

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1737 Session of
2019INTRODUCED BY GLEIM, HELM, ECKER AND M. K. KELLER,
SEPTEMBER 12, 2019

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, NOVEMBER 19, 2020

AN ACT

~~Amending the act of May 19, 1995 (P.L.33, No.3), entitled "An~~ <--
~~act limiting environmental liability for economic development~~
~~agencies, financiers and fiduciaries," further providing for~~
~~definitions.~~

AMENDING TITLE 42 (JUDICIARY AND JUDICIAL PROCEDURE) OF THE <--
PENNSYLVANIA CONSOLIDATED STATUTES, IN PARTICULAR RIGHTS AND
IMMUNITIES, PROVIDING FOR ECONOMIC DEVELOPMENT AGENCY,
FIDUCIARY AND LENDER ENVIRONMENTAL LIABILITY PROTECTION, FOR
AGRITOURISM ACTIVITY PROTECTION AND FOR COVID-19-RELATED
LIABILITY; AND MAKING A RELATED REPEAL.

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

~~Section 1. The definition of "economic development agencies"~~ <--
~~in section 3 of the act of May 19, 1995 (P.L.33, No.3), known as~~
~~the Economic Development Agency, Fiduciary and Lender~~
~~Environmental Liability Protection Act, is amended to read:~~

~~Section 3. Definitions.~~

~~The following words and phrases when used in this act shall~~
~~have the meanings given to them in this section unless the~~
~~context clearly indicates otherwise:~~

~~* * *~~

1 ~~"Economic development [agencies] agency." The term includes:~~

2 ~~(1) Any redevelopment authority created under the act of~~
3 ~~May 24, 1945 (P.L.991, No.385), known as the Urban~~
4 ~~Redevelopment Law, and any nonprofit corporation created and~~
5 ~~controlled by a redevelopment authority to carry out its~~
6 ~~statutory purpose.~~

7 ~~(2) Any industrial development agency as that term is~~
8 ~~defined in the act of May 17, 1956 (1955 P.L.1609, No.537),~~
9 ~~known as the Pennsylvania Industrial Development Authority~~
10 ~~Act.~~

11 ~~(3) Any industrial and commercial development authority~~
12 ~~created under the act of August 23, 1967 (P.L.251, No.102),~~
13 ~~known as the Economic Development Financing Law.~~

14 ~~(4) Any area loan organization as that term is defined~~
15 ~~in the act of July 2, 1984 (P.L.545, No.109), known as the~~
16 ~~Capital Loan Fund Act.~~

17 ~~(5) Any other Commonwealth or municipal authority which~~
18 ~~acquires title or an interest in property.~~

19 ~~(6) [Municipalities] Any municipality or municipal~~
20 ~~industrial development or community development [departments]~~
21 ~~department organized by ordinance under a home rule charter~~
22 ~~which [buy] buys and [sell] sells land for community~~
23 ~~development purposes.~~

24 ~~(7) [Tourist] Any tourist promotion [agencies] agency or~~
25 ~~[their] its local community based nonprofit sponsor which~~
26 ~~[engage] engages in the acquisition of former industrial~~
27 ~~sites as part of an "Industrial Heritage" or similar program.~~

28 ~~(8) [Conservancies] Any conservancy engaged in the~~
29 ~~renewal or reclamation of an industrial site.~~

30 ~~(9) Any land bank established under 68 Pa.C.S. Ch. 21~~

~~(relating to land banks).~~

~~* * *~~

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

SECTION 1. CHAPTER 83 OF TITLE 42 OF THE PENNSYLVANIA
CONSOLIDATED STATUTES IS AMENDED BY ADDING SUBCHAPTERS TO READ:

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SUBCHAPTER F.2

ECONOMIC DEVELOPMENT AGENCY, FIDUCIARY AND LENDER

ENVIRONMENTAL LIABILITY PROTECTION

SEC.

8368.11. SCOPE OF SUBCHAPTER.

8368.12. DECLARATION OF POLICY.

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8368.14. LIMITATION OF ECONOMIC DEVELOPMENT AGENCY ENVIRONMENTAL
LIABILITY.

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8368.16. LIMITATION OF FIDUCIARY ENVIRONMENTAL LIABILITY.

8368.17. DEFENSES TO LIABILITY.

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8368.19. APPORTIONMENT OF LIABILITY.

8368.20. CONSTRUCTION.

8368.21. SEVERABILITY.

8368.22. PREEMPTION AND REPEALS.

8368.23. APPLICABILITY.

§ 8368.11. SCOPE OF SUBCHAPTER.

THIS SUBCHAPTER RELATES TO ECONOMIC DEVELOPMENT AGENCY,
FIDUCIARY AND LENDER ENVIRONMENTAL LIABILITY PROTECTION.

§ 8368.12. DECLARATION OF POLICY.

THE GENERAL ASSEMBLY FINDS AND DECLARES AS FOLLOWS:

(1) THE COMMONWEALTH HAS PROVIDED GRANT AND LOAN MONEY
TO A VARIETY OF ECONOMIC DEVELOPMENT AGENCIES, ALL FOR THE

1 PURPOSE OF ASSISTING THESE AGENCIES IN THEIR EFFORTS TO
2 PROMOTE THE GENERAL WELFARE OF THIS COMMONWEALTH BY
3 ENCOURAGING ECONOMIC DEVELOPMENT AND INDUSTRIAL REDEVELOPMENT
4 THROUGHOUT THIS COMMONWEALTH.

5 (2) ECONOMIC DEVELOPMENT AGENCIES ACQUIRE TITLE TO
6 INDUSTRIAL PROPERTY FOR FINANCING PURPOSES ONLY AND LEASE OR
7 SELL THE SAME TO INDUSTRIAL OCCUPANTS WHO HAVE SOLE
8 POSSESSION OF THE FACILITIES FOR AN AMOUNT OF RENT OR
9 INSTALLMENT PAYMENTS UNDER AN INSTALLMENT SALE CONTRACT WHICH
10 IS DETERMINED SOLELY ON A BASIS OF MEETING THE COSTS OF THE
11 FINANCING AND OTHER COSTS ASSOCIATED WITH OWNERSHIP UNRELATED
12 TO PROFIT.

13 (3) ECONOMIC DEVELOPMENT AGENCIES ACQUIRE POSSESSION OF
14 THESE INDUSTRIAL SITES FROM TIME TO TIME WHEN THE INDUSTRIAL
15 OCCUPANT DEFAULTS UNDER ITS OBLIGATIONS TO THE AGENCIES UNDER
16 ITS LEASE OR INSTALLMENT SALES AGREEMENTS.

17 (4) ECONOMIC DEVELOPMENT AGENCIES ACQUIRE INDUSTRIAL
18 PROPERTY EITHER FOR THE PURPOSE OF FINANCING OR REDEVELOPMENT
19 BUT WITHOUT A MOTIVE FOR PROFIT OR TO OCCUPY THE PROPERTY FOR
20 THEIR OWN INDUSTRIAL OPERATIONS.

21 (5) ECONOMIC DEVELOPMENT AGENCIES ARE RELUCTANT TO
22 ACQUIRE TITLE TO OR OTHER INTERESTS IN PROPERTY WHETHER FOR
23 FINANCING OR REDEVELOPMENT PURPOSES OR TO SECURE REPAYMENT OF
24 OBLIGATIONS UNLESS THE ECONOMIC DEVELOPMENT AGENCIES ARE
25 PROTECTED FROM LIABILITY FOR ENVIRONMENTAL CONTAMINATION ON
26 THOSE SITES THEY SEEK TO ASSIST TO DEVELOP.

27 (6) THE TAKING OF LEGAL TITLE AND ANY FORECLOSURE OR
28 RETAKING OF POSSESSION OF PROPERTY BY AN INDUSTRIAL
29 DEVELOPMENT AGENCY, AREA LOAN ORGANIZATION OR INDUSTRIAL AND
30 COMMERCIAL DEVELOPMENT AUTHORITY IS UNDER THE FOLLOWING ACTS:

1 (I) THE ACT OF MAY 17, 1956 (1955 P.L.1609, NO.537),
2 KNOWN AS THE PENNSYLVANIA INDUSTRIAL DEVELOPMENT
3 AUTHORITY ACT, WHICH EXPRESSLY REQUIRES THAT THE
4 PENNSYLVANIA INDUSTRIAL DEVELOPMENT AUTHORITY LOAN MONEY
5 TO INDUSTRIAL DEVELOPMENT AGENCIES SECURED BY NOT LESS
6 THAN A SECOND MORTGAGE LIEN.

7 (II) THE ACT OF AUGUST 23, 1967 (P.L.251, NO.102),
8 KNOWN AS THE ECONOMIC DEVELOPMENT FINANCING LAW, WHICH
9 PROVIDES FOR ISSUANCE OF DEBT BY INDUSTRIAL AND
10 COMMERCIAL DEVELOPMENT AUTHORITIES AND AUTHORIZES THESE
11 AUTHORITIES TO TAKE TITLE TO REAL PROPERTY AS SECURITY
12 FOR THE INDEBTEDNESS.

13 (III) THE ACT OF JUNE 29, 1996 (P.L.434, NO.67),
14 KNOWN AS THE JOB ENHANCEMENT ACT.

15 (7) THE MAXIMUM LEVEL OF ECONOMIC DEVELOPMENT AND
16 BUSINESS OPPORTUNITY AND EMPLOYMENT AND THE ELIMINATION OR
17 PREVENTION OF ABANDONED INDUSTRIAL AND COMMERCIAL PROPERTY
18 AND FEDERAL GOVERNMENT OR MILITARY LANDS WHICH CAN BEST BE
19 PROVIDED BY THE PROMOTION, ATTRACTION, STIMULATION,
20 REHABILITATION AND REVITALIZATION OF ALL TYPES OF INDUSTRY,
21 COMMERCE, MANUFACTURING AND BUSINESS DEVELOPMENT WITHIN THIS
22 COMMONWEALTH.

23 (8) TO CONTINUE AND FURTHER THE STIMULATION OF BUSINESS
24 OPPORTUNITIES AND ECONOMIC DEVELOPMENT WITHIN THIS
25 COMMONWEALTH AND BY WHICH CAUSE THE REUSE AND REHABILITATION
26 OF INDUSTRIAL AND COMMERCIAL PROPERTY, IT IS NECESSARY TO
27 ENSURE VARIOUS MEANS OF FINANCING TO PROMOTE ECONOMIC GROWTH
28 AND THE AVAILABILITY OF FIDUCIARY SERVICES TO PERSONS WITHIN
29 THIS COMMONWEALTH.

30 (9) LENDERS ARE RELUCTANT TO PROVIDE FUNDING FOR

1 BUSINESS OPPORTUNITIES AND ECONOMIC DEVELOPMENT, AND
2 FIDUCIARIES ARE RELUCTANT TO PROVIDE SERVICES TO PERSONS WITH
3 ENVIRONMENTAL PROBLEMS, BECAUSE OF CATASTROPHIC RISKS OF
4 ENVIRONMENTAL LIABILITY AND REMEDIATION COSTS UNDER
5 ENVIRONMENTAL LAWS RELATING TO RELEASES AND CONTAMINATION
6 WHICH WERE NOT CAUSED BY LENDERS AND FIDUCIARIES.

7 (10) WHEN BORROWERS DEFAULT ON LOANS, LENDERS ARE
8 RELUCTANT TO FORECLOSE UPON COMMERCIAL PROPERTY WITH
9 ENVIRONMENTAL PROBLEMS BECAUSE LENDERS MAY BE FORCED TO
10 ASSUME COSTLY ENVIRONMENTAL LIABILITIES; THUS, COMMERCIAL
11 PROPERTY IS BEING ABANDONED IN THIS COMMONWEALTH AND NEW
12 BUSINESSES ARE UNABLE TO OBTAIN FINANCING TO PURCHASE SUCH
13 PROPERTIES.

14 (11) FAMILY BUSINESSES ARE UNABLE TO ESTABLISH TRUSTS TO
15 CONVEY THEIR BUSINESS INTERESTS TO THE NEXT GENERATION, AND
16 OTHER BUSINESSES ARE UNABLE TO RECEIVE RETIREMENT, INVESTMENT
17 AND OTHER TRUST SERVICES FROM FIDUCIARIES, IF FIDUCIARIES IN
18 THEIR PERSONAL OR INDIVIDUAL CAPACITIES MAY BE HELD LIABLE
19 FOR ENVIRONMENTAL CONTAMINATION CAUSED BY OTHER PERSONS
20 MERELY BY VIRTUE OF OWNING PROPERTY IN THEIR TRUSTEE
21 CAPACITIES AND PROVIDING FIDUCIARY SERVICES.

22 (12) IN ORDER TO CONTINUE TO STIMULATE GROWTH AND
23 CONTINUE THE USE OR REUSE OF INDUSTRIAL AND COMMERCIAL
24 PROPERTY, IT IS NECESSARY TO PROVIDE PROTECTION TO LENDERS,
25 FIDUCIARIES AND ECONOMIC DEVELOPMENT AGENCIES FROM
26 ENVIRONMENTAL LIABILITY AND REMEDIATION COSTS UNDER
27 ENVIRONMENTAL LAWS FOR RELEASES AND CONTAMINATION CAUSED BY
28 OTHERS.

29 (13) ENVIRONMENTAL LIABILITY FOR LENDERS, FIDUCIARIES
30 AND ECONOMIC DEVELOPMENT AGENCIES SHALL BE LIMITED IN SCOPE

1 AS SPECIFICALLY PROVIDED IN THIS SUBCHAPTER, AND THIS
2 SUBCHAPTER SHALL BE INTERPRETED AS BROADLY AS POSSIBLE IN
3 ORDER TO PREEMPT ANY LAWS, REGULATIONS OR ORDINANCES IMPOSING
4 ENVIRONMENTAL LIABILITY ON THE PERSONS IN ORDER TO PROMOTE
5 ECONOMIC DEVELOPMENT.

6 § 8368.13. DEFINITIONS.

7 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS SUBCHAPTER
8 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
9 CONTEXT CLEARLY INDICATES OTHERWISE:

10 "BOARD." THE ENVIRONMENTAL HEARING BOARD OF THE
11 COMMONWEALTH.

12 "BORROWER." A PERSON WHO HAS RECEIVED AN EXTENSION OF
13 CREDIT. THE TERM INCLUDES A DEBTOR, A LESSOR, A LESSEE OR AN
14 OBLIGOR.

15 "CONSERVANCY." A CHARITABLE CORPORATION, CHARITABLE
16 ASSOCIATION OR CHARITABLE TRUST:

17 (1) REGISTERED WITH THE BUREAU OF CORPORATIONS AND
18 CHARITABLE ORGANIZATIONS;

19 (2) EXEMPT FROM TAXATION UNDER SECTION 501(C)(3) OF THE
20 INTERNAL REVENUE CODE OF 1986 (PUBLIC LAW 99-514, 26 U.S.C. §
21 501(C)(3)) OR OTHER FEDERAL OR COMMONWEALTH STATUTES OR
22 REGULATIONS; AND

23 (3) THE PURPOSE OR POWERS OF WHICH INCLUDE:

24 (I) RETAINING OR PROTECTING NATURAL, SCENIC,
25 AGRICULTURAL OR OPEN-SPACE VALUES OF REAL PROPERTY;

26 (II) ASSURING THE AVAILABILITY OF REAL PROPERTY FOR
27 AGRICULTURAL, FOREST, RECREATIONAL OR OPEN-SPACE USE;

28 (III) PROTECTING NATURAL RESOURCES AND WILDLIFE;

29 (IV) MAINTAINING OR ENHANCING LAND, AIR OR WATER
30 QUALITY; OR

1 (V) PRESERVING THE HISTORICAL, ARCHITECTURAL,
2 ARCHAEOLOGICAL OR CULTURAL ASPECTS OF REAL PROPERTY.
3 "DEPARTMENT." THE DEPARTMENT OF ENVIRONMENTAL PROTECTION OF
4 THE COMMONWEALTH.

5 "ECONOMIC DEVELOPMENT AGENCY." THE TERM INCLUDES:

6 (1) A REDEVELOPMENT AUTHORITY CREATED UNDER THE ACT OF
7 MAY 24, 1945 (P.L.991, NO.385), KNOWN AS THE URBAN
8 REDEVELOPMENT LAW, AND ANY NONPROFIT CORPORATION CREATED AND
9 CONTROLLED BY A REDEVELOPMENT AUTHORITY TO CARRY OUT ITS
10 STATUTORY PURPOSE.

11 (2) AN INDUSTRIAL DEVELOPMENT AGENCY AS DEFINED IN THE
12 ACT OF MAY 17, 1956 (1955 P.L.1609, NO.537), KNOWN AS THE
13 PENNSYLVANIA INDUSTRIAL DEVELOPMENT AUTHORITY ACT.

14 (3) AN INDUSTRIAL AND COMMERCIAL DEVELOPMENT AUTHORITY
15 CREATED UNDER THE ACT OF AUGUST 23, 1967 (P.L.251, NO.102),
16 KNOWN AS THE ECONOMIC DEVELOPMENT FINANCING LAW.

17 (4) AN AREA LOAN ORGANIZATION AS DEFINED IN THE ACT OF
18 JUNE 29, 1996 (P.L.434, NO.67), KNOWN AS THE JOB ENHANCEMENT
19 ACT.

20 (5) ANY OTHER COMMONWEALTH OR MUNICIPAL AUTHORITY WHICH
21 ACQUIRES TITLE OR AN INTEREST IN PROPERTY.

22 (6) A MUNICIPALITY OR MUNICIPAL INDUSTRIAL DEVELOPMENT
23 OR COMMUNITY DEVELOPMENT DEPARTMENT ORGANIZED BY ORDINANCE
24 UNDER A HOME RULE CHARTER WHICH BUYS AND SELLS LAND FOR
25 COMMUNITY DEVELOPMENT PURPOSES.

26 (7) A TOURIST PROMOTION AGENCY OR THE TOURIST PROMOTION
27 AGENCY'S LOCAL COMMUNITY-BASED NONPROFIT SPONSOR WHICH
28 ENGAGES IN THE ACQUISITION OF FORMER INDUSTRIAL SITES AS PART
29 OF AN "INDUSTRIAL HERITAGE" OR SIMILAR PROGRAM.

30 (8) A CONSERVANCY ENGAGED IN THE RENEWAL OR RECLAMATION

1 OF AN INDUSTRIAL SITE.

2 (9) A LAND BANK ESTABLISHED UNDER 68 PA.C.S. CH. 21
3 (RELATING TO LAND BANKS).

4 "ENVIRONMENTAL ACT." ANY OF THE FOLLOWING:

5 (1) THE ACT OF JUNE 22, 1937 (P.L.1987, NO.394), KNOWN
6 AS THE CLEAN STREAMS LAW.

7 (2) THE ACT OF JANUARY 8, 1960 (1959 P.L.2119, NO.787),
8 KNOWN AS THE AIR POLLUTION CONTROL ACT.

9 (3) THE ACT OF JULY 7, 1980 (P.L. 380, NO.97), KNOWN AS
10 THE SOLID WASTE MANAGEMENT ACT.

11 (4) THE ACT OF OCTOBER 5, 1984 (P.L.734, NO.159), KNOWN
12 AS THE WORKER AND COMMUNITY RIGHT-TO-KNOW ACT.

13 (5) THE ACT OF JULY 13, 1988 (P.L.525, NO.93), REFERRED
14 TO AS THE INFECTIOUS AND CHEMOTHERAPEUTIC WASTE LAW.

15 (6) THE ACT OF OCTOBER 18, 1988 (P.L.756, NO.108), KNOWN
16 AS THE HAZARDOUS SITES CLEANUP ACT.

17 (7) THE ACT OF JULY 6, 1989 (P.L.169, NO.32), KNOWN AS
18 THE STORAGE TANK AND SPILL PREVENTION ACT.

19 (8) THE ACT OF DECEMBER 7, 1990 (P.L.639, NO.165), KNOWN
20 AS THE HAZARDOUS MATERIAL EMERGENCY PLANNING AND RESPONSE
21 ACT.

22 (9) THE ACT OF JUNE 11, 1992 (P.L.303, NO.52), KNOWN AS
23 THE OIL SPILL RESPONDER LIABILITY ACT.

24 (10) A FEDERAL, STATE OR LOCAL LAW, STATUTE, REGULATION,
25 RULE, ORDINANCE, COURT OR ADMINISTRATIVE ORDER OR DECREE,
26 COMMON LAW, INTERPRETATION OR GUIDANCE, IN EXISTENCE ON OR
27 AFTER JULY 18, 1995, PERTAINING TO EMPLOYEES, OCCUPATIONAL
28 HEALTH AND SAFETY, PUBLIC HEALTH OR SAFETY, NATURAL RESOURCES
29 OR THE ENVIRONMENT.

30 "ENVIRONMENTAL DUE DILIGENCE." INVESTIGATIVE TECHNIQUES,

1 INCLUDING VISUAL PROPERTY INSPECTIONS, ELECTRONIC ENVIRONMENTAL
2 DATABASE SEARCHES, REVIEW OF OWNERSHIP AND USE HISTORY OF THE
3 PROPERTY, ENVIRONMENTAL QUESTIONNAIRES, TRANSACTION SCREENS,
4 ENVIRONMENTAL ASSESSMENTS OR AUDITS.

5 "FIDUCIARY." A PERSON WHICH IS CONSIDERED A FIDUCIARY UNDER
6 SECTION 3(21) OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF
7 1974 (PUBLIC LAW 93-406, 29 U.S.C. § 1002(21)) OR WHO ACTS AS
8 TRUSTEE, EXECUTOR, ADMINISTRATOR, CUSTODIAN, GUARDIAN OF
9 ESTATES, CONSERVATOR, COMMITTEE OF ESTATES OF PERSONS WHO ARE
10 DISABLED, PERSONAL REPRESENTATIVE, RECEIVER, AGENT, NOMINEE,
11 REGISTRAR OF STOCKS AND BONDS, ASSIGNEE OR IN ANY OTHER CAPACITY
12 FOR THE BENEFIT OF ANOTHER PERSON.

13 "FORECLOSURE." THE DATE UPON WHICH TITLE VESTS IN PROPERTY
14 THROUGH REALIZING UPON A SECURITY INTEREST, INCLUDING AN
15 OWNERSHIP OF PROPERTY RECOGNIZED UNDER APPLICABLE LAW AS VESTING
16 THE HOLDER OF THE SECURITY INTEREST WITH SOME INDICIA OF TITLE,
17 LEGAL OR EQUITABLE TITLE OBTAINED AT OR IN LIEU OF FORECLOSURE,
18 SHERIFF SALES, BANKRUPTCY DISTRIBUTIONS AND THEIR EQUIVALENTS.

19 "FUND." ANY OF THE FOLLOWING:

20 (1) A SPECIAL FUND OF COMMONWEALTH MONEY ADMINISTERED BY
21 THE COMMONWEALTH OR THE DEPARTMENT OF ENVIRONMENTAL
22 PROTECTION, INCLUDING THE HAZARDOUS SITES CLEANUP FUND AND
23 THE UNDERGROUND STORAGE TANK INDEMNIFICATION FUND.

24 (2) A FUND OF COMMONWEALTH MONEY IN EXISTENCE ON AND
25 AFTER JULY 18, 1995, CREATED FOR THE FUNDING OR REIMBURSEMENT
26 OF COSTS AND DAMAGES SUCH AS RESPONSE COSTS, EMERGENCY
27 RESPONSE MEASURES AND THEIR EQUIVALENT RELATING TO NATURAL
28 RESOURCES OR THE ENVIRONMENT.

29 "GUARANTOR." THE TERM INCLUDES:

30 (1) GUARANTORS AND SURETIES OF SECURITY INTERESTS,

1 SECURITIES AND OTHER OBLIGATIONS, ISSUERS OF LETTERS OF
2 CREDIT AND OTHER CREDIT ENHANCEMENTS, TITLE INSURERS AND
3 ENTITIES WHICH DIRECTLY OR INDIRECTLY ACQUIRE INDICIA OF
4 OWNERSHIP IN THE COURSE OF PROTECTING A SECURITY INTEREST OR
5 ACTING AS THE GUARANTORS, SURETIES, ISSUERS OF LETTERS OF
6 CREDIT OR OTHER CREDIT ENHANCEMENTS OR TITLE INSURERS.

7 (2) GUARANTIES, SURETY BONDS, TITLE INSURANCE POLICIES,
8 LETTERS OF CREDIT AND OTHER CREDIT ENHANCEMENTS, AND OTHER
9 AGREEMENTS WITH A GUARANTOR RELATING TO THE OBLIGATIONS
10 DESCRIBED IN THIS DEFINITION.

11 (3) DIRECTLY OR INDIRECTLY, AN INTEREST IN PROPERTY,
12 SECURITY INTEREST, INDICIA OF OWNERSHIP TITLE OR RIGHT TO
13 TITLE HELD OR ACQUIRED BY A FIDUCIARY OR SIMILAR ENTITY FOR
14 THE BENEFIT OF A HOLDER OF A SECURITY INTEREST.
15 "INDICIA OF OWNERSHIP." AS FOLLOWS:

16 (1) A LEGAL OR EQUITABLE INTEREST IN PROPERTY, INCLUDING
17 FEE TITLE, ACQUIRED DIRECTLY OR INDIRECTLY:

18 (I) FOR SECURING PAYMENT OF A LOAN OR INDEBTEDNESS,
19 A RIGHT OF REIMBURSEMENT OR SUBROGATION UNDER A GUARANTY
20 OR THE PERFORMANCE OF ANOTHER OBLIGATION;

21 (II) EVIDENCING OWNERSHIP UNDER A LEASE FINANCING
22 TRANSACTION WHERE THE LESSOR DOES NOT INITIALLY SELECT OR
23 ORDINARILY CONTROL THE DAILY OPERATION OR MAINTENANCE OF
24 THE PROPERTY;

25 (III) IN THE COURSE OF CREATING, PROTECTING OR
26 ENFORCING A SECURITY INTEREST OR RIGHT OF REIMBURSEMENT
27 OF SUBROGATION UNDER A GUARANTY; OR

28 (IV) TO SECURE PUBLIC FUNDING FOR THE ENVIRONMENTAL
29 INVESTIGATION, REMEDIATION OR REDEVELOPMENT OF OR
30 IMPLEMENTATION OF INFRASTRUCTURE IMPROVEMENTS AT THE

1 PROPERTY FOR, AMONG OTHER PURPOSES, THE TRANSFER OF TITLE
2 TO THE PROPERTY TO A THIRD PARTY AFTER REHABILITATION.

3 (2) THE TERM INCLUDES EVIDENCE OF INTEREST IN MORTGAGES,
4 DEEDS OF TRUST, LIENS, SURETY BONDS, GUARANTIES, LEASE
5 FINANCING TRANSACTIONS WHERE THE LESSOR DOES NOT INITIALLY
6 SELECT OR ORDINARILY CONTROL THE DAILY OPERATION OR
7 MAINTENANCE OF THE PROPERTY, OTHER FORMS OF ENCUMBRANCES
8 AGAINST PROPERTY RECOGNIZED UNDER APPLICABLE LAW AS VESTING
9 THE HOLDER OF THE SECURITY INTEREST WITH SOME INDICIA OF
10 TITLE.

11 "INDUSTRIAL ACTIVITY." COMMERCIAL, MANUFACTURING, PUBLIC
12 UTILITY, MINING OR ANY OTHER ACTIVITY DONE TO FURTHER EITHER THE
13 DEVELOPMENT, MANUFACTURING OR DISTRIBUTION OF GOODS AND
14 SERVICES, INTERMEDIATE AND FINAL PRODUCTS AND SOLID WASTE
15 CREATED DURING THE ACTIVITIES, INCLUDING ADMINISTRATION OF
16 BUSINESS ACTIVITIES, RESEARCH AND DEVELOPMENT, WAREHOUSING,
17 SHIPPING, TRANSPORT, REMANUFACTURING, STOCKPILING OF RAW
18 MATERIALS, STORAGE, REPAIR AND MAINTENANCE OF COMMERCIAL
19 MACHINERY AND EQUIPMENT AND SOLID WASTE MANAGEMENT.

20 "INDUSTRIAL SITE." A SITE WHICH NOW HAS OR ONCE HAD AN
21 INDUSTRIAL ACTIVITY ON IT.

22 "LENDER." A PERSON REGULATED OR SUPERVISED BY A FEDERAL OR
23 STATE REGULATORY AGENCY AND ANY OF ITS AFFILIATES OR
24 SUBSIDIARIES, SUCCESSORS OR ASSIGNS, INCLUDING ITS OFFICERS,
25 DIRECTORS, EMPLOYEES, REPRESENTATIVES OR AGENTS, AND ANY FEDERAL
26 OR STATE BANKING OR LENDING AGENCY OR ITS SUCCESSORS, INCLUDING,
27 THE RESOLUTION TRUST CORPORATION, FEDERAL DEPOSIT INSURANCE
28 CORPORATION, FEDERAL RESERVE BANK, BOARD OF GOVERNORS OF THE
29 FEDERAL RESERVE SYSTEM, FEDERAL HOME LOAN BANK, NATIONAL CREDIT
30 UNION ADMINISTRATOR BOARD, OFFICE OF THE COMPTROLLER OF THE

CURRENCY, OFFICE OF THRIFT SUPERVISION, FARM CREDIT
ADMINISTRATION AND SMALL BUSINESS ADMINISTRATION OR SIMILARLY
CHARTERED FEDERAL INSTRUMENTALITY. THE TERM INCLUDES:

(1) THE INITIAL LENDER AND A SUBSEQUENT HOLDER OF A
SECURITY INTEREST OR NOTE, GUARANTOR, LEASE FINANCIER OR A
SUCCESSOR OR A RECEIVER OR OTHER PERSON WHO ACTS ON BEHALF OR
FOR THE BENEFIT OF A HOLDER OF A SECURITY INTEREST.

(2) AN ECONOMIC DEVELOPMENT AGENCY.
"OCCUPANT." A PARTY WHICH OCCUPIES OR HAS THE RIGHT TO
OCCUPY PROPERTY OWNED BY AN ECONOMIC DEVELOPMENT AGENCY BY AN
INSTRUMENT, INCLUDING A LEASE, MORTGAGE, INSTALLMENT SALE
CONTRACT, DISPOSITION AGREEMENT OR TRUST AGREEMENT.

"PERSON." AN INDIVIDUAL, PARTNERSHIP, CORPORATION, BUSINESS
TRUST, JOINT-STOCK FUND, ESTATE TRUST, BANKING ASSOCIATION,
GOVERNMENTAL, ADMINISTRATIVE OR REGULATORY AGENCY, INSTITUTION
OR ANY OTHER TYPE OF LEGAL ENTITY.

"PROPERTY." EACH TYPE OF REAL, PERSONAL, TANGIBLE AND
INTANGIBLE PROPERTY.

"REDEVELOPMENT." UNDERTAKINGS AND ACTIVITIES MADE UNDER THE
ACT OF MAY 24, 1945 (P.L.991, NO.385), KNOWN AS THE URBAN
REDEVELOPMENT LAW, INCLUDING PLANNING, ACQUISITION, SITE
PREPARATION, DEMOLITION, REHABILITATION, RENOVATION,
CONSERVATION, REUSE, RENEWAL, IMPROVEMENT, CLEARANCE, SALE AND
LEASE OF REAL PROPERTY AND IMPROVEMENTS THEREON.

"REGULATED SUBSTANCE." AN ELEMENT, COMPOUND OR MATERIAL
WHICH IS SUBJECT TO REGULATION UNDER THE ENVIRONMENTAL ACTS OR
AN ELEMENT, COMPOUND OR MATERIAL DEFINED AS A HAZARDOUS, TOXIC,
REGULATED INFECTIOUS CHEMOTHERAPEUTIC SUBSTANCE OR CHEMICAL
CONTAMINANT, WASTE, A TYPE OF POLLUTION OR CONDITION OR AN
EQUIVALENT UNDER THE ENVIRONMENTAL ACTS.

1 "RELEASE." A SPILL, RUPTURE, EMISSION, DISCHARGE, OTHER
2 ACTION, OCCURRENCE, CONDITION OR ANY OTHER TERM DEFINED AS A
3 "RELEASE" OR OTHER THREAT OF RELEASE OR OPERATIVE WORD OR EVENT
4 WHICH WOULD TRIGGER COMPLIANCE REQUIREMENTS OR LIABILITY UNDER
5 THE ENVIRONMENTAL ACTS.

6 "RESPONSE ACTION." AN ACTION, INCLUDING A RESPONSE OR
7 INTERIM RESPONSE, REMEDIAL RESPONSE OR REMEDY OR CORRECTIVE
8 ACTION, CLOSURE OR ANOTHER ACTION UNDER THE ENVIRONMENTAL ACTS
9 IN RESPONSE TO A RELEASE, SUCH AS TESTING, INSPECTIONS,
10 SAMPLING, INSTALLATIONS, CORRECTIVE ACTION, REMOVALS, CLOSURE,
11 RESPONSE COSTS, ASSESSMENTS OR A TYPE OF CLAIMS, DAMAGES,
12 ACTIONS, FINES AND PENALTIES.

13 "SECURITY INTEREST." AN INTEREST IN PROPERTY CREATED OR
14 ESTABLISHED FOR THE PURPOSE OF SECURING A LOAN, RIGHT OF
15 REIMBURSEMENT OR SUBROGATION UNDER A GUARANTY OR OTHER
16 OBLIGATION OR CONSTITUTING A LEASE FINANCING TRANSACTION. THE
17 TERM INCLUDES:

18 (1) SECURITY INTERESTS CREATED UNDER 13 PA.C.S.
19 (RELATING TO COMMERCIAL CODE), MORTGAGES, DEEDS OF TRUST,
20 LIENS, LEASE FINANCING TRANSACTIONS IN WHICH THE LESSOR DOES
21 NOT INITIALLY SELECT OR ORDINARILY CONTROL THE DAILY
22 OPERATION OR MAINTENANCE OF THE PROPERTY, TRUST RECEIPT
23 TRANSACTIONS AND THEIR EQUIVALENTS. A SECURITY INTEREST MAY
24 ARISE FROM TRANSACTIONS SUCH AS SALES AND LEASEBACKS,
25 CONDITIONAL SALES, INSTALLMENT SALES, CERTAIN ASSIGNMENTS,
26 FACTORING AGREEMENTS, ACCOUNTS RECEIVABLE, FINANCING
27 ARRANGEMENTS AND CONSIGNMENTS IF THE TRANSACTION CREATES OR
28 ESTABLISHES AN INTEREST IN PROPERTY FOR THE PURPOSE OF
29 SECURING A LOAN, RIGHT OF REIMBURSEMENT OR SUBROGATION UNDER
30 A GUARANTY OR OTHER OBLIGATION.

1 (2) A CONFESSION OF JUDGMENT OR MONEY JUDGMENT WHEREBY A
2 LENDER COMMENCES AN EXECUTION ON THE JUDGMENT WITH A WRIT OF
3 EXECUTION AND BY WHICH CAUSES PROPERTY TO BE LEVIED AND
4 ATTACHED.

5 § 8368.14. LIMITATION OF ECONOMIC DEVELOPMENT AGENCY
6 ENVIRONMENTAL LIABILITY.

7 (A) GENERAL RULE.--AN ECONOMIC DEVELOPMENT AGENCY THAT HOLDS
8 AN INDICIA OF OWNERSHIP IN PROPERTY UNDER THE FOLLOWING SHALL
9 NOT BE LIABLE UNDER THE ENVIRONMENTAL ACTS TO THE DEPARTMENT OR
10 TO ANY OTHER PERSON IN ACCORDANCE WITH THIS SECTION:

11 (1) AS A SECURITY INTEREST FOR THE PURPOSE OF DEVELOPING
12 OR REDEVELOPING THE PROPERTY;

13 (2) TO FINANCE AN ECONOMIC DEVELOPMENT OR REDEVELOPMENT
14 ACTIVITY; OR

15 (3) TO SECURE PUBLIC FUNDING FOR THE ENVIRONMENTAL
16 INVESTIGATION, REMEDIATION OR REDEVELOPMENT OF OR
17 IMPLEMENTATION OF INFRASTRUCTURE IMPROVEMENTS AT THE PROPERTY
18 FOR, AMONG OTHER PURPOSES, THE TRANSFER OF TITLE TO THE
19 PROPERTY TO A THIRD PARTY AFTER REHABILITATION.

20 (B) SCOPE OF LIMITED LIABILITY.--

21 (1) AN ECONOMIC DEVELOPMENT AGENCY SHALL NOT BE LIABLE
22 IN AN ACTION BY THE DEPARTMENT, AS A RESPONSIBLE PERSON,
23 UNLESS THE ECONOMIC DEVELOPMENT AGENCY, ITS EMPLOYEES OR
24 AGENTS DIRECTLY CAUSE AN IMMEDIATE RELEASE OR DIRECTLY
25 EXACERBATE A RELEASE OF A REGULATED SUBSTANCE ON OR FROM THE
26 PROPERTY.

27 (1.1) AN ECONOMIC DEVELOPMENT AGENCY, ITS OFFICERS,
28 DIRECTORS, AGENTS, MEMBERS, EMPLOYEES AND ITS PROFESSIONAL
29 CONSULTANTS SHALL NOT BE LIABLE, INCLUDING FOR PROPERTY
30 DAMAGES, DIMINUTION OF PROPERTY VALUE, STIGMA DAMAGES,

1 NATURAL RESOURCE DAMAGES, ECONOMIC LOSS, BODILY INJURY OR
2 DEATH RELATING TO A REGULATED SUBSTANCE CURRENTLY OR
3 PREVIOUSLY RELEASED ON OR FROM THE PROPERTY, IN AN ACTION BY
4 A PERSON ALLEGING LIABILITY OF ANY KIND UNDER THE
5 ENVIRONMENTAL ACTS, EXCEPT IF THE ECONOMIC DEVELOPMENT
6 AGENCY, ITS OFFICERS, DIRECTORS, AGENTS, MEMBERS, EMPLOYEES
7 OR ITS PROFESSIONAL CONSULTANTS DIRECTLY CAUSE AN IMMEDIATE
8 RELEASE OR DIRECTLY EXACERBATE A RELEASE OF ANY REGULATED
9 SUBSTANCE ON OR FROM THE PROPERTY.

10 (2) AN ECONOMIC DEVELOPMENT AGENCY WHICH FORECLOSES ON
11 OR ASSUMES POSSESSION OF A PROPERTY SHALL REMAIN WITHIN THE
12 EXEMPTION FROM LIABILITY UNDER SUBSECTION (A).

13 (3) AN ECONOMIC DEVELOPMENT AGENCY THAT CONDUCTS A
14 REMEDIAL ACTION IN ACCORDANCE WITH A WRITTEN AGREEMENT WITH
15 THE DEPARTMENT SHALL NOT BE LIABLE AS A RESPONSIBLE PARTY,
16 OWNER, OPERATOR OR OCCUPIER IN AN ACTION BY THE DEPARTMENT
17 FOR A RELEASE OR POTENTIAL RELEASE OF A REGULATED SUBSTANCE.

18 (4) COOPERATION AMONG GOVERNMENTAL AGENCIES PERFORMING A
19 REMEDIAL ACTION SHALL BE AS FOLLOWS:

20 (I) AN ECONOMIC DEVELOPMENT AGENCY AND ANY OF ITS
21 SUCCESSORS AND ASSIGNS MAY TAKE NO ACTION THAT WOULD
22 DISTURB OR BE INCONSISTENT WITH REMEDIAL RESPONSE THAT IS
23 PROPOSED, APPROVED OR IMPLEMENTED BY THE ENVIRONMENTAL
24 PROTECTION AGENCY.

25 (II) AN ECONOMIC DEVELOPMENT AGENCY AND ANY OF ITS
26 SUCCESSORS AND ASSIGNS SHALL PERMIT ACCESS TO FEDERAL AND
27 COMMONWEALTH AGENCIES AND OTHER PARTIES ACTING UNDER THE
28 DIRECTION OF THE AGENCIES TO EVALUATE, PERFORM OR
29 MAINTAIN A REMEDIAL ACTION.

30 (III) AN ECONOMIC DEVELOPMENT AGENCY OR ANY OF ITS

SUCCESSORS AND ASSIGNS SHALL PERFORM, OPERATE AND
MAINTAIN REMEDIAL ACTIONS UNDER STATE LAWS AS DIRECTED BY
THE DEPARTMENT.

§ 8368.15. LIMITATION OF LENDER ENVIRONMENTAL LIABILITY.

(A) SCOPE OF LENDER LIABILITY.--A LENDER WHO ENGAGES IN
ACTIVITIES INVOLVED IN THE ROUTINE PRACTICES OF COMMERCIAL
LENDING, INCLUDING THE PROVIDING OF FINANCIAL SERVICES, HOLDING
OF SECURITY INTERESTS, WORKOUT PRACTICES, FORECLOSURE OR THE
RECOVERY OF MONEY FROM THE SALE OF PROPERTY SHALL NOT BE LIABLE
UNDER THE ENVIRONMENTAL ACTS OR COMMON LAW EQUIVALENTS TO THE
DEPARTMENT OF ENVIRONMENTAL PROTECTION OR TO ANY OTHER PERSON BY
VIRTUE OF THE FACT THAT THE LENDER ENGAGES IN THE COMMERCIAL
LENDING PRACTICE EXCEPT IF:

(1) THE LENDER, ITS EMPLOYEES OR AGENTS DIRECTLY CAUSE
AN IMMEDIATE RELEASE OR DIRECTLY EXACERBATE A RELEASE OF
REGULATED SUBSTANCES ON OR FROM THE PROPERTY; OR

(2) THE LENDER, ITS EMPLOYEES OR AGENTS KNOWINGLY AND
WILLFULLY COMPELLED THE BORROWER TO:

(I) DO AN ACTION WHICH CAUSED AN IMMEDIATE RELEASE
OF REGULATED SUBSTANCES; OR

(II) VIOLATE AN ENVIRONMENTAL ACT.

(B) LIMITATION OF LENDER LIABILITY.--

(1) LIABILITY UNDER THIS SUBCHAPTER SHALL BE LIMITED TO
THE COST FOR A RESPONSE ACTION WHICH MAY BE DIRECTLY
ATTRIBUTABLE TO THE LENDER'S ACTIVITIES AS SPECIFIED IN
SUBSECTION (A).

(2) LIABILITY SHALL ARISE ONLY IF THE LENDER'S ACTIONS
WERE THE PROXIMATE AND EFFICIENT CAUSE OF THE RELEASE OR
VIOLATION.

(3) OWNERSHIP OR CONTROL OF THE PROPERTY AFTER

1 FORECLOSURE SHALL NOT BY ITSELF TRIGGER LIABILITY.

2 (4) A LENDER SHALL NOT BE LIABLE FOR A RESPONSE ACTION
3 IF THE RESPONSE ACTION ARISES SOLELY FROM A RELEASE OF
4 REGULATED SUBSTANCES WHICH OCCURRED PRIOR TO OR COMMENCES
5 BEFORE AND CONTINUES AFTER FORECLOSURE, EXCEPT THAT THE
6 LENDER SHALL BE RESPONSIBLE FOR THAT PORTION OF THE RESPONSE
7 ACTION WHICH IS DIRECTLY ATTRIBUTED TO THE LENDER'S
8 EXACERBATION OF A RELEASE.

9 (5) A RELEASE OF REGULATED SUBSTANCES DISCOVERED IN THE
10 COURSE OF CONDUCTING ENVIRONMENTAL DUE DILIGENCE SHALL BE
11 PRESUMED TO BE A PRIOR OR CONTINUING RELEASE ON THE PROPERTY.

12 § 8368.16. LIMITATION OF FIDUCIARY ENVIRONMENTAL LIABILITY.

13 (A) SCOPE OF FIDUCIARY LIABILITY.--ANY PERSON WHO ACTS OR
14 HAS ACTED AS A FIDUCIARY TO ANOTHER PERSON SHALL NOT BE LIABLE
15 IN ITS PERSONAL OR INDIVIDUAL CAPACITY UNDER THE ENVIRONMENTAL
16 ACTS OR COMMON LAW EQUIVALENTS TO THE DEPARTMENT OR TO ANY OTHER
17 PERSON BY VIRTUE OF THE FACT THAT THE FIDUCIARY PROVIDES OR
18 PROVIDED THE SERVICES EXCEPT IF:

19 (1) DURING THE TIME WHEN THE FIDUCIARY SERVICES WERE
20 ACTIVELY PROVIDED, AN EVENT OCCURRED WHICH CONSTITUTED A
21 RELEASE OF REGULATED SUBSTANCES ACCORDING TO THE
22 ENVIRONMENTAL ACTS AT THE TIME OF THE EVENT;

23 (2) THE FIDUCIARY HAD THE EXPRESS POWER AND AUTHORITY TO
24 CONTROL PROPERTY WHICH WAS THE CAUSE OF OR THE SITE OF THE
25 RELEASE AS PART OF ACTIVELY PROVIDING SERVICES; AND

26 (3) THE RELEASE WAS CAUSED BY AN ACT OR OMISSION WHICH
27 CONSTITUTED GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE
28 FIDUCIARY ACCORDING TO THE LAW OR STANDARD PRACTICES AT THE
29 TIME OF THE RELEASE.

30 (B) LIMITATION OF FIDUCIARY LIABILITY.--

1 (1) LIABILITY UNDER THIS SUBCHAPTER SHALL BE LIMITED TO
2 ONLY THE COST FOR A RESPONSE ACTION WHICH IS DIRECTLY
3 ATTRIBUTABLE TO THE FIDUCIARY'S ACTIVITIES AS SPECIFIED IN
4 THIS SECTION.

5 (2) UNDER SUBSECTION (A) (2), CONTROL OF PROPERTY SHALL
6 BE DEEMED TO BE IN THE LESSEE AND NOT THE LESSOR FOR LEASED
7 PROPERTY.

8 (3) A FIDUCIARY:

9 (I) SHALL NOT BE LIABLE FOR A RESPONSE ACTION IF THE
10 RESPONSE ACTION ARISES FROM A RELEASE OF REGULATED
11 SUBSTANCES WHICH OCCURRED PRIOR TO OR COMMENCES BEFORE
12 AND CONTINUES AFTER THE FIDUCIARY TAKES ACTION AS
13 SPECIFIED IN SUBSECTION (A); BUT

14 (II) SHALL BE RESPONSIBLE FOR THAT PORTION OF A
15 RESPONSE ACTION WHICH IS DIRECTLY ATTRIBUTABLE TO
16 EXACERBATING A RELEASE.

17 (4) A RELEASE OF REGULATED SUBSTANCES DISCOVERED IN THE
18 COURSE OF CONDUCTING AN ENVIRONMENTAL DUE DILIGENCE SHALL BE
19 PRESUMED TO BE A PRIOR AND CONTINUING RELEASE ON THE
20 PROPERTY.

21 (C) ESTATE CLAIMS.--NOTHING IN THIS SECTION SHALL PREVENT
22 CLAIMS AGAINST THE FIDUCIARY IN ITS REPRESENTATIVE CAPACITY.

23 § 8368.17. DEFENSES TO LIABILITY.

24 A LENDER, FIDUCIARY OR ECONOMIC DEVELOPMENT AGENCY CAN AVOID
25 LIABILITY UNDER THE ENVIRONMENTAL ACTS BY SHOWING EVIDENCE THAT
26 A RELEASE OR THREATENED RELEASE OF REGULATED SUBSTANCES FOR
27 WHICH THE LENDER, FIDUCIARY OR ECONOMIC DEVELOPMENT AGENCY
28 OTHERWISE IS RESPONSIBLE UNDER SECTIONS 8368.14 (RELATING TO
29 LIMITATION OF ECONOMIC DEVELOPMENT AGENCY ENVIRONMENTAL
30 LIABILITY), 8368.15 (RELATING TO LIMITATION OF LENDER

1 ENVIRONMENTAL LIABILITY) AND 8368.16 (RELATING TO LIMITATION OF
2 FIDUCIARY ENVIRONMENTAL LIABILITY) WAS CAUSED BY ANY OF THE
3 FOLLOWING:

4 (1) AN ACT OF GOD.

5 (2) AN INTERVENING ACT OF A PUBLIC AGENCY.

6 (3) MIGRATION FROM PROPERTY OWNED BY A THIRD PARTY.

7 (4) ACTIONS TAKEN OR OMITTED IN THE COURSE OF RENDERING
8 CARE, ASSISTANCE OR ADVICE IN ACCORDANCE WITH THE
9 ENVIRONMENTAL ACTS OR AT THE DIRECTION OF THE DEPARTMENT.

10 (5) AN ACT OF A THIRD PARTY WHO WAS NOT AN AGENT OR
11 EMPLOYEE OF THE LENDER, FIDUCIARY OR ECONOMIC DEVELOPMENT
12 AGENCY.

13 (6) IF THE ALLEGED LIABILITY FOR A LENDER OR ECONOMIC
14 DEVELOPMENT AGENCY ARISES AFTER FORECLOSURE AND THE LENDER OR
15 ECONOMIC DEVELOPMENT AGENCY EXERCISED DUE CARE WITH RESPECT
16 TO THE LENDER'S OR ECONOMIC DEVELOPMENT AGENCY'S KNOWLEDGE
17 ABOUT THE REGULATED SUBSTANCES AND TOOK REASONABLE
18 PRECAUTIONS BASED UPON SUCH KNOWLEDGE AGAINST FORESEEABLE
19 ACTIONS OF THIRD PARTIES AND THE CONSEQUENCES ARISING
20 THEREFROM. A LENDER, FIDUCIARY OR ECONOMIC DEVELOPMENT AGENCY
21 CAN AVOID LIABILITY BY PROVING ANY OTHER DEFENSE WHICH MAY BE
22 AVAILABLE TO IT UNDER THE ENVIRONMENTAL ACTS OR COMMON LAW.

23 § 8368.18. SAVINGS CLAUSE.

24 NOTHING IN THIS SUBCHAPTER SHALL AFFECT THE RIGHTS,
25 IMMUNITIES OR OTHER DEFENSES THAT ARE AVAILABLE UNDER OTHER
26 APPLICABLE LAW TO A LENDER, FIDUCIARY OR ECONOMIC DEVELOPMENT
27 AGENCY, INCLUDING RIGHTS OF CONTRIBUTION AND INDEMNITY. NOTHING
28 IN THIS SUBCHAPTER SHALL BE CONSTRUED TO CREATE A NEW, DIFFERENT
29 OR ADDITIONAL LIABILITY FOR OR CREATE A PRIVATE RIGHT OF ACTION
30 AGAINST A LENDER, FIDUCIARY OR ECONOMIC DEVELOPMENT AGENCY.

1 § 8368.19. APPORTIONMENT OF LIABILITY.

2 NOTWITHSTANDING ANYTHING TO THE CONTRARY, IF TWO OR MORE
3 PERSONS ACTING INDEPENDENTLY CAUSE DISTINCT HARM OR A SINGLE
4 HARM FOR WHICH THERE IS A REASONABLE BASIS FOR DIVISION
5 ACCORDING TO THE CONTRIBUTION OF EACH, A LENDER, FIDUCIARY OR
6 ECONOMIC DEVELOPMENT AGENCY SHALL BE SUBJECT TO LIABILITY ONLY
7 FOR THE PORTION OF THE TOTAL LIABILITY THAT IS DIRECTLY
8 ATTRIBUTABLE TO THE LENDER, FIDUCIARY OR ECONOMIC DEVELOPMENT
9 AGENCY.

10 § 8368.20. CONSTRUCTION.

11 THE TERMS AND CONDITIONS OF THIS SUBCHAPTER ARE TO BE
12 LIBERALLY CONSTRUED SO AS TO BEST ACHIEVE AND EFFECTUATE THE
13 GOALS AND PURPOSES OF THIS SUBCHAPTER. LIABILITY SHALL BE BASED
14 ON PROXIMATE AND EFFICIENT CAUSATION. THIS SUBCHAPTER SHALL
15 PREEMPT AND ELIMINATE ALL LIABILITY STANDARDS IN EFFECT ON JULY
16 18, 1995, INCLUDING THE CONCEPT OF A PERSON WHO, WITHOUT
17 PARTICIPATION IN THE MANAGEMENT OF PROPERTY, HOLDS INDICIA OF
18 OWNERSHIP PRIMARILY TO PROTECT A SECURITY INTEREST. UNDER THE
19 PROVISIONS OF THIS SUBCHAPTER, THE BURDEN OF PROOF SHALL BE ON
20 THE PERSON SEEKING TO HAVE A LENDER, FIDUCIARY OR ECONOMIC
21 DEVELOPMENT AGENCY HELD LIABLE FOR A RESPONSE ACTION OR DAMAGES.

22 § 8368.21. SEVERABILITY.

23 THE PROVISIONS OF THIS SUBCHAPTER ARE SEVERABLE. IF A
24 PROVISION OF THIS SUBCHAPTER OR ITS APPLICATION TO A PERSON OR
25 CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY SHALL NOT AFFECT
26 OTHER PROVISIONS OR APPLICATIONS OF THIS SUBCHAPTER WHICH CAN BE
27 GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION.

28 § 8368.22. PREEMPTION AND REPEALS.

29 IN THE EVENT OF AN INCONSISTENCY BETWEEN AN ENVIRONMENTAL ACT
30 AND THIS SUBCHAPTER, THIS SUBCHAPTER SHALL CONTROL. AN

1 ENVIRONMENTAL LAW ENACTED AFTER JULY 18, 1995, MAY NOT BE
2 APPLIED RETROACTIVELY TO IMPOSE LIABILITY ON A LENDER, FIDUCIARY
3 OR ECONOMIC DEVELOPMENT AGENCY UNLESS THERE ARE EXPRESS
4 REPEALERS WHICH EXPLAIN THE EXTENT OF THE REPEAL.

5 § 8368.23. APPLICABILITY.

6 THIS SUBCHAPTER SHALL APPLY TO THE FOLLOWING:

7 (1) EACH INDICIA OF OWNERSHIP, REGARDLESS OF THE DATE OF
8 ACQUISITION.

9 (2) EACH FIDUCIARY WITH RESPECT TO A SERVICE PROVIDED BY
10 THE FIDUCIARY, REGARDLESS OF THE DATE THE SERVICE WAS
11 PROVIDED.

12 (3) EACH ADMINISTRATIVE ACTION, ACTION, SUIT OR CLAIM
13 AGAINST A LENDER, FIDUCIARY OR ECONOMIC DEVELOPMENT AGENCY
14 NOT YET FINALLY RESOLVED BY THE DEPARTMENT OR A COURT OR
15 ADMINISTRATIVE HEARING BOARD HAVING AN ACTION, SUIT OR CLAIM
16 PENDING BEFORE IT OR AN APPEAL FROM A LOWER COURT,
17 NOTWITHSTANDING WHEN THE RELEASE OR INTEREST IN THE SUBJECT
18 PROPERTY OCCURRED.

19 SUBCHAPTER F.3

20 AGRITOURISM ACTIVITY PROTECTION

21 SEC.

22 8368.31. SCOPE OF SUBCHAPTER.

23 8368.32. DEFINITIONS.

24 8368.33. LIMITED CIVIL LIABILITY FOR AGRITOURISM ACTIVITY
25 PROVIDERS.

26 8368.34. NOTICE OF LIMITED CIVIL LIABILITY.

27 8368.35. ACKNOWLEDGMENT OF LIMITED CIVIL LIABILITY.

28 8368.36. APPLICABILITY.

29 § 8368.31. SCOPE OF SUBCHAPTER.

30 THIS SUBCHAPTER RELATES TO AGRITOURISM ACTIVITY PROTECTION.

1 § 8368.32. DEFINITIONS.

2 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS SUBCHAPTER
3 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
4 CONTEXT CLEARLY INDICATES OTHERWISE:

5 "AGRITOURISM ACTIVITY." AS FOLLOWS:

6 (1) A FARM-RELATED TOURISM OR FARM-RELATED ENTERTAINMENT
7 ACTIVITY THAT TAKES PLACE ON AGRICULTURAL LAND AND ALLOWS
8 MEMBERS OF THE GENERAL PUBLIC, WHETHER OR NOT FOR A FEE, TO
9 TOUR, EXPLORE, OBSERVE, LEARN ABOUT, PARTICIPATE IN OR BE
10 ENTERTAINED BY AN ASPECT OF AGRICULTURAL PRODUCTION,
11 HARVESTING, HUSBANDRY OR RURAL LIFESTYLE THAT OCCURS ON THE
12 FARM.

13 (2) THE TERM SHALL NOT INCLUDE OVERNIGHT ACCOMMODATIONS,
14 WEDDINGS, CONCERTS OR PROVISIONS FOR FOOD AND BEVERAGE
15 SERVICES.

16 "AGRITOURISM ACTIVITY PROVIDER." A PERSON WHO OWNS,
17 OPERATES, PROVIDES OR SPONSORS AN AGRITOURISM ACTIVITY, WHETHER
18 OR NOT FOR A FEE, OR AN EMPLOYEE OF SUCH A PERSON.

19 "DANGEROUS CONDITION." A CONDITION THAT CREATES AN IMMINENT
20 AND SUBSTANTIAL RISK OF INJURY OR DAMAGES TO A PARTICIPANT.

21 "PARTICIPANT." AN INDIVIDUAL, OTHER THAN AN EMPLOYEE OF AN
22 AGRITOURISM ACTIVITY PROVIDER, WHO ENGAGES IN AN AGRITOURISM
23 ACTIVITY.

24 § 8368.33. LIMITED CIVIL LIABILITY FOR AGRITOURISM ACTIVITY
25 PROVIDERS.

26 (A) LIABILITY.--EXCEPT AS OTHERWISE PROVIDED BY SUBSECTION
27 (B), AN AGRITOURISM ACTIVITY PROVIDER SHALL NOT BE CIVILLY
28 LIABLE FOR INJURY OR DAMAGES TO A PARTICIPANT IF:

29 (1) AT THE TIME OF THE AGRITOURISM ACTIVITY FROM WHICH
30 THE INJURY OR DAMAGES OCCURRED, A WARNING SIGN WAS POSTED IN

1 ACCORDANCE WITH SECTION 8368.34 (RELATING TO NOTICE OF
2 LIMITED CIVIL LIABILITY); AND

3 (2) THE AGRITOURISM ACTIVITY PROVIDER ENTERED INTO A
4 WRITTEN AGREEMENT WITH THE PARTICIPANT IN ACCORDANCE WITH
5 SECTION 8368.35 (RELATING TO ACKNOWLEDGMENT OF LIMITED CIVIL
6 LIABILITY) WITH RESPECT TO THE AGRITOURISM ACTIVITY FROM
7 WHICH THE INJURY OR DAMAGES OCCURRED.

8 (B) EXCEPTIONS.--AN AGRITOURISM ACTIVITY PROVIDER SHALL NOT
9 BE IMMUNE FROM CIVIL LIABILITY FOR INJURY OR DAMAGES IF ANY OF
10 THE FOLLOWING APPLY:

11 (1) THE AGRITOURISM ACTIVITY PROVIDER PERFORMS AN ACT IN
12 A GROSSLY NEGLIGENT MANNER AND CAUSES INJURY OR DAMAGES TO A
13 PARTICIPANT.

14 (2) THE AGRITOURISM ACTIVITY PROVIDER PURPOSEFULLY
15 CAUSES THE INJURY OR DAMAGES TO A PARTICIPANT.

16 (3) THE AGRITOURISM ACTIVITY PROVIDER'S ACTION OR
17 INACTION CONSTITUTES CRIMINAL CONDUCT AND CAUSES THE INJURY
18 OR DAMAGES TO A PARTICIPANT.

19 (4) THE AGRITOURISM ACTIVITY PROVIDER RECKLESSLY FAILS
20 TO WARN OR GUARD AGAINST A DANGEROUS CONDITION THAT CAUSES
21 INJURY OR DAMAGES TO A PARTICIPANT.

22 § 8368.34. NOTICE OF LIMITED CIVIL LIABILITY.

23 (A) NOTICE.--FOR THE PURPOSE OF PROVIDING NOTICE OF THE
24 LIMITED LIABILITY UNDER SECTION 8368.33 (RELATING TO LIMITED
25 CIVIL LIABILITY FOR AGRITOURISM ACTIVITY PROVIDERS), AN
26 AGRITOURISM ACTIVITY PROVIDER SHALL POST AND MAINTAIN A SIGN
27 WITH A WARNING NOTICE IN ACCORDANCE WITH SUBSECTION (B). THE
28 AGRITOURISM ACTIVITY PROVIDER SHALL POST THE SIGN IN A CLEARLY
29 VISIBLE LOCATION AT OR NEAR EACH ENTRANCE TO THE FARM OR AT THE
30 SITE OF EACH AGRITOURISM ACTIVITY.

1 (B) CONTENTS.--THE WARNING NOTICE SHALL CONSIST OF A SIGN
2 THAT IS AT LEAST THREE FEET BY TWO FEET IN DIMENSION AND STATES
3 THE FOLLOWING:

4 "WARNING: READ YOUR WRITTEN AGREEMENT OR THE BACK OF
5 YOUR TICKET. UNDER PENNSYLVANIA LAW, EXCEPT FOR LIMITED
6 CIRCUMSTANCES, AN AGRITOURISM ACTIVITY PROVIDER IS NOT
7 LIABLE FOR ANY INJURY TO OR DEATH OF A PARTICIPANT
8 RESULTING FROM AN AGRITOURISM ACTIVITY. DO NOT
9 PARTICIPATE IN THE ACTIVITY IF YOU DO NOT WISH TO WAIVE
10 LIABILITY."

11 § 8368.35. ACKNOWLEDGMENT OF LIMITED CIVIL LIABILITY.

12 FOR THE PURPOSE OF ENFORCING THE LIMITED LIABILITY UNDER
13 SECTION 8368.33 (RELATING TO LIMITED CIVIL LIABILITY FOR
14 AGRITOURISM ACTIVITY PROVIDERS), A WRITTEN AGREEMENT BETWEEN AN
15 AGRITOURISM ACTIVITY PROVIDER AND A PARTICIPANT SHALL BE
16 ENFORCEABLE IF THE WRITTEN AGREEMENT MEETS ALL THE FOLLOWING
17 CRITERIA:

18 (1) THE WRITTEN AGREEMENT IS SIGNED BEFORE THE
19 PARTICIPANT ENGAGES IN AN AGRITOURISM ACTIVITY.

20 (2) THE WRITTEN AGREEMENT IS SIGNED BY THE PARTICIPANT
21 OR, IF THE PARTICIPANT IS A MINOR OR CARE DEPENDENT PERSON,
22 THE PARTICIPANT'S PARENT OR GUARDIAN.

23 (3) THE WRITTEN AGREEMENT IS IN A DOCUMENT SEPARATE FROM
24 ANY OTHER AGREEMENT BETWEEN THE PARTICIPANT AND THE
25 AGRITOURISM ACTIVITY PROVIDER, EXCEPT FOR A DOCUMENT THAT
26 INCLUDES A DIFFERENT WARNING, CONSENT OR ASSUMPTION OF RISK
27 STATEMENT.

28 (4) THE WRITTEN AGREEMENT IS PRINTED IN NOT LESS THAN
29 10-POINT BOLD TYPE.

30 (5) THE WRITTEN AGREEMENT CONTAINS THE FOLLOWING

1 LANGUAGE:

2 "AGREEMENT AND WARNING: I UNDERSTAND AND ACKNOWLEDGE
3 THAT, EXCEPT FOR LIMITED CIRCUMSTANCES LISTED BELOW,
4 AN AGRITOURISM ACTIVITY PROVIDER IS NOT LIABLE FOR
5 ANY INJURY TO OR DEATH OF A PARTICIPANT RESULTING
6 FROM AN AGRITOURISM ACTIVITY. I UNDERSTAND THAT I
7 HAVE ACCEPTED ALL RISK OF INJURY, DEATH, PROPERTY
8 DAMAGE AND OTHER LOSS THAT MAY RESULT FROM AN
9 AGRITOURISM ACTIVITY. I UNDERSTAND THAT AN
10 AGRITOURISM ACTIVITY PROVIDER IS NOT PROTECTED FROM
11 LIABILITY IF THE PROVIDER:

12 (1) PERFORMS AN ACT IN A GROSSLY NEGLIGENT
13 MANNER AND CAUSES INJURY OR DAMAGES TO A PARTICIPANT.

14 (2) PURPOSEFULLY CAUSES A PARTICIPANT'S INJURY.

15 (3) ACTS OR FAILS TO ACT IN A WAY THAT
16 CONSTITUTES CRIMINAL CONDUCT.

17 (4) RECKLESSLY FAILS TO WARN OR GUARD AGAINST A
18 DANGEROUS CONDITION THAT CAUSES INJURY OR DAMAGES TO
19 A PARTICIPANT. A DANGEROUS CONDITION IS A CONDITION
20 THAT CREATES AN IMMINENT AND SUBSTANTIAL RISK OF
21 INJURY OR DAMAGES TO A PARTICIPANT."

22 (6) NOTWITHSTANDING PARAGRAPHS (1), (2), (3) AND (4), A
23 WRITTEN AGREEMENT THAT CONTAINS SUBSTANTIALLY THE SAME
24 LANGUAGE UNDER PARAGRAPH (5) MAY BE PRINTED ON A TICKET
25 REQUIRED FOR ACCESS TO AN AGRITOURISM ACTIVITY.

26 § 8368.36. APPLICABILITY.

27 THIS SUBCHAPTER SHALL APPLY TO ANY CAUSE OF ACTION THAT
28 ARISES ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION.

29 SUBCHAPTER F.4

30 COVID-19-RELATED LIABILITY

1 SEC.

2 8368.41. DEFINITIONS.

3 8368.42. SCHOOL AND CHILD CARE LIABILITY.

4 8368.43. PERSONAL PROTECTIVE EQUIPMENT LIABILITY.

5 8368.44. BUSINESS OR GOVERNMENT SERVICES LIABILITY.

6 8368.45. COVERED PROVIDER LIABILITY.

7 8368.46. APPLICATION OF SUBCHAPTER.

8 8368.47. CONSTRUCTION OF SUBCHAPTER.

9 § 8368.41. DEFINITIONS.

10 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS SUBCHAPTER
11 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
12 CONTEXT CLEARLY INDICATES OTHERWISE:

13 "BUSINESS OR GOVERNMENT SERVICES." A LAWFUL ACTIVITY
14 CONDUCTED BY A TRADE, BUSINESS, NONPROFIT ORGANIZATION OR LOCAL
15 GOVERNMENTAL UNIT WHICH IS PERMITTED BY THE TERMS OF A
16 PROCLAMATION OF DISASTER EMERGENCY TO HOLD ITSELF OUT AS OPEN TO
17 MEMBERS OF THE PUBLIC.

18 "CHILD-CARE FACILITY." ANY OF THE FOLLOWING:

19 (1) A CHILD CARE CENTER AS DEFINED IN SECTION 1001 OF
20 THE ACT OF JUNE 13, 1967 (P.L.31, NO.21), KNOWN AS THE HUMAN
21 SERVICES CODE.

22 (2) A CHILDREN'S INSTITUTION AS DEFINED IN SECTION 901
23 OF THE HUMAN SERVICES CODE.

24 (3) A FAMILY CHILD CARE HOME AS DEFINED IN SECTION 1001
25 OF THE HUMAN SERVICES CODE.

26 (4) AN INDIVIDUAL EMPLOYED OR CONTRACTED BY A PERSON
27 UNDER PARAGRAPH (1), (2) OR (3).

28 "COVERED PROVIDER." ANY OF THE FOLLOWING:

29 (1) A HEALTH CARE PRACTITIONER AS DEFINED IN SECTION 103
30 OF THE ACT OF JULY 19, 1979 (P.L.130, NO.48), KNOWN AS THE

1 HEALTH CARE FACILITIES ACT.

2 (2) A HEALTH CARE PROVIDER, INCLUDING A REGISTERED
3 NURSE, LICENSED BY A STATE OR A POLITICAL DIVISION OF THE
4 UNITED STATES. THIS PARAGRAPH INCLUDES LICENSURE PURSUANT TO
5 A WAIVER.

6 (3) A HEALTH CARE FACILITY AS DEFINED IN SECTION 802.1
7 OF THE HEALTH CARE FACILITIES ACT. THIS PARAGRAPH INCLUDES
8 A FACILITY AUTHORIZED TO OPERATE PURSUANT TO A WAIVER.

9 (4) A TEMPORARY SITE OPERATED BY A HEALTH CARE FACILITY
10 UNDER PARAGRAPH (3) DURING THE PROCLAMATION OF DISASTER
11 EMERGENCY.

12 (5) A HEALTH CARE PROVIDER AS DEFINED IN SECTION 103 OF
13 THE HEALTH CARE FACILITIES ACT OR ANOTHER LEGAL ENTITY WHOSE
14 PRIMARY PURPOSE IS THE PROVISION OF MEDICAL CARE FOR A HEALTH
15 CARE PROVIDER.

16 (6) A FACILITY AS DEFINED IN SECTION 1001 OF THE HUMAN
17 SERVICES CODE OR A PARENT ORGANIZATION OF THE FACILITY.

18 (7) A BUSINESS, INSTITUTION OF HIGHER EDUCATION,
19 FACILITY OR ORGANIZATION, WHICH PROVIDES A VENUE FOR THE
20 PROVISION OF MEDICAL CARE.

21 (8) A LICENSED, CERTIFIED, REGISTERED OR AUTHORIZED
22 PERSON PROVIDING EMERGENCY MEDICAL SERVICES AS DEFINED IN 35
23 PA.C.S. § 8103 (RELATING TO DEFINITIONS). THE TERM INCLUDES
24 AN EMERGENCY MEDICAL SERVICES VEHICLE OPERATOR.

25 (9) AN EMERGENCY MEDICAL SERVICES AGENCY AS DEFINED IN
26 35 PA.C.S. § 8103. THIS PARAGRAPH INCLUDES A PARENT
27 ORGANIZATION OF THE AGENCY.

28 (10) A PERSON ENGAGED IN NURSING CARE AS DEFINED IN 28
29 PA. CODE § 201.3 (RELATING TO DEFINITIONS), IF THE NURSING
30 CARE:

1 (I) IS IN SUPPORT OF THE ADL--ACTIVITIES OF DAILY
2 LIVING AND OTHER INSTRUMENTAL ACTIVITIES OF DAILY LIVING
3 AS DEFINED IN 55 PA. CODE § 2600.4 (RELATING TO
4 DEFINITIONS) OR 2800.4 (RELATING TO DEFINITIONS) AND
5 OTHER INSTRUMENTAL ACTIVITIES; OR

6 (II) CONSISTS OF COVERED SERVICES WHICH NURSING CARE
7 PROVIDERS ARE OBLIGATED TO DELIVER OR ARRANGE UNDER THEIR
8 REQUIREMENTS OF LICENSURE.

9 (11) A CLINICAL LABORATORY:

10 (I) CERTIFIED UNDER SECTION 353 OF THE PUBLIC HEALTH
11 SERVICE ACT (58 STAT. 682, 42 U.S.C. § 263A); OR

12 (II) LICENSED UNDER THE ACT OF SEPTEMBER 26, 1951
13 (P.L.1539, NO.389), KNOWN AS THE CLINICAL LABORATORY ACT.

14 (12) AN INDIVIDUAL EMPLOYED OR CONTRACTED BY A PERSON
15 UNDER PARAGRAPH (1), (2), (3), (4), (5), (6), (7), (8), (9),
16 (10) OR (11), WHO IS INVOLVED IN PROVIDING MEDICAL CARE.

17 "COVID-19." THE NOVEL CORONAVIRUS AS IDENTIFIED IN THE
18 PROCLAMATION OF DISASTER EMERGENCY ISSUED BY THE GOVERNOR ON
19 MARCH 6, 2020, PUBLISHED AT 50 PA.B. 1644 (MARCH 21, 2020).

20 "DIRECT COST." THE DIRECT LABOR AND DIRECT MATERIAL COSTS OF
21 PRODUCING PERSONAL PROTECTIVE EQUIPMENT, EXCLUDING ANY
22 MANUFACTURING OVERHEAD COSTS.

23 "INSTITUTION OF HIGHER EDUCATION." THE TERM INCLUDES ANY OF
24 THE FOLLOWING:

25 (1) A COMMUNITY COLLEGE OPERATING UNDER ARTICLE XIX-A OF
26 THE ACT OF MARCH 10, 1949 (P.L.30, NO.14), KNOWN AS THE
27 PUBLIC SCHOOL CODE OF 1949.

28 (2) THE STATE SYSTEM OF HIGHER EDUCATION. THIS PARAGRAPH
29 INCLUDES A UNIVERSITY WITHIN THE SYSTEM.

30 (3) THE PENNSYLVANIA STATE UNIVERSITY, THE UNIVERSITY OF

1 PITTSBURGH, TEMPLE UNIVERSITY, LINCOLN UNIVERSITY OR AN
2 INSTITUTION DESIGNATED AS STATE-RELATED BY THE COMMONWEALTH.

3 (4) THE THADDEUS STEVENS COLLEGE OF TECHNOLOGY AND THE
4 PENNSYLVANIA COLLEGE OF TECHNOLOGY.

5 (5) A RURAL REGIONAL COLLEGE OPERATING UNDER ARTICLE
6 XIX-G OF THE PUBLIC SCHOOL CODE OF 1949.

7 (6) AN INSTITUTION OF HIGHER EDUCATION LOCATED IN AND
8 INCORPORATED OR CHARTERED BY THE COMMONWEALTH AND ENTITLED TO
9 CONFER DEGREES UNDER 24 PA.C.S. § 6505 (RELATING TO POWER TO
10 CONFER DEGREES) AND AS PROVIDED FOR BY THE STANDARDS AND
11 QUALIFICATIONS PRESCRIBED BY THE STATE BOARD OF EDUCATION
12 UNDER 24 PA.C.S. CH. 65 (RELATING TO PRIVATE COLLEGES,
13 UNIVERSITIES AND SEMINARIES).

14 (7) A PRIVATE SCHOOL LICENSED UNDER THE ACT OF DECEMBER
15 15, 1986 (P.L.1585, NO.174), KNOWN AS THE PRIVATE LICENSED
16 SCHOOLS ACT.

17 (8) A FOREIGN CORPORATION APPROVED TO OPERATE AN
18 EDUCATIONAL ENTERPRISE UNDER 22 PA. CODE CH. 36 (RELATING TO
19 FOREIGN CORPORATION STANDARDS).

20 (9) A COMMUNITY EDUCATION COUNCIL OPERATING UNDER
21 ARTICLE XIX-D OF THE PUBLIC SCHOOL CODE OF 1949.

22 "LOCAL GOVERNMENTAL UNIT." A MUNICIPALITY OR LOCAL
23 AUTHORITY.

24 "PERSON." A NATURAL PERSON, CORPORATION, FIRM, ASSOCIATION,
25 ORGANIZATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, BUSINESS,
26 TRUST, BUSINESS TRUST, ESTATE OR FOUNDATION.

27 "PERSONAL PROTECTIVE EQUIPMENT." A DEVICE, EQUIPMENT,
28 SUBSTANCE OR MATERIAL, RECOMMENDED BY THE CENTERS FOR DISEASE
29 CONTROL AND PREVENTION, FOOD AND DRUG ADMINISTRATION,
30 ENVIRONMENTAL PROTECTION AGENCY, DEPARTMENT OF HOMELAND SECURITY

OR ANOTHER FEDERAL AUTHORITY OR THE DEPARTMENT OF HEALTH TO PREVENT, LIMIT OR SLOW THE SPREAD OF COVID-19, SUCH AS RESPIRATORS, MASKS, SURGICAL APPAREL, GOWNS, GLOVES AND OTHER APPAREL INTENDED FOR A MEDICAL PURPOSE. THE TERM INCLUDES SANITIZERS AND DISINFECTANTS.

"PROCLAMATION OF DISASTER EMERGENCY." A PROCLAMATION OF DISASTER EMERGENCY ISSUED BY THE GOVERNOR RELATING TO COVID-19 AND ANY RENEWAL OF THE STATE OF DISASTER EMERGENCY, SUCH AS THE PROCLAMATION OF DISASTER EMERGENCY ISSUED BY THE GOVERNOR ON MARCH 6, 2020, PUBLISHED AT 50 PA.B. 1644 (MARCH 21, 2020), AND RENEWED ON JUNE 3, 2020, AND AUGUST 31, 2020.

"PUBLIC HEALTH DIRECTIVES." ORDERS OR GUIDELINES ISSUED BY THE FEDERAL OR STATE GOVERNMENT REGARDING ANY OF THE FOLLOWING:

(1) THE MANUFACTURING OR USE OF PERSONAL PROTECTIVE EQUIPMENT DURING THE PROCLAMATION OF DISASTER EMERGENCY.

(2) TREATMENT OR TESTING OF INDIVIDUALS WITH OR REASONABLY BELIEVED TO HAVE COVID-19.

(3) STEPS NECESSARY OR RECOMMENDED TO PREVENT, LIMIT OR SLOW THE SPREAD OF COVID-19.

"SCHOOL ENTITY." ANY SCHOOL DISTRICT, CHARTER SCHOOL, CYBER CHARTER SCHOOL, REGIONAL CHARTER SCHOOL, CHARTERED SCHOOL FOR THE DEAF AND BLIND, PRIVATE SCHOOL, NONPUBLIC SCHOOL, PREKINDERGARTEN, INTERMEDIATE UNIT, AREA CAREER AND TECHNICAL SCHOOL, APPROVED PRIVATE SCHOOL OR INSTITUTION OF HIGHER EDUCATION OPERATING WITHIN THIS COMMONWEALTH. THE TERM INCLUDES AN INDIVIDUAL EMPLOYED BY OR CONTRACTED BY A SCHOOL ENTITY.

§ 8368.42. SCHOOL AND CHILD CARE LIABILITY.

(A) LIMITED LIABILITY.--NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A SCHOOL ENTITY OR CHILD-CARE FACILITY SHALL NOT BE CIVILLY LIABLE FOR DAMAGES OR PERSONAL INJURY RELATING TO AN

1 ACTUAL OR ALLEGED EXPOSURE TO COVID-19, ABSENT A SHOWING, BY
2 CLEAR AND CONVINCING EVIDENCE, OF GROSS NEGLIGENCE,
3 RECKLESSNESS, WILLFUL MISCONDUCT OR INTENTIONAL INFLICTION OF
4 HARM.

5 (B) COMPLIANCE WITH PUBLIC HEALTH DIRECTIVES.--AN ACT OR
6 OMISSION IN COMPLIANCE WITH, OR IN A GOOD FAITH BELIEF THAT THE
7 ACT OR OMISSION IS IN COMPLIANCE WITH, PUBLIC HEALTH DIRECTIVES
8 SHALL NOT BE CONSIDERED GROSS NEGLIGENCE, RECKLESSNESS, WILLFUL
9 MISCONDUCT OR INTENTIONAL INFLICTION OF HARM.

10 § 8368.43. PERSONAL PROTECTIVE EQUIPMENT LIABILITY.

11 (A) MANUFACTURER, DISTRIBUTOR, LABELER AND DONOR.--

12 (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A PERSON
13 THAT MANUFACTURES, DISTRIBUTES, LABELS OR DONATES PERSONAL
14 PROTECTIVE EQUIPMENT SHALL NOT BE CIVILLY LIABLE FOR DAMAGE
15 TO PROPERTY OR PERSONAL INJURY, RELATED TO ACTUAL OR ALLEGED
16 EXPOSURE TO COVID-19 IN CONNECTION WITH THE USE OF PERSONAL
17 PROTECTIVE EQUIPMENT WHICH, DURING THE PROCLAMATION OF
18 DISASTER EMERGENCY, IS DONATED OR SOLD AT DIRECT COST TO A
19 CHARITABLE ORGANIZATION, THE COMMONWEALTH, A LOCAL
20 GOVERNMENTAL UNIT OR COVERED PROVIDER, ABSENT A SHOWING BY
21 CLEAR AND CONVINCING EVIDENCE OF RECKLESSNESS, WILLFUL
22 MISCONDUCT OR INTENTIONAL INFLICTION OF HARM.

23 (2) AN ACT OR OMISSION IN COMPLIANCE WITH, OR IN A GOOD
24 FAITH BELIEF THAT THE ACT OR OMISSION WAS IN COMPLIANCE WITH,
25 PUBLIC HEALTH DIRECTIVES SHALL NOT BE CONSIDERED
26 RECKLESSNESS, WILLFUL MISCONDUCT OR INTENTIONAL INFLICTION OF
27 HARM.

28 (B) OTHER MANUFACTURERS, DISTRIBUTORS AND LABELERS.--SUBJECT
29 TO SUBSECTION (A), ALL OF THE FOLLOWING APPLY:

30 (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A PERSON

1 THAT MANUFACTURES, DISTRIBUTES OR LABELS PERSONAL PROTECTIVE
2 EQUIPMENT SHALL NOT BE CIVILLY LIABLE FOR DAMAGE TO PROPERTY
3 OR PERSONAL INJURY RELATED TO ACTUAL OR ALLEGED EXPOSURE TO
4 COVID-19 IN CONNECTION WITH THE USE OF PERSONAL PROTECTIVE
5 EQUIPMENT, ABSENT A SHOWING, BY CLEAR AND CONVINCING
6 EVIDENCE, OF GROSS NEGLIGENCE, RECKLESSNESS, WILLFUL
7 MISCONDUCT OR INTENTIONAL INFLICTION OF HARM IF THE PERSON
8 COMMENCED MANUFACTURING, DISTRIBUTING OR LABELING:

9 (I) ONLY IN CONNECTION WITH A PROCLAMATION OF
10 DISASTER EMERGENCY; OR

11 (II) IN ACCORD WITH THE SAME STANDARDS TO WHICH IT
12 MANUFACTURED, DISTRIBUTED OR LABELED THE EQUIPMENT BEFORE
13 A PROCLAMATION OF DISASTER EMERGENCY, UNLESS THE
14 EQUIPMENT IS CLEARLY LABELED TO INDICATE OTHERWISE.

15 (2) AN ACT OR OMISSION IN COMPLIANCE WITH, OR IN A GOOD
16 FAITH BELIEF THAT THE ACT OR OMISSION WAS IN COMPLIANCE WITH,
17 PUBLIC HEALTH DIRECTIVES SHALL NOT BE CONSIDERED GROSS
18 NEGLIGENCE, RECKLESSNESS, WILLFUL MISCONDUCT OR INTENTIONAL
19 INFLICTION OF HARM.

20 (C) USERS.--

21 (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A PERSON
22 THAT USES OR EMPLOYS PERSONAL PROTECTIVE EQUIPMENT DURING THE
23 PROCLAMATION OF DISASTER EMERGENCY IN COMPLIANCE WITH PUBLIC
24 HEALTH DIRECTIVES RELATED TO THE PERSONAL PROTECTIVE
25 EQUIPMENT SHALL NOT BE CIVILLY LIABLE FOR DAMAGE TO PROPERTY
26 OR PERSONAL INJURY RELATED TO USE OF THE PERSONAL PROTECTIVE
27 EQUIPMENT, ABSENT A SHOWING, BY CLEAR AND CONVINCING
28 EVIDENCE, OF GROSS NEGLIGENCE, RECKLESSNESS, WILLFUL
29 MISCONDUCT OR INTENTIONAL INFLICTION OF HARM.

30 (2) AN ACT OR OMISSION IN COMPLIANCE WITH, OR IN A GOOD

1 FAITH BELIEF THAT THE ACT OR OMISSION WAS IN COMPLIANCE WITH,
2 PUBLIC HEALTH DIRECTIVES SHALL NOT BE CONSIDERED GROSS
3 NEGLIGENCE, RECKLESSNESS, WILLFUL MISCONDUCT OR INTENTIONAL
4 INFLICTION OF HARM.

5 § 8368.44. BUSINESS OR GOVERNMENT SERVICES LIABILITY.

6 (A) LIMITED LIABILITY.--NOTWITHSTANDING ANY OTHER PROVISION
7 OF LAW, A PERSON PROVIDING BUSINESS OR GOVERNMENT SERVICES SHALL
8 NOT BE CIVILLY LIABLE FOR DAMAGE TO PROPERTY OR PERSONAL INJURY,
9 RELATED TO AN ACTUAL OR ALLEGED EXPOSURE TO COVID-19, ABSENT A
10 SHOWING, BY CLEAR AND CONVINCING EVIDENCE, OF GROSS NEGLIGENCE,
11 RECKLESSNESS, WILLFUL MISCONDUCT OR INTENTIONAL INFLICTION OF
12 HARM.

13 (B) COMPLIANCE WITH PUBLIC HEALTH DIRECTIVES.--AN ACT OR
14 OMISSION IN COMPLIANCE WITH, OR IN A GOOD FAITH BELIEF THAT THE
15 ACT OR OMISSION IS IN COMPLIANCE WITH, PUBLIC HEALTH DIRECTIVES
16 SHALL NOT BE CONSIDERED GROSS NEGLIGENCE, RECKLESSNESS, WILLFUL
17 MISCONDUCT OR INTENTIONAL INFLICTION OF HARM.

18 § 8368.45. COVERED PROVIDER LIABILITY.

19 (A) LIMITED LIABILITY.--NOTWITHSTANDING ANY OTHER PROVISION
20 OF LAW, A COVERED PROVIDER SHALL NOT BE CIVILLY LIABLE FOR
21 DAMAGES OR PERSONAL INJURY, RELATED TO ANY OF THE FOLLOWING,
22 ABSENT A SHOWING, BY CLEAR AND CONVINCING EVIDENCE, OF GROSS
23 NEGLIGENCE, RECKLESSNESS, WILLFUL MISCONDUCT OR INTENTIONAL
24 INFLICTION OF HARM:

25 (1) PROVISION OF TREATMENT OR TESTING FOR COVID-19 TO
26 PATIENTS WHO HAVE BEEN EXPOSED TO OR WHOM A COVERED PROVIDER
27 REASONABLY BELIEVES MAY HAVE BEEN EXPOSED TO COVID-19.

28 (2) AN ACT OR OMISSION PROXIMATELY CAUSED BY:

29 (I) SHORTAGE OF EQUIPMENT, SUPPLIES OR PERSONNEL

30 WHICH:

1 (A) WAS A DIRECT RESULT OF THE DEMAND FOR
2 TESTING FOR OR TREATMENT OF COVID-19; AND

3 (B) WAS BEYOND THE REASONABLE CONTROL OF THE
4 COVERED PROVIDER;

5 (II) A NUMBER OF PATIENTS IN EXCESS OF THE CAPACITY
6 OF A DEPARTMENT OR OF A UNIT OF A COVERED PROVIDER AS A
7 DIRECT RESULT OF THE NEED TO TEST FOR OR TREAT COVID-19;
8 OR

9 (III) COMPLIANCE WITH PUBLIC HEALTH DIRECTIVES
10 REGARDING THE TESTING FOR AND TREATMENT OF COVID-19.

11 (B) COMPLIANCE WITH PUBLIC HEALTH DIRECTIVES.--AN ACT OR
12 OMISSION BY A COVERED PROVIDER IN COMPLIANCE WITH, OR IN A GOOD
13 FAITH BELIEF THAT THE ACT OR OMISSION WAS IN COMPLIANCE WITH,
14 PUBLIC HEALTH DIRECTIVES SHALL NOT BE CONSIDERED GROSS
15 NEGLIGENCE, RECKLESSNESS, WILLFUL MISCONDUCT OR INTENTIONAL
16 INFLICTION OF HARM.

17 § 8368.46. APPLICATION OF SUBCHAPTER.

18 (A) VICARIOUS LIABILITY.--VICARIOUS LIABILITY SHALL NOT
19 ATTACH TO THE EMPLOYER OF AN INDIVIDUAL WHO IS OTHERWISE IMMUNE
20 UNDER THIS SUBCHAPTER OR AN EXECUTIVE ORDER.

21 (B) PUBLIC HEALTH DIRECTIVES.--IN DETERMINING CIVIL
22 LIABILITY UNDER THIS SUBCHAPTER, A COURT SHALL:

23 (1) FOR A MANUFACTURER, DISTRIBUTOR, LABELER OR DONOR,
24 CONSIDER PUBLIC HEALTH DIRECTIVES WHICH WERE IN EFFECT AT THE
25 TIME OF THE MANUFACTURE, DISTRIBUTION, LABELING OR SALE OF
26 THE PERSONAL PROTECTIVE EQUIPMENT.

27 (2) FOR A PERSON PROVIDING BUSINESS OR GOVERNMENT
28 SERVICES, USER OF PERSONAL PROTECTIVE EQUIPMENT, SCHOOL
29 ENTITY OR CHILD-CARE FACILITY, CONSIDER PUBLIC HEALTH
30 DIRECTIVES WHICH WERE IN EFFECT AT THE TIME AN ALLEGED ACT OR

1 OMISSION OCCURRED.

2 (3) FOR A COVERED PROVIDER, CONSIDER PUBLIC HEALTH
3 DIRECTIVES WHICH WERE IN EFFECT AT THE TIME AN ALLEGED ACT OR
4 OMISSION OCCURRED.

5 (C) PROCLAMATION OF DISASTER EMERGENCY.--THIS SUBCHAPTER
6 SHALL APPLY TO ACTS OR OMISSIONS DURING A PROCLAMATION OF
7 DISASTER EMERGENCY.

8 § 8368.47. CONSTRUCTION OF SUBCHAPTER.

9 THIS SUBCHAPTER SHALL NOT BE CONSTRUED TO:

10 (1) CREATE A NEW CAUSE OF ACTION;

11 (2) EXPAND A CIVIL OR CRIMINAL LIABILITY OTHERWISE
12 IMPOSED;

13 (3) LIMIT A DEFENSE;

14 (4) AFFECT THE APPLICABILITY OF A STATUTE WHICH AFFORDS
15 GREATER PROTECTIONS TO DEFENDANTS THAN ARE PROVIDED UNDER
16 THIS SUBCHAPTER; OR

17 (5) PREVENT AN INDIVIDUAL FROM FILING A CLAIM OR
18 RECEIVING BENEFITS UNDER THE ACT OF JUNE 2, 1915 (P.L.736,
19 NO.338), KNOWN AS THE WORKERS' COMPENSATION ACT, IF OTHERWISE
20 AVAILABLE.

21 SECTION 2. REPEALS ARE AS FOLLOWS:

22 (1) THE GENERAL ASSEMBLY DECLARES THAT THE REPEAL UNDER
23 PARAGRAPH (2) IS NECESSARY TO EFFECTUATE THE ADDITION OF 42
24 PA.C.S. CH. 83 SUBCH. F.2.

25 (2) THE ACT OF MAY 19, 1995 (P.L.33, NO.3), KNOWN AS THE
26 ECONOMIC DEVELOPMENT AGENCY, FIDUCIARY AND LENDER
27 ENVIRONMENTAL LIABILITY PROTECTION ACT, IS REPEALED.

28 SECTION 3. THE ADDITION OF 42 PA.C.S. CH. 83 SUBCH. F.2 IS A
29 CONTINUATION OF THE ACT OF MAY 19, 1995 (P.L.33, NO.3), KNOWN AS
30 THE ECONOMIC DEVELOPMENT AGENCY, FIDUCIARY AND LENDER

1 ENVIRONMENTAL LIABILITY PROTECTION ACT. THE FOLLOWING APPLY:

2 (1) EXCEPT AS OTHERWISE PROVIDED IN 42 PA.C.S. CH. 83
3 SUBCH. F.2, ALL ACTIVITIES INITIATED UNDER THE ECONOMIC
4 DEVELOPMENT AGENCY, FIDUCIARY AND LENDER ENVIRONMENTAL
5 LIABILITY PROTECTION ACT SHALL CONTINUE AND REMAIN IN FULL
6 FORCE AND EFFECT AND MAY BE COMPLETED UNDER 42 PA.C.S. CH. 83
7 SUBCH. F.2. ORDERS, REGULATIONS, RULES AND DECISIONS WHICH
8 WERE MADE UNDER THE ECONOMIC DEVELOPMENT AGENCY, FIDUCIARY
9 AND LENDER ENVIRONMENTAL LIABILITY PROTECTION ACT AND WHICH
10 ARE IN EFFECT ON THE EFFECTIVE DATE OF SECTION 2 OF THIS ACT
11 SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL REVOKED, VACATED
12 OR MODIFIED UNDER 42 PA.C.S. CH. 83 SUBCH. F.2. CONTRACTS,
13 OBLIGATIONS AND COLLECTIVE BARGAINING AGREEMENTS ENTERED INTO
14 UNDER THE ECONOMIC DEVELOPMENT AGENCY, FIDUCIARY AND LENDER
15 ENVIRONMENTAL LIABILITY PROTECTION ACT ARE NOT AFFECTED NOR
16 IMPAIRED BY THE REPEAL OF THE ECONOMIC DEVELOPMENT AGENCY,
17 FIDUCIARY AND LENDER ENVIRONMENTAL LIABILITY PROTECTION ACT.

18 (2) EXCEPT AS SET FORTH IN PARAGRAPH (3), ANY DIFFERENCE
19 IN LANGUAGE BETWEEN 42 PA.C.S. CH. 83 SUBCH. F.2 AND THE
20 ECONOMIC DEVELOPMENT AGENCY, FIDUCIARY AND LENDER
21 ENVIRONMENTAL LIABILITY PROTECTION ACT IS INTENDED ONLY TO
22 CONFORM TO THE STYLE OF THE PENNSYLVANIA CONSOLIDATED
23 STATUTES AND IS NOT INTENDED TO CHANGE OR AFFECT THE
24 LEGISLATIVE INTENT, JUDICIAL CONSTRUCTION OR ADMINISTRATION
25 AND IMPLEMENTATION OF THE ECONOMIC DEVELOPMENT AGENCY,
26 FIDUCIARY AND LENDER ENVIRONMENTAL LIABILITY PROTECTION ACT.

27 (3) PARAGRAPH (2) DOES NOT APPLY TO THE ADDITION OF
28 PARAGRAPH (9) OF THE DEFINITION OF "ECONOMIC DEVELOPMENT
29 AGENCY" IN 42 PA.C.S. § 8368.13.

30 SECTION 4. THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

1 (1) THE FOLLOWING PROVISIONS SHALL TAKE EFFECT
2 IMMEDIATELY:
3 (I) THIS SECTION.
4 (II) THE ADDITION OF 42 PA.C.S. CH. 83 SUBCH. F.4.
5 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT
6 IMMEDIATELY.