

**TESTIMONY BEFORE PENNSYLVANIA
HOUSE JUDICIARY COMMITTEE
RELATING TO HB 1**

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**ON BEHALF OF THE PENNSYLVANIA ASSOCIATION
FOR JUSTICE**

Chairman Marsico, members of the Committee and staff. Thank you for allowing the Pennsylvania Association for Justice to speak today. My name is Scott Cooper and I am an attorney and partner at the law firm of Schmidt Kramer P.C. in Harrisburg. I am also a member of the Pennsylvania Association for Justice (PaJ). I represent victims injured or killed, and their families, mainly in motor vehicle accidents. I serve as Chair of PAJ's Legislative Policy Committee and am currently its Vice President. I am a contributing editor to a leading treatise on the Pennsylvania Motor Vehicle Financial Responsibility Law, authored and argued several important and leading motor vehicle accident cases in the federal and state Appellate Courts and have spoken extensively on the issue at seminars for several organizations. I also have litigated and tried to verdict many jury trials in this Commonwealth.

We welcome the opportunity to speak to the Committee today to elaborate why the Committee must take a careful look at HB 1 in its current version and make sure that some changes are made to the Bill and even current insurance law before it is considered for any final passage. It is our concern that HB 1, as currently drafted, provides inadequate protection for victims of negligence when the centuries old doctrine of joint and several liability will be applicable. I will elaborate on three (3) problems, or deficiencies, and then be happy to answer any questions.

Three (3) of the most important reasons of why HB 1 is not fair to victims of negligence are:

1. The Dram Shop exception is one with no teeth since the Commonwealth of Pennsylvania does not require mandatory Dram Shop insurance and it does not recognize social host liability.

2. The intentional/criminal act exception does not cover instances of abhorrent behavior such as where a trucking company acts recklessly when it fails to train or monitor its driver who is clearly a danger on the road and then the driver injures or kills a person. In these cases, the trucking company may not have acted intentionally or criminally but certainly with a wanton and reckless indifference to the rights of others. The exception would not apply to this situation.

3. The Bill does not adequately protect our children if one of the responsible Defendants who is the cause of an injury or a death to a child is uninsured or bankrupt.

I will now elaborate a little more on each.

First, the corporate, insurance and business community tout that “there is a Dram Shop exception” so there is a safeguard. This is really an exaggeration because the exception is hollow. This is because our Commonwealth does not mandate Dram Shop insurance. In fact, in many cases throughout the Commonwealth bars are liable for Dram Shop violations for serving visibly intoxicated people who cause injuries

shortly after leaving the bar but because there is not mandatory insurance to cover the claim many bars have no liability insurance.

Surely, everyone here would admit that this is a concern and should be addressed. I am certain that Mothers Against Drunk Driving would not support a Bill that does not also take into consideration adding mandatory Dram Shop insurance. One such way to achieve a real goal is that before passing HB 1 is for the House to fast track a Bill which makes Dram Shop insurance mandatory in the Commonwealth.

Second, HB 1 does not adequately protect those injured as a result of recklessness, or what is known as gross negligence. In these types of instances a corporation can be liable for punitive damages but under HB 1 the intentional act exception does not cover these wrongdoers. Therefore, in a case where a trucking company is reckless in hiring or retaining a dangerous driver the company would not be fully responsible or covered by this exception. Thus, a fair resolution is to modify the exception to cover those liable for acting with a reckless indifference to the rights of another or grossly negligent.

Last, there is no protection for minors in HB 1 who should really receive some special consideration in our society, for not only fairness but moral reasons. It cannot be disputed that some injured victims will receive less than a full recovery for their damages if HB 1 is passed as written. However, for a 3, 5 or even 11 year old child who will live the rest of their lives in a wheelchair as a result of some corporate misdeed

or medical error we should make certain that they are fully compensated. It is simply not fair when a Defendant is uninsured, has limited insurance or goes bankrupt and a child cannot recover their full damages.

Our Commonwealth has special provisions already for minors in personal injury cases and HB 1 should be amended to exempt minors from the modification of joint and several liability. Why should the rights of the negligent corporation be greater than the rights of the innocent child?

I want to thank the Committee for giving us a chance to voice our opposition and some of our concerns about HB 1 in its current form. The proposed legislation is not fair as it takes away the right of some injured or killed victims of negligence without any benefit to policyholders of the insurance industry who will reap windfall profits. These uncompensated costs will ultimately become a burden of the taxpayers which will lead to a further drain on our state budget. Finally, we believe HB 1 is unconstitutional and is outside the legislature authority under our Commonwealth's Constitution.

Due to the time constraints, I have tried to briefly state PaJ's reasons why this legislation needs to be modified and the Committee take great pause before considering it for passage, or even voting out of Committee. Thank you for inviting us to share our concerns with you

today. I would be more than happy to answer any questions the Committee members may have.