



# CAPITOL REPORT

## STATE REPRESENTATIVE

# PAUL SEMMEL

*Serving the people of the 187th Legislative District*

BULK RATE  
U.S. Postage  
PAID  
Permit #529  
Harrisburg, PA

### Offices

#### Schnecksville

Sand Spring Center,  
4525 Spring Hill Drive  
P.O. Box 235  
Schnecksville, PA 18078  
Mon. - Thurs., 8:30 a.m. - 4:30 p.m.  
Fri. 8:30 a.m. - 4:00 p.m.  
215-799-0187  
Fax: (215) 799-0188  
*Legislative Aides:*  
*Ms. Jean Husack, Mr. Jerry Faust*

#### Parkland

Upper Macungie Township Bldg.  
8330 Schantz Road  
Breinigsville, PA 18031  
Tues. - Fri., 8 a.m. - Noon  
215-395-8180  
*Legislative Aide: Ms. Joy Adams*

#### Macungie

Macungie Borough Hall  
26 South Church Street  
Macungie, PA 18062  
Tues., Thurs.  
8:30 a.m. - 3:30 p.m.  
215-966-0187  
*Legislative Aide: Mr. Jerry Faust*

#### Kutztown

215-683-9199

#### Harrisburg

Main Capitol Building, Box 161  
Harrisburg, PA 17120-0028  
717-787-3017  
*Secretary: Ms. Paula Hand*

### Meet Olga...



*Olga Barkovskaia, a visitor from Moscow, Russia, recently visited with Rep. Semmel in Harrisburg. Ms. Barkovskaia was presented with an official Pennsylvania flag and an opportunity to take a seat in the House Chambers.*

**Meet Olga Barkovskaia**, an elementary school teacher from Moscow, Russia, who recently visited with Mr. and Mrs. Harry Haas of Schnecksville. While visiting with their daughter, Heather, the Haas' met Barkovskaia, an exchange instructor at a Florida institute. The Haas' extended an invitation to come north. Ms. Barkovskaia gladly accepted.

In seven days, the enthusiastic -- and energetic -- young woman's itinerary included Ellis Island, the Statue of Liberty, Bethlehem, Gettysburg Battlefield and even a day at Parkland's Springhouse Junior High School, where she answered questions from inquiring young minds.

Ms. Barkovskaia also visited with Rep. Semmel in Harrisburg and was perplexed by the lack of security and the degree of accessibility to government officials. She was surprised that, as a Russian, she had free access to government buildings.

The same surprise greeted her during her visit to Atlantic City casinos, particularly after she won \$55, a sum comparable to her teacher's salary for about one and a half months in Russia. While Rep. Semmel cannot arrange a visit to Atlantic City, his office can make all the arrangements for you and your group to visit Harrisburg.

### In This Issue

Local Tax Reform .....	2
Children's Health Care .....	3
Long-Term Health Care .....	3
Healthy Horizons .....	3
Child Care .....	3
Capitol Update .....	4
Environment	
Volunteers	
Children	
Education	



PRINTED ON RECYCLED PAPER

# House Local Tax Reform Caucus Endorses Proposal

Seemingly never-ending increases in local property and nuisance taxes throughout Pennsylvania are once again fueling debate in the General Assembly over the need for local tax reform. Although the Legislature has avoided taking up the issue since voters rejected the governor's ill-fated tax reform plan in 1989, calls for action are now being heard in Harrisburg.

## Bipartisan Caucus

Local tax reform is a very complex issue, and there have been a tremendous number of bills offered to address various aspects of it. I am a member of the bipartisan House Local Tax Reform Caucus, an informal group of legislators from both parties who recognize that Pennsylvania taxpayers need and deserve reform of the state's antiquated local tax structure. The group has reviewed numerous legislative proposals over the past several months, and in September lent their endorsement to a legislative package which would provide real local tax reform and tax relief for Pennsylvanians.

The proposal is intended to provide for a more equitable local taxation system by reducing property taxes, increasing citizen participation in local government financial decisions, repealing nuisance taxes and creating a less complicated system for determining property tax assessments.

## A Starting Point

It must be kept in mind that the legislation endorsed by the Local Tax Reform Caucus is simply a starting point for discussion. Various aspects of their proposal would have very different results in different areas of Pennsylvania. Suburban Philadelphia residents and legislators, for example, want to see a repeal of the Sterling Act, which requires suburbanites who work in the city to pay a 4.25 percent wage tax to Philadelphia, included as part of any local tax overhaul. Obviously, this particular issue would be meaningless for residents of other parts of the state who may have their own local tax reform priorities.

In any event, the Local Tax Reform Caucus' willingness to tackle this complicated issue and desire to move the discussion forward in the Legislature is a promising step in the right direction. I will work to see that our efforts result in greater fairness in what has been described as the most outdated local tax system in the nation and bring about real tax relief for Pennsylvania taxpayers.

## Highlights Of Proposal

- Elimination of the personal property, occupational assessment, occupation privilege, or per capita taxes levied by local governments
- Replacing the existing local earned income tax with a local personal income tax which could not exceed 1.5 percent for school districts, 1 percent for municipalities and 0.5 percent for counties
- Freezing property tax rates as of Sept. 1, 1993

## Exemptions

- Exempting the first \$20,000 of a parcel's market value from property taxes
- Exempting senior citizens age 65 and older from paying local taxes on unearned income
- Exempting single taxpayers earning less than \$6,300, couples earning less than \$7,800 and couples with one child earning less than \$8,800 from local taxes

## Voter Approval

- Requiring voter approval for all bond issues, as well as local income and property tax increases, unless tax revenues actually declined from the previous year

## More Local Authority

- Permitting municipalities to levy a municipal services tax, not to exceed \$25
- Permitting counties to replace lost revenue with a personal income tax not to exceed 0.5 percent, and/or a county sales tax of 0.5 or 1 percent
- Allowing counties, municipalities and school districts to establish a program whereby qualified senior citizens, widows or widowers over 50 and permanently disabled adults could defer future property tax increases which would be come due when the property is sold or passes to a third party in an estate. (Eligibility requirements would be similar to those used in the current Property Tax/Rent Rebate program.)

## Improved Property Assessment

- Reviewing the status of all tax-exempt property statewide, with mandatory county-wide reviews of all tax-exempt

property at least once every five years. (Tax-exempt property owners could be charged a payment in lieu of taxes by counties and municipalities to be phased in over a five-year period for services provided to the property. The payment could not exceed 25 percent of the property tax that would have been owed if the property was not tax-exempt.)

- Creation of a loan program to help counties improve their assessment system, such as computerization, updating tax maps and conducting reassessments
- Requiring counties to assess property at 100 percent of market value; counties assessing at less than 100 percent when the law is implemented would be required to reduce millage rates accordingly to keep revenues the same.

## Independent Boards & Public Involvement

- Requiring the appointment of independent boards to hear assessment appeals in all counties
- Requiring public hearings any time a local tax hike is proposed

## Congratulations...

*To Rep. Semmel for his recognition of long-time service with the Pennsylvania Public Television Network (PPTN)*

# Family Matters

## CHILDREN'S HEALTH CARE PROGRAM AVAILABLE

Enacted last year, the Children's Health Care Program (CHIP) provides insurance benefits to uninsured Pennsylvania children under the age of 15 who reside in households not poor enough to qualify for medical assistance but do not make enough to afford health insurance. The program is funded by a two-cent per pack cigarette tax.

The eligibility requirements are as follows:

--children up to age six whose family has an annual income up to \$26,548 (family of four) are eligible to receive free coverage;

--children up to age six whose family has an annual income between \$26,548 and \$33,722 for a family of four will be eligible for a 50-percent insurance subsidy. Co-payments would range from \$44 to \$51 per month, depending on area of residency;

--children between ages 9 and 12 whose family has an income of no more than \$14,350 for a family of four would receive free coverage.

Because of limited funding, individuals should apply immediately. For more information, contact 1-800-822-CHIP. Benefits are provided on a first-come, first-served basis.

## LONG-TERM CARE

Long-term care insurance reform is now law. Because employer-based health care insurance, Medicare and private Medigap policies do not cover the costs of prolonged stays, Pennsylvania enacted Act 148 of 1992. The new law established guidelines for long-term care insurance policies and should help older Pennsylvanians safeguard themselves against unscrupulous providers.

The act seeks to promote the availability of long-term care insurance policies, protect applicants from deceptive or unfair sales and enrollment practices, establish standards for insurance companies, facilitate public understanding and comparison of policies and bring Pennsylvania into conformance with standards advocated by the National Association of Insurance Commissioners.

## HEALTHY HORIZONS

If you are over 65 years old or disabled and have less than \$7,200 annual income (\$9,660 for married couples) and have limited assets you may qualify for a Healthy Horizons medical card.

There are two tiers in this program known as the Blue Card and Orange Card programs and your monthly \$36.60 Medicare premium will be paid under each plan. Additionally, the Blue Card eliminates your \$652 Medicare Part A deductible requirement, the Part B \$100 physician deductible and 20% co-payment.

To apply call your local senior center, your county's Department of Public Welfare office or call their toll-free number 1-800-842-2020. Call my office if you need additional help.

## CHILD CARE CREDIT FOR BUSINESS

Pennsylvania businesses would receive a tax credit for operating licensed child-care centers for their employees' children if this proposal becomes law. The tax credit, equal to 50 percent of the service costs, would be applied to those businesses that maintain or pay part or all of the cost of child-care services.

The availability and the affordability of adequate child-care services represents a major concern to many Pennsylvanians. The increase of single-parent households and the need for more and more households to have two wage-earners has pushed this issue to the forefront. Children, parents who are employed, and their employers all stand to benefit from child-care programs of this nature.

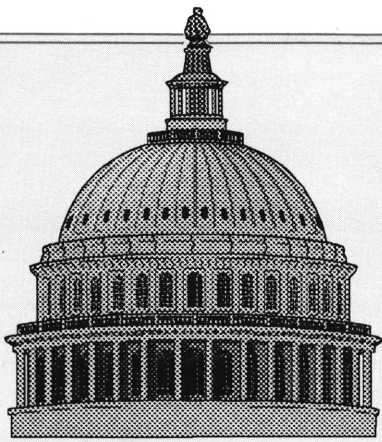
## ADDITIONAL LAWS

- ◆ Many consumer contracts, leases and other legal documents will need to be written in plain, understandable language.
- ◆ Liens will no longer be placed against houses owned by welfare recipients.
- ◆ Tightened mandatory safety seat law by requiring that children ages 1 to 4 be buckled in an approved child safety seat in the back seat of a vehicle.
- ◆ Gave the state more tools to establish paternity and enforce child support payments. Delinquent parents could have their names published in the paper.
- ◆ Harassment is now a crime and stalking has been designated as a misdemeanor of the first degree. A second or subsequent offense shall constitute a felony.

and other matters

FAMILY LAW . . .

Proposals  
and  
Laws Affecting  
You



**Under the Dome**

# Capitol Update

*If you would like more information on these or any other proposals or laws, please contact me or one of my offices.*

## Environment

### Helping Local Governments Comply

Currently, the Department of Environmental Resources (DER) inspects water supplies of local governments and determines if they are in compliance with Clean Stream regulations. If the borough or township fails the test, they are slapped with a severe fine and must pay to rectify the problem. Stranded in a Catch-22, many already distressed municipalities must figure out a way to clean-up and then pay-up. Usually, the pay-up is accomplished by raising taxes and forcing local taxpayers to foot the bill for another unfunded state mandate.

That would change if HB 1966, which I support, is enacted. The bill changes the Clean Stream Law to require that all fines and penalties collected for municipal violations be placed in special dedicated escrow accounts with the fund. The proposal also directs DER to allow municipalities to pay any fine or penalty with reasonable installment plans. Ultimately, HB 1966 would clean up the environment, but not at the backbreaking expense of the taxpayers.

## Volunteers

### Providing Relief to Firefighters

Legislation (HB 675) that will enable firefighters to use money from the fire company's Relief Association for the purchase of necessary items such as pocket pagers has been introduced. The cost of the pagers ranges from \$100 to \$300. Currently, Relief Association expenditures generally fall into the categories of insurance, safety equipment and training.

If enacted into law, the measure would also allow volunteer firefighters to use their relief funds to purchase fire hoses, nozzles, fire prevention materials for outside distribution, physical fitness training, nutrition improvement, and medical monitoring equipment.

## Children

### Protection from Abuse

For the first time in nearly 20 years, the House approved legislation to strengthen state law concerning child abuse. House Bill 1001 expands the definition of child abuse to include any act, or failure to act, that not only harms children but puts them at imminent risk of harm. Under current law, if a professional who has personal contact with a child, such as a doctor, nurse or day-care provider, has "reason to believe" the child has been abused he or she must report it. The legislation requires professionals to report cases where abuse is suspected in an effort to cover more incidents of possible abuse.

If enacted, the legislation will also screen teachers for any history of child abuse, in addition to the State Police clearance now required by law, before being hired.

## Education

### Equal Opportunity

Parents will have the right to choose what public school their child will attend if House Bill 1655 becomes law. Under the legislation, every public school student in the Commonwealth would be permitted to attend the public school of their parents' choice unless the school has no attendance slots available or if a student's attendance would place either the receiving district or the district of residence in violation of a binding desegregation order.

The legislation also establishes an Office of Educational Opportunity, which among other responsibilities, will establish and operate a grant program enabling children whose parents earn \$75,000 to receive grants to pay for their school of choice. Depending upon the grade of the child, the grants would range from \$700-\$1,000.

To accommodate the freedom of choice, 50 charter schools would be established and would operate independently from the existing school district structure. The purpose of the new schools is to improve the educational system by encouraging different and innovative teaching methods and providing parents and pupils with a variety of educational opportunities.

**PAUL  
SEMMEI**

**Rep. Paul Semmel's Legislative Updates**

# CAPITOL REPORT

**WINTER 1994**

*Best Wishes  
for a  
Happy and  
Prosperous  
New Year!*



## **Domestic Violence**

### **Women and Children First**

By now, almost everyone is horrifyingly aware of just how widespread--and deadly domestic violence is in the United States. The much publicized and aggrandized Nicole Simpson tragedy has emphasized the need to strengthen domestic violence policies. This year, the Pennsylvania General Assembly took positive action and implemented a stronger domestic abuse law and recently examined the physical and mental effects on the youngest victims--the children who witness the abuse. Information gathered from a recent public hearing will be used to draft legislation for the 1995-96 legislative session.

Domestic violence crises are dangerous to everyone involved--the abused, the children and even the police who respond to the cry for help. That is why the General Assembly is taking a comprehensive approach to the problem. For more information regarding the recent changes to the domestic abuse law, see page 2 of this newsletter.

I anticipate that more improvements will be made to laws regarding women and children as we begin the 1995-96 session. I will keep you informed of those developments. Till then, best wishes for a happy and prosperous New Year.

**REP. PAUL SEMMEL'S**

**DIRECTORY OF SERVICES**

**Caregiver Assistance 610-478-6500  
610-820-3034**

Pennsylvania's Family Caregiver Support programs help families care for their older loved one's at home. The Berks & Lehigh County Area Agency on Aging has staff professionals who can help families assess their needs in taking care of older relatives who are sixty years of age and older. In addition to basic services offered at no cost to families, financial assistance is available on a cost-sharing basis to help families with out-of-pocket caregiving expenses.

**Mortgage Assistance 800-342-2397**

Financial hardship making it difficult for you to make your mortgage payment? The state offers a Homeowners' Emergency Mortgage Assistance Program (HEMAP), a loan program designed to protect individuals, who through no fault of their own, are financially unable to make their mortgage payments and are in danger of losing their homes to foreclosure. As a Pennsylvania resident, if you are threatened with foreclosure, are at least sixty days delinquent and have reasonable prospects of being able to resume normal mortgage payments after assistance ends, you may be eligible for HEMAP. Call 1-800-342-2397 for more information.

**Senior Specials 799-0187**

**Property Tax/Rent Rebates**

You may be eligible for up to \$500 in a property tax or rent rebate IF you are:

- 65 years of age or older; or
- 50 years of age or older and a widow or widower; or
- 18 years of age or older and totally disabled; and
- your total household income from all sources is \$15,000 or less annually.



**Reduced Automobile Registration**

Automobile registrations may cost you as little as \$10 annually IF:

- you are retired;
- and have a total annual income from all sources not exceeding \$14,999.

**PACE Program (Pharmaceutical Assistance)**

Prescription medicines may be obtained for as little as \$6 IF you are:

- 65 years of age or older;
- and your annual income is \$13,000 or less if single and \$16,200 or less if married

**Childhood Immunization 800-692-7254**

The Childhood Immunization Act of 1992 provides that all childhood immunization vaccinations and booster shots must be covered by health insurance policies in Pennsylvania, except in special circumstances.

Age*	Immunization	Key
2 months	DTP, OPV, HIB	DTP - Combined Diphtheria, Tetanus and Pertussis
4 months	DTP, OPV, HIB	MMR - Combined Measles, Mumps, Rubella
6 months	DTP, HIB	OPV - Oral Polio Vaccine
15 months	DTP, OPV, HIB, MMR	Td - Combined Tetanus and Diphtheria given after six years and every 10 years throughout life
4 - 6 years	DTP, OPV, MMR	
14 years and every 10 years	Td (Adult)	HIB - Hemophilus Influenza b

**Suggested Immunization Schedule** - This schedule is recommended by the United States Public Health Services and may vary depending upon your child's needs.

**Child Safety 799-0187**

Kids! They're into everything. Is your home a safe place for your child to explore and learn? Is it child-proofed? If you would like additional tips on how to protect your children from home-related accidents, call my office and ask for a free copy of "A Guide to Making Your Home Child SAFE."



**Tuition Assistance 800-440-4000**

TAP into tomorrow by preparing for your child's higher education today. The state's Tuition Assistance Program (TAP) provides you with an opportunity to pay for your child's college today before inflation drives it out of reach. To learn how inexpensively you can begin to prepare for your children's future, call 1-800-440-4000.



# 1995....

## The Year of Change

### The First 100 Days

Recently I joined my colleagues in announcing a new legislative agenda, "Taking Charge for Change -- the House Majority Blueprint for the First 100 Days."

In doing so, we are entering into a contract with the people we represent to "Take Charge for Change," and turn Pennsylvania back into a job-producer, effective educator and a safe haven for our children and families.

Some of the more specific aspects of the program include:

-- creating jobs in the private sector through continuing tax relief, job training, assistance to the state's two largest industries (agriculture and tourism) and promoting the export of Pennsylvania products;

-- fighting crime to protect all of our citizens, particularly those most vulnerable -- our children and our senior citizen population;

-- improving education by protecting children and teachers, and by reforming the state's education bureaucracy;

-- downsizing the state bureaucracy, mainly through the transfer, merging or consolidation of current state duties and responsibilities;

-- reforming welfare through the elimination of certain programs, payments to individuals, duplicate benefits and fraud.

### Welfare

#### Instituting Real Incentives

A new pilot program requires Pennsylvania's welfare recipients to actively seek permanent jobs if they want to receive public assistance. Recently approved by the federal government, the Pathways to Independence program mandates that in order for people to receive welfare benefits, they must show a willingness to leave welfare--permanently.

To receive benefits, people must sign a contract, agreeing to undertake certain responsibilities and set specific goals and steps toward independence from welfare. If those conditions are met, the state will provide medical benefits, child care and other services under the program.

Additionally, the program will begin restructuring the welfare system by removing penalties for welfare recipients who marry or remarry to promote two-parent families.

Working recipients would be allowed to keep more of their earnings before they become ineligible for public assistance. Eligibility for child care and medical expenses would be extended to cover the first year of employment. The pilot program will begin in Lancaster County in the spring for five years.

#### Sweeping Reform Takes Effect

The governor recently signed Act 49, legislation enacting sweeping welfare reform. The new law, expected to save taxpayers \$91 million, will limit benefits available to able-bodied general assistance recipients and provide incentives for recipients to strive for independence and self-sufficiency.

Under the law, persons over 45 who are able to work and currently classified as chronically needy will be removed from that category. Transitionally needy recipients would be limited to two monthly checks during any 24-month period. Act 49 also creates a Learnfare pilot program in six geographic regions requiring children whose families receive Aid to Families with Dependent Children (AFDC) to attend school or face losing \$65 a month in welfare benefits.

A 60-day residency provision requires recipients to prove they have been residents of Pennsylvania for at least 60 days.

### New Domestic Violence Law

Statistics show that domestic batterings are the single largest cause of injury to women in the United States, and that every 15 seconds in this country, a woman is physically abused by her husband or boyfriend. A new law will step up efforts to address this national tragedy.

Following are some of the improvements made by House Bill 1717 (Act 85 of 1994):

--implementation of a national registry, increasing the potential for arrests of those who violate their protection from abuse orders;

--out-of-state or jurisdiction protection orders must also be registered and enforced in Pennsylvania;

--expanded definition of abuse to include stalking;

--establishment of a uniform written response policy so as to better educate and protect the police about domestic violence.

The new law was endorsed by the Pennsylvania Coalition Against Domestic Violence.

### Megan's Law

Before adjournment of the 1993-94 session, the House Judiciary Committee held a public hearing on legislation that would require certain convicted sex offenders to register their address with police as a means of alerting communities to the presence of individuals with a history of child molestation. The measure--known as Megan's Law--targets those convicted of sexual crimes against children. It would permit police to notify neighbors of the whereabouts of offenders. Although discussed in the previous session, I anticipate the issue will resurface in 1995.

## Child Abuse

# Let's Stop the Hurting

In 1992, there were 25,891 reports of child abuse in the Commonwealth; 51 Pennsylvania children died that year usually at the hands of someone they knew. In response, the Legislature passed a bill that would correct a serious flaw in state law which authorized state officials to take action to stop abuse only if a child had already been physically harmed.

Parents comprise the largest group of child abuse perpetrators (47.7 percent). The largest proportion of abusing mothers were between the ages of 20 and 29 while the largest proportion for fathers was in the age bracket of 30 to 39.

To ensure the safety of our children, the House and the Senate approved House Bill 1001, legislation which redefines child abuse to include actions which put a minor in imminent risk of serious injury -- even if there is no physical abuse.

Some of the major provisions of the new legislation include expanding the definition of child abuse; clarifying the definition of sexual abuse; adding "serious mental injury" and "serious physical neglect" as categories of abuse; establishing criteria for school employees to report abuse; making certain stipulations for counties to conduct investigations of reported cases of abuse and share information; and requiring the state Department of Public Welfare (DPW) to establish staff-to-family ratios for both child protective and general protective services.

House Bill 1001 was signed into law (Act 151) on Dec. 16, 1994.

# AUTO EMISSIONS DELAY...

## A Consumer Victory

The General Assembly recently took action requiring the state Transportation Department (PennDOT) to re-evaluate the centralized auto emissions inspection program set to start Jan. 1.

Under the plan, motorists residing in 25 state counties would be required to have their vehicle emissions tested every two years at centralized inspection facilities operated by an Arizona-based contractor. Currently, emissions testing is required for motorists residing in 11 counties and is performed by private service stations.

Protecting the environment and purifying the air are worthwhile and necessary goals. However, neither one would have been accomplished under the proposed program. Following are the reasons I opposed the centralized motor vehicle emissions program:

**Consumer Fraud** -- If, after spending \$450 to make necessary repairs and the vehicle still fails the test, then the consumer can obtain a waiver to exempt them from compliance.

**Lack of National Standard** -- Not every state is required to implement the federal Clean Air program. Is that because there are some kind of invisible barriers that prevent air from crossing state borders?

**Trucks are Exempt** -- Anyone who has ever travelled behind a tractor trailer knows that they, too, pollute the air. However, under the program, they are exempt from testing.

**Small Percentage of Auto Polluters** -- Approximately 80 percent of the vehicles are expected to pass the test, leaving only 20 percent that won't. Why then, subject the entire population to a \$17 - \$22 fee to have their car tested?



***Congratulations.** . . Kenneth Zellner, Milken Family Foundation award recipient, stands next to Reps. Donald W. Snyder (l) & Paul Semmel (r). A teacher at Kernsville Elementary, Zellner was recognized for his outstanding contributions to education.*

## Scholarships Available FINNEGAN FOUNDATION

College students wanting to get a close-up view of state government may now apply for a James A. Finnegan Foundation internship. The foundation was established to honor the memory of the former Secretary of the Commonwealth, by providing practical training in government and politics to outstanding Pennsylvania college students.

Selection for the internship is based on the student's scholastic and civic achievements and career interest and an essay dealing with a political science theme. In addition to the internship program, the foundation also offers possible case awards for students. For more information, call my Schnecksville office at 799-0187.

## EMT CERTIFICATION LAW CHANGES

Certification procedures for emergency medical technicians (EMT) and EMT-paramedics will provide EMT paramedics with permanent certification and EMTs with the ability to maintain certification by taking an exam or a Department of Health-approved continuing education course. Those permanently certified must receive command authorization from their medical command physician. Refresher courses will be required for authorizations withheld from the command physician.

The act also establishes certification requirements for those who perform basic life support activities to stabilize and improve a patient's condition in a pre-hospital setting before EMS personnel arrive. A training course must be completed and a written and practical exam must be passed to get a three-year certificate. Recertification can be accomplished by exam or continuing education.

In addition to including "pre-hospital registered nurse" to the definition of health professional and requiring specific training, Act 82 provides civil immunity to advanced life support directors and medical command physicians from acts of their EMS personnel, provided direction was given in good faith and there was no gross or willful negligence.