

No. 92
AN ACT

HB 926

Amending the act of January 8, 1960 (P. L. 2119), entitled "An act to provide for the better protection of the health, general welfare and property of the people of the Commonwealth by the control, abatement, reduction and prevention of the pollution of the air by smokes, dusts, fumes, gases, odors, mists, vapors, pollens and similar matter, or any combination thereof; creating within the Department of Health an Air Pollution Commission and defining its powers; authorizing the Department of Health to enforce rules and regulations of the Commission as provided in this act; establishing Regional Air Pollution Control Associations and defining their powers, reserving powers to local political subdivisions, and defining the relationship between this act and the ordinances, resolutions and regulations of counties, cities, boroughs, towns and townships; imposing penalties for violation of this act; and providing for the power to enjoin violations of this act; and conferring upon persons aggrieved certain rights and remedies, and providing an appropriation therefor," changing the membership and powers of the Air Pollution Commission; changing the powers and duties of the Department of Health and Regional Air Pollution Control Associations; setting forth a new declaration of policy; and redefining air pollution.

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

Section 1. Section 2, act of January 8, 1960 (P. L. 2119), known as the "Air Pollution Control Act," is amended to read:

Section 2. Declaration of Policy.—[It is hereby determined and declared to be the policy of the Commonwealth of Pennsylvania to maintain such a reasonable degree of purity of the air resources of the Commonwealth as shall be technically feasible, economically reasonable, and necessary for the protection of the normal health, the general welfare and the property of the people of the Commonwealth. The measures for the accomplishment of this purpose shall not unreasonably obstruct the attraction, development and expansion of business, industry and commerce within the Commonwealth, but shall be technically feasible and economically reasonable. The program for the control of air pollution under this act shall be undertaken in a progressive manner, and each of its successive objectives shall be sought to be accomplished by a maximum of cooperation and conciliation among all the parties concerned. All powers herein conferred upon the Department of Health, the Air Pollution Commission, or any Regional Air Pollution Control Association, and all powers herein reserved to any political subdivision shall be exercised solely to effectuate the policy declared in this section.] It is hereby declared to be the policy of the Commonwealth of Pennsylvania to protect the air resources of the Commonwealth to the degree necessary for the (i) protection of public health, safety and well-being of its citizens;

(ii) prevention of injury to plant and animal life and to property;
(iii) protection of the comfort and convenience of the public and the
protection of the recreational resources of the Commonwealth; and
(iv) development, attraction and expansion of industry, commerce
and agriculture.

Section 2. Clause (5) of section 3 of the act is amended to read:

Section 3. Definitions.—The following words and phrases, when used in this act, unless the context clearly indicates otherwise, shall have the meaning ascribed to them in this section:

* * *

(5) "Air pollution." The presence in the outdoor atmosphere of [one or more air contaminants in sufficient quantity and of such characteristics and duration] any form of contaminant including but not limited to the discharging from stacks, chimneys, openings, buildings, structures, open fires, vehicles, processes, or any other source of any smoke, soot, fly ash, dust, cinders, dirt, noxious or obnoxious acids, fumes, oxides, gases, vapors, odors, toxic or radioactive substances, waste, or any other matter in such place, manner, or concentration inimical or which may be inimical to the public health, safety, or welfare or which is, or may be injurious to human, plant or animal life, or to property, or which unreasonably interferes with the comfortable enjoyment of life [and] or property [throughout the Commonwealth or throughout such areas of the Commonwealth as shall be affected thereby].

* * *

Section 3. Clause (10) of section 3 of the act is repealed.

Section 4. The introductory paragraph and clauses (3), (5), (7) and (9) of section 4 of the act are amended, and a new clause is added after clause (4) of such section, to read:

Section 4. Powers and Duties of the Department of Health.—[In accordance with the policies of the Commission, the] The department shall have power and its duty shall be to—

* * *

(3) Receive and initiate complaints of air pollution [in alleged violation of law or any rule or regulation promulgated under this act,] and [to] submit such complaints to the Association of the air pollution control region in which [such complaints arise: Provided, however, That where the source of air pollution is within one region and the effects thereof extend to another region or regions, as determined by appropriate surveys by the department, the said complaint shall

be forwarded to the Commission] the air contamination source is located.

* * *

(4.1) Issue orders to any person causing air pollution. The department may stipulate, in such orders, a time within which compliance shall be effected: Provided, however, That within thirty (30) days of the issuance of such order the person to whom it is issued may appeal to the Commission, in writing, with a copy thereof to the Secretary of Health. After such appeal, the order shall be held in abeyance until the Commission shall have granted the person appealing the order reasonable notice and an opportunity to be heard, in accordance with the provisions of the act of June 4, 1945 (P. L. 1388), as amended, known as the "Administrative Agency Law." Thereafter, the adjudication of the Commission shall be the order of the department, unless such adjudication is disturbed on appeal. If the person against whom an order of the department is issued fails to appeal to the Commission within thirty (30) days of the issuance of said order, he shall have waived his right to appeal to the Commission, under this act, or to the courts under the provisions of the "Administrative Agency Law."

(5) [When directed by the Commission, institute] Institute, [or cause to be instituted] in a court of competent jurisdiction proceedings to compel compliance with any order of the [Commission] department from which there has been no appeal or which has been sustained on appeal.

* * *

(7) [Enforce orders for compliance with rules and regulations of the Commission.] Institute prosecutions under this act.

* * *

(9) [Accept, and at the request of the Commission require to be submitted to it,] Require the submission of, and consider for approval, plans and specifications of air pollution control equipment, devices or process changes, and inspect such installations or modifications to insure compliance with the plans which [may] have been [so] approved [by it].

* * *

Section 5. Sections 5 and 6 of the act are amended to read.

Section 5. The Air Pollution Commission.—(a) [There is hereby created in the department an Air Pollution Commission which shall consist of five governmental members and six public members. The public members shall be appointed by the Governor, by and with the advice and consent of two-thirds of all the members of the Senate.

(b) The governmental members shall be the Secretaries of the Department of Health, Department of Commerce, Department of Labor and Industry, Department of Mines and Mineral Industries, Department of Agriculture, or persons designated by them.

(c) Of the six public members, one shall be a member of the general public. Of the remaining five members, one member shall be an industrial toxicologist experienced and competent in the toxicology of air contaminants; three members shall be representative of industry and as such shall be employed by a manufacturer or a public utility carrying on a manufacturing or public utility business within the Commonwealth and shall be experienced and competent in matters of air pollution control, of which three members at least one member shall be a licensed professional engineer trained and experienced in matters of air pollution control; and the remaining one member shall be an additional licensed professional engineer trained and experienced in matters of air pollution control. All the public members of the Commission shall be residents of the Commonwealth.] There is

hereby created in the department an Air Pollution Commission which shall consist of the Secretaries of the Department of Health, Department of Commerce, Department of Community Affairs, Department of Mines and Mineral Industries, Department of Agriculture or, in lieu thereof, individuals employed in their respective departments designated by them, and six other persons appointed by the Governor, by and with the advice and consent of two-thirds of all the members of the Senate. Of the persons appointed by the Governor, one shall be a duly licensed professional engineer, two shall be members of groups or organizations concerned with the conservation of the natural resources of the Commonwealth, two shall be engineers from industry active and experienced in air pollution control and one shall be a member of the general public. All members appointed by the Governor shall be residents of the Commonwealth.

[(d)] (b) The term of each [public] member appointed by the Governor shall be four (4) years or until a successor is duly appointed

and qualified. The members of the Commission, other than the governmental members, shall receive [twenty-five dollars (\$25.00)] fifty dollars (\$50.00) per diem while actually engaged in the work of the Commission and each of them shall be allowed the necessary and actual expense which he shall incur in the performance of his duties under this act.

[(e)] (c) The Commission shall elect a chairman and vice chairman every two years: Provided, however, That the first chairman of the Commission shall be the Secretary of Health.

[(f)] (d) The Commission shall have the power and its duty shall be to—

(1) Certify to the Governor as soon as is practicable the number and boundaries of regions [and subregions] as defined herein, and in the event that the number of regions or the boundaries thereof are subsequently changed, to certify such changes to the Governor, by resolution, at a subsequent meeting.

(2) Adopt rules and regulations for the control of air pollution in regions or parts thereof, after reviewing studies made by the department in those regions or parts thereof, and after such suggested rules and regulations have been reviewed by the Association, or Associations, of the region, or regions affected [Provided, however, That if such rules and regulations are designed to correct an air pollution condition which affects more than one region, it shall be necessary for the Commission to submit such rules and regulations to the Associations affected]. To carry out the purpose and intent of this act, all rules and regulations shall be adopted by the Commission in accordance with the provisions of the act of June 4, 1945 (P. L. 1388), known as the "Administrative Agency Law," and its amendments. In exercising its authority to adopt rules and regulations, the Commission may, and to the extent deemed desirable by it shall, consult with a council of technical advisers, properly qualified by education or experience in air pollution matters, appointed by the Commission and to serve at the pleasure of the Commission, to consist of such number of advisers as the Commission may appoint, but such technical advisers shall receive no compensation, other than their actual and necessary expenses, for their services to the Commission.

(3) Adopt rules and regulations for the orderly conduct of business before it and adopt policies and regulations for the enforcement of regulations promulgated under clause (d) (2) of this section.

(4) Hold meetings or hearings at the call of the chairman, but in no event shall meetings be held less than six times per year.

(5) Hear and determine all [complaints of alleged violations of the rules and regulations of the Commission, which complaints have been referred to it by any Association or by the department as provided by section 4 (3) of this act] appeals from orders issued by the department in accordance with the provisions of this act. Any and all action by the Commission taken with reference to any [complaint] such appeal shall be in the form of an adjudication, and all such action shall be subject to the provisions of the Administrative Agency Law, the act of June 4, 1945 (P. L. 1388), as amended, insofar as the rights of any person aggrieved are concerned. Any party aggrieved, as defined in the act of June 4, 1945 (P. L. 1388), as amended, known as the "Administrative Agency Law," by any adjudication of the Commission shall have the right to appeal such adjudication in the manner provided by, and subject to the "Administrative Agency Law."

[(6) Prescribe and disseminate to Associations a form of complaint which such Associations shall make available to persons desiring to make a complaint.

(7) Require the necessary and proper steps to minimize the effect, hazard or nuisance from air pollution and issue appropriate orders for compliance with rules and regulations for the control, abatement, reduction and prevention of air pollution and stipulate in such orders a time by which compliance shall be made.

(8) (6) Establish and publish maximum quantities of air contaminants that may be permitted under various conditions at the point of use from any air contaminant source in various areas of the Commonwealth so as to control air pollution.

(7) By rule or regulation, classify air contaminant sources, according to levels and types of emissions and other characteristics which relate to air pollution. Classifications made pursuant to this subsection shall apply to the entire Commonwealth or any part thereof. Any person who owns or operates an air contaminant source of any class to which the rules and regulations of the Commission under this subsection apply, shall make reports containing information as may be required by the Commission concerning location, size and height of air contaminant outlets, processes employed, fuels used and the nature and time periods or duration of emissions, and such other

information as is relevant to air pollution and available or reasonably capable of being assembled.

[(g) Any party aggrieved as defined in the act of June 4, 1945 (P. L. 1388), known as the "Administrative Agency Law," and its amendments, by any order, decision or determination of the Commission made pursuant to the provisions of this act, shall have the right to appeal such order, decision or determination in the manner provided for by, and subject to all the provisions of, the act of June 4, 1945 (P. L. 1388), known as the "Administrative Agency Law," and its amendments.]

Section 6. Regional Air Pollution Control Associations.—(a) In each of the regions designated by the Commission there shall be established an Association consisting of a representative of industry, and of labor, and a county commissioner of one of the counties comprising the region. In addition thereto, each Association shall be comprised of a resident of each of the counties of the region concerned. All members of such Association, including the chairman, shall be appointed by the Governor and shall serve at his pleasure.

(b) Each Association shall have the power and its duty shall be to—

(1) Review and comment upon all proposed regulations of the Commission peculiar to the region within a period of ninety (90) days. If the Commission shall not have received comments from the Association within ninety (90) days of their submission to the Association, such suggested rules and regulations shall be adopted by the Commission.

(2) Suggest to the Commission such regulations as may seem suitable to the conditions of that region.

(3) Consider complaints regarding [air pollution within their respective regions] any air contamination source within its region which is alleged to cause air pollution. In the consideration of such complaints, an Association shall attempt to resolve the complaint through the use of a maximum of conference, conciliation and persuasion [to abate, control, reduce or prevent air pollution within the region pursuant to the rules and regulations of the Commission]. Within [six] three months of the receipt of any complaint, an Association shall [report to the Commission regarding the disposition of the complaint. In the event that the efforts of an Association are unavailing with respect to the air pollution problem or problems set forth in a complaint, an Association shall refer such complaint to the Commission for appropriate action. If within sixty (60) days after an Association has reported to the Commission a satisfactory disposition of a complaint, another complaint concerning the same

problems or persons, whichever the case may be, is filed with an Association, this complaint shall be forthwith referred to the Commission for appropriate action] refer the matter, in writing, to the department for appropriate action in accordance with the rules and regulations of the Commission. Thereafter, all complaints received by an Association with respect to the same problem shall be referred directly to the department.

(4) Cooperate with persons within the region to develop a program for the prevention, abatement, control and reduction of air pollution within the region.

(5) Avail itself of the services of the Department of Health for technical service or advice whenever it is necessary for a proper understanding of the problems within the region.

(6) Meet at the call of the chairman of the Association [or of the chairman of the Commission,] but in no event shall the Association meet less than four times a year.

[(7) Submit to the Commission a copy of all complaints received by the Association and action taken thereon.

(8)] (7) Utilize such stenographic and clerical assistance of the department as is necessary for the conduct of the business of the Association.

[(9)] (8) Enter into an agreement with the Department of Health for the reimbursement of all necessary expenses of the Association.

[(10)] (9) Provide for convenient headquarters for the Association. In the absence of any cogent reason the headquarters of the Association shall be situated in the regional office of the Department of Health, and such office shall be supplied by the department to the Association at no charge.

(c) Each Association shall be considered an autonomous body insofar as the conduct of its business is concerned, notwithstanding the fact that it may utilize such services of the department as are herein provided, and notwithstanding the fact that it must comply with subsection (b) (3) of this section.

Section 6. Section 8 of the act, amended January 24, 1966 (P. L. 1520), is amended to read:

Section 8. Unlawful Conduct.—It shall be unlawful to [refuse] fail to comply with any rule or regulation or to fail to comply with any order of the [Commission] department, to violate or to assist in the violation of any of the provisions of this act or rules and regulations adopted hereunder, or to in any manner hinder, obstruct, delay, resist, prevent or in any way interfere or attempt to interfere with the department or its personnel in the performance of any duty

hereunder, or refuse to permit such personnel to perform their duty by refusing them, after proper identification or presentation of a written order of the department, entrance at reasonable hours to any premises.

Section 7. Subsection (a) of section 9 and section 10 of the act are amended to read:

Section 9. Penalties.—(a) Summary offense. Any person as herein defined, except a department, board, bureau or agency of the Commonwealth, political subdivision, municipality, district or authority, engaging in unlawful conduct as set forth in section 8 of this act, shall, for each offense, upon conviction thereof in a summary proceeding before a magistrate, alderman or justice of the peace, be sentenced to pay the costs of prosecution and a fine of not less than [thirty dollars (\$30.00) nor more than three hundred dollars (\$300.00),] one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), and, in default thereof, to undergo imprisonment of not less than ten (10) days nor more than thirty (30) days.

* * *

Section 10. Application for Injunctive Relief.—(a) In addition to any other remedies provided for in this act, the [Commission] department may request the Attorney General to petition the court of common pleas in the county in which the defendant resides or has his place of business for an injunction to restrain all violations of this act.

(b) The penalties and remedies prescribed by this act shall be deemed concurrent and the existence of or exercise of any remedy shall not prevent the [Commission] department from exercising any other remedy hereunder, at law or in equity.

Section 8. The act is amended by adding, after section 12, a new section to read:

Section 12.1. Existing Rights and Remedies Preserved.—Nothing in this act shall be construed as impairing any right or remedy, now or hereafter existing in equity, or under common or statutory law, to abate private or public nuisances. No court of this Commonwealth having jurisdiction to abate public or private nuisance shall be deprived of such jurisdiction to abate any private or public nuisance instituted by any person for the reason that such nuisance constitutes air pollution.

Section 9. This act shall take effect immediately.

APPROVED—The 12th day of June, A. D. 1968.

RAYMOND P. SHAFER.

No. 93

AN ACT

HB 670

Amending the act of April 29, 1959 (P. L. 58), entitled "An act consolidating and revising the Vehicle Code, the Tractor Code, the Motor Vehicle Financial Responsibility Act and other acts relating to the ownership, possession and use of vehicles and tractors," eliminating the requirement of erecting parking signs in certain cases.

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

Section 1. Section 1106, act of April 29, 1959 (P. L. 58), known as "The Vehicle Code," amended August 13, 1963 (P. L. 773), is amended to read:

Section 1106. Local Traffic Signs.—Local authorities, in their respective jurisdictions, may cause official signs, in accordance with section 1105 of this act, to be erected and maintained, as may be appropriate, to give notice of legal parking and other local ordinances, rules and regulations. Local parking and other local ordinances, rules and regulations shall not be enforceable against an alleged violator, if, at the time and place of the alleged violation, an official sign, giving notice thereof, is not posted conspicuously by the municipalities making the same, at points where any highway affected thereby joins other highways: Provided, That no official sign shall be required to give notice of the presence of parking meters, the time limit for parking thereat, the days and hours when parking meters shall be operative, and the number of minutes or hours of parking obtained by the deposit of one or more coins, if the legend on each parking meter contains such information: And provided further, That no official sign shall be required to permit the enforcement of special parking regulations during snow emergencies and of special parking regulations in residentially zoned districts if, for the first offense, no penalty is imposed upon a violator of the special parking regulation. No prosecution shall be brought for a second or subsequent viola-