

No. 1984-99

AN ACT

SB 1239

Amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, defining hazardous material; providing for the effect of amendments to Federal regulations; repealing the penalty for violating Federal law when driving a vehicle; providing for the transportation of hazardous materials; providing for enforcement of traffic regulations on private property; and making a repeal.

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

Section 1. Section 102 of Title 75 of the Pennsylvania Consolidated Statutes is amended by adding a definition to read:

§ 102. Definitions.

Subject to additional definitions contained in subsequent provisions of this title which are applicable to specific provisions of this title, the following words and phrases when used in this title shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

* * *

“Hazardous material.” Any explosive, blasting agent, flammable liquid, combustible liquid, flammable solid, flammable or nonflammable compressed gas, corrosive material, poison, poison gas, irritant, oxidizer, organic peroxide, radioactive material, etiologic agent, cryogenic liquid, hazardous waste, hazardous substance or other material which the department by procedure prescribed in Chapter 83 (relating to hazardous materials transportation) declares to be a hazardous material.

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Section 2. Section 3731(e) of Title 75 is amended by adding a paragraph and a subsection is added to read:

§ 3731. Driving under influence of alcohol or controlled substance.

* * *

(e) Penalty.—

* * *

(7.1) In addition to the conditions set forth in paragraph (7) for Accelerated Rehabilitative Disposition of any charge brought under this section, the judge may impose, and the person shall accept, the condition that the person engage in a program of collecting litter from public and private property, especially property which is littered with alcoholic beverage containers. The duration of the person’s participation in a litter collection program shall not exceed the duration of the probationary period imposed on the person under Accelerated Rehabilitative Disposition.

* * *

(h) Work release.—In any case in which a person is sentenced to a period of imprisonment as a result of a conviction for violating any provision of this section, the judicial officer imposing that sentence shall consider assigning

that person to a daytime work release program pursuant to which the person would be required to collect litter from public and private property, especially property which is littered with alcoholic beverage containers.

Section 3. Sections 4522 and 6113 of Title 75 are amended to read:

§ 4522. [Violation of Federal statute or regulation.]

Effect of amendments to Federal regulations.

(a) General rule.—No person shall drive a vehicle on any highway in violation of any provision of a Federal statute or regulation relating to any type of equipment or documents used in the vehicle while engaged in interstate commerce.

(b) Penalty.—Any person violating this section is guilty of a summary offense and shall, upon conviction, be sentenced to pay a fine of \$100.]

If any Federal regulations adopted by the department are amended or modified by the Federal agency, the amendment or modification may also be adopted by the department if the secretary determines that the amendment or modification is in the best interests of this Commonwealth and promulgates the amendments or modifications as provided in the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law, and submits the amendments or modifications to the Independent Regulatory Review Commission and the designated standing committees of the General Assembly for review pursuant to the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

§ 6113. Control of public travel on private property by owner.

(a) General rule.—Nothing in this title shall be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner, and not as a matter of right, from prohibiting such use, or from requiring other or different or additional conditions than those specified in this title, or otherwise regulating such use as may seem best to such owner.

(b) Enforcement.—*The owner of real property which is ten contiguous acres or more in size may request the local authority to enforce the observance of speed limits and traffic-control devices on his property, providing the property has been posted in accordance with departmental regulations.*

Section 4. Title 75 is amended by adding a chapter to read:

CHAPTER 83 HAZARDOUS MATERIALS TRANSPORTATION

Sec.

- 8301. Legislative findings.
- 8302. Powers and duties of department.
- 8303. Correspondence with Federal regulations.
- 8304. Right of entry.
- 8305. Injunctions and other remedies.
- 8306. Penalties.
- 8307. Hazardous Materials Transportation Advisory Committee.
- 8308. Report to the General Assembly.

§ 8301. Legislative findings.

(a) Essential nature.—It is hereby found as a fact that hazardous materials are essential for various industrial, commercial and other purposes, that their transportation is a necessary incident of their use and, therefore, that such transportation is required for the employment and economic prosperity of the people. It is also found as a fact that the transportation of hazardous materials may involve risk of injury to persons and damage to property and that the degree of the risk can and should be kept at a minimum consistent with technical feasibility and economic reasonableness.

(b) Balance of interests.—The purpose of this chapter and the primary standard by which it shall be administered is to so regulate the transportation of hazardous materials and assure compliance with the regulations promulgated pursuant to this chapter that there is established and maintained a reasonable balance between the interests of the people in the safety of themselves and their property, on the one hand, and the interests of the people and their employment and economic prosperity on the other.

§ 8302. Powers and duties of department.

The department shall have the following powers and duties:

(1) Administer the hazardous materials transportation program pursuant to this chapter.

(2) Classify hazardous materials according to the nature and degree of risk involved in their transportation and apply separate regulations to each class.

(3) Adopt regulations pertaining to methods of packing, loading and unloading hazardous materials; to the specifications, marking, inspection, condition and equipment of vehicles transporting such substances; to qualification of drivers and other matters relating to operation of such vehicles; to routing and parking of such vehicles, except that such regulations may not supersede ordinances of local authorities and all other factors which affect the nature or degree of risk involved in transportation of hazardous materials.

(4) Declare any material to be a hazardous material and thereby subject its transportation to this chapter.

(5) Issue permits and specify the terms and conditions thereof, exempting cargo tanks used solely for intrastate transportation and trucks used solely for the transportation of combustible liquids from Federal design specifications. The permits shall be issued upon meeting testing requirements established by department regulation and shall be valid for a period of two years.

(6) Inspect vehicles and investigate all other matters relating to the safe transportation of hazardous materials on any highway in this Commonwealth including the Pennsylvania Turnpike.

(7) Delegate enforcement of all or parts of these regulations to one or more of the several departments and commissions represented on the Hazardous Materials Transportation Advisory Committee who meet training criteria specified by department regulation. Delegation shall be accomplished through cooperative agreements and become effective upon publication in the Pennsylvania Bulletin.

(8) Enter into cooperative agreements with the Federal Government relating to the regulation of the highway transportation of hazardous materials.

§ 8303. Correspondence with Federal regulations.

In the case of any person who is subject to Federal regulations pertaining to the transportation of hazardous materials, the department's regulations shall, and in any other case may, as far as practicable, correspond with such Federal regulations. It is the purpose of this section to avoid, as far as practicable, the imposition of conflicting regulations upon persons who operate vehicles subject to Federal regulations, pertaining to the transportation of hazardous materials. It is also the purpose of this section to empower, but not require, the department to prescribe, for persons not subject to the Federal regulations, regulations identical with or similar to those Federal regulations pertaining to the transportation of hazardous materials.

§ 8304. Right of entry.

Every motor carrier shall allow any department field investigator, member of the Pennsylvania State Police or other person delegated enforcement authority in accordance with section 8302(7) (relating to powers and duties of department) to enter upon and inspect the business premises of the motor carrier, including vehicles and other equipment located thereon, at all reasonable times for the purpose of determining whether the motor carrier is in compliance with this chapter and pertinent regulations, and shall make available to such person for inspection and copying all accounts, books, records, memoranda, correspondence and other documents which may reasonably relate to such determination.

§ 8305. Injunctions and other remedies.

(a) Restraining orders.—The Attorney General, upon request of the department or upon his own motion, may proceed in the name of the Commonwealth, by injunction, mandamus, quo warranto or other appropriate remedy at law or in equity, criminal or civil, to restrain violations of the department's hazardous materials regulations or orders or to enforce obedience thereto.

(b) Long arm provision.—Whenever the Attorney General shall have reason to believe that a person has violated any regulation or order of the department but is outside the jurisdiction of this Commonwealth, the Attorney General may petition the court for an order authorizing the seizure and confiscation of such person's vehicles or hazardous materials wherever and whenever they may be found in this Commonwealth.

§ 8306. Penalties.

(a) Offenses defined.—Any person who violates any provision of this chapter, any rule or regulation of the department, any order of the department or any condition of any permit issued pursuant to this chapter commits a summary offense and, upon conviction, the person shall be subject to a fine of not less than \$50 nor more than \$1,000 for each separate offense, and, in default of the payment of the fine, shall be imprisoned for a period of 90 days.

(b) **Willful violations.**—Any person who willfully violates any provision of this chapter, any rule or regulation of the department, any order of the department or any condition of any permit issued pursuant to this chapter commits a misdemeanor of the third degree and, upon conviction, shall be subject to a fine of not less than \$1,000 nor more than \$25,000 for each separate offense or to imprisonment in the county jail for a period of not more than one year, or both.

(c) **Subsequent willful violations.**—Any person who, after a conviction of a misdemeanor for any violation within two years as provided in this section, willfully violates any provision of this chapter, any rule or regulation of the department, any order of the department or any condition of any permit issued pursuant to this chapter commits a misdemeanor of the second degree and, upon conviction, shall be subject to a fine of not less than \$2,500 nor more than \$50,000 for each separate offense or to imprisonment for a period of not more than two years, or both.

(d) **Continuing violations.**—Each day of continued violation of any provision of this chapter, any rule or regulation of the department, any condition of any permit or order of the department issued pursuant to this chapter shall constitute a separate offense.

(e) **Jurisdiction.**—All summary proceedings under the provisions of this chapter may be brought before any district justice of the county where the offense occurred or in the county where the public is affected, and to that end jurisdiction is hereby conferred upon the district justices, subject to appeal by either party in the manner provided by law for appeals from summary convictions. It shall be the duty of the district attorney of the county to represent the interests of the Commonwealth.

§ 8307. Hazardous Materials Transportation Advisory Committee.

(a) **Membership.**—There shall be a Hazardous Materials Transportation Advisory Committee appointed by the secretary. The committee shall be composed of an authorized representative from the Department of Transportation, who shall chair the committee, the Office of Attorney General, the Department of Health, the Department of Environmental Resources, the Pennsylvania State Police, the Pennsylvania Emergency Management Agency and the Pennsylvania Public Utility Commission and representatives of the hazardous materials industry and the public as follows:

- (1) A manufacturer or shipper.
- (2) A consignee or user.
- (3) A common carrier.
- (4) A private carrier.
- (5) A representative of the fire services.
- (6) A representative of the emergency medical services.
- (7) A representative with highway safety experience.
- (8) A member from the general public.
- (9) Others deemed appropriate by the secretary.

(b) **Duties.**—The committee may review all regulations and advise the department on all matters concerning the highway transportation of hazardous materials.

§ 8308. Report to the General Assembly.

Within one year of the effective date of this chapter, the secretary shall cause to be filed in the offices of the Secretary of the Senate and the Chief Clerk of the House of Representatives a report explaining the department's efforts to:

- (1) Appoint all members of the Hazardous Materials Transportation Advisory Committee representing private interests and the public.
- (2) Conduct terminal inspections and road checks in a uniform manner across this Commonwealth.
- (3) Utilize Federal funds to the fullest extent practicable.
- (4) Coordinate inspections with the United States Office of Motor Carrier Safety.

Section 5. All rules and regulations promulgated by the Hazardous Substance Transportation Board heretofore shall remain in full force and effect until amended or repealed by the Secretary of Transportation.

Section 6. The act of November 9, 1965 (P.L.657, No.323), known as the Hazardous Substances Transportation Act, is repealed.

Section 7. This act shall take effect immediately.

APPROVED—The 30th day of June, A. D. 1984.

DICK THORNBURGH