

No. 1993-84

AN ACT

HB 2091

Amending the act of October 4, 1978 (P.L.876, No.169), entitled "An act establishing the Pennsylvania Crime Commission and providing for its powers and duties," abolishing the act; further providing for the powers and duties of the Pennsylvania Crime Commission; providing for transition; and making an appropriation.

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

Section 1. Sections 1 and 2 of the act of October 4, 1978 (P.L.876, No.169), known as the Pennsylvania Crime Commission Act, are amended to read:

[Section 1. Short title.

This act shall be known and may be cited as the "Pennsylvania Crime Commission Act."

Section 2. Definitions.

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

"Commission." The Pennsylvania Crime Commission.

"Court." The Commonwealth Court.

"Immunity order." An order issued pursuant to this act by the Commonwealth Court directing a witness to testify or produce other information over a claim of privilege against self incrimination.

"Organized crime." The unlawful activity of an association trafficking in illegal goods or services, including but not limited to gambling, prostitution, loan sharking, controlled substances, labor racketeering or other unlawful activities or any continuing criminal conspiracy or other unlawful practice which has as its objective large economic gain through fraudulent or coercive practices or improper governmental influence.

"Public corruption." The unlawful activity of any public official or public employee under color of or in connection with any public office or employment or any candidate for public office of the agent of any candidate for public office under color of or in connection with any public office or employment.]

Section 2. Section 3 of the act, amended April 30, 1986 (P.L.132, No.40) and repealed in part October 5, 1980 (P.L.693, No.142), is amended to read:

Section 3. Creation of commission; membership; compensation; vacancies; removal.

(a) The Pennsylvania Crime Commission shall consist of **[five] six** members to be known as commissioners.

(b) One member of the commission shall be appointed by the Governor, one by the President pro tempore of the Senate, one by the Speaker of the House of Representatives, one by the Minority Leader of the Senate and one by the Minority Leader of the House of Representatives. *The chairperson of the commission shall be the Commissioner of the Pennsylvania State Police.*

(c) Of the original members, the member appointed by the Governor shall serve for an initial term of one year, the two members appointed by the Speaker of the House of Representatives and the Minority Leader of the House of Representatives respectively shall serve for an initial term of two years and the two members appointed by the President pro tempore of the Senate and the Minority Leader of the Senate respectively shall serve for an initial term of three years. Thereafter each appointment provided for by this act shall be for a term of three years and such appointments shall be made in the same manner as the original appointments. Not more than three commissioners shall be members of the same political party.

(d) Commissioners shall receive \$50 a day compensation for their services. Expenses incurred by the executive director or other employees shall be allowed and paid on the presentation of itemized vouchers therefor and approved by the commission. *This subsection shall not apply to the chairperson of the commission.*

(e) All vacancies shall be filled, for the remainder of the unexpired term in the same manner as original appointments. Any commissioner, upon the expiration of his term, shall continue to hold office until his successor has been duly appointed and qualified according to law, but in no event longer than six months after the expiration of the commissioner's appointed term.

(f) Except as authorized pursuant to this subsection, no commissioner may be removed from office during his term. The Governor may, upon a clear and convincing evidence of misfeasance or malfeasance in office or neglect of duty, remove a commissioner prior to the expiration of his term. The Governor shall provide the commissioner so removed with a detailed written statement of the reasons for his removal. A commissioner so removed may petition the Court for reinstatement. The court shall hold an expedited hearing and render a decision within 30 days after said hearing or as soon thereafter as may be practicable. Any decision of the Court adverse to a commissioner so removed shall create a vacancy which shall be filled pursuant to subsection (e). *This subsection shall not apply to the chairperson of the commission.*

(g) This section shall expire June 30, 1994.

Section 3. Section 4 of the act, amended April 30, 1986 (P.L.132, No.40), is amended to read:

Section 4. Powers and duties.

(a) The Pennsylvania Crime Commission shall have the power and its duty shall be:

(1) To inquire into organized crime and activities of persons engaged in or associated with organized crime.

(2) To inquire into public corruption and the activities of persons engaged in and associated with public corruption.

(3) To make a detailed written report of every completed investigation which may include recommendation for legislative or administrative action.

(4) To account to the Governor, the Auditor General and the General Assembly at the end of each fiscal year for all moneys received and disbursed.

[(5) To submit, during April of each calendar year, an annual report on the status of organized crime in the Commonwealth to a joint public hearing of the Judiciary Committee of the Senate and the House of Representatives. In addition the commission shall submit other reports prepared pursuant to this section and to present said reports at public hearings of the committees of the Senate and the House of Representatives having oversight responsibilities or appropriate legislative jurisdiction of the subject matter of said reports.]

(6) Through its chairman, to call upon the department heads of State Government and State agencies for such information and assistance as is needed to carry out the functions of the commission.

(7) To require the attendance and testimony of witnesses and the production of documentary evidence relative to any investigation which the commission may conduct in accordance with the powers given it. Such subpoenas shall be signed by the chairman, the executive director and two commissioners and shall be served by any person authorized to serve subpoenas under the laws of the Commonwealth.

(8) To appoint and fix the compensation of an executive director who shall devote his full time to the general supervision of all investigations and proceedings by the commission.

(9) To appoint and fix the compensation of such other employees as the commission may from time to time find necessary for the proper performance of the functions of the commission. Investigative employees of the commission shall be deemed law enforcement officers.

(10.1) To promulgate and publish rules and regulations, including those regulations controlling or defining the:

(i) Calling of meetings.

(ii) Investigative responsibilities of commission members.

(iii) Written procedures to be utilized by the commission's investigative management staff in planning and supervising investigations and inquiries.

(iv) Dissemination of materials, including dissemination to the Governor and members or committees of the General Assembly.

(v) Appropriate use of commission property, including all vehicles.

(vi) Maintenance of confidentiality of information.

(vii) All other procedures and acts as are necessary for the proper

functioning of the commission.

(11) To perform such other acts as are necessary for the proper functioning of the commission.

(b) This section shall expire June 30, 1994.

Section 4. Section 5 of the act is amended to read:

[Section 5. Limitations on activities by commission members and employees.

(a) A commissioner shall not hold any elective public office.

(b) A commissioner or any employee of the commission shall not engage in any partisan activity, other than voting and making, but not soliciting contributions to candidates for office.]

Section 5. Section 5.1 of the act, added April 30, 1986 (P.L.132, No.40), is amended to read:

[Section 5.1. Weapons.

(a) The commission shall publish and promulgate regulations and procedures for the use or possession of firearms by any commission employee, including:

(1) The type of weapon permitted.

(2) The job title or classification of employee to be permitted to possess or use a firearm.

(3) The specific circumstances in which an employee would be permitted to possess or use a firearm.

(b) No commission employee may use or possess a firearm in the course of his duties unless he has successfully completed the basic firearm training program approved by the Pennsylvania State Police for its own officers. All costs for such training shall be borne by the commission.]

Section 6. Section 6 of the act is amended to read:

[Section 6. Immunity of witnesses.

(a) Immunity orders shall be available under this section in all proceedings before the Pennsylvania Crime Commission.

(b) The commission may request an immunity order from any judge of the Commonwealth Court and said judge shall issue an immunity order when in the judgement of the commission:

(1) the testimony or other information from a witness may be necessary to the public interest, and

(2) a witness has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination.

(c) Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding specified in subsection (a), and any commissioner presiding at such proceeding communicates to the witness an immunity order, that witness may not refuse to testify based on his privilege against self-incrimination.

(d) No testimony or other information compelled under an immunity

order, or any information directly or indirectly derived from such testimony or other information, may be used against a witness in any criminal case, except that such information may be used:

(1) in a prosecution under 18 Pa.C.S. § 4902 (relating to perjury) or under 18 Pa.C.S. § 4903 (relating to false swearing),

(2) in a contempt proceeding for failure to comply with an immunity order, or

(3) as evidence, where otherwise admissible, in any proceeding where the witness is not a criminal defendant.

(e) Any person who shall fail to comply with an immunity order may be adjudged in civil contempt and committed to a county jail by the issuing judge until such time as said person shall purge himself of contempt by complying with the immunity order. Provided however, if the proceeding or the investigation or report involving any proceeding wherein said person refused to comply with an immunity order has been completed, said person may purge himself of contempt by complying with said order before the commission notwithstanding the completion of said investigation or report.

(f) Prior to seeking an immunity order, the commission shall require the executive director to consult with the Attorney General, the district attorney of any affected county, and the United States Attorney of any affected district in order to prevent any interference with any of their investigations. The results of the consultation shall be reported to the commission before any immunity order is sought pursuant to this section. In addition the commission shall give notice to the Attorney General, the United States Attorney of any affected district and any district attorney of any affected county of any request for an immunity order to be submitted to a judge of the Commonwealth Court. Any such officer may appear as a party and request a reasonable delay or denial of the grant of immunity if an immediate grant would jeopardize an investigation or prosecution. The judge may, in a proceeding under this section, delay or deny the request for immunity if he determines, in the exercise of his discretion that an immunity order will jeopardize an actual or pending investigation or prosecution.]

Section 7. Section 7 of the act, amended April 30, 1986 (P.L.132, No.40), is amended to read:

[Section 7. Enforcement of subpoenas.

(a) Upon the failure of any person who is subpoenaed pursuant to section 4(7) to obey the command of the subpoena or to be sworn or affirmed or to testify, application may be made to the Commonwealth Court for the enforcement of such subpoena.

(b) If any person who has been ordered by the Commonwealth Court to comply with a subpoena issued pursuant to section 4(7) fails to obey the command of such order, application may be made to the Commonwealth Court for the attachment of said person who is to be

brought before the court which is authorized to proceed against said person for civil contempt of court.]

Section 8. Sections 8, 9, 10, 12 and 13 of the act are amended to read:
[Section 8. Disclosure of executive session testimony and investigative records.

No testimony taken in executive session, any part thereof, or any summary thereof and no investigative record, any part thereof, or any summary thereof, shall be released or disclosed to any person either orally or in writing by any commissioner or employee of the commission without the authorization of the commission.]

Section 9. Privileged statements and reports.

(a) Any statement or disclosure of information made by a commissioner or an employee of the commission during the course of any [commission] hearing [or official proceeding and any report issued by the commission] before the General Assembly shall be absolutely privileged and such privilege shall be an absolute defense to any action for invasion of privacy, defamation or other civil or criminal action.

(b) *This section shall expire June 30, 1994.*

[Section 10. Disclosure of financial interests.

(a) Each commissioner, as of the date of appointment to the commission and on or before March 15th of each following year, shall file with the Governor, the Secretary of the Senate and the Chief Clerk of the House of Representatives for the preceding calendar year a sworn statement of financial interests. The financial statement shall contain the information required pursuant to subsection (e). Once an economic interest statement has been filed under this act, such statement shall be updated annually by filing a supplemental statement thereto. The financial interests of a spouse or child, under 18 years of age, of a commissioner shall be deemed a financial interest of a commissioner.

(b) The Governor, the Secretary of the Senate and the Chief Clerk of the House of Representatives shall maintain all disclosure statements filed by commissioners as public records which shall be open for public examination and copying, at cost, at all reasonable times. Such disclosure statements shall remain on file for five years from the initial date of filing.

(c) The commission shall promulgate, by regulation, to be published in the Pennsylvania Bulletin, financial disclosure requirements for employees of the commission.

(d) In addition to any other penalties imposed by law for false swearing, neglect or refusal of any commissioner or employee to file a complete and accurate financial statement pursuant to the requirements of this section or the willful filing of an inaccurate statement shall, in the case of commissioners, constitute misfeasance in office, and shall, in the case of employees, constitute grounds for dismissal.

(e) The sworn financial disclosure statement shall contain:

(1) The identity, by name, of all offices and directorships.

(2) An identifying description of all real estate in the Commonwealth in which he or a member of his household has any interest, direct or indirect, including an option to buy, provided a commissioner's primary place of residence shall not be included.

(3) The name of each creditor to whom he or a member of his household owes moneys in excess of \$5,000, the category of the amount owed, and the interest rate, provided further that loans or credit extended between members of the immediate family and any mortgage upon the commissioner's primary place of residence shall not be included.

(4) The name of each business, insurance policy, or trust in which he or a member of his household has a financial interest, and the nature and category of the amount of such interest.

(5) The source, by name, and category of the amounts of any income in excess of \$1,000, including capital gains, whether or not taxable, received by him or a member of his household during the preceding year.

(6) A list of businesses with which a commissioner is associated that do business with or are regulated by the State and a description of the nature of such business or regulation.

(7) Any salary, fee, commission or other income, listed in dollar amount or value, received by a commissioner from any political subdivision of the Commonwealth or any agency of the Commonwealth, other than the commission, including the name of such political subdivision or agency or from any entity which maintains a person required to be registered as a lobbyist under any law requiring such registration.

(f) Where an amount is required to be reported by category the individual shall report whether the amount is less than \$5,000, at least \$5,000 but less than \$10,000, at least \$10,000 but less than \$25,000, or \$25,000 or more. An amount of stock may be reported by number of shares instead of by category of dollar value. No provision of this act shall be interpreted to prevent any person from filing more information or more detailed information than required.

Section 12. Repeals.

Sections 469 and 923, act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," are repealed.

Section 13. Effective date.

This act shall take effect in 60 days.]

Section 9. The Pennsylvania Crime Commission shall not begin any new investigation. It shall also prepare to transfer all ongoing investigations to the Pennsylvania State Police and Federal law enforcement officials by June 30, 1994.

The Commissioner of the Pennsylvania State Police, or a designee, shall

review the records of the Pennsylvania Crime Commission and determine which records should remain with the Pennsylvania State Police and which should be transferred to Federal law enforcement authorities.

Section 10. The Commissioner of the Pennsylvania State Police shall determine which employees of the Pennsylvania Crime Commission shall be transferred to the Bureau of Criminal Investigation of the Pennsylvania State Police by June 30, 1994.

Section 11. By November 30, 1994, the Commissioner of the Pennsylvania State Police shall make a report to the General Assembly on the disposition of employees, property, cases and records of the Pennsylvania Crime Commission.

Section 12. The sum of \$1,191,000 is hereby appropriated to the Pennsylvania Crime Commission for the period January 1, 1994, to June 30, 1994, for the general governmental operations of the Pennsylvania Crime Commission.

Section 13. This act shall take effect as follows:

- (1) Section 12 of this act shall take effect January 1, 1994.
- (2) The amendment of sections 1, 2, 5, 5.1, 6, 7, 8, 10, 12 and 13 of the act shall take effect June 30, 1994.
- (3) The remainder of this act shall take effect immediately.

APPROVED—The 23rd day of December, A.D. 1993.

ROBERT P. CASEY