and certain ARD cases)
 2 from persons who are incarcerated or confined shall be drawn
 3 at the place of incarceration or confinement as provided for
 4 in section 4716. DNA samples from persons who are not ordered
 5 or sentenced to a term of confinement shall be drawn at a
 6 prison, jail unit, juvenile facility or other facility to be
 7 specified by the court. Only those individuals qualified to
 8 draw DNA samples in a medically approved manner shall draw a
 9 DNA sample to be submitted for DNA analysis. Such sample and
 10 the set of fingerprints provided for in paragraph (2) shall
 11 be delivered to the State Police within 48 hours of drawing
 12 the sample.

13 (2) In addition to the DNA sample, a full set of
 14 fingerprints shall be taken from the person from whom the DNA
 15 sample is being drawn for the exclusive purpose of verifying
 16 the identity of such person.

17 (b) Limitation on liability.--Persons authorized to draw DNA
 18 samples under this section shall not be criminally liable for
 19 withdrawing a DNA sample and transmitting test results pursuant
 20 to this chapter if they perform these activities in good faith
 21 and shall not be civilly liable for such activities when the
 22 person acted in a reasonable manner according to generally
 23 accepted medical and other professional practices.

24 (c) Reasonable use of force.--Duly authorized law
 25 enforcement and corrections personnel may employ reasonable
 26 force in cases where an individual refuses to submit to DNA
 27 testing authorized under this chapter, and no such employee
 28 shall be criminally or civilly liable for the use of reasonable
 29 force.

30 § 4718. Procedures for conduct, disposition and use of DNA
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1 analysis.
 2 (a) Procedures.--The State Police shall prescribe procedures
 3 to be used in the collection, submission, identification,
 4 analysis, storage and disposition of DNA samples and typing
 5 results of DNA samples submitted under the former DNA Act or
 6 this chapter. The DNA sample typing results shall be securely
 7 stored in the State DNA Data Base, and records of testing shall
 8 be retained on file with the State Police consistent with the
 9 procedures established by the FBI. These procedures shall also
 10 include quality assurance guidelines to insure that DNA
 11 identification records meet standards for laboratories which
 12 submit DNA records to the State DNA Data Base.

13 (b) Contracting.--The State Police are authorized to
 14 contract with third parties for purposes of this chapter.
 15 (c) Use of tests.--Except as otherwise provided in section
 16 4719(c) (relating to DNA data base exchange), the tests to be
 17 performed on each DNA sample shall be used only for law
 18 enforcement identification purposes or to assist in the recovery
 19 or identification of human remains from disasters or for other
 20 humanitarian identification purposes, including identification
 21 of missing persons.
 22 (d) Restrictions and requirements on contracting party.--Any
 23 other party contracting to carry out the functions of this
 24 chapter shall be subject to the same restrictions and
 25 requirements of this chapter, insofar as applicable, as the
 26 State Police as well as any additional restrictions imposed by
 27 the State Police.

28 § 4719. DNA data base exchange.
 29 (a) Receipt of DNA samples by State Police.--It shall be the
 30 duty of the State Police to receive DNA samples, to store, to
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1 perform analysis or to contract for DNA typing analysis with a
 2 qualified DNA laboratory that meets the guidelines as
 3 established by the State Police, to classify and to file the DNA
 4 record of identification characteristic profiles of DNA samples
 5 submitted under the former DNA Act or this chapter and to make
 6 such information available as provided in this section. The
 7 State Police may contract out the storage of DNA typing analysis
 8 and may contract out DNA typing analysis to a qualified DNA
 9 laboratory that meets guidelines as established by the State
 10 Police. The results of the DNA profile of individuals in the
 11 State DNA Data Base shall be made available:

- 12 (1) to criminal justice agencies or approved crime
- 13 laboratories which serve these agencies; or
- 14 (2) upon written or electronic request and in
- 15 furtherance of an official investigation of a criminal
- 16 offense or offender or suspected offender.

17 (b) Methods of obtaining information.--The State Police
 18 shall adopt guidelines governing the methods of obtaining
 19 information from the State DNA Data Base and CODIS and
 20 procedures for verification of the identity and authority of the
 21 requester.

22 (c) Population data base.--The State Police may establish a
 23 separate population data base comprised of DNA samples obtained
 24 under this chapter after all personal identification is removed.
 25 The State Police may share or disseminate the population data
 26 base with other criminal justice agencies or crime laboratories
 27 that serve to assist the State Police with statistical data
 28 bases. The population data base may be made available to and
 29 searched by other agencies participating in the CODIS system.
 30 § 4720. Cancellation of authority to access or exchange DNA
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1 records.
 2 The State Police shall be authorized, for good cause shown,
 3 to revoke or suspend the right of a forensic DNA laboratory
 4 within this Commonwealth to access or exchange DNA
 5 identification records with criminal justice agencies.
 6 § 4721. Expungement.

7 (a) General rule.--A person whose DNA record or profile has
 8 been included in the data bank pursuant to the former DNA Act or
 9 this chapter may request expungement on the grounds that the
 10 conviction or delinquency adjudication on which the authority
 11 for including that person's DNA record or profile was based has

12 been reversed and the case dismissed.
 13 (b) Duty of State Police.--The State Police shall purge all
 14 records and identifiable information in the data base pertaining
 15 to the person and destroy all samples from the person upon
 16 receipt of a written request for expungement pursuant to this
 17 section and a certified copy of the final court order reversing
 18 and dismissing the conviction.

19 (c) Limitation.--An incarcerated or previously incarcerated
 20 person may not seek expungement of a DNA record or profile on
 21 the ground that that person was convicted or adjudicated
 22 delinquent for a felony sex offense prior to the effective date
 23 of the former DNA Act or prior to the effective date of this
 24 chapter.

25 § 4722. Mandatory cost.

26 Unless the court finds that undue hardship would result, a
 27 mandatory cost of \$250, which shall be in addition to any other
 28 costs imposed pursuant to statutory authority, shall
 29 automatically be assessed on any person convicted, adjudicated
 30 delinquent or granted ARD for a felony sex offense or other

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 1 specified offense, and all proceeds derived from this section
 2 shall be transmitted to the fund.

3 SUBCHAPTER C
 4 ENFORCEMENT AND OTHER PROVISIONS

5 Sec.

- 6 4731. Prohibition on disclosure.
- 7 4732. Criminal penalties.
- 8 4733. Civil actions.
- 9 4734. Confidentiality of records.
- 10 4735. DNA Detection Fund.
- 11 4736. Authority of law enforcement officers.

12 § 4731. Prohibition on disclosure.

13 (a) Disclosure.--Any person who by virtue of employment or
 14 official position or any person contracting to carry out any
 15 functions under this chapter, including any officers, employees
 16 and agents of such contractor, who has possession of or access
 17 to individually identifiable DNA information contained in the
 18 State DNA Data Base or in the State DNA Data Bank shall not
 19 disclose it in any manner to any person or agency not authorized
 20 to receive it knowing that such person or agency is not
 21 authorized to receive it.

22 (b) Obtaining information.--No person shall obtain
 23 individually identifiable DNA information from the State DNA
 24 Data Base or the State DNA Data Bank without authorization to do
 25 so.

26 § 4732. Criminal penalties.

27 (a) Disclosure.--Any person who by virtue of employment or
 28 official position or any person contracting to carry out any
 29 functions under this chapter, including any officers, employees
 30 and agents of such contractor, who has possession of or access

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 1 to individually identifiable DNA information contained in the
 2 State DNA Data Base or in the State DNA Data Bank and who for
 3 pecuniary gain for such person or for any other person discloses
 4 it in any manner to any person or agency not authorized to
 5 receive it commits a misdemeanor of the first degree.

6 (b) Obtaining information.--Any person who knowingly
 7 violates section 4731(b) (relating to prohibition on disclosure)
 8 commits a misdemeanor of the first degree.

9 § 4733. Civil actions.

10 (a) Injunctions.--The State Police or any other aggrieved

11 individual or agency may institute an action in a court of
 12 proper jurisdiction against any person, agency or organization
 13 to enjoin any criminal justice agency, noncriminal justice
 14 agency, organization or individual from violating the provisions
 15 of this chapter or to compel such agency, organization or person
 16 to comply with the provisions of this chapter.

17 (b) Action for damages.--

18 (1) Any person aggrieved by a knowing violation of
 19 section 4731 (relating to prohibition on disclosure) shall
 20 have the substantive right to bring an action for damages by
 21 reason of such violation in a court of competent
 22 jurisdiction.

23 (2) A person found by the court to have been aggrieved
 24 by a knowing violation of section 4731 shall be entitled to
 25 actual and real damages of not less than \$100 for each
 26 violation and to reasonable costs of litigation and attorney
 27 fees. Exemplary and punitive damages of not less than \$1,000
 28 nor more than \$10,000 shall be imposed for any violation of
 29 section 4731.

30 § 4734. Confidentiality of records.

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1 All DNA profiles and samples submitted to the State Police
 2 pursuant to the former DNA Act or this chapter shall be treated
 3 as confidential except as otherwise provided in this chapter.

4 § 4735. DNA Detection Fund.

5 The DNA Detection Fund is reestablished in the State Treasury
 6 as a restricted fund. All costs collected under section 4722
 7 (relating to mandatory cost) shall be paid into the fund. All
 8 moneys in the fund and the interest accruing thereon are hereby
 9 appropriated to the Pennsylvania State Police on a continuing
 10 basis to carry out the provisions of this chapter upon
 11 authorization of the Governor for each fiscal year.

12 § 4736. Authority of law enforcement officers.

13 Nothing in this chapter shall limit or abrogate any existing
 14 authority of law enforcement officers to take, maintain, store
 15 and utilize DNA samples for law enforcement purposes.

16 SUBCHAPTER D

17 MISCELLANEOUS PROVISIONS

18 Sec.

19 4741. State Police notice of capability to carry out chapter.

20 § 4741. State Police notice of capability to carry out chapter.

21 When the commissioner determines that the State Police
 22 possess the capabilities to carry out this chapter, the
 23 commissioner shall publish a notice to this effect in the
 24 Pennsylvania Bulletin.

25 Section 2. Section 7102 of Title 42 is amended to read:

26 § 7102. Comparative negligence.

27 (a) General rule.--In all actions brought to recover damages
 28 for negligence resulting in death or injury to person or
 29 property, the fact that the plaintiff may have been guilty of
 30 contributory negligence shall not bar a recovery by the

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1 plaintiff or his legal representative where such negligence was
 2 not greater than the causal negligence of the defendant or
 3 defendants against whom recovery is sought, but any damages
 4 sustained by the plaintiff shall be diminished in proportion to
 5 the amount of negligence attributed to the plaintiff.

6 [(b) Recovery against joint defendant; contribution.--Where
 7 recovery is allowed against more than one defendant, each
 8 defendant shall be liable for that proportion of the total
 9 dollar amount awarded as damages in the ratio of the amount of

10 his causal negligence to the amount of causal negligence
11 attributed to all defendants against whom recovery is allowed.
12 The plaintiff may recover the full amount of the allowed
13 recovery from any defendant against whom the plaintiff is not
14 barred from recovery. Any defendant who is so compelled to pay
15 more than his percentage share may seek contribution.]

16 ~~(b.1) Recovery against joint defendant; contribution. Where~~ <--
17 ~~(B.1) RECOVERY AGAINST JOINT DEFENDANT; CONTRIBUTION.--~~ <--

18 ~~(1) WHERE recovery is allowed against more than one~~
19 ~~person, including actions for strict liability, and where~~
20 ~~liability is attributed to more than one defendant, each~~
21 ~~defendant shall be liable for that proportion of the total~~
22 ~~dollar amount awarded as damages in the ratio of the amount~~
23 ~~of that defendant's liability to the amount of liability~~
24 ~~attributed to all defendants and other persons to whom~~
25 ~~liability is apportioned under subsection (b.2). Except where~~ <--
26 ~~a defendant has been held liable for intentional fraud or an~~
27 ~~intentional tort or where a defendant has been held liable~~
28 ~~for not less than 60% of the total dollar amount awarded as~~
29 ~~damages, a defendant's liability shall be several and not~~
30 ~~joint, and the court shall enter a separate and several~~

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1 ~~judgment in favor of the plaintiff and against each defendant~~
2 ~~for the proportionate amount of that defendant's liability.~~
3 ~~where a~~

4 ~~(2) EXCEPT AS SET FORTH IN PARAGRAPH (3), A DEFENDANT'S~~ <--
5 ~~LIABILITY SHALL BE SEVERAL AND NOT JOINT; AND THE COURT SHALL~~
6 ~~ENTER A SEPARATE AND SEVERAL JUDGMENT IN FAVOR OF THE~~
7 ~~PLAINTIFF AND AGAINST EACH DEFENDANT FOR THE APPORTIONED~~
8 ~~AMOUNT OF THAT DEFENDANT'S LIABILITY.~~

9 ~~(3) A DEFENDANT'S LIABILITY IN ANY OF THE FOLLOWING~~
10 ~~ACTIONS SHALL BE JOINT AND SEVERAL, AND THE COURT SHALL ENTER~~
11 ~~A JOINT AND SEVERAL JUDGMENT IN FAVOR OF THE PLAINTIFF AND~~
12 ~~AGAINST THE DEFENDANT FOR THE TOTAL DOLLAR AMOUNT AWARDED AS~~
13 ~~DAMAGES:~~

- 14 ~~(I) INTENTIONAL MISREPRESENTATION.~~
- 15 ~~(II) AN INTENTIONAL TORT.~~
- 16 ~~(III) WHERE A DEFENDANT HAS BEEN HELD LIABLE FOR NOT~~
17 ~~LESS THAN 60% OF THE TOTAL LIABILITY APPORTIONED TO ALL~~
18 ~~PARTIES.~~
- 19 ~~(IV) A RELEASE OR THREATENED RELEASE OF A HAZARDOUS~~
20 ~~SUBSTANCE UNDER SECTION 702 OF THE ACT OF OCTOBER 18,~~
21 ~~1988 (P.L.756, NO.108), KNOWN AS THE HAZARDOUS SITES~~
22 ~~CLEANUP ACT.~~
- 23 ~~(V) A CIVIL ACTION IN WHICH A DEFENDANT HAS VIOLATED~~
24 ~~SECTION 497 OF THE ACT OF APRIL 12, 1951 (P.L.90, NO.21),~~
25 ~~KNOWN AS THE LIQUOR CODE.~~

26 ~~(4) WHERE A defendant has been held jointly and~~
27 ~~severally liable under this subsection and discharges by~~
28 ~~payment more than that defendant's proportionate share of the~~
29 ~~total liability, that defendant is entitled to recover~~
30 ~~contribution from defendants who have paid less than their~~

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1 ~~proportionate share. Further, in any case, any defendant may~~
2 ~~recover from any other person all or a portion of the damages~~
3 ~~assessed that defendant, pursuant to the terms of a~~
4 ~~contractual agreement.~~

5 ~~(b.2) Apportionment of responsibility among certain~~
6 ~~nonparties and effect.--For purposes of apportioning liability~~
7 ~~only, the question of liability of any defendant or other person~~
8 ~~who has entered into a release with the plaintiff with respect~~

9 to the action and who is not a party shall be transmitted to the
 10 trier of fact upon appropriate requests and proofs by any party.
 11 A person whose liability may be determined pursuant to this
 12 subsection SECTION does not include an employer to the extent <--
 13 that the employer is granted immunity from liability or suit
 14 pursuant to the act of June 2, 1915 (P.L.736, No.338), known as
 15 the Workers' Compensation Act. An attribution of responsibility
 16 to any person or entity as provided in this subsection shall not
 17 be admissible or relied upon in any other action or proceeding
 18 for any purpose. NOTHING IN THIS SECTION SHALL AFFECT THE <--
 19 ADMISSIBILITY OR NONADMISSIBILITY OF EVIDENCE REGARDING
 20 RELEASES, SETTLEMENTS, OFFERS TO COMPROMISE OR COMPROMISES AS
 21 SET FORTH IN THE PENNSYLVANIA RULES OF EVIDENCE. NOTHING IN THIS
 22 SECTION SHALL AFFECT THE RULES OF JOINDER OF PARTIES AS SET
 23 FORTH IN THE PENNSYLVANIA RULES OF CIVIL PROCEDURE.
 24 ~~(b.3) Effect of release, covenant not to sue or similar~~ <--
 25 ~~agreement. A release, covenant not to sue or similar agreement~~
 26 ~~entered into by a plaintiff and a person who is or could be a~~
 27 ~~defendant in an action for damages for death, injury to person~~
 28 ~~or property or economic loss, may discharge that person from all~~
 29 ~~further liability, but does not discharge any other person~~
 30 ~~liable with respect to the same cause of action unless the~~

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1 ~~release, covenant not to sue or similar agreement specifically~~
 2 ~~so provides. However, any damages which the plaintiff is~~
 3 ~~entitled to recover shall be reduced by the largest of the~~
 4 ~~following:~~

- 5 ~~(1) The released person's proportional share of the~~
- 6 ~~plaintiff's damages as though the released person were a~~
- 7 ~~defendant at the time judgment is entered.~~
- 8 ~~(2) The amount paid to the plaintiff by the person~~
- 9 ~~entering into the release, covenant not to sue or similar~~
- 10 ~~agreement.~~
- 11 ~~(3) The amount or proportion by which the release,~~
- 12 ~~covenant not to sue or similar agreement provides that the~~
- 13 ~~total damages of the plaintiff shall be reduced.~~

14 (c) Downhill skiing.--
 15 (1) The General Assembly finds that the sport of
 16 downhill skiing is practiced by a large number of citizens of
 17 this Commonwealth and also attracts to this Commonwealth
 18 large numbers of nonresidents significantly contributing to
 19 the economy of this Commonwealth. It is recognized that as in
 20 some other sports, there are inherent risks in the sport of
 21 downhill skiing.
 22 (2) The doctrine of voluntary assumption of risk as it
 23 applies to downhill skiing injuries and damages is not
 24 modified by subsections (a) and [(b)] (b.1).

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

29 (d) Definitions.--As used in this section the following
 30 words and phrases shall have the meanings given to them in this
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- 1 subsection:
- 2 "Defendant or defendants [against whom recovery is sought]."
- 3 Includes impleaded defendants.
- 4 "Plaintiff." Includes counter claimants and cross-claimants.
- 5 Section 3. Nothing in this act shall be construed to
- 6 diminish the immunity of an employer to the extent that the
- 7 employer is granted immunity from liability or suit pursuant to

8 the act of June 2, 1915 (P.L.736, No.338), known as the Workers'
9 Compensation Act.

10 Section 4. Chapter 47 of Title 42 is a continuation of the
11 act of May 28, 1995 (1st Sp.Sess., P.L.1009, No.14), known as
12 the DNA Detection of Sexual and Violent Offenders Act.

13 Section 5. The act of May 28, 1995 (1st Sp.Sess., P.L.1009,
14 No.14), known as the DNA Detection of Sexual and Violent
15 Offenders Act, is repealed.

16 Section 6. The amendment of 42 Pa.C.S. § 7102 shall apply to
17 all causes of action that accrue after the effective date of
18 this section.

19 SECTION 6.1. THE PROVISIONS OF THIS ACT ARE SEVERABLE. IF <--
20 ANY PROVISION OF THIS ACT OR ITS APPLICATION TO ANY PERSON OR
21 CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY SHALL NOT AFFECT
22 OTHER PROVISIONS OR APPLICATIONS OF THIS ACT WHICH CAN BE GIVEN
23 EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION.

24 Section 7. This act shall take effect as follows:

25 (1) The references to 18 Pa.C.S. §§ 2901, 2910, 3502,
26 3701, 4302, 5902(c) (iii) and (iv), 5903(a), 6318 and 6320 in
27 the definitions of "felony sex offense" and "other specified
28 offenses" of 42 Pa.C.S. § 4703 shall take effect in 180 days.

29 (2) THE FOLLOWING PROVISIONS SHALL TAKE EFFECT IN 60 <--
30 DAYS:

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1 (I) THE AMENDMENT OF 42 PA.C.S. § 7102.

2 (II) SECTION 3 OF THIS ACT.

3 (III) SECTION 6 OF THIS ACT.

4 ~~(2)~~ (3) The remainder of this act shall take effect <--
5 immediately.