

No. 160

AN ACT

HB 1718

Providing for the control and regulation of outdoor advertising adjacent to the interstate and primary highway systems within this Commonwealth; providing for administration by the Department of Transportation to comply with Federal requirements as a condition to the receipt of highway funds; fixing penalties and making appropriations.

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

Section 1. Short Title.—This act may be cited as the “Outdoor Advertising Control Act of 1971.”

Section 2. Purposes of Act.—The people of this Commonwealth would suffer economically if the Commonwealth failed to participate fully in the allocation and apportionment of Federal-aid highway funds since a reduction in such funds would necessitate increased taxation to support and maintain the Commonwealth’s road program and system. Therefore, for the purpose of assuring the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the national policy to protect the public investment in the interstate and primary systems; to promote the welfare, convenience and recreational value of public travel; and to preserve natural beauty, it is hereby declared to be in the public interest to control the erection and maintenance of outdoor advertising devices in areas adjacent to the interstate and primary systems within this Commonwealth.

Section 3. Definitions.—As used in this act:

(1) “Department” shall mean the Department of Transportation of the Commonwealth of Pennsylvania and “secretary” shall mean the Secretary of Transportation of the Commonwealth of Pennsylvania.

(2) “Erect” means to construct, build, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish, but it shall not include any of the foregoing activities when performed as an incident to the change of advertising message or customary maintenance and repair of a sign or sign structure.

(3) “Information center” shall mean an area or site established for the purpose of informing the public of places of interest within the Commonwealth and providing such other information as the secretary may consider desirable.

(4) “Interstate system” shall mean that portion of the national system of interstate and defense highways located within this Commonwealth, as officially designated, or as may hereafter be so designated, by the secretary and approved by the United States Secretary of Transportation, pursuant to the provisions of Title 23, United States Code, “Highways.”

(5) "Outdoor advertising device" shall mean any outdoor sign, display, light, figure, painting, drawing, message, plaque, poster, billboard or other thing which is designed, intended or used to advertise or inform.

(6) "Primary system" shall mean that portion of connected main highways located within this Commonwealth which now or hereafter may be designated officially by the secretary and approved by the Secretary of Transportation of the United States pursuant to Title 23, United States Code, "Highways."

(7) "Safety rest area" shall mean an area or site established and maintained within or adjacent to the highway right-of-way by or under public supervision or control, for the convenience of the traveling public.

(8) "Traveled way" shall mean the portion of a roadway for the movement of vehicles, exclusive of shoulders. The term "main-traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. The term does not include such facilities as frontage roads, turning roadways, or parking areas.

(9) "Unzoned commercial or industrial area" shall mean an area which is not zoned by State or local law, regulation or ordinance, and on which there is located one or more commercial or industrial activities and the area along the highway extending outward eight hundred feet from and beyond the edge of such activity. Unzoned commercial and industrial areas shall not include land on the opposite side of the highway from said activities except that on two or three-lane noncontrolled access highways the unzoned commercial or industrial area may be located on the opposite side of the highway from the commercial or industrial activity, if in the opinion of the secretary, the topographical conditions on the same side of the highway as the activity are such that it is not reasonably usable, and provided that the land on the opposite side of the highway has not been designated scenic by the department. In no event shall such unzoned commercial or industrial area be located on both sides of the highway. All measurements shall be from the outer edges of the regularly used buildings, parking lots, storage or processing areas of the commercial or industrial activities, not from the property lines of the activities, and shall be along or parallel to the edge of the pavement of the highway.

(10) "Visible" shall mean capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

(11) "Zoned commercial or industrial area" shall mean an area which is reserved for business, industry, commerce, trade or other business of any type or category pursuant to a State, or local zoning law, ordinance or regulation.

(12) "Commercial or industrial activities" shall mean those activities generally recognized as commercial or industrial by zoning law in the Commonwealth, except that none of the following activities shall be considered commercial or industrial:

- (i) Outdoor advertising signs.
- (ii) Agricultural, forestry, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands.
- (iii) Activities not visible from the main-traveled way.
- (iv) Activities conducted in a building principally used as a residence.
- (v) Railroad tracks and minor sidings.

Section 4. Control of Outdoor Advertising.—To effectively control outdoor advertising, while recognizing it to be a legitimate commercial use of property and an integral part of the business and marketing function, no outdoor advertising device shall be erected or maintained within six hundred sixty feet of the nearest edge of the right-of-way if any part of the advertising or informative contents is visible from the main-traveled way of an interstate or primary highway, except:

(1) Directional and other official signs and notices which are required or authorized by law and which shall conform to the national standards promulgated by the Secretary of Transportation of the United States pursuant to section 131 of Title 23, United States Code.

(2) Outdoor advertising devices advertising the sale or lease of the real property upon which they are located.

(3) Outdoor advertising devices advertising activities conducted on the property on which they are located.

(4) Outdoor advertising devices in zoned or unzoned commercial or industrial areas along those portions of the interstate system constructed on right-of-way, any part of the width of which was acquired on or before July 1, 1956.

(5) Outdoor advertising devices in areas zoned commercial or industrial along the interstate system and lying within the boundaries of any incorporated municipality as such boundaries existed on September 21, 1959, and devices located in any other area which, as of September 21, 1959, was clearly established by law as industrial or commercial.

(6) Outdoor advertising devices in zoned or unzoned commercial or industrial areas along the primary system.

(7) Outdoor advertising devices in the specific interest of the traveling public which are authorized to be erected or maintained by the secretary and which are designed to give information in the interest of the traveling public.

(8) Any other outdoor advertising devices permitted or authorized along the interstate system by the official agreement executed June 23, 1961, between the Commonwealth and the Federal Government; provided such outdoor advertising devices do not violate the provisions of Title 23, U.S. Code, "Highways."

Section 5. Control Criteria for Size, Spacing and Lighting.—(a) In order to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the purposes of this act and

with customary use in this Commonwealth, the secretary shall strictly adhere to the criteria prescribed by this section in promulgating regulations to effectively control those signs, displays and devices provided for under clauses (4) through (6) of section 4 of this act and erected subsequent to the effective date of this act: Provided, however, That such regulations shall not apply to outdoor advertising devices erected within six months after the effective date of this act under a lease dated prior to the effective date of this act and filed with the department and recorded in the recorder's office of the county in which the device would be located within thirty days following the effective date of this act: And, provided further, That should any outdoor advertising device excluded from such regulations fall into such state of disrepair that it becomes necessary to rebuild or repair a major portion of the physical structure of such outdoor advertising device, then, in such event, such outdoor advertising device, if rebuilt or repaired, shall thereafter conform to such regulations at no cost to the Commonwealth.

(b) In zoned commercial or industrial areas, the secretary may certify to the Secretary of Transportation of the United States as notice of effective control, that there has been established within such areas regulations which are enforced with respect to the size, lighting and spacing of outdoor advertising devices. In such areas, the size, lighting and spacing requirements set forth below shall not apply. For the purposes of this subsection, requirements as to the number or total size of signs, displays or devices permitted on a single plot or parcel of land will be considered to be a spacing requirement.

(c) In all other zoned and unzoned commercial or industrial areas, the criteria set forth below shall apply:

(1) Size of signs:

(i) The maximum area for any one sign shall be twelve hundred square feet with a maximum height of thirty feet and maximum length of sixty feet, inclusive of any border and trim but excluding the base or apron, supports and other structural members.

(ii) The area shall be measured by the smallest square, rectangle, triangle, circle or combination thereof which will encompass the entire sign.

(iii) A sign structure may contain one or two signs per facing and may be placed double-faced, back to back or V-type.

(iv) Signs which exceed six hundred square feet in area may not be double-faced (abutting and facing the same direction).

(2) Spacing of signs:

(i) Along the interstate system and limited access highways on the primary system, no two sign structures shall be spaced less than five hundred feet apart; and outside the boundaries of cities of all classes and boroughs, no structure may be erected adjacent to or within five hundred feet of an interchange or safety rest area, measured along the interstate

or limited access primary from the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.

(ii) Along nonlimited access highways on the primary system, no two structures shall be spaced less than three hundred feet apart if outside cities of all classes and boroughs, nor less than one hundred feet apart if within such cities and boroughs.

(iii) These spacing provisions shall not apply to sign structures separated by a building or other obstruction in such a manner that only one sign facing located within these spacing distances is visible from the highway at any one time.

(iv) Official and "on premise" signs, as defined in section 131 (c) of Title 23, United States Code, shall not be counted nor shall measurements be made from them for purposes of determining spacing requirements.

(v) The distance between sign structures shall be measured along the nearest edge of the pavement between points directly opposite the signs along the same side of the traveled way.

(3) Lighting of signs:

(i) No sign will be permitted which is not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled ways of the interstate or primary systems or which is of such intensity or brilliance as to cause glare or to impair the vision of the driver of any vehicle, or which interferes with any driver's operation of a motor vehicle.

(ii) No sign shall be so illuminated that it interferes with the effectiveness of or obscures an official traffic sign, device or signal.

(iii) Lighting of all signs shall be subject to all other provisions relating to lighting of signs along highways under the jurisdiction of the department.

(iv) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather, or similar information.

(d) The Commonwealth and local political subdivisions shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes and the action of the Commonwealth and local political subdivisions in this regard will be accepted for the purposes of this act. At any time, that a political subdivision adopts regulations which include the size, spacing and lighting of outdoor advertising devices the secretary may so certify to the Secretary of Transportation of the United States and control of outdoor advertising in commercial or industrial areas will transfer to subsection (b) under this section 5.

Section 6. Rules and Regulations.—The secretary is authorized to promulgate rules and regulations governing outdoor advertising devices and such rules and regulations shall contain the criteria set forth under section 5 of this act and shall contain the permit provisions set forth under

section 7 of this act. Regulations relating to outdoor advertising devices permitted under clauses (1) through (3) of section 4 shall be no more restrictive than the national standards pertaining to such outdoor advertising devices.

Section 7. Permits.—An annual permit shall be required for each outdoor advertising device regulated by this act and located outside the limits of those incorporated municipalities that have legally established and operating procedures for issuing permits for such outdoor advertising devices which have been certified by the secretary as conforming to the provisions of subsection (d) of section 5 of this act. The fee for each such permit shall be five dollars (\$5) if the sign area does not exceed three hundred square feet; ten dollars (\$10) if the sign area exceeds three hundred square feet but does not exceed six hundred square feet; and fifteen dollars (\$15) if the sign area exceeds six hundred square feet. A tag indicating that a permit has been duly issued shall be affixed to the device or structure by the department.

Section 8. Agreement with Federal Government or Agencies.—The secretary shall enter into an agreement with the Secretary of Transportation of the United States, consistent with the provisions of this act and to the degree necessary to preserve the Commonwealth's entitlement to its full share of Federal road funds, and may take action in the name of the Commonwealth to comply with the terms of such agreement. In the event said Secretary of Transportation of the United States or his agent fails to agree, the disagreement shall be resolved with the Attorney General of this Commonwealth participating, and taking such appeals provided for in subsection (1) of section 131 of Title 23, United States Code, as amended, as he deems advisable. The agreement entered into on October 7, 1968, by the then Secretary of Highways with the Federal Highway Administrator, has not been authorized by the General Assembly and is hereby abrogated.

Section 9. Compensation for Removal of Outdoor Advertising Devices.—(a) Just compensation shall be paid upon the removal of any outdoor advertising device (1) lawfully in existence on the effective date of this act; (2) lawfully on any highway made a part of the interstate or primary system on or after the effective date of this act; or (3) otherwise lawfully erected on or after the effective date of this act.

(b) Just compensation shall consist of payment for (1) the taking from the owner of an outdoor advertising device of all right, title, leasehold and interest in such outdoor advertising device, and (2) the taking from the owner of the real property on which an outdoor advertising device is located of the right to erect and maintain such outdoor advertising device.

(c) The department shall require removal of all nonconforming outdoor advertising devices lawfully on any highway made a part of the interstate or primary system on or after the effective date of this act no later than the end of the sixth year after the said highway is made a part of the interstate or primary system.

(d) Notwithstanding the provisions of subsections (b) and (c) of this section, the periods specified therein within which the department shall require removal of all nonconforming outdoor advertising devices may be extended, if necessary, until such time as Federal funds are available to reimburse the Commonwealth for the Federal share of the costs of removal of those signs for which Federal contribution is provided in section 131 of Title 23 of the United States Code.

Section 10. Removal of Prohibited Advertising Devices.—In addition to the penalties prescribed in this act, the secretary may institute any appropriate action or proceeding after thirty days' written notice of a violation to the person or persons maintaining or allowing to be maintained such device, to prevent, restrain, correct or abate a violation or to cause the removal of any advertising device erected or maintained in violation of the provisions of this act, or the secretary may have any such device corrected or removed by his employes. In the event of such removal, the person or persons responsible for the erection or maintenance of such device and the person or persons allowing such device to be maintained shall be liable to the department for the cost of removal or correction of such device. Neither the secretary nor any other employe acting at his direction shall be liable in any criminal or civil action for damages for any action authorized by this act.

Section 11. Penalties for Violation.—Any person who shall erect or cause or allow to be erected or maintained any advertising device in violation of this act, shall, upon summary conviction thereof, be sentenced to pay a fine of five hundred dollars (\$500) to be paid into the Highway Beautification Fund, and in default of the payment thereof, shall undergo imprisonment for thirty days. Each day a device is maintained in violation of this act after conviction shall constitute a separate offense.

Section 12. Highway Beautification Fund.—(a) All receipts received pursuant to this act, together with all Federal funds received by the Commonwealth to accomplish the control of outdoor advertising pursuant to section 131, United States Code, "Highways," shall be paid into and credited to the Highway Beautification Fund. All costs incurred by the secretary pursuant to this act shall be paid from the Highway Beautification Fund, and as much moneys as the secretary shall deem necessary are specifically appropriated from such fund to the Department of Transportation.

(b) In addition to the moneys to be received under subsection (a) of this section, such moneys as may be necessary shall be appropriated from time to time by the General Assembly from the General Fund to the Highway Beautification Fund for the purpose of carrying out the provisions of this act.

Section 13. Interpretation.—Nothing in this act shall be construed to abrogate or affect the provisions of any lawful ordinance, regulation, or resolution which are more restrictive than the provisions of this act.

Section 14. Severability.—The provisions of this act shall be severable. If any provision of this act is found by a court of record to be unconstitutional and void, the remaining provisions of the act shall, nevertheless, remain valid, unless the court finds the valid provisions of the act are so essentially and inseparably connected with, and so depend upon, the void provision that it cannot be presumed the General Assembly would have enacted the remaining valid provisions without the void one, or unless the court finds that the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

Section 15. Repeals.—(a) The act of April 28, 1961 (P.L.101), entitled “An act prohibiting the erection and maintenance of certain advertising devices along highways on the National System of Interstate and Defense Highways; providing for the acquisition of such devices and property use in connection with such devices by the Secretary of Highways; and providing penalties for violations,” is hereby repealed.

(b) All other acts and parts of acts are repealed in so far as they are inconsistent herewith.

Section 16. Effective Date.—This act shall take effect immediately.

APPROVED—The 15th day of December, A. D. 1971.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 160.

A handwritten signature in black ink, reading "C. McLaughlin Tucker". The signature is written in a cursive, flowing style.

Secretary of the Commonwealth.