

## No. 1

## AN ACT

## SB 213

Regulating the practice of massage and the conduct of massage establishments; requiring the licensing of all who practice massage and providing penalties.

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

Section 1. Short Title.—This act may be referred to and cited as “The Massage License Act.”

Section 2. Definitions.—As used in this act:

(1) “Masseur” means any person who shall practice or administer body massage to any other person for a fee, donation, or any other remuneration.

(2) “Body massage” means the application of any or all of the following to the human body by the hands or any other means: touching, stroking, friction, kneading, vibration, percussion, oil rubs, heat, cold, salt glows, hot and cold packs, alcohol rubs, and tub, shower or cabinet baths.

(3) “Massage establishment” means any place where body massage shall be available to any person for a fee, donation, or other remuneration.

(4) “Department” means the Department of State of the Commonwealth of Pennsylvania.

(5) “Board” means the State Board of Masseurs.

Section 3. Exemptions.—This act shall not apply to the following classes of persons:

(1) Persons authorized by the laws of this State to practice medicine, surgery, dentistry, osteopathy, chiropractic or podiatry.

(2) Registered nurses, licensed practical nurses and physical therapists.

(3) Persons holding a drugless practitioners certificate under the laws of this State.

(4) Salesmen demonstrating massage equipment solely for the purpose of effecting a sale of such equipment.

(5) Barbers, beauticians, and manicurists, in so far as they deal with the head, hands, and feet.

Section 4. Registration Requirements.—It shall be unlawful for any person:

(1) To act as a masseur without a valid masseur’s license.

(2) To operate any massage establishment without a valid massage establishment license.

(3) To violate any of the provisions of this act.

Section 5. State Board of Masseurs.—(a) The State Board of Masseurs, consisting of eleven members, as follows: two physicians, one of whom shall be a doctor of osteopathy; a physical therapist; a registered nurse; a

chiropractor; and, six masseurs, of which at least two shall be females.

(b) Three members of the initial board shall be appointed for a term of one year; four for a term of two years; and, four for a term of three years. Thereafter, the term of office for each member shall be three years.

(c) Appointments to the board shall be made by the Governor, by and with the advice and consent of two-thirds of all the members of the Senate, after consultation with the associations and societies appropriate to the professions and disciplines representative of the vacancies to be filled.

(d) The board shall elect annually from its membership a chairman and a secretary. The secretary shall keep a written record of the proceedings of the board.

(e) The board shall meet at least two times each year, and at any time on the call of the chairman or the Secretary of State. A majority of the members present at a meeting shall constitute a quorum.

(f) Each member shall be reimbursed for actual expenses incurred while he is engaged in the performance of his duties.

Section 6. Powers of the Board.—The board shall have the power to make such rules and regulations as shall be necessary to effectuate this act.

Section 7. Licensing Requirements.—(a) All applications for a masseur's license shall be made to the board, which shall issue such licenses upon satisfactory proof:

(1) That the applicant is at least eighteen years of age.

(2) That the applicant is a citizen of the United States of America and has resided in the State of Pennsylvania for at least one year.

(3) That the applicant has never been convicted of any felony or crime of moral turpitude.

(4) That the applicant has a diploma from a recognized school of massage having a curriculum approved by the board, certifying that he has completed six hundred hours of study in the basic subjects of anatomy, physiology, hygiene, corrective exercises, gymnastics, hydrotherapy, technique of massage, and clinical internship and has served an apprenticeship of six months. The board may reduce the required hours of study to not less than four hundred hours and equivalent experience under a qualified masseur.

(5) That the applicant has received a score of seventy per cent or better in a written examination, conducted and prepared by the board, said examination to cover the general subject of body massage. All masseurs shall be re-examined every five years.

(b) Except that clauses (1) through (5) of subsection (a) of this section shall not apply to an applicant who has practiced massage for three years within the State of Pennsylvania or who has been an owner of a massage establishment for one year within the State of Pennsylvania at the time of final passage of this act who shall furnish credentials satisfactory to the board and pass a practical examination within six months after the effective date of this act.

(c) All applications for a massage establishment license shall be made to the board, which shall issue the same upon satisfactory proof of the following requisites:

- (1) That the applicant is twenty-one years of age.
  - (2) The applicant is a citizen of the United States of America and has resided in the State of Pennsylvania for one year, except as provided in subsection (b).
  - (3) The applicant has never been convicted of a felony or a crime of moral turpitude.
  - (4) The applicant has legal or equitable title to an establishment which the board finds suitable for use as a massage establishment.
  - (5) That the floor plan, the equipment and the proposed services are adequate and meet the standards of the board.
- (d) Any person failing to meet the requirements of subsections (a) and (b) of this section, may reapply for a license thirty days after formal denial of the previous application.
- (e) Both the masseur's license and the massage establishment license shall be renewed yearly.

Section 8. Reciprocity.—The board shall issue a license to a person after completion of a six month residence plus having taken a practical examination, without such person meeting all of the requirements of section 7 of this act, if such person has a valid massage license from another state.

Section 9. Licensing Fees.—(a) The application fee for the masseur's license shall be thirty-five dollars (\$35).

(b) The fee for each subsequent application for a masseur's license or renewal of an existing license shall be set by the board at an amount not less than twenty-five dollars (\$25) nor more than fifty dollars (\$50).

(c) The fee for a massage establishment license shall be one hundred dollars (\$100).

(d) The fee for each subsequent application for a massage establishment license or renewal of an existing massage establishment license will be set by the board at an amount not less than twenty-five dollars (\$25) nor more than seventy-five dollars (\$75).

Section 10. Recording and Display of Licenses.—(a) The massage establishment license shall be conspicuously displayed on the premises of the massage establishment.

(b) The masseur's license shall be conspicuously displayed at every massage establishment wherein the masseur practices body massage.

(c) If compliance with this requirement is impracticable, the board may, in its discretion, allow the masseur to carry his masseur's license on his person.

Section 11. Revocation of Certificates.—The board may revoke the masseur's license or massage establishment license issued to any person upon satisfactory proof of any of the following:

(1) That the registrant did not properly meet the licensing requirements of this act.

(2) That the registrant is no longer a citizen of the United States or a resident of the State of Pennsylvania.

(3) That the registrant has been convicted of a felony or a crime of moral turpitude.

(4) That the registrant has diagnosed or treated classified diseases, practiced spinal adjustments, or prescribed medicines.

(5) Registrant is guilty of fraud or other improper actions in the practice of body massage.

(6) That the registrant is addicted to the habitual use of intoxicating liquors, narcotics, or other drugs.

(7) That the registrant has contracted any dangerous or communicable disease.

(8) That the registrant is guilty of willful negligence in the practice of massage or has been guilty of employing, allowing or permitting an unregistered person to perform body massage in his or her establishment.

(9) Said registrant has violated any of the provisions of this act.

Section 12. Provision for Hearing.—(a) No masseur's license or massage establishment license shall be revoked without a public hearing, before the board, should the registrant choose to make timely demand of such a hearing.

(1) The board shall notify the registrant of its intention to revoke his license at least thirty days before formal action or revocation by the board.

(2) Such notification shall be by registered letter and shall set forth the intended action of the board, the charges against the registrant and the procedure for demanding a hearing.

(3) A registrant may demand a hearing at any time prior to actual commencement of the hearing to revoke his license.

(b) Any person who has had an application for a license under this act denied, may, on subsequent application for a license demand a hearing.

(c) All parties to a hearing shall have the right to subpoena and cross-examine witnesses, to retain counsel, and to confront their accusers.

Section 13. Review by Court on Suspension or Revocation of Licenses; Right to Appeal.—(a) The refusal of the board, to issue any license after application properly made and compliance by the applicant with the requirements of this act, shall be subject to review by the Commonwealth Court upon petition for writ of mandamus or other appropriate remedy with the right of appeal to the applicant as in similar cases.

(b) The decision of the board in suspending or revoking any license issued under this act shall be subject to review by the Commonwealth Court.

(c) The ruling or decision of the board shall be final when in favor of the licensee and in dismissal of the complaint filed, if any. If against the licensee or in any way to licensee's injury or prejudice, the licensee may,

at any time prior to the date fixed by the board in its said notice as the date it shall become effective, appeal from such decision to the Commonwealth Court in accordance with the provisions of the "Administrative Agency Law."

Section 14. Licenses After Revocation or Conviction.—After the revocation of any license, no new license shall be issued to the same licensee within a period of at least one year from and after the date of the revocation nor at any time thereafter except in the sole discretion of the board.

Section 15. Oaths; Subpoenas; Process; Witness Fees; Enforcing Attendance.—(a) The board and each of its duly authorized representatives and any special representative appointed by it to hold a hearing in any particular case shall have power to administer production of books and papers. In any hearing, the process issued by the board shall extend to all parts of the Commonwealth and the process shall be served either in like manner as are served writs of subpoena in the court of common pleas or by any person designated by the board for that purpose. The person serving the process shall receive such compensation as may be allowed by the board not to exceed the fee prescribed by law for similar services in the courts of common pleas and the fees shall be paid in the same manner as provided in this act for the fees of witnesses subpoenaed at the instance of the board. All witnesses who shall be subpoenaed and who appear in any proceeding before the board shall receive the same fees and mileage as allowed by law to witnesses in the court of common pleas, which amount shall be paid by the party at whose instance the subpoena was issued or upon whose behalf the witness has been called. When any witness who has not been subpoenaed at the instance of any party to the proceeding shall be subpoenaed at the instance of the board, the fees and mileage of the witness shall be paid from the funds appropriated to the use of the board through the department in the same manner as other expenses of the department are paid.

(b) Where in any proceeding before the board, any witness shall fail or refuse to attend upon subpoena issued by the board or any of its representatives, or appearing, shall refuse to testify or shall refuse to produce any books and papers the production of which is called for by the subpoena, the attendance of any witness and the giving of his testimony and the production of the books and papers required shall be enforced by any court of common pleas of this Commonwealth in like manner as are enforced the attendance and testimony of witnesses before commissioners appointed by any court of the United States or of any other state to examine or take the testimony of witnesses within this Commonwealth.

(c) The Commonwealth Court shall, upon the application of the board, issue commissions or letters rogatory to other states for the taking of evidence for use in any proceeding before the board. The board shall make such application at the instance of any party to the proceeding

before it unless in its opinion the application is made for the purpose of delay. Any party shall be entitled as of right to subpoenas from the board directed to witnesses and for the production of books and papers as the party may desire.

Section 16. Penalties.—Any person who violates this act shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine of one thousand dollars (\$1,000), or undergo sixty days imprisonment, or both.

Section 17. The sum of two thousand five hundred dollars (\$2,500) is hereby appropriated to the Department of State for the purposes of this act.

Section 18. Effective date.—This act shall take effect immediately.

March 3, 1972

To the Honorable, the Senate  
of the Commonwealth of Pennsylvania:

I return herewith, without my approval, Senate Bill No. 213, Printer's No. 1532, entitled, "An Act regulating the practice of massage and the conduct of massage establishments; requiring the licensing of all who practice massage and providing penalties."

This bill, entitled "The Massage License Act," is designed to regulate the business of masseurs and massage establishments by creating a State Board of Masseurs under the Department of State.

Apart from the fact that the occupation relating to "Body Massage" is one which does not appear to warrant licensing by the Commonwealth, this bill is objectionable from the standpoint of consumer protection, administrative feasibility and constitutionality.

Under this bill the proposed State Board of Masseurs would include six masseurs, a majority of the eleven members. Of the remaining five members, there is no representative from the general public. This would insure that the Board is dominated by those whom the act seeks to regulate. At the present moment I am seeking legislation to place public representatives on all professional and occupational boards. It would, therefore, be inappropriate for me to approve legislation which does not provide for representation of consumers.

Further, this legislation would impose an administrative burden upon the Department of State, far in excess of any demonstrable need. For example, there will have to be massage schools established, which will have to be regulated; there will have to be tests administered; there will have to be a board structure, all of which will serve to legitimize a business which may not really require such formal licensing. Additionally, the bill does not provide that the State Board of Masseurs be placed under the jurisdiction of the Commissioner of Professional and Occupational Affairs, nor does it provide making the Commissioner an ex-officio member. This

is a defect which could seriously impair the Department of State's ability to enforce the bill's provisions.

Finally, there are serious questions of constitutionality raised by Senate Bill No. 213. For example, the subject legislation requires the applicant for licensure to be a citizen of the United States and a resident of Pennsylvania for at least one year. The Attorney General has recently ruled that such a requirement for a veterinarian is unconstitutional and it would seem to be so in the case of a masseur as well.

Further, the legislation provides that a revocation of license shall take place without a public hearing unless the registrant makes a timely demand for such a hearing. I believe that this does not comport with due process requirements and that a hearing should be a requirement of the Board.

For these reasons, the bill is not approved.

MILTON J. SHAPP  
Governor

## No. 2

## AN ACT

SB 638

Relating to the practice of hypnotism, providing for licensing of hypnotists, providing regulation and control, in the public interest and welfare, of those practicing hypnotism, and imposing penalties.

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

Section 1. Short Title.—This act shall be known and may be cited as the “Hypnotism Act.”

Section 2. Definitions.—As used in this act, unless the context clearly indicates otherwise, the following words and terms shall be construed as follows:

(1) “Hypnosis” means a condition of trance, in which the suggestibility of a person is enhanced to the extent of the alteration of processes by intensification or inhibition through suggestion.

(2) “Hypnotism” means, by purpose of intent, the induction of hypnosis, and phenomenal suggestion response while under hypnosis.

(3) “Board” means the State Board of Hypnotist Examiners.

(4) “Commissioner” means the Commissioner of Professional and Occupational Affairs in the Department of State.

(5) “Practice of hypnotism” means holding one’s self out to the public by the title “Hypnotist,” or “Basic Hypnotist” offering to render or rendering services in “hypnosis” or “hypnotism” for or without remuneration to individuals, groups, organizations, institutions, agencies, or to the public by hypnotic induction and hypnotic suggestion, and through and under hypnosis and hypnotic suggestion, intensifies or inhibits processes or instills patterns of action for purpose of experiment, instruction, teaching, or for purposes of alleviation and general or specific improvements, and for purposes of hypnosis as an aid to therapy. The practice of hypnotism is divided into: (i) basic hypnotism, (ii) hypnotism.

(6) “License applicant” means a person applying for a license to practice hypnotism or basic hypnotism.

(7) “Basic hypnotist” means a practitioner or trainee, having learned hypnotism through training, and, under the tutelage of a licensed hypnotist, tutor or teacher through private instruction, or through studio, school or training quarters, and having passed the examination given by the State Board of Hypnotist Examiners and having been awarded a license to practice basic hypnotism.

(8) “Hypnotist” means a practitioner who has passed the examination given by the State Board of Hypnotist Examiners and has been awarded a license to practice basic hypnotism, hypnosis as an aid to therapy as hereinafter approved under section 3, clause (8), and hypnotism exhibitions in the Commonwealth of Pennsylvania.



Section 3. Authorization to Practice Hypnotism.—It shall be unlawful for any person to engage in the practice of hypnotism unless he shall first have obtained a license pursuant to this act, except as hereinafter provided:

(1) Persons licensed as physicians, dentists and optometrists in this Commonwealth shall be exempt.

(2) Persons licensed to practice psychology shall be exempt.

(3) Ordained ministers and recognized members of the clergy shall be exempt.

(4) It shall not be construed that this act applies to the simple acts of persuasion or suggestion by one person to another, or to a group.

(5) The influences of salesmen, advertisers, speakers, coaches, and others using verbalisms in simple persuasion techniques are not involved in this act.

(6) Suggestions given through printed or written words shall not apply in this act.

(7) A basic hypnotist under this act shall be authorized to practice basic hypnotism, which does not include hypnosis as an aid to therapy nor the teaching of hypnotism.

(8) No hypnotist shall practice hypnosis as an aid to therapy except under the supervision, and/or prescription of a Pennsylvania licensed physician, dentist and/or optometrist practitioner.

(9) No hypnotist, unless licensed in the Commonwealth of Pennsylvania or registered in the American Guild of Variety Artists shall engage in public exhibitions of hypnotism, as specified in section 10.

Section 4. Board of Hypnotist Examiners.—The State Board of Hypnotist Examiners shall consist of five members to be appointed by the Governor within ninety days of the effective date of this act, shall be residents of the Commonwealth of Pennsylvania for a minimum of three years, citizens of the United States, one a duly licensed physician, one a duly licensed dentist, and three hypnotists having five or more years of experience in the practice of hypnotism and shall administer the provisions of this act with the application of the following provisos:

(1) Appointments and reappointments to the board shall be made at the discretion of the Governor from persons meeting the requirements of this act and any vacancy occurring on the board shall be filled by the Governor by appointment for the unexpired term.

(2) Each board member shall be reimbursed for all proper traveling and other expense in carrying out the provisions of this act.

(3) The board shall hold a meeting as soon as possible after the effective date of this act and shall elect a chairman, vice-chairman, and secretary-treasurer, and shall organize and carry out the provisions of this act. Subsequent meetings of the board shall be deemed necessary and advisable by the chairman, or by a majority of its members. A quorum shall consist of a majority of the members of the board.

Section 5. Duties and Powers of the Board.—Duties and powers of the board shall be as follows:

(1) To hold examinations in Harrisburg, Pittsburgh, Philadelphia, or any place designated by the board, and on such dates as near as possible to the end of a six-month period, with due advance notice given to the applicants who are eligible, and to pass upon the eligibility and registration of candidates prior to examination.

(2) To conduct suitable examinations in written, oral, and demonstration tests, and to adopt and revise rules and requirements when deemed advisable.

(3) To make the necessary adoptions and revisions from time to time, to conform to progressions and improvements.

(4) To deny or issue: (i) hypnotist licenses, (ii) basic hypnotist licenses.

(5) To renew licenses of hypnotists, and to revoke or suspend licenses of hypnotists not conforming to the rules and regulations adopted pursuant to this act.

(6) To have a code of ethical standards to apply to the conduct of the board and to the ethical practice of hypnotism.

(7) To keep a record of those persons classified as license applicant, basic hypnotist, and hypnotist.

(8) To waive examination and grant a license in certain cases deemed exceptional by the board, when the board's ethical standards are met and the necessary qualifications are known, and when the proper fee is paid. The practicing hypnotist who has practiced in the Commonwealth of Pennsylvania for a period of five years or more shall be deemed exceptional.

(9) To expend moneys necessary to carry out the duties of the board, and to be responsible to the commissioner for moneys received.

(10) To consider complaints and conduct hearings concerning violations of the provisions of this act and the rules and regulations pursuant to this act, and to cause the prosecutions of those persons accused of violation.

Section 6. Application for Examinations.—(a) A hypnotist to be eligible for hypnotist or basic hypnotist examination shall, after procuring the necessary application forms, furnish to the board satisfactory proof that he or she is eighteen years of age or more for basic hypnotist, and twenty-one years of age or more for hypnotist, a citizen of the United States and a resident of the Commonwealth of Pennsylvania for one year or more, and must verify the facts given and listed on the application forms by legal affidavit or notarization. Any applicant who knowingly or wilfully makes a false statement of fact shall be subject to prosecution for perjury.

(b) The applicant must be of good moral character, must furnish character references, and must not be addicted to alcohol, narcotics, or other habit-forming drugs, nor a user of hallucinogens.

(c) The applicant for basic hypnotist examination must furnish proof satisfactory to the board that he has completed a twenty-five-week course in basic hypnotism, which shall include fifty hours of instruction and supervision in theory, practice, and techniques of hypnotism, and shall have one hundred hours of actual practice of hypnosis and hypnotic suggestion.

(d) The applicant for hypnotist examination must furnish proof satisfactory to the board that he has completed a fifty-week course in advanced hypnotism; having the basis of basic hypnotism, hypnosis as an aid to therapy, and hypnotism exhibitions, all of which shall include one hundred hours or more of training and instruction in mental and physiological principles and influences, causes and effects, and all the practices of hypnotism heretofore mentioned in section 2, including one thousand hours of the actual practice of hypnotism.

Section 7. Restrictions upon Issuance of Licenses.—A license may be denied to any person who has been:

- (1) Convicted of a felony or any crimes involving physical violence.
- (2) Found lacking in moral character which the board considers detrimental to the welfare of a client, or is found guilty of the unethical practice of hypnotism as detailed by the ethical standards of the board.
- (3) Who has fraudulently misrepresented credentials in his application for license.

Section 8. Qualifications.—An applicant shall be qualified for a license to practice hypnotism or basic hypnotism when he has met the qualification provisions set forth in the following:

- (1) Submitted a notarized application containing the requirements of sections 6 and 7.
- (2) Accompanies his application with a fee of fifty dollars (\$50) or any amount specified by the board, payable to the commissioner.
- (3) Has successfully passed the examination given by the examination board.

Section 9. Licensure Without Examination.—The hypnotist meeting the provisions of section 8 shall be issued a basic hypnotist license without examination upon submission of proof satisfactory to the board that the applicant has practiced hypnotism in the Commonwealth of Pennsylvania for five years or more.

Section 10. Nonresident Hypnotist Performers and Resident of the State Hypnotist Performers.—The resident and nonresident performer or artist licensed by the Commonwealth of Pennsylvania and/or registered by the American Guild of Variety Artists shall be permitted to perform public exhibitions in the State of Pennsylvania.

Section 11. Reexamination.—In case of a failure at any examination, the applicant shall have the privilege of a second examination, after a waiting period for the next examination date. The board shall adopt rules governing the failure to pass two examinations.

Section 12. Revocation of Licenses.—The license of any hypnotist shall be revoked for fraudulently misrepresenting any credential in support of his application for a license. The board may revoke the license of any hypnotist who is found guilty of the following:

(1) The unethical practice of hypnotism as set forth by the code of ethical standards adopted by the board.

(2) Convicted on a charge of felony or any crimes involving physical violence, or on any charge the board may consider as detrimental to the practice of hypnotism.

Section 13. Suspension of Licenses.—The license of any person committed to an institution because of mental incompetency shall automatically be suspended. The board shall suspend or revoke the license of any person whose intellect and judgment has been impaired, or who becomes guilty of grossly unethical practice, or violations of the rules and regulations of the board when satisfactory proof of such conditions has been shown.

Section 14. Hearings.—An applicant who has been refused examination by the board or a person whose license has been suspended or revoked by the board because of complaints or charges preferred by the board, shall, upon request, have a hearing before the board and shall have the right to appear personally and by counsel, and may produce witnesses and evidence in his own defense, and cross-examine witnesses against him.

The board may administer oaths, subpoena and examine witnesses, and present evidence in support of any charge or complaint made against any licensee.

Section 15. Penalties.—After eighteen months from the effective date of this act, it shall be unlawful to practice hypnotism or conduct hypnotism performances in the Commonwealth of Pennsylvania without registration, or license, as defined in this act.

The unlawful practice of hypnotism as defined in this act may be enjoined by the courts on petition of the board or by the commissioners. Violation of any of the provisions of this act shall be deemed a misdemeanor punishable by a fine of five hundred dollars (\$500), or imprisonment for a period of six months, or both.

Section 16. Renewal of Licenses.—Renewal of license shall be biennially for a fee established by the board of not less than forty dollars (\$40).

Section 17. Display of License or Permit and Copy Kept on Person.—The hypnotist's license or permit shall be displayed in a conspicuous location in his place of business and a duplicate thereof shall be kept on his person.

March 24, 1972

To the Honorable, the Senate  
of the Commonwealth of Pennsylvania:

I return herewith, without my approval, Senate Bill No. 638, Printer's No. 1525, entitled "An Act relating to the practice of hypnotism, providing for licensing of hypnotists, providing regulation and control, in the public interest and welfare, of those practicing hypnotism, and imposing penalties."

The decision to withhold my approval of Senate Bill No. 638 has not been made lightly. My staff and I have consulted with hypnotists, psychologists, physicians, psychiatrists, and entertainers, all of whom employ hypnotism in their daily tasks. I have received comments about this bill from the Department of Justice, the Department of Health, the Office of the Budget, and the Bureau of Professional and Occupational Affairs. The unanimous view of all these people was that the bill contains serious defects of conception, language, and structure and should not be approved.

The deficiencies of the bill fall into three groups: substantive, administrative and constitutional.

First, there is a question as to the nature of the bill. It would seem to legitimize the profession of hypnotism. However, hypnotism is not a separate science; it is one of the many techniques used by various practitioners of the healing arts to heal, in the same manner that surgery is not a separate science, but one of the techniques of healing. Accordingly, there is no separate occupation to be licensed. Moreover, section 3 of the bill specifically exempts from licensing those practitioners of the healing arts who use hypnotism. No purpose exists, therefore, for having anyone else licensed to be a hypnotist. If the purpose of the bill was to prevent untrained people from using hypnotism, then it should have limited the practice of hypnosis to doctors, dentists, psychologists and other professionals trained to use hypnosis as one of the techniques of their treatment.

Further, the bill sets no specific educational requirements to become a licensed hypnotist. Indeed, there is no requirement that a licensed hypnotist have any level of education. All that is required is certain prescribed training by a licensed hypnotist. But since physicians and psychologists are exempt from licensing, it is questionable whether training by such persons would be sufficient.

The bill also provides that a licensed hypnotist may practice hypnosis as an aid to therapy only "under the supervision and/or prescription" of a licensed physician, dentist or optometrist. This requirement suggests two problems. First, if a hypnotist is practicing under "prescription" he could be rendering therapy outside the presence of a physician. Second, there is no assurance that a physician, dentist or optometrist would possess the

necessary expertise that would enable him to competently refer a patient to a hypnotist.

Administratively, the bill imposes an unnecessary burden on the Bureau of Professional and Occupational Affairs. This bill would create yet another professional board for the already understaffed bureau to administer. It would necessitate the hiring of additional personnel for clerical and inspection purposes. Funds for this purpose have not been provided in this year's budget nor is the \$33,000.00 the Budget Office says will be needed to implement this bill included in the budget for fiscal 1972-73. Additionally, the board would be controlled by hypnotists. Thus the board would be dominated by those whom the bill seeks to regulate.

Finally, there are questions of constitutionality raised by Senate Bill No. 638. For example, the bill requires that a licensed hypnotist must be a citizen of the United States and a resident of Pennsylvania for at least one year. In a recent ruling, the Attorney General found that such requirements are unconstitutional in the case of licensing veterinarians. It would appear that the ruling would also be applicable in this case as well. Sections 13 and 14 may also be unconstitutional because they do not provide for a due process hearing before a license is suspended or revoked, but only a hearing after suspension or revocation and then only upon request of the licensee.

It is with some regret that I must disapprove this bill. I hope that a new bill, one that meets the objections I have enumerated, can be developed so that the legitimate concerns of the hypnotist and the public interest can be served.

For these reasons, the bill is not approved.

MILTON J. SHAPP  
Governor

No. 3

AN ACT

HB 474

Prohibiting the disbanding of a paid fire force in favor of having such services performed by volunteers.

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

Section 1. No county, city, borough, town or township which has paid employes on its fire force, including but not limited to fire apparatus operators, except by referendum, shall disband such fire force in favor of having such services performed by volunteers.

Section 2. This act shall take effect immediately.

March 30, 1972

To the Honorable, the House of Representatives  
of the Commonwealth of Pennsylvania:

I return herewith, without my approval, House Bill No. 474, Printer's No. 517, entitled "An Act prohibiting the disbanding of a paid fire force in favor of having such services performed by volunteers."

This bill mandates that paid fire fighting companies could be changed to volunteer fire companies only by municipal referendum.

As a result of the 1968 Constitutional Convention, the General Assembly must enact State-wide Home Rule legislation prior to April 23, 1972. The intent of this Home Rule legislation is to provide Pennsylvania's local municipalities the wherewithal to effectively govern their affairs without the undue involvement of the State. House Bill No. 474 runs counter to that intent by legislatively mandating procedures for what is essentially a matter of local government prerogative.

It should be noted that if special legislation of this sort for fire fighting companies were approved, then other groups of local employes would also seek similar protective legislation. It would be difficult to draw the line once such a precedent has been set.

Since I believe that the best interests of local communities will be served by the enactment of Home Rule, it would be inconsistent for me to approve legislation which would involve the State in a direct manner in the functions of local government.

For this reason, the bill is not approved.

MILTON J. SHAPP  
Governor

No. 4

AN ACT

HB 581

Amending the act of August 9, 1955 (P.L.323), entitled "An act relating to counties of the third, fourth, fifth, sixth, seventh and eighth classes; amending, revising, consolidating and changing the laws relating thereto," authorizing the licensing of tour guides and providing penalties.

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

Section 1. Article XIX, act of August 9, 1955 (P.L.323), known as "The County Code," is amended by adding a subdivision to read:

ARTICLE XIX  
SPECIAL POWERS AND DUTIES OF COUNTIES

\* \* \*

(aa) *Tour Guides*

*Section 1999h. Licensing of Tour Guides.—(a) In each county the county commissioners may create a tour guide licensing board.*

*(b) The county tour guide licensing board, in every county in which such a board is created, shall consist of three citizens of such county knowledgeable in the history and geography of such county, to be appointed by and be responsible to the county commissioners.*

*(c) For the purpose of this subdivision the term "tour guide" shall mean any person who directs any group of people on a tour of places of historical or geographical interest within a county and receives compensation for such services.*

*(d) The tour guide licensing board shall establish and administer examinations for persons desiring to be licensed as tour guides within such county. Such examinations shall be based on a knowledge of the history and geography of such county. The board is authorized to grant licenses to those persons successfully completing such examinations.*

*(e) The county commissioners in counties creating such a board are authorized to appropriate the necessary moneys for the proper administration of such board, including the hiring of any necessary personnel.*

*(f) The members of the board shall not receive any compensation, but shall be entitled to any expenses incurred in the performance of their duties.*

*(g) The county commissioners, in counties creating such a board, are authorized to charge a fee, not to exceed ten dollars (\$10), for each application made to take any examination administered by the board.*



*Such fees shall be used by the county towards the administration of such board.*

*(h) After the effective date of this act, in any county in which the county commissioners have created a tour guide licensing board, it shall be unlawful for any person to act as a tour guide, as defined in this subdivision, without first having obtained a license in the prescribed manner.*

*(i) Any person who violates any provision of this subdivision shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine not to exceed fifty dollars (\$50) and costs of prosecution, and in default of the payment thereof shall be imprisoned for a period not to exceed ten (10) days.*

June 15, 1972

To the Honorable, the House of Representatives  
of the Commonwealth of Pennsylvania:

I return herewith, without my approval, House Bill No. 581, Printer's No. 633, entitled "An Act amending the act of August 9, 1955 (P.L.323), entitled 'The County Code,' authorizing the licensing of tour guides and providing penalties."

Because substantive objections to this legislation came to my attention at a time when it was impossible for the General Assembly to recall it for corrective action, I am withholding my approval with the understanding that new legislation, which meets the objections, will presently be introduced.

For this reason, the bill is not approved.

MILTON J. SHAPP  
Governor

(This Veto No. 5 was over-riden by the General Assembly and became Act No. 212 of 1972.)

## No. 5

## AN ACT

## HB 1343

Amending the act of December 22, 1959 (P.L.1978), entitled, as amended, "An act providing for and regulating harness racing with pari-mutuel wagering on the results thereof; creating the State Harness Racing Commission as a departmental administrative commission within the Department of Agriculture and defining its powers and duties; providing for the establishment and operation of harness racing plants subject to local option; imposing taxes on revenues of such plants; disposing of all moneys received by the commission and all moneys collected from the taxes; authorizing penalties; and making appropriations," designating a committee to determine the agricultural research projects to be conducted under the funds appropriated.

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

Section 1. Subsection (e), section 16, act of December 22, 1959 (P.L.1978), entitled, as amended, "An act providing for and regulating harness racing with pari-mutuel wagering on the results thereof; creating the State Harness Racing Commission as a departmental administrative commission within the Department of Agriculture and defining its powers and duties; providing for the establishment and operation of harness racing plants subject to local option; imposing taxes on revenues of such plants; disposing of all moneys received by the commission and all moneys collected from the taxes; authorizing penalties; and making appropriations," amended November 30, 1967 (P.L.643), is amended to read:

Section 16. Disposition and Appropriation of Funds Accruing under the Provisions of this Act.—\* \* \*

(e) In the event there is in the Pennsylvania Fair Fund an excess over the amount required to make payments specified in subsection (d) above, such excess shall be distributed as follows: ten percent of such excess or seventy-five thousand dollars (\$75,000), whichever amount is greater to be used by the Department of Agriculture for marketing and consumer service programs; and fifty percent of such excess or four hundred thousand dollars (\$400,000), whichever amount is greater for agricultural research projects, as determined by **[the Secretary of Agriculture, from the recommendations submitted by a committee appointed by him, such] a committee to include in its membership, [the dean of the college of agriculture at the Pennsylvania State University, and the dean of the school of Veterinary medicine of the University of Pennsylvania,] the Secretary of Agriculture, the chairman and a minority member of the Agriculture Committee of the Senate, the chairman and a minority member of the Agriculture Committee of the House of Representatives, six persons**

*designated by the Pennsylvania State Council of Farm Organizations, the chairman of the State Harness Racing Commission or his designate, one person designated by the Pennsylvania Cannery and Fruit Processors Association, one person designated by the Pennsylvania Association of County Fairs and three persons designated by the Secretary of Agriculture from his staff.*

*There are hereby created subcommittees, the members of which shall consist of the Secretary of Agriculture or his designate, the chairman of the Agriculture Committee of the Senate or his designate, the chairman of the Agriculture Committee of the House of Representatives or his designate, and a member designated by the group representing the producers involved in the research project which shall meet annually in the month of September to evaluate research projects and report their findings and recommendations to the Secretary of Agriculture and the members of the committee.*

In the event the amount of money in the Pennsylvania Fair Fund is less than is required to make payments specified in subsection (d) above, the amount granted to each recipient shall be reduced proportionately.

\* \* \*

June 15, 1972

To the Honorable, the House of Representatives  
of the Commonwealth of Pennsylvania:

I return herewith, without my approval, House Bill No. 1343, Printer's No. 2824, entitled "An Act amending the act of December 22, 1959 (P.L. 1978), entitled, as amended, 'An act providing for and regulating harness racing with pari-mutuel wagering on the results thereof; creating the State Harness Racing Commission as a departmental administrative commission within the Department of Agriculture and defining its powers and duties; providing for the establishment and operation of harness racing plants subject to local option; imposing taxes on revenues of such plants; disposing of all moneys received by the commission and all moneys collected from the taxes; authorizing penalties; and making appropriations,' designating a committee to determine the agricultural research projects to be conducted under the funds appropriated."

This bill designates a committee to determine the agricultural research projects to be funded by the Pennsylvania Fair Fund.

A supplemental report to the Governor's Review of Government Management indicated that the present procedure employed by the Department of Agriculture in designating and funding research projects needs thorough revision. The report states that in some cases funds were provided for projects of marginal benefit to the Commonwealth. Additionally, it suggested that better cost-accounting techniques should be established, so that the Commonwealth will have greater control over the disposition of their research funds.

While recognizing the need for reform, it is my belief that House Bill No. 1343, Printer's No. 2824, in its present form is not an adequate response to the problem. Under House Bill No. 1343 a committee is established to determine the agricultural research projects. I have serious reservations because the membership of this committee would include representatives of the interests which could benefit from the funds the committee is responsible for disbursing. I believe this opens the way for conflict of interest and that instead of correcting the problems connected with the awarding of research grants, this could compound them.

Unfortunately, this objection was brought to my attention at a time when the General Assembly could not recall the bill for corrective action. I would have preferred that the bill be recalled from my desk rather than disapproving it. However, I do not have the luxury of choice.

I want to emphasize that I am aware that change is needed in this area. I am withholding my approval of this bill with the clear understanding that new legislation which will provide genuine reform will be drafted and introduced without delay.

For these reasons, this bill is not approved.

MILTON J. SHAPP  
Governor

## No. 6

## AN ACT

## HB 951

Amending the act of June 1, 1945 (P.L.1242), entitled "An act relating to roads, streets, highways and bridges; amending, revising, consolidating and changing the laws administered by the Secretary of Highways and by the Department of Highways relating thereto," abolishing the Highway Beautification Fund as a separate fund.

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

Section 1. Section 413.1, act of June 1, 1945 (P.L.1242), known as the "State Highway Law," added September 27, 1966 (P.L.94), is amended to read:

Section 413.1. Roadside and Landscape Development; Highway Beautification Fund.—The secretary is hereby authorized to make a part of the establishment, construction, or reconstruction of State highways on the Federal-Aid Highway System, roadside and landscape development and scenic enhancement, including such sanitary and other non-commercial facilities, as may be reasonably necessary to provide for the suitable accommodation of the public, and also including land that will be necessary for the restoration, preservation and enhancement of areas within and adjacent to such highways not to exceed one thousand (1,000) feet from right of way line. Any such roadside landscape and scenic developments may be undertaken as separate projects from highway construction or reconstruction where the secretary deems it proper, and the secretary may acquire property by gift or purchase, or such lesser estate or interest as may be necessary for such purpose not to exceed one thousand (1,000) feet from the right of way line and by eminent domain in base fee not to exceed five hundred (500) feet from right of way line. The secretary may determine the number, location, size, and purpose of such acquisitions, and may employ department personnel or contract for the planning, design, construction, and maintenance in connection therewith. The secretary may promulgate rules and regulations that may be necessary for any such roadside landscape and scenic developments, and any person violating any such rules and regulations posted on or in any such development shall be guilty of a summary offense, and, upon conviction thereof, shall pay a fine of not less than five dollars (\$5.00) nor more than two hundred fifty dollars (\$250.00), and costs of prosecution, together with any amount which may be necessary to reimburse the Department of **[Highways] Transportation** for the expense of repairing or placing any damage to the development resulting from the violation. The secretary may also exercise the powers expressed in this section in such manner and form as to qualify for grants of Federal funds pursuant to the

provisions of existing Federal legislation relating to roadside landscape and scenic developments, and policies of the Federal government established in accordance therewith. **[There is hereby established in the State Treasury a special fund, to be known as the Highway Beautification Fund, into which shall be paid and credited all]** *All* fines and reimbursements for violations under this section, all receipts of grants of Federal funds for costs of roadside and landscape and scenic development aforesaid, and such amounts as may be appropriated from time to time **[by law to such fund]** from the General Fund but in no case exceeding one hundred and ten percent of the amount of Federal funds then available for reimbursement ***shall be paid and credited to the Motor License Fund.*** All costs of roadside and landscape and scenic development pursuant to this act shall be paid from the **[Highway Beautification] Motor License** Fund, and as much moneys as the secretary shall deem necessary therefor are hereby specifically appropriated from the **[Highway Beautification] Motor License** Fund to the Department of **[Highways] Transportation**, provided that no expenditures shall be made from the said fund for any roadside, landscape or scenic development project, the total cost of which exceeds one hundred and ten percent of the Federal funds then available and which the department reasonably expects to receive as reimbursement for the project.

Section 2. This act shall take effect immediately.

July 7, 1972

To the Honorable, the House of Representatives  
of the Commonwealth of Pennsylvania:

I return herewith, without my approval, House Bill No. 951, Printer's No. 1055, entitled "An Act amending the act of June 1, 1945 (P.L.1242), entitled 'State Highway Law,' abolishing the Highway Beautification Fund as a separate fund."

I must withhold my approval from the bill because it abolishes the Highway Beautification Fund which provides for financing of junkyard and outdoor advertising controls.

Without this fund, these programs would be without financing and Federal funds could be lost.

For this reason, the bill is not approved.

MILTON J. SHAPP  
Governor

No. 7

## AN ACT

HB 1072

Amending the act of April 9, 1929 (P.L.177), entitled "An act providing for and reorganizing the conduct of the executive and administrative work of the Commonwealth by the Executive Department thereof and the administrative departments, boards, commissions, and officers thereof, including the boards of trustees of State Normal Schools, or Teachers Colleges; abolishing, creating, reorganizing or authorizing the reorganization of certain administrative departments, boards, and commissions; defining the powers and duties of the Governor and other executive and administrative officers, and of the several administrative departments, boards, commissions, and officers; fixing the salaries of the Governor, Lieutenant Governor, and certain other executive and administrative officers; providing for the appointment of certain administrative officers, and of all deputies and other assistants and employes in certain departments, boards, and commissions; and prescribing the manner in which the number and compensation of the deputies and all other assistants and employes of certain departments, boards and commissions shall be determined," creating a State Board of Auctioneer Examiners as a departmental administrative board in the Department of State and providing for the adoption of rules and regulations by the Department of Public Welfare.

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

Section 1. As much as applies to the Department of State of section 202, act of April 9, 1929 (P.L.177), known as "The Administrative Code of 1929," amended June 22, 1970 (P.L.375), is amended to read:

Section 202. Departmental Administrative Boards, Commissions and Offices.—The following boards, commissions, and offices are hereby placed and made departmental administrative boards, commissions, or offices, as the case may be, in the respective administrative departments mentioned in the preceding section, as follows:

In the Department of State,

- State Employees' Retirement Board,
- Commissioner of Professional and Occupational Affairs,
- State Real Estate Commission,
- State Board of Medical Education and Licensure,
- State Board of Pharmacy,
- State Dental Council and Examining Board,
- State Board of Optometrical Examiners,
- State Board of Osteopathic Examiners,
- State Board of Nurse Examiners,
- State Board of Barber Examiners,
- State Board of Cosmetology,
- State Board of Veterinary Medical Examiners,
- State Board of Chiropractic Examiners,
- State Board of Podiatry Examiners,
- State Board of Examiners of Public Accountants,

State Board of Examiners of Architects,  
 State Registration Board for Professional Engineers,  
 State Board of Funeral Directors,  
 State Board of Examiners of Nursing Home Administrators,  
*State Board of Auctioneer Examiners.*

\* \* \*

All of the foregoing departmental administrative boards and commissions shall be organized or reorganized as provided in this act.

Section 2. The act is amended by adding a section to read:

*Section 476. State Board of Auctioneer Examiners.—There is hereby created the State Board of Auctioneer Examiners consisting of seven members, as follows: the Commissioner of Professional and Occupational Affairs ex officio; four members, who shall be licensed auctioneers, have served as a licensed auctioneer for ten years or more and conduct at least fifty auctions each year; and two lay members having no association with the profession of auctioneering.*

*Two members of the initial board shall be appointed for a one-year term of office; two members of the initial board shall be appointed for a two-year term of office; and two members of the initial board shall be appointed for a three-year term of office. Thereafter, the term of office for each member of the board shall be three years. No member shall serve more than two consecutive full terms except that terms of initial board members of less than three years shall not be considered full term.*

*Appointments to the board shall be made by the Governor, by and with the advice and consent of two-thirds of all the members of the Senate.*

*Three members of the board shall constitute a quorum, and the board shall select from among its members, a chairman, and shall elect a secretary who need not be a member of the board.*

*The members of the board, other than the Commissioner of Professional and Occupational Affairs, shall receive thirty-five dollars (\$35) per diem, when actually engaged in the transaction of official business, and the secretary shall receive such reasonable compensation as shall be determined by the board, with the approval of the Secretary of the Commonwealth.*

*The Governor may remove any examiner for misconduct, incapacity, incompetence, or neglect of duty after the examiner so charged has been served with a written statement of charges and has been given an opportunity to be heard.*

Section 3. The act is amended by adding a section to read:

*Section 2333. Rules and Regulations of the Department.—(a) Definitions. As used in this section, the following terms shall have the meanings ascribed to them in this section, unless the context clearly indicates otherwise:*



(1) "Department" shall mean the Department of Public Welfare of the Commonwealth of Pennsylvania.

(2) "Legislature" shall mean the General Assembly of the Commonwealth of Pennsylvania.

(b) Existing Rules and Regulations. Effective eight weeks after the convening of the Legislature in 1973, all rules and regulations of the department shall be null and void except those rules and regulations which are promulgated by the department under this section.

(c) Public Hearings. All rules and regulations hereinafter proposed by the department shall initially be the subject of notice and public hearings conducted by the department under the act of July 31, 1968 (P.L. 769), known as the "Commonwealth Documents Law," except that the provisions of the Commonwealth Documents Law providing for discretionary powers to waive public notice and hearings shall not apply.

(d) Analysis. All proposals for new rules and regulations which are submitted to the Governor and the Legislature under this section shall be accompanied by a detailed analysis thereof prepared by the department justifying the need for every item involved therein, including a statement as to whether or not the proposed rule or regulation is required by law or regulation of the Federal Government, and an explanation as to how the proposed rule or regulation would change, alter or affect existing rules or regulations. In the event that a rule or regulation is required by Federal law, the analysis of the department shall specify by section the Federal law or regulation which is applicable. Such analysis and proposals shall be provided each member of the Legislature.

(e) Schedule. (1) Before the convening of the Legislature in 1973, the department shall draft proposals for new rules and regulations which shall be submitted to the Governor and accompanied by an analysis as provided in subsection (d) of this section.

(2) The Governor shall transmit the proposals for new rules and regulations prepared by the department to the Legislature on the day it convenes in 1973. Such proposals shall be in bill form and accompanied by a letter of transmittal from the Governor and an analysis by the department.

(3) The proposals for new rules and regulations shall be placed on the calendars of the House and Senate on the day after they convene in 1973, in the same manner as a bill on third reading. Such proposals shall remain on the calendar of the respective Houses for eight weeks, or until action is taken by both Houses, whichever occurs first.

(4) Such proposals shall remain on the calendar of each House and on third reading for three weeks, during which time no action shall be taken by the respective Houses except for hearings, investigations and other studies of the subject matter of such proposals.

(5) Each of the respective Houses shall have the power to amend

*such proposals in any manner whatsoever during the third and fourth week.*

*(6) In the event that there is a conflict in the amendments proposed in one or both Houses, such conflicts shall be resolved by the end of the fifth week. Such conflict may be resolved informally or formally through the established Conference Committee procedures. If a Conference Committee is appointed it shall present its report no later than the end of the sixth week. If the Conference Committee Report is not adopted by both Houses by the end of the seventh week the proposal shall be immediately placed on the third reading calendar with the prior printer's number as if a Conference Committee Report had not been presented.*

*(7) The Legislature shall have until the end of the eighth week to pass finally on such proposals for rules and regulations. If, by that date, both Houses of the Legislature have not acted on any of such proposals or amendments thereto, such proposals shall become effective. Their effective date shall be the end of the eighth week, the same date that the existing rules and regulations shall be null and void as provided in subsection (b) of this section.*

*(8) If the Legislature shall adjourn after receipt of such proposals and before the expiration of the schedule provided herein, such schedule shall continue to run and such proposals shall be effective in the absence of action by the Legislature.*

*(f) Rules and Regulations Proposed After the End of the Eighth Week of 1973. (1) All rules and regulations proposed by the department after the end of the eighth week of 1973 shall not become effective until such proposals have been submitted to the Governor and the Legislature for approval as provided herein.*

*(2) Such proposals shall be submitted to the Legislature by the Governor accompanied with a letter of transmittal and an analysis by the department. They shall be submitted to the Legislature on a day on which the Legislature is in session.*

*(3) On the next legislative day following the submission of such proposals to the Legislature, they shall be placed on the calendar of each House in the same manner as a bill on third reading.*

*(4) After such proposals have been placed on the calendar of each House as provided herein, they shall remain on the calendar on third reading of each House for a period of thirty calendar days, during which time no action shall be taken other than hearings, investigations, and other studies of the subject matter of such proposals.*

*(5) After the time period provided for in clause (4) has expired and during the next fifteen calendar days, the proposals may be amended in either House of the Legislature.*

*(6) After the expiration of the time period provided for in clause (5) and during the next fifteen calendar days, the Legislature shall resolve*

*any conflict in amendments either informally or formally through established Conference Committee procedures. If a Conference Committee is appointed it shall present its report no later than five calendar days. If the Conference Committee Report is not adopted by both Houses within ten calendar days from the time the report is presented the proposal shall be immediately placed on the third reading calendar with the prior printer's number as if a Conference Committee Report had not been presented.*

*(7) After the expiration of the time period provided for in clause (6) and during the next ten calendar days, the Legislature may either approve or disapprove the proposed rules and regulations. If, by that date, both Houses of the Legislature have not acted on any of such proposals or amendments thereto, such proposals shall become effective.*

*(8) If the Legislature shall adjourn after receipt of such proposals and before the expiration of the schedule provided herein, such schedule shall continue to run and such proposals shall be effective in the absence of action by the Legislature.*

*(g) Emergency Rules and Regulations. In the event that the Legislature is not in session, the department may issue emergency rules and regulations which shall have only temporary effect until ratified by the Legislature at its next meeting. Such ratification shall be pursuant to the timetable set forth in subsection (f) hereof. Such emergency rules and regulations shall only be issued after public notice and hearings as provided in subsection (c) and where there is a clear emergency affecting the health, safety and welfare of the Commonwealth of Pennsylvania, as determined by the department with approval of the Governor.*

Section 4. This act shall take effect immediately.

July 7, 1972

To the Honorable, the House of Representatives  
of the Commonwealth of Pennsylvania:

I return herewith, without my approval, House Bill No. 1072, Printer's No. 2918, entitled "An Act amending the act of April 9, 1929 (P.L.177), entitled 'The Administrative Code of 1929,' creating a State Board of Auctioneer Examiners as a departmental administrative board in the Department of State and providing for the adoption of rules and regulations by the Department of Public Welfare."

Originally, House Bill 1072 was drafted to create a Board of Auctioneer Examiners within the Department of State.

Unfortunately, the General Assembly added to the bill a totally unrelated amendment dealing with the Department of Public Welfare. This amendment (aside from its irrelevance to the bill's original intent), raises such grave questions of constitutionality and administrative feasibility that I have no alternative but to disapprove the entire bill.

Although the authors of the amendment intended it as a reform measure, in point of fact it would impair the Department of Public Welfare's ongoing efforts to streamline its operations and secure even greater fiscal and administrative accountability.

The amendments to House Bill 1072 would in effect remove from the Department of Public Welfare, which is an arm of the Executive Branch, its capacity to control and administer the programs which the General Assembly has entrusted to it. Under the amendments, the entire body of regulations governing the Department of Public Welfare would be rendered null and void. New regulations drawn by the department would then be submitted to the General Assembly for its approval, amendment or rejection.

Subsequently, all future regulations would be subject to the same process.

The procedure is objectionable from at least three standpoints.

First, the Constitution of Pennsylvania clearly delineates three branches of government: Executive, Legislative and Judicial. Under the so-called "welfare control" amendment the General Assembly would be abrogating unto itself prerogatives and responsibilities reserved by the Constitution to the Executive Branch. One of the powers of the Executive, under Article IV, Section 15 of the Pennsylvania Constitution is the power of the Governor to approve or disapprove all bills passed by the General Assembly. The amendment to House Bill 1072 would permit the regulations of the Welfare Department, submitted in bill form to the Legislature, to be amended "in any manner whatsoever" before they are adopted by the General Assembly. The amended regulations would become effective without the approval of the Governor. Thus, the Executive, as an equal and coordinate branch of government, would be by-passed.

In addition, Article III, Section 2 of the Pennsylvania Constitution requires all bills introduced in the General Assembly to be referred to a Committee.

The provisions of House Bill 1072 require that bills introduced to create new regulations would automatically appear on the Legislative Calendar without prior referral to Committee. Thus, this section of the bill would appear to violate the Constitution.

Another objectionable aspect of the welfare amendments to House Bill 1072 is the enormous and unreasonable burden it would impose on the Department of Public Welfare.

The initial effort required to provide the analysis of regulations will be overwhelming at a time when the department, in addition to all of its other duties, must devote major efforts to planning for the relief of the Commonwealth's flood victims. The continuing delay and uncertainty created by these cumbersome time-consuming procedures would seriously hamper the department's capacity to meet changing conditions.

A most striking example of the department's need for flexibility can be found in the recent regulation change promulgated during the flood crisis which enabled flood victims to immediately receive free food stamps. If House Bill 1072 had been in effect, this needed assistance would have been so delayed as to be totally ineffective.

Finally, the bill appears to be in conflict with Federal law which requires that there be a "single state agency" for the administration of the public welfare programs within the Commonwealth. The Department of Public Welfare is the "single state agency" in the Commonwealth. The lack of control which the department would have over its programs by virtue of the authority which this bill would vest in the Legislature, could seriously impair the department's ability to function as the "single state agency." If this is the case, then Pennsylvania could be ineligible for receipt of Federal funds, which annually totals more than 600 million dollars.

I am not unsympathetic to the Legislature's desire to reform the administration of public welfare programs in Pennsylvania. This is a goal of my administration, and is a goal we are starting to achieve in a meaningful way. The Department of Public Welfare has itself already effectuated significant and realistic reforms.

I believe that House Bill 1072 is ill-conceived and would only hamper the efforts to bring efficiency, accountability and compassion to the administration of public welfare in Pennsylvania.

For these reasons, the bill is not approved.

MILTON J. SHAPP  
Governor

## No. 8

## AN ACT

## HB 1470

Amending the act of May 5, 1933 (P.L.364), entitled, as amended, "An act relating to corporations; defining and providing for the organization, merger, consolidation, reorganization, winding up and dissolution of certain corporations for profit; conferring certain rights, powers, duties and immunities upon them and their officers and shareholders; prescribing the conditions on which such corporations may exercise their powers; providing for the inclusion of certain existing corporations and associations within the provisions of this act; prescribing the terms and conditions upon which certain foreign corporations may be admitted, or may continue, to do business within the Commonwealth; conferring powers and imposing duties on the courts of common pleas, and certain State departments, commissions, and officers; authorizing certain State departments, boards, commissions, or officers to collect fees for services required to be rendered by this act; imposing penalties; and repealing certain acts and parts of acts relating to corporations and other entities," providing for the division of corporations.

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

Section 1. Clause (1) of section 2 and clause (2) of subsection L of section 515, act of May 5, 1933 (P.L.364), known as the "Business Corporation Law," amended or added July 20, 1968 (P.L.459), are amended to read:

Section 2. Definitions.—The following words or phrases, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section:

(1) "Articles" means the original articles of incorporation, all amendments thereto, articles of merger, consolidation, *division* and domestication, statements relating to shares filed pursuant to sections 602 and 709 of this act and any other statement or certificate permitted or required to be filed by this act, and includes what have heretofore been designated by law as certificates of incorporation or charters but does not include registry statements specified in section 206 of this act. If an amendment or articles of merger *or division* made in the manner permitted by this act restates articles in their entirety, thenceforth the "articles" shall not include any prior documents and the certificate issued by the Department of State shall so state.

\* \* \*

Section 515. Rights of Dissenting Shareholders.—\* \* \*

L. Except as otherwise provided in subsection M of this section or in the articles or in the resolution of the board of directors submitting a proposed plan of action to the shareholders, this section shall not apply (1) to the shares of any class, which, at the record date fixed to determine the shareholders entitled to notice of and to vote at the meeting at which the plan is to be acted on, or on the date of such meeting, if no record date

has been fixed, are either (i) listed on the New York Stock Exchange or the American Stock Exchange, or (ii) held of record by not less than two thousand five hundred shareholders; nor (2) to any of the shares of a corporation which is a party to a plan of merger *or division* if, pursuant to section 902.1 *or section 953* of this act, the plan does not require the approval of the shareholders of such corporation.

\* \* \*

Section 2. The article heading of Article IX of the act is amended and said article is also amended by adding chapter headings and a new chapter and sections to read:

Article IX  
MERGER, [AND] CONSOLIDATION  
*AND DIVISION*

*Chapter A*  
*Merger and Consolidation*

\* \* \*

*Chapter B*  
*Division*

*Section 951. Division Authorized.—(a) Any domestic business corporation may, in the manner provided in this chapter, be divided into two or more domestic business corporations incorporated or to be incorporated under this act, or into one or more such domestic business corporations and one or more foreign business corporations to be incorporated under the laws of another jurisdiction or jurisdictions, or into two or more of such foreign business corporations, if the law or laws of such other jurisdictions authorize such division.*

*(b) Any foreign business corporation may, in the manner provided in this chapter, be divided into one or more domestic business corporations to be incorporated under this act and one or more foreign business corporations incorporated or to be incorporated under the laws of another jurisdiction or jurisdictions, or into two or more of such domestic business corporations, if such foreign business corporation is authorized under the laws of the jurisdiction under which it is incorporated to effect such division.*

*(c) The corporation effecting a division, if it shall survive the division, is hereinafter designated as the surviving corporation. All corporations originally incorporated by a division are hereinafter designated as new corporations. The surviving corporation, if any, and the new corporation or corporations are hereinafter collectively designated as the resulting corporations.*

*Section 952. Proposal and Adoption of Plan of Division.—(a) A plan of division shall be prepared, setting forth:*

*(1) The terms and conditions of the division, including the manner*

*and basis of (i) the reclassification of the shares or other securities of the surviving corporation, if there be one, and if any of the shares or other securities of the surviving corporation are not to be converted solely into shares or other securities or obligations of one or more of the resulting corporations, the amount of shares or other securities or obligations of any other corporation, or cash, which the holders of such shares or other securities are to receive in exchange for such shares or other securities, or upon their conversion, and the surrender of the certificates or instruments evidencing such shares or other securities, which securities or obligations, if any, of any other corporation or cash, may be in addition to or in lieu of shares or other securities or obligations of one or more of the resulting corporations, and (ii) the disposition of the shares and other securities and obligations, if any, of the new corporation or corporations resulting from the division.*

*(2) The mode of carrying the division into effect.*

*(3) A statement that the dividing business corporation will, or will not, survive the division.*

*(4) Any changes desired to be made in the articles of the surviving corporation, if there be one, including a restatement of the articles.*

*(5) The articles of incorporation required by subsection (b) of this section.*

*(6) Such other details and provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance of fractional shares or other securities or obligations of any surviving, new or other corporation.*

*(b) There shall be included in or annexed to the plan of division:*

*(1) Articles of incorporation, which shall contain all of the statements required by this act to be set forth in restated articles, for each of the new domestic business corporations, if any, resulting from the division.*

*(2) Articles of incorporation, certificates of incorporation, or other charter documents for each of the new foreign business corporations, if any, resulting from the division.*

*(c) Except as otherwise provided in this section and in section 953 of this act, the plan of division shall be proposed and adopted, and may be terminated, by a domestic business corporation, in the manner provided for the proposal, adoption and termination of a plan of merger in Chapter A of this Article IX, except section 902.1 of this act, or, if the dividing corporation is a foreign business corporation, in accordance with the laws of the jurisdiction in which it is incorporated.*

*(d) If any shareholder of a business corporation which adopts a plan of division shall object to such plan and shall comply with the provisions of section 515 of this act, such shareholder shall be entitled to the rights and remedies of dissenting shareholders therein provided,*



*if any. If the shareholders of the dividing corporation are entitled to any rights or remedies under section 515, there shall be included in, or enclosed with, the notice of the meeting of shareholders to act on the plan a copy or a summary of the plan and a copy of this subsection and of section 515 of this act.*

*(e) Unless the plan of division provides that the dividing corporation shall survive the division and that all shares and other securities and obligations, if any, of all new corporations resulting from the plan shall be owned solely by the surviving corporation, no plan of division may be made effective:*

*(1) At a time when the dividing corporation is insolvent or when the division would render any of the resulting corporations insolvent.*

*(2) If the net assets of any resulting corporation immediately following the division will be less than:*

*(i) The stated capital of the resulting corporation.*

*(ii) The aggregate preferential amount payable in event of voluntary liquidation to the holders of shares of the resulting corporation having preferential rights to the assets of the corporation in the event of liquidation.*

*(f) No plan of division may be made effective if the effect of the plan is to make a distribution to the holders of any class of shares of the dividing corporation:*

*(1) At a time when all cumulative dividends accrued on all classes of shares of the dividing corporation entitled to preferential dividends prior to dividends on the shares to the holders of which such distribution is to be made shall not have been fully paid.*

*(2) In shares of any other class of the dividing corporation, unless the articles so provide or the plan requires for its adoption the affirmative vote of shareholders of the class in which the distribution is to be made entitled to cast at least a majority of the votes which all shareholders of such class are entitled to cast thereon.*

*(g) If the dividing corporation has outstanding any shares of any preferred or special class, the holders of the outstanding shares of such class shall be entitled to vote as a class on such plan regardless of any limitations stated in the articles on the voting rights of such class if the plan of division:*

*(1) Provides that the dividing corporation will not survive the division;*

*(2) Amends the articles of the surviving corporation in a manner which would entitle the holders of such preferred or special stock to a class vote thereon under either the articles or section 804 of this act; or*

*(3) Reduces the aggregate stated capital of the surviving corporation.*

*(h) Unless otherwise provided by an indenture or other contract by which the dividing corporation is bound, a plan of division shall not*

*require the approval of the holders of any debt securities or other obligations of the dividing corporation or of any representative of such holders if the transfer of assets effected by the division, if effected by means of a sale, lease or exchange, and any related distribution of assets, would not require the approval of such holders or representatives thereof.*

*(i) If any provision of the articles or by-laws of a dividing domestic business corporation adopted before the effective date of this chapter shall require for the adoption of a plan of merger or consolidation or a plan involving the sale, lease or exchange of all or substantially all of the property and assets of the corporation a specific number or percentage of votes of directors or shareholders or other special procedures, the plan of division shall not be adopted by such directors, or (if adoption by the shareholders is otherwise required by this chapter) by such shareholders, without such number or percentage of votes or compliance with such other special procedures.*

*Section 953. Division without Shareholder Approval.—Unless otherwise required by its articles or by section 952 of this act, a plan of division which does not alter the state of incorporation of a business corporation nor any provision of its articles (except that such a plan may change the corporate name) shall not require the approval of the shareholders of such corporation if:*

*(1) The dividing corporation has only one class of shares outstanding and the shares and other securities, if any, of each corporation resulting from the plan are distributed pro rata to the shareholders of the dividing corporation,*

*(2) The dividing corporation survives the division, and all the shares and other securities and obligations, if any, of all new corporations resulting from the plan are owned solely by the surviving corporation, or*

*(3) The transfers of assets effected by the division, if effected by means of a sale, lease or exchange, would not require the approval of shareholders under section 311 of this act.*

*Section 954. Articles of Division.—Upon the adoption of a plan of division by the corporation desiring to divide, as provided in this chapter, articles of division shall be executed under the seal of the corporation by two duly authorized officers thereof, and shall set forth:*

*(1) The name and the location of the registered office, including street and number, if any, of the dividing domestic corporation, or, in the case of a dividing foreign corporation, the name of such corporation and its domiciliary jurisdiction, together with either: (i) if a qualified foreign business corporation, the address, including street and number, if any, of its registered office in this Commonwealth; or (ii) if a foreign business corporation other than a qualified foreign business*

corporation, the address, including street and number, if any, of its principal office under the laws of such jurisdiction.

(2) The statute under which the dividing corporation was incorporated and the date of incorporation.

(3) A statement that the dividing corporation will, or will not, survive the division.

(4) The name and the address, including street and number, if any, of the registered office of each new domestic business corporation or qualified foreign business corporation resulting from the division.

(5) If the plan is to be effective on a specified date, the hour, if any, and the month, day and year of such effective date.

(6) The manner in which the plan was adopted by the corporation.

(7) The plan of division.

Section 955. *Filing of Articles of Division.*—(a) The articles of division shall be delivered to the Department of State, which shall upon filing the articles, issue to each new domestic business corporation a certificate of incorporation. No certificate from any department evidencing the payment of taxes and charges shall be required. At the same time there shall be delivered to the Department of State with respect to each new foreign business corporation and each new domestic business corporation resulting from the division an original and two duplicate copies, which may be conformed, of the registry statement specified in section 206 of this act.

(b) The excise tax imposed by the act of July 25, 1953 (P.L.564), entitled "An act to provide revenue for State purposes by imposing an excise tax on the capital stock, stated capital or capital of domestic corporations, banks and trust companies, and certain partnerships; providing for the computation, payment, assessment, settlement and resettlement of the tax, and reviews and appeals therefrom; conferring powers and imposing duties on certain persons, corporations and certain partnerships, State officers, boards and departments; requiring certain reports; creating a lien for unpaid tax; imposing penalties; and repealing certain acts relating to corporations and certain partnerships," shall be computed separately with respect to each resulting domestic business corporation after giving effect to the credit, if any, against such tax allocated to each such resulting corporation by or pursuant to subsection (c) of section 957 of this act.

Section 956. *Effective Date of Divisions.*—Upon the filing of articles of division in the Department of State, or upon the effective date specified in the plan of division, whichever is later, the division shall become effective. The certificate of incorporation of a new domestic business corporation shall have the effect provided in section 207 of this act. The division of a domestic business corporation into one or more foreign business corporations or the division of a foreign business corporation shall be effective according to the laws of the jurisdictions where such foreign corporations are or are to be incorporated, but not

*until articles of division have been adopted and filed, as provided in this chapter.*

*Section 957. Effect of Division.—(a) Upon the division becoming effective the dividing corporation shall be subdivided into the distinct and independent resulting corporations named in the plan of division and, if the dividing corporation is not to survive the division, the existence of the dividing corporation shall cease. The resulting corporations, if they are domestic corporations, shall not thereby acquire authority to engage in any business or exercise any right which a corporation may not be incorporated under this act to engage in or exercise. Any resulting foreign business corporation which is stated in the articles of division to be a qualified foreign business corporation shall be a qualified foreign business corporation under this act and the articles of division shall be deemed to be the application for a certificate of authority and the certificate of authority issued thereon of such corporation.*

*(b) All the property, real, personal, and mixed, and franchises of the dividing corporation, and all debts due on whatever account to it, including subscriptions for shares and other choses in action belonging to it, shall be taken and deemed without further act or deed to be transferred to and vested in the resulting corporations in such a manner and basis and with such effect as is specified in the plan of division, or per capita among the resulting corporations, as tenants in common, if no such specification is made in the plan. The resulting corporations shall each thenceforth be responsible as separate and distinct corporations only for such liabilities and obligations as each corporation may undertake or incur in its own name, but shall be liable inter se for the debts and liabilities of the dividing corporation in the manner and on the basis specified in the plan of division. No liens upon the property of the dividing corporation shall be impaired by the division. One or more, but less than all, of the resulting corporations shall be free of the liabilities and obligations of the dividing corporation to the extent, if any, specified in the plan, if no fraud of corporate creditors, or of minority shareholders or shareholders without voting rights or violation of law shall be effected thereby and if all applicable provisions of Article 6 of the Uniform Commercial Code (relating to bulk transfers) and all other applicable provisions of law are complied with. Otherwise, the liability of the dividing corporation, or of its shareholders, directors, or officers, shall not be affected by the division, nor shall the rights of creditors thereof or of any person dealing with such corporation be impaired by such division, and, except as otherwise provided in this section any claim existing or action or proceeding pending by or against such corporation may be prosecuted to judgment as if such division had not taken place, or the resulting corporations may be proceeded against or substituted in its*

*place as joint and several obligors on such liability, regardless of any provision of the plan of division apportioning the debts and liabilities of the dividing corporation.*

*(c) Any taxes, penalties and public accounts of the Commonwealth, claimed against the dividing corporation, but not settled, assessed or determined prior to such division, shall be settled, assessed or determined against any of the resulting corporations and, together with interest thereon, shall be a lien against the franchises and property, both real and personal, of all such corporations. The Department of Revenue may, upon the application of the dividing corporation, release one or more, but less than all, of the resulting corporations from liability for all taxes, penalties and public accounts of the dividing corporation due the Commonwealth or any other taxing authority for periods prior to the effective date of the division, if the Department of Revenue is satisfied that the public revenues will be adequately secured. Unless a different allocation is made in the plan, the total credit to which the dividing corporation was entitled under the act of July 25, 1953 (P.L.564), entitled "An act to provide revenue for State purposes by imposing an excise tax on the capital stock, stated capital or capital of domestic corporations, banks and trust companies, and certain partnerships; providing for the computation, payment, assessment, settlement and resettlement of the tax, and reviews and appeals therefrom; conferring powers and imposing duties on certain persons, corporations and certain partnerships, State officers, boards and departments; requiring certain reports; creating a lien for unpaid tax; imposing penalties; and repealing certain acts relating to corporations and certain partnerships," shall be apportioned among the resulting corporations in proportion to the amounts of their respective stated capital, as defined in said act, immediately following the division.*

*(d) The articles of incorporation of the surviving corporation, if there be one, shall be deemed to be amended to the extent, if any, that changes in its articles are stated in the plan of division.*

*(e) The statements which are set forth in the plan of division with respect to each new domestic corporation and which are required or permitted to be set forth in restated articles of incorporation of corporations incorporated under this act, shall be deemed to be the articles of incorporation of each such new corporation.*

*(f) Unless otherwise provided in the plan, the directors and officers of the dividing corporation shall be the initial directors and officers of each of the resulting corporations.*

*(g) The earned surplus of the dividing corporation shall be carried forward to and allocated among the resulting corporations in the manner specified in the plan of division, or in proportion to the amounts of the respective net assets of the resulting corporations immediately following the division, if no such specification is made in*

*the plan. The aggregate earned surplus of the resulting corporations immediately following the division shall not exceed the earned surplus of the dividing corporation immediately prior to the division, reduced by any distributions to shareholders out of earned surplus and transfers of earned surplus to stated capital or capital surplus made in connection with the division.*

*(h) If any of the resulting corporations is a foreign business corporation other than a qualified foreign business corporation, the articles of division shall constitute a designation of the Secretary of the Commonwealth and his successor in office as the true and lawful attorney of such corporation upon whom may be served all lawful process in any action or proceeding against it for enforcement against it of any obligation of the dividing corporation for which it may be liable or any obligation arising from the division proceedings, or any action or proceeding to determine or enforce the rights of any shareholder under the provisions of subsection (d) of section 952 of this act, and an agreement that the service of process upon the Secretary of the Commonwealth shall be of the same legal force and validity as if served on such corporation and that the authority for such service of process shall continue in force as long as any of the aforesaid obligations and rights remain outstanding in this Commonwealth.*

Section 3. This act shall take effect immediately and shall be retroactive to March 31, 1972.

July 10, 1972

To the Honorable, the House of Representatives  
of the Commonwealth of Pennsylvania:

I return herewith, without my approval, House Bill No. 1470, Printer's No. 3090, entitled "An Act amending the act of May 5, 1933 (P.L.364), entitled, as amended, 'Business Corporation Law,' providing for the division of corporations."

This bill would amend the "Business Corporation Law" by providing similar treatment in the case of corporate division as it presently provided in the case of merger and consolidation.

The bill would permit attributing a pro-rata portion of the Domestic Excise Tax to the division created pursuant to the reorganization.

The bill would have an affect on several taxes. A division pursuant to this legislation would escape the realty transfer tax. In addition transfers of certain tangible property would not be subject to the sales and use tax.

A corporation could reduce its Corporate Net Income tax by spinning off a division located in Pennsylvania. The corporation could reduce the three apportionment factors by creating separate corporation of division presently doing business in the Commonwealth. The Franchise and Capital Stock tax could also be reduced in the same manner.

While the revenue loss is not calculable with scientific accuracy at this

time, it is certain that the revenue loss would and could be substantial in all areas.

For these reasons, the bill is not approved.

MILTON J. SHAPP  
Governor

## No. 9

## AN ACT

## HB 1526

Regulating the practice of veterinary medicine and imposing penalties.

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

Section 1. Short Title.—This act shall be known and may be cited as the “Veterinary Medicine Practice Act.”

Section 2. Legislative Intent and Purpose.—It is hereby declared that the practice of veterinary medicine is a privilege which is granted by legislative authority in the interest of the public health, safety and welfare and to protect the public from being misled by incompetent, unscrupulous and unauthorized persons and from unprofessional or illegal practices by persons licensed to practice veterinary medicine. This act is enacted in the interest of society, health, safety and welfare of Pennsylvanians.

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

(1) “Board” means the Pennsylvania State Board of Veterinary Medicine Examiners.

(2) “Rule” means any regulation, standard or statement of policy adopted by the board to implement, interpret or clarify the law which it enforces and administers and which governs its duties, functions, organization and procedures.

(3) “Hearing” means any proceeding initiated before the board in which the legal rights, duties, privileges or immunities of a specific party or parties are determined.

(4) “Complainant” means the board or any other person who initiates a proceeding.

(5) “Respondent” means any person against whom a proceeding is initiated.

(6) “License” means any permit, approval or certificate issued by the board.

(7) “Temporary permit” means temporary permission to practice veterinary medicine issued pursuant to section 10.

(8) “Veterinary college” means any veterinary school, legally organized, whose course of study in the art and science of veterinary medicine shall have been approved by the board and placed on its published list of approved schools.

(9) “Licensed doctor of veterinary medicine” means a person qualified by educational training and experience in the science and techniques of veterinary medicine and who is currently licensed by the board to practice veterinary medicine.

(10) “Veterinary medicine” means a person engaged in the practice



of veterinary medicine within the meaning of this act who diagnoses, prognoses, treats, administers, prescribes, operates or manipulates or applies any apparatus or appliance for any disease, pain, deformity, defect, injury, wound or physical condition of any animal or for the prevention or to test the presence of any disease or who holds himself or herself out as being legally authorized to do so.

(11) "Practice of veterinary medicine" includes, but is not limited to, the practice by any person who (i) diagnoses, prescribes, or administers a drug, medicine, biological product, appliance, application, or treatment of whatever nature, for the prevention, cure or relief of a wound, fracture or bodily injury or disease of animals, (ii) performs a surgical operation, including cosmetic surgery, upon any animal, (iii) performs any manual procedure upon an animal for the diagnosis or treatment of sterility or infertility of animals, (iv) represents himself as engaged in the practice of veterinary medicine, (v) offers, undertakes, or holds himself out as being able to diagnose, treat, operate, vaccinate, or prescribe for any animal disease, pain, injury, deformity, or physical condition or (vi) uses any words, letters, or titles in such connection or under such circumstances as to induce the belief that the person using them is engaged in the practice of veterinary medicine and such use shall be prima facie evidence of the intention to represent himself as engaged in the practice of veterinary medicine and the responsible supervision for words of similar purport is the control, direction and regulation by a licensed doctor of veterinary medicine of the duties which he delegates to his unlicensed personnel.

(12) "Unprofessional or unethical conduct" means any conduct of a character in violation of the currently published Principle of Veterinary Medical Ethics as published by the American Veterinary Medical Association.

Section 4. Pennsylvania State Board of Veterinary Medicine Examiners.—The State Board of Veterinary Medicine Examiners, hereinafter called the board, shall be created, appointed and organized in accordance with the provisions of "The Administrative Code of 1929."

Section 5. Board Duties, Rights, Privileges and Powers.—The board may:

(1) Adopt reasonable rules and regulations governing the practice of veterinary medicine as are necessary to enable it to carry out and make effective the purpose and intent of this statutory law.

(2) Adopt rules and regulations of professional conduct appropriate to establish and maintain a high standard of integrity, skills and practice in the profession of veterinary medicine. In prescribing such rules of professional conduct the board shall be guided by the Principles of Veterinary Medical Ethics adopted by the American Veterinary Medical Association and the Pennsylvania State Veterinary Medical Association.

(3) Have its rules printed, which shall be distributed to all licensed doctors of veterinary medicine.

(4) Administer and enforce the law and rules and regulations regulating the practice of veterinary medicine.

(5) Hold at least two regular meetings each year at a place on and such dates as the board may select for the purpose of conducting examinations of applicants for license to practice veterinary medicine.

(6) Pass upon the qualifications of applicants for a license to practice veterinary medicine.

(7) Prescribe the subject, character, manner, time and place of holding examinations and the filing of applications for examinations and to conduct examinations.

(8) Issue temporary permits for licenses to duly qualified applicants which shall be signed by the chairman and attested by the secretary under its adopted seal.

(9) Provide for, regulate and require all persons licensed in accordance with the provisions of this act to register their license biennially, to require as a condition precedent to such biennial registration the payment of the biennial registration fee as provided herein, to issue biennial registration certificates to such persons and to suspend or revoke the registration of such persons who fail, refuse or neglect to register same or pay such fees.

(10) Conduct investigations and hearings upon complaints calling for discipline of a licensee.

(11) Have issued summons and subpoenas for any witnesses or subpoenas duces tecum in connection with any matter within the jurisdiction of the board, which shall be signed by either the chairman or the secretary of the board.

(12) Adopt such forms as it may deem necessary.

Section 6. Board to Keep Records.—The board shall keep records of its proceedings especially with relation to the issuance, denial, registration, suspension and revocation of license to practice veterinary medicine. All licenses issued by the board shall be numbered and recorded by the secretary and a file kept for that purpose and such file or record shall be open to public inspection. In all actions or proceedings in any court a transcript of any record or any part thereof, which is certified to be a true copy by the secretary, shall be entitled to admission in evidence.

Section 7. Certain Information of Board Confidential.—Information received by the board through inspections and investigations shall be confidential and shall not be disclosed except in a proceeding involving the question of licensure.

Section 8. Board May Approve Schools and Colleges of Veterinary Medicine.—The board may approve schools and colleges of veterinary medicine which maintain standards of training and reputability sufficient to admit their graduates to the examinations given by the board.

Section 9. Applicants for License to Practice Veterinary Medicine; Qualifications.—(a) Any person wishing to practice veterinary medicine in

this State shall obtain a license from the board and maintain registration. Unless such person shall have obtained such a license it shall be unlawful for him to practice veterinary medicine as defined herein and if he shall so practice he shall be deemed to have violated the provisions of this act.

(b) The board may admit to examination any applicant who submits satisfactory evidence that he:

(1) Is eighteen years of age or over or has had his age disabilities removed by judicial decree.

(2) Is a citizen of the United States or, if he is not a citizen, (i) has filed declaration of intent to become a citizen and, (ii) subscribes to and will uphold the principles incorporated in the Constitution of the United States and the Commonwealth of Pennsylvania.

(3) Is of good moral character.

Section 10. Applicants for Temporary Permits; Condition; Fee.—The board may issue, without examination, a temporary permit to practice veterinary medicine to an applicant for admission to the examination provided such applicant meets all conditions and requirements relating to the qualification of applicants for a license to practice veterinary medicine and provided further any person applying for a temporary permit shall associate himself with a licensed doctor of veterinary medicine and his work shall be limited to the practice of the licensed doctor of veterinary medicine and he shall not participate in any practice or operation of a branch office, clinic, or allied establishment. The permit, when granted, shall bear the name and address of a licensed doctor of veterinary medicine. The applicant must present himself for examination at the next scheduled examination of the board. There shall be a fee of at least fifty dollars (\$50) for the permit, twenty-five dollars (\$25) of which shall be applied towards the examination fee, but shall be forfeited if the applicant fails to present himself at the next scheduled examination, and the permit shall terminate and the applicant is disqualified to practice veterinary medicine. No more than two temporary permits may be issued to any one applicant. Such temporary permit shall expire on the day following the announcement of the grades of the first examination given after such temporary permit is issued. No temporary permit shall be issued to any applicant if he has previously failed the examination.

Section 11. Additional Duties of Board of Examiners.—(a) It shall further be the responsibility of the board to provide for and to regulate the licensure and biennial registration of animal technicians and the board shall have authority to establish reasonable fees for licensure and registration as hereinafter provided in this act.

(b) An animal technician is any person employed within the field of veterinary medicine within the meaning of this act who for compensation or personal profit is employed by, or under the supervision of, a veterinarian, to perform such duties as are required in the physical care of animals and in carrying out of medical orders prescribed by a licensed

veterinarian requiring an understanding of animal science but not requiring the professional services of a licensed veterinarian.

Section 12. Application for Examination; Time for Filing Form.—Any person desiring to take the examination for a license to practice veterinary medicine shall make application at least thirty days before the examination on a form provided by the board. The application shall be accompanied by such evidence as is required to show the eligibility of the applicant including proof of graduation from an approved school of veterinary medicine. All applications shall be in accordance with the rules of the board and shall be signed and sworn to by the applicant.

Section 13. Fees.—(a) Each person applying for a license to practice veterinary medicine shall pay such fee as is currently stated by the board. The fee shall be paid upon the filing of the application.

(b) By November 1 of every second year beginning with the year when this act becomes effective, the board by regulation shall fix fees to be charged under this act for the ensuing two years in accordance with the Commonwealth Documents Law. The board shall fix fees in such a manner that in the aggregate they will be sufficient to make the board self-sustaining as to all of its salaries, wages and expenses for the ensuing two years.

Section 14. Fees Not to Be Returned.—Fees shall not be returned under any circumstances regardless of whether the applicant is accepted for examination, fails the examination, withdraws his application, or is issued or denied a license: Provided, however, That if an applicant fails to take the examination he may take same at a later time without having to pay another examining fee.

Section 15. Notice of Examination.—The board shall give notice of the time and place of all examinations in such manner as the board may deem expedient.

Section 16. Examination of Applicants.—(a) The examination of applicants for license to practice veterinary medicine shall be conducted according to the methods deemed by the board to be the most practical and expeditious to test the applicant's ability and qualifications.

(b) The minimum passing grade shall be established by the board.

(c) Each applicant shall be designated by a number instead of by name so that his identity shall not be disclosed to members of the board until after the examination papers are graded.

(d) All examination papers shall be filed with the secretary of the board who shall make a record of the grade of each applicant on each subject and said grade shall be a part of the examination papers which shall be preserved for two years.

Section 17. License to Be Displayed.—Each person to whom a license is issued shall keep such license conspicuously displayed in his principal office, place of business, or place of employment and shall, whenever required, exhibit said license to any member or authorized representative

of the board. Duplicate licenses for additional offices or branch offices may be obtained from the board for a fee established by the board.

Section 18. Annual Educational Requirements; Exceptions.—Each license holder under this act shall be required to attend eight hours of educational programs in the twenty-four months preceding each renewal date. Certification of such attendance shall be in accordance with provisions of the board.

Section 19. Restoration of License Suspended for Failure to Register.—Any person whose license has been suspended for failure to make biennial registration over a period not exceeding five years may have same reinstated on compliance with the following:

(1) Presentation to the board of satisfactory evidence of having completed an approved educational program in the year immediately preceding the application for reinstatement provided such was required of other licensees.

(2) Payment of all fees that would have been paid if he had maintained his license in good standing plus a special reinstatement fee as determined by the board.

Section 20. Reissue of Suspended or Revoked License.—(a) The board, by an affirmative vote of three at any time after suspension or revocation of a license for good and sufficient cause, may reissue a license to the person affected conferring upon him all the rights and privileges pertaining to the practice of veterinary medicine.

(b) Any person to whom such license may be reissued shall pay therefor the same fee as upon the issuance of the original license.

Section 21. Grounds for Disciplinary Proceedings.—The board, pursuant to the procedure prescribed herein, shall have the power to deny, suspend or revoke any license or to otherwise discipline an applicant or licensee who is found guilty by the board of one or more of the following:

(1) Wilful or repeated violations of any provisions of this act or any of the rules and regulations of the board.

(2) Fraud or deceit in the procuring or attempting to procure a license to practice veterinary medicine or presenting to the board dishonest or fraudulent evidence of qualifications. Fraud or deception in the process of examination for the purpose of securing a license.

(3) The wilful failure to display a license.

(4) Fraud, deception, misrepresentation, dishonest or illegal practices in or connected with the practice of veterinary medicine.

(5) Wilfully making any misrepresentation in the inspection of food for human consumption.

(6) Fraudulently issuing or using any health certificate, inspection certificate, vaccination certificate, test chart or other blank forms used in the practice of veterinary medicine to prevent the dissemination of

animal disease. Transportation of diseased animals or the sale of inedible products of animal origin for human consumption.

(7) Fraud or dishonesty in applying, treating or reporting on any diagnostic or other biological test.

(8) Failure to keep the equipment and premises of the business establishment in a clean and sanitary condition.

(9) Refusing to permit the board, or duly authorized representatives of the board, to inspect the business premises of the licensee during regular business hours.

(10) Circulating untrue, fraudulent, misleading or deceptive advertising.

(11) Gross malpractice.

(12) Unprofessional or unethical conduct or engaging in practices in connection with the practice of veterinary medicine which are in violation of the standards of professional conduct as defined herein or prescribed by the rules of the board.

(13) Revocation by another state of a license to practice veterinary medicine in that state in which case the record of such revocation shall be conclusive evidence.

(14) Conviction of a violation of The Drug, Device and Cosmetic Act in which case a record of conviction shall be conclusive evidence.

(15) Conviction of a felony in the courts of this State or any other state, territory or country which, if committed in this State, would be deemed a felony and in the best interest of the public health and the general safety and welfare of the public.

A record of conviction in a court of competent jurisdiction shall be sufficient evidence for disciplinary action to be taken as may be deemed proper by the board. For the purposes of this act a conviction shall be deemed to be a conviction which has been upheld by the highest appellate court having jurisdiction or a conviction on which the time for filing an appeal has passed, and a record of conviction upon charges which involve the unlawful practice of veterinary medicine and based upon such record of conviction without any other testimony the board may take temporary disciplinary action even though an appeal for review by a higher court may be pending.

(16) Permitting or allowing another to use his license for the purpose of treating or offering to treat sick, injured or afflicted animals.

(17) Engaging in the practice of veterinary medicine under a false or assumed name or the impersonation of another practitioner of a like, similar or different name.

(18) Maintaining a professional or business connection with any other person who continues to violate any of the provisions of this act or rules of the board after ten days' notice in writing by the board.

(19) Addiction to the habitual use of intoxicating liquors, narcotics or stimulations to such an extent as to incapacitate him from the performance of his professional obligations and duties.

(20) Professional incompetence.

(21) The wilful making of any false statement as to material matter in any oath or affidavit which is required by this act.

Section 22. Hearing Guaranteed.—The board shall not deny, suspend, revoke, refuse to renew, limit or condition a license, right, authority or privilege without first giving the person possessing, enjoying or applying for same, an opportunity to be heard unless otherwise provided.

Section 23. Hearing on Suspensions and Revocations of Licenses and Registrations; Appeals.—(a) Before the license of any licensee or a registration is suspended or revoked by the board, a written copy of the complaint shall be furnished to the licensee or registrant against whom the same is directed and an opportunity be afforded him or her to be heard before the board personally and by counsel. At least ten days' written notice of the time and place of such hearing shall be given the licensee or registrant by registered mail addressed to the post office address shown on the annual registration or other record or information in the possession of the board. Any person aggrieved by the action of the board in suspending or revoking a license or registration, or by any other action of the board, which is alleged to be improper, unreasonable or unlawful may appeal from such action of the board in writing to the Commonwealth Court.

(b) Appeals from suspension and revocation of licenses and registrations shall be taken within thirty days after such suspension or revocation of which immediate notice shall be given the licensee or registrant by registered mail addressed as above provided. In the cases of appeals from other actions of the board the appeal may be taken at any time by the person aggrieved by such action. No such appeal shall act as a supersedeas except on special allowance of the court before which the appeal is pending.

(c) Appeals shall be taken by serving upon the board written notice of such appeal together with reasons for such appeal. Such service shall be made either by filing the said notice of appeal in the office of the board, or in the event that a hearing has been had, by delivering the same to the person before whom the hearing in the case was had.

(d) Within thirty days after the service of such notice of appeal the board shall file with the Prothonotary of the Commonwealth Court a transcript of the records of the proceedings, if any, in its office, duly certified over the seal of the board which record shall include all papers on file with the board affecting or relating to the inquiry or investigation, if any, conducted by the board and all evidence taken in the hearing, if any, including the stenographic notes of testimony. Notice of the filing of the said transcript with the term and number to which filed shall be forthwith given by the board to the licensee or registrant and as well to the party or parties, if any, upon whose complaint the proceedings before the board were instituted. The cost of the transcript, at twenty-five cents

(25¢) per folio and one dollar (\$1) for certification, shall be entered as part of the record cost in the cost to be paid as the court may direct. In all proceedings upon such appeal the Department of Justice shall appear for and represent the Commonwealth.

(e) The court, upon application by the board or the appellant, shall fix a time and place for hearing at which time, or at any adjournment thereof, the appeal shall be heard by the court by whom the proceedings before the board, if any, its findings and ruling shall be given similar weight, force and effect as are accorded to the findings and report or referee selected or appointed under the provisions of the act of May 14, 1874 (P.L.166), entitled, "An act to provide for the submission of civil cases by agreement of the parties to a referee learned in the law," and its supplements. After hearing the court may sustain, modify or reverse the action of the board as in its judgment the facts shall warrant.

(f) Either party may appeal from the decision of the Commonwealth Court to the Superior Court but not later than thirty days after the entry of the decree by said court. Such appeal shall be taken and prosecuted in the same manner and with like effect as provided by law in other cases of appeal to the Superior Court, and the records certified to the Superior Court shall contain all that was before the Commonwealth Court. The decree of the Superior Court shall be final and conclusive.

Section 24. Disciplinary Action Authorized; Revocation; Suspension; Denial of License; Probation, Etc.—The board shall have authority to enter an order to discipline any person who, after proper hearing, has been found guilty by the board of a violation, of one or more provisions of this act or any rule or regulation of the board. The board, based upon the evidence and its finding of fact, may enter its final order which may include one of the following provisions:

(1) Suspend or limit the right to practice veterinary medicine in the State for a period not to exceed two years.

(2) Revoke the license to practice veterinary medicine. Following revocation of such license the licensee may be relicensed at the discretion of the board with or without examination.

(3) Suspend the imposition of judgment and penalties.

(4) Impose judgment and penalties but suspend enforcement thereof and place the licensee or applicant for license on probation.

(5) Refuse to issue or renew a license.

(6) Withhold any license, either permanently or for a period of time, when the same has not been delivered.

(7) Take such other action in relation to disciplining as the board in its discretion may deem proper.

Section 25. Procedure After Order.—Immediately upon the entry of the final order by the board a copy thereof shall be delivered to the respondent and his counsel, if any, either personally or by registered or certified mail.



Section 26. Rehearing.—The board shall have a discretion to grant a rehearing if applied for within thirty days. For good cause the time may be extended.

Section 27. Judicial Review of Orders from Board.—Judicial review of orders of the board may be had by writ of certiorari or as otherwise provided by law.

Section 28. Enforcement Duties and Powers.—The enforcement of the laws and rules regulating the practice of veterinary medicine is primarily vested in the board with the following powers and duties:

(1) To employ investigators and clerical assistants or any other necessary personnel.

(2) To inspect all animal hospitals or veterinary establishments to determine sanitary conditions, physical equipment and methods of operation.

(3) To inspect the licenses.

(4) Conduct investigations of alleged violations.

Section 29. Penalties.—Any person who violates any of the provisions of this act or the rules of the board adopted pursuant hereto shall, upon conviction, be sentenced to pay a fine not exceeding five hundred dollars (\$500) or to imprisonment not exceeding six months, or both. The violations set forth herein whereby the board can discipline the holder of a license issued under this act, are specifically made a misdemeanor and shall be prosecuted and upon conviction shall be punished according to this section.

Section 30. Penalty for Filing Diploma of Another or Forged Diploma.—Any person filing or attempting to file, as his own, the diploma of another, or a forged or fictitious or fraudulently obtained diploma or certificate, upon conviction shall be subject to such fine and imprisonment as provided by the statutes of this State for the crime of forgery.

Section 31. Injunctions When Authorized.—In addition to the penalties herein provided, the board may institute legal proceedings to enjoin the violation of the provisions of this law or rules of the board in the Commonwealth Court and the court may grant a temporary or permanent injunction restraining the violation thereof.

Section 32. Exemptions and Exceptions.—This act shall not apply to:

(1) Students in schools or colleges of veterinary medicine in the performance of duties or actions assigned by their instructors or when working under the immediate supervision of a licensee.

(2) Any lawfully qualified doctor of veterinary medicine residing in some other state or country, or when meeting in consultation with a licensed doctor of veterinary medicine of this State.

(3) Any doctor of veterinary medicine in the employ of a State agency or the United States Government while actually engaged in the performance of his official duties: Provided, however, That this exemption shall not apply to such person when he is not engaged in carrying out his

official duties or is not working at the installations for which his services were engaged.

(4) Any person or his regular employe administering to the ills or injuries of his own animals.

(5) State agencies, accredited schools, institutions, foundations, business corporations or associations, physicians licensed to practice medicine and surgery in all its branches, graduate doctors of veterinary medicine or persons under the direct supervision thereof, which or who conduct experiments, and scientific research on animals in the development of pharmaceuticals, biologicals, serums, or methods of treatment or techniques for the diagnosis or treatment of human ailments or when engaged in the study and development of methods and techniques directly or indirectly applicable to the problems and practice of veterinary medicine.

(6) Any nurse, laboratory technician, intern or other employe of a licensed doctor of veterinary medicine when administering medication or rendering auxiliary or supporting assistance under the responsible supervision of such licensed practitioner.

Section 33. Associated Employment of Unlicensed Personnel by Licensed Doctors of Veterinary Medicine.—A licensed doctor of veterinary medicine may employ or be associated with a person who has obtained a temporary permit provided the services of such person will be limited to the practice of the licensed doctor of veterinary medicine.

Section 34. Abandonment of Animals by Owner; Procedure for Handling.—(a) Any animal placed in the custody of a licensed doctor of veterinary medicine for treatment, boarding, or other care which shall be abandoned by its owner or his agent for a period of more than ten days after written notice by registered mail is given to the owner or his agent at his last known address, may be turned over to the custody of the nearest Humane Society or dog pound in the area for disposal as such custodian may deem proper.

(b) The giving of notice to the owner, or the agent of the owner, of such animal by the licensed doctor of veterinary medicine as provided in subsection (a), shall relieve the doctor of veterinary medicine, and any custodian to whom such animal may be given of any further liability for disposal. It is further provided that such procedure by the licensed doctor of veterinary medicine shall not constitute grounds for disciplinary procedure under this act.

(c) For the purpose of this section, the term “abandonment” means to forsake entirely or to neglect or refuse to provide or perform the legal obligations for the care and support of an animal by its owner or his agent. Such abandonment shall constitute relinquishment of all rights and claims by the owner to such animal.

Section 35. Transitory Provisions.—(a) Every license, certificate, permit or order of the board in force on the effective date of this act, and

which was issued under any law herein repealed, is valid until its expiration date, if any, unless earlier terminated, revoked or suspended.

(b) Any person holding a license to practice veterinary medicine in this State which is valid on the effective date of this act shall be deemed to be licensed to practice veterinary medicine under this act and shall be subject to all the provisions thereof.

(c) All rules adopted by the board and in effect immediately prior to the effective date of this act, which are not in direct conflict with any provision herewith, shall remain in full force and effect unless and until repealed, modified or amended by the board.

(d) All persons who were members of the board immediately prior to the effective date of this act shall serve as members of the board until the expiration of the term to which each member was appointed.

(e) This act shall not impair or affect any act done, offense committed, or right accruing, accrued, or acquired for liability, penalty, forfeiture or punishment incurred prior to the time this act takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted as fully and to the same extent as if this act had not been passed.

Section 36. Repeals.—The act of April 27, 1945 (P.L.321), known as “The Veterinary Law,” is repealed.

October 20, 1972

To the Honorable, the House of Representatives  
of the Commonwealth of Pennsylvania:

I return herewith, with my objections, House Bill No. 1526, Printer’s No. 2663, entitled “An Act regulating the practice of veterinary medicine and imposing penalties.”

The bill has the commendable purpose of revising and updating the rules governing the practice of veterinary medicine. However, the bill as passed contains a number of provisions which are objectionable from a governmental administrative or constitutional standpoint.

This legislation contains a citizenship requirement which the Department of Justice advises me is clearly unconstitutional. In addition, the bill would allow an appeal from a decision of the State Board of Veterinary Medicine Examiners to the Commonwealth Court, then to the Superior Court as a matter of right and then to the Supreme Court on a discretionary basis. This is contrary to the normal procedures provided in the Appellate Court Jurisdiction Act and would add another step and unnecessarily complicate the administration of justice. In addition, other sections of this bill raise serious questions concerning the administration of the provisions of the bill as passed. These objections were communicated to the Legislature in staff memoranda submitted in February and March of this year.

As I believe that the bill has much merit, I will work with all concerned in an effort to overcome my objections to this piece of legislation.

However, as passed, I cannot approve this piece of legislation.  
For these reasons, the bill is not approved.

MILTON J. SHAPP  
Governor

No. 10

AN ACT

HB 2097

Amending the act of December 11, 1967 (P.L.707), entitled "An act providing for and regulating thoroughbred horse racing with pari-mutuel wagering on the results thereof, creating the State Horse Racing Commission as an independent administrative commission and defining its powers and duties; providing for the establishment and operation of thoroughbred horse racing plants; imposing taxes on revenues of such plants; disposing of all moneys received by the commission and all moneys collected from the taxes; authorizing penalties; and making appropriations," further providing for disposition of pari-mutuel pools; providing for awards for Pennsylvania-bred horses, their owners and their Pennsylvania sires' owners; establishing a fund and an advisory committee; recognizing certain records as official and providing for payments for services rendered in connection therewith.

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

Section 1. Clause (3) of subsection (b) of section 2 and section 17, act of December 11, 1967 (P.L.707), entitled "An act providing for and regulating thoroughbred horse racing with pari-mutuel wagering on the results thereof, creating the State Horse Racing Commission as an independent administrative commission and defining its powers and duties; providing for the establishment and operation of thoroughbred horse racing plants; imposing taxes on revenues of such plants; disposing of all moneys received by the commission and all moneys collected from the taxes; authorizing penalties; and making appropriations," are amended to read:

Section 2. General Powers of State Horse Racing Commission.—\* \* \*

(b) Without limiting the generality of the foregoing, and in addition to its other powers:

\* \* \*

(3) The rules of the commission shall also provide that all winning pari-mutuel tickets must be presented for payment before April first of the year following the year of their purchase and failure to present any such ticket within the prescribed period of time shall constitute a waiver of the right to participate in the award or dividend. After April first of the year following, all licensees will forward to the **[State Treasurer] Department of Revenue** all funds so held for such uncashed tickets *for credit to the State Horse Racing Fund*.

Section 17. Disposition of Pari-mutuel Pools.—Every corporation authorized under this act to conduct pari-mutuel betting at a thoroughbred horse race meeting on races run thereat shall distribute all sums deposited in any pari-mutuel pool to the holders of winning tickets therein, provided such tickets be presented for payment before April first of the year following the year of their purchase, less fifteen percent of the

total deposits plus the breaks and as to thoroughbred horse race meetings held within school districts of the first class, less seventeen percent of the total deposits plus the breaks. At the close of each racing day, the permit holder out of the amount retained on said day by said permit holder, shall pay, through the Department of Revenue into the State Treasury for credit to the State Horse Racing Fund, a tax of five percent of the amount wagered each day, which tax is hereby imposed and as to thoroughbred horse race meetings held within school districts of the first class the permit holder shall pay the school district in which the thoroughbred horse race meeting is held a tax of two percent of the amount wagered each day, which tax is hereby imposed for general school purposes.

In addition, each permit holder shall be allowed to retain the odd cents of all redistribution to be made on all mutuel contributions exceeding a sum equal to the next lowest multiple of ten, subject to a tax of fifty percent of the total sum of such odd cents, which tax is hereby imposed and shall be paid by the permit holder at the close of each racing day to the Department of Revenue for credit to the State Horse Racing Fund.

*During the fiscal year 1972-1973, the money paid into the State Horse Racing Fund from uncashed pari-mutuel tickets plus twenty percent of the fifty percent breakage tax is hereby appropriated to the Pennsylvania-bred Race Fund. During the fiscal year 1973-1974, the money paid into the State Horse Racing Fund from uncashed pari-mutuel tickets plus forty percent of the fifty percent breakage tax is hereby appropriated to the fund. During the fiscal year 1974-1975, the money paid into the State Horse Racing Fund from uncashed pari-mutuel tickets plus sixty percent of the fifty percent breakage tax is hereby appropriated to the fund. During the fiscal year 1975-1976, the money paid into the State Horse Racing Fund from uncashed pari-mutuel tickets plus eighty percent of the fifty percent breakage tax is hereby appropriated to the fund. During the fiscal year 1976-1977, and each year thereafter all of the money paid into the State Horse Racing Fund from uncashed pari-mutuel tickets and the fifty percent breakage tax is hereby appropriated to the Pennsylvania-bred Race Fund.*

Section 2. The act is amended by adding a section to read:

**Section 17.1. Pennsylvania-bred Race Fund.**—(a) *There is hereby created the Pennsylvania-bred Race Fund which shall consist of the money appropriated under the provisions of section 17 and which shall be administered by the commission.*

(b) *The commission shall, by rule or regulation, provide for awards from the fund as follows:*

(1) *To every breeder of Pennsylvania-bred horse which runs first, second, third, fourth or fifth in any open race, that is, a race open to horses regardless of where bred;*

(2) *To the owner of every Pennsylvania-bred horse which runs first,*

*second, third, fourth or fifth in any such open race; and*

*(3) To the owner of the Pennsylvania sire of any Pennsylvania-bred horse which runs first, second, third, fourth or fifth in any such open race.*

*Breeder awards shall not exceed ten times the value of owner or owners of sire awards. The amount of every such award shall be predicated on the amount in the fund, such amounts to be fixed for the succeeding six months twice each year.*

*(c) On each racing day, every permit holder shall card a race in which Pennsylvania-breds are preferred entrants but such races shall be filled as the handicapper finds necessary to fill each such race from non-Pennsylvania-bred entrants.*

*(d) The Pennsylvania-bred Race Fund advisory committee, under jurisdiction of the State Horse Racing Commission, is hereby established and shall be a part of the Pennsylvania State Horse Racing Commission. The committee shall consist of five members to be appointed by the commission by June 1 of each year. The committee shall consist of two members of the Pennsylvania Horse Breeder's Association, recommended by it; two members from permit holders recommended by them; and one member of the commission designated by it. If any member other than the commission member has not been recommended by June 1 of each year, the commission with the approval of the Governor shall make an appointment for the organization failing to so recommend a member of the committee. The committee shall assist and advise the commission in administering the Pennsylvania-bred Race Program and the Pennsylvania-bred Race Fund. The members of the committee shall receive no compensation for their services as members.*

*(e) The Pennsylvania Horse Breeder's Association as the responsible body for the registration and records of Pennsylvania-breds, shall advise the commission when called upon, shall determine the qualifications for Pennsylvania-bred horses and Pennsylvania sires, and its registration and record facts are hereby declared as official Pennsylvania records. The commission shall on an annual basis compensate in a reasonable manner, from moneys in the Pennsylvania-bred Race Fund, the Pennsylvania Horse Breeder's Association for the services it renders in its capacity as advisor to the commission.*

Section 3. This act shall take effect July 1, 1972.

November 16, 1972

To the Honorable, the House of Representatives  
of the Commonwealth of Pennsylvania:

I return herewith, with my objections, House Bill No. 2097, Printer's No.

2862, entitled "An Act amending the act of December 11, 1967 (P.L.707), entitled 'An act providing for and regulating thoroughbred horse racing with pari-mutuel wagering on the results thereof, creating the State Horse Racing Commission as an independent administrative commission and defining its powers and duties; providing for the establishment and operation of thoroughbred horse racing plants; imposing taxes on revenues of such plants; disposing of all moneys received by the commission and all moneys collected from the taxes; authorizing penalties; and making appropriations,' further providing for disposition of pari-mutuel pools; providing for awards for Pennsylvania-bred horses, their owners and their Pennsylvania sires' owners; establishing a fund and an advisory committee; recognizing certain records as official and providing for payments for services rendered in connection therewith."

While this bill embodies a concept which is in many respects commendable, upon examination I find that it is unacceptable from at least three standpoints.

First, this bill establishes a Pennsylvania-bred Race Fund which would grant a cash prize to every breeder or owner of a Pennsylvania-bred horse and to every owner of any Pennsylvania sire of any Pennsylvania-bred horse which runs first, second, third, fourth or fifth in any open race, i.e. a race open to horses regardless where bred. The bill contains no provision which would limit the granting of such awards to races held in the Commonwealth. Thus awards would be required to be granted to owners and breeders of horses which race at non-Pennsylvania tracks. I believe this to be unfair to the taxpayers of the Commonwealth. I see no reason to award horse breeders and owners for the success of their horses outside of Pennsylvania.

Secondly, section 2 of this bill provides that "on each racing day, every permit holder shall card a race in which Pennsylvania-breds are preferred entrants but such races shall be filled as the handicapper finds necessary to fill each such race from non-Pennsylvania-bred entrants." I believe such a requirement could be deleterious to horse racing tracks throughout the Commonwealth. At this time, the number of Pennsylvania-bred horses is small and there would usually not be enough high-quality Pennsylvania-bred horses to fill the race. This could result in lowered standards for horses, a resulting loss of confidence in horse racing by the wagering public, and loss of revenue to the Commonwealth.

Finally, the bill would transfer to the Pennsylvania-bred Race Fund certain revenues from the State Horse Racing Fund, which now go to the General Fund. The Budget Office estimates that within five years this fund will total \$1,800,000. Such a significant loss of General Fund revenues is, in my opinion, untenable particularly when considered in relation to the small number of breeders and owners who will benefit by the cash awards.

It should be noted that the State Horse Racing Commission is presently



studying the feasibility of establishing a Breeder's Award Program in the Commonwealth. Perhaps as a result of that study an equitable and efficient method can be found that will be beneficial not only to breeders and owners but to the economy of Pennsylvania as well.

For these reasons, the bill is not approved.

MILTON J. SHAPP

Governor

## No. 11

## AN ACT

HB 800

Amending the act of June 24, 1939 (P.L.872), entitled "An act to consolidate, amend and revise the penal laws of the Commonwealth," further providing for the crime of abortion and abortion causing death of a pregnant person.

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

Section 1. Section 718, act of June 24, 1939 (P.L.872), known as "The Penal Code," is amended to read:

Section 718. Abortion.—(a) *Declaration of policy. The Commonwealth of Pennsylvania hereby reaffirms its immemorial recognition that all human life is inviolable regardless of its age or form, whether possessed by the aged, the physically or mentally ill, the handicapped, or the unborn in the womb; that the eroding of the recognition of the personhood and right to life of any of these will inevitably endanger the enjoyment of the right to life of all of them; and that the Commonwealth continues to have the high duty to use the force of law for the protection of all human life.*

(b) *Whoever, with intent to [procure the miscarriage] do so, terminates the pregnancy of any woman [, unlawfully administers to her any poison, drug or substance, or unlawfully uses any instrument, or other means, with the like intent, is guilty of] otherwise than by a justified medical termination or by a live birth, commits a felony, and upon conviction thereof, shall be sentenced to pay a fine not exceeding three thousand dollars (\$3,000), or undergo imprisonment [by separate or solitary confinement at labor] not exceeding five (5) years, or both, except that if such terminating of the pregnancy results in the death of the pregnant person, the penalty, upon conviction, shall be a fine not exceeding six thousand dollars (\$6,000), or imprisonment not exceeding ten (10) years, or both.*

(c) *As used in this section:*

(1) *"Justified medical termination" means the intentional ending of the pregnancy of a woman by a licensed physician using accepted medical procedures in a fully accredited hospital upon written certification by all of the members of a special hospital board that continuation of the pregnancy, in their opinion, with reasonable medical certainty, will result in the death of the woman.*

(2) *"Pregnancy" and "pregnant" means the condition of there being a developing, fertilized ovum, or a developing embryo or fetus in the woman's body.*

(3) *"Special hospital board" means a committee of three (3) licensed physicians who are members of the staff of the hospital where the proposed termination would be performed if certified and who meet*

*regularly or on call for the purpose of determining the question of medical justification in each individual case, and which maintains a written record, signed by each member, of the proceedings and deliberations of such board.*

Section 2. Nothing herein shall require a hospital to admit any patient under the provisions of this act for the purposes of performing an abortion, nor shall any hospital be required to appoint a special hospital board as defined in this act. A person who is a member of or associated with the staff of a hospital or any employe of a hospital in which a justified medical termination has been authorized and who shall state in writing an objection to such termination on moral or religious grounds shall not be required to participate in the medical procedures which will result in the termination of a pregnancy and the refusal of any such person to participate shall not form the basis for any disciplinary or other recriminatory action against such person.

Section 3. Section 719 of the act is repealed.

November 30, 1972

To the Honorable, the House of Representatives  
of the Commonwealth of Pennsylvania:

I return herewith, without my approval, House Bill No. 800, Printer's No. 3561, entitled "An Act amending the act of June 24, 1939 (P.L.872), entitled 'An act to consolidate, amend and revise the penal laws of the Commonwealth,' further providing for the crime of abortion and abortion causing death of a pregnant person."

Two years ago, when I was running for Governor, I said that "we need a sound, clear, unequivocal law in Pennsylvania to insure the preservation and protection of all life."

House Bill 800 is not sound. It is unsound.

It is clear, but it is so restrictive that it is unenforceable.

Yes, it is unequivocal, but it is so unequivocal that it is totally unfair.

In that same statement, I said that I would appoint an Abortion Law Commission and that "I would be guided by what would come out of this commission's report and the Legislature."

I appointed that Commission.

On the very day that the Commission issued its report, a bill came out of Legislative Committee which completely overlooked its recommendations.

Last week, the General Assembly passed House Bill 800.

This bill does not provide for cases of rape or incest, and I say again that there is no man in Pennsylvania who will stand by idly and permit his wife, daughter, sister or even mother to be a victim of such a situation.

It does not provide for cases of grave danger to the physical or mental health of the woman.

In fact, House Bill 800 does not attack, in any way, one of the most tragic

issues of our time, the problem of unwanted, abandoned and uncared for children.

Even the eight member minority of my Abortion Law Commission, which basically advanced an anti-abortion viewpoint, made twelve full pages of social recommendations to deal with this problem on an enlightened basis. But some members of the General Assembly, in their rush to enact House Bill 800, and only House Bill 800, chose to see this problem in such narrow and restrictive terms that all of these enlightened reforms were cast aside or ignored.

I am concerned about the unborn.

But I am also concerned about the women of our Commonwealth.

In my opinion, House Bill 800 does not strike a fair and rational balance between the two.

Yesterday, one of the members of my Abortion Law Commission sent a letter to the Harrisburg Patriot. In that letter she said: "As a Roman Catholic mother of two and neutral on the subject of abortion, I was asked to serve on the Pennsylvania Abortion Law Commission. My neutrality however, changed as I was exposed to the majority feeling of the people of our Commonwealth. . .our Representatives in Harrisburg have passed the most restrictive and retrogressive of abortion laws. . .House Bill 800 will not stop abortions. It will only stop safe abortions. The only choice for the legislators is to decide what kind of abortions women will get - medically safe ones or back alley ones."

These words of Mrs. Jacqueline Burrie should be considered carefully by all concerned people.

I have often said that I believe in "the sanctity of life."

This is true.

But the "sanctity of life" applies equally to the born and the unborn.

It is a question of whether or not life will be healthy, sound and safe for all our people.

And House Bill 800, while understandably solicitous of the rights of the unborn, potentially casts aside the rights of every woman in this Commonwealth.

The minority of my Abortion Law Commission, which basically recommended anti-abortion legislation, clearly recognizes this problem. Six of those minority members stated specifically that "defenses available at common law such as self defense and legal necessity which are applicable to homicide cases apply also in abortion. Therefore, an abortion can be performed if the woman is in imminent danger of death or grave bodily harm by reason of a physical, maternal or pathological disease or condition."

I agree with that statement.

We recognize in many other areas of law the right of self protection, and so I believe that, under the law, no woman should be forced to destroy herself, nor should any husband be forced to stand by idly and not take

steps to protect his wife when her health or life are seriously endangered.

Eight days ago, I asked the General Assembly to reconsider this bill. It is now 2 P.M. on the last day of the session and they have not done so. Therefore, I must act now if the General Assembly is to be in a position to exercise its constitutional right of review.

Because the Legislature has acted hastily, because House Bill 800 does not contain provisions for rape, incest and severe harm to the health of the mother, because the many recommendations of the Abortion Law Commission have been ignored and because this bill threatens the rights of our women, I am today vetoing House Bill 800.

I am doing so in time for the General Assembly to have an opportunity to exercise its constitutional right to review my veto.

It is true that I could have counted the days and let the session end - thus preventing the Legislature from exercising its right of review.

At any other time of the year, however, their right of review would have been preserved.

On an issue as vital as this, I firmly believe that it would have been unfair of me to permit a decision by calendar instead of by the Constitution.

The General Assembly still has time to reconsider my veto.

I strongly urge each and every member to consider my objections carefully and to sustain my veto in the interest of all our people.

We need a new Abortion Law in Pennsylvania, but I would hope that the next session of the General Assembly would wait until the United States Supreme Court renders its decision on the abortion cases now before it so that constitutional standards will be available as guides for future action.

For these reasons, the bill is not approved.

MILTON J. SHAPP  
Governor

## No. 12

## AN ACT

## HB 2142

Amending the act of April 24, 1947 (P.L.80), entitled "An act relating to the descent of the real and personal estates of persons dying intestate and the procedure in reference thereto," removing the rights of a remarried spouse of a person missing in military action and of certain issue of the remarried spouse.

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

Section 1. Section 2, act of April 24, 1947 (P.L.80), known as the "Intestate Act of 1947," amended February 10, 1956 (P.L.1037) and October 9, 1967 (P.L.420), is amended to read:

Section 2. Share of Surviving Spouse.—(a) The surviving spouse shall be entitled to the following share or shares:

(1) More Than One Child. One-third if the decedent is survived by more than one child, or by one or more children and the issue of a deceased child or children, or by the issue of more than one deceased child; or

(2) One Child. One-half if the decedent is survived by one child only, or by no child, but by the issue of one deceased child; or

(3) No Issue. The first twenty thousand dollars in value and one-half of the balance of the estate, if the decedent is survived by no issue. In case of partial intestacy, any amount received by the surviving spouse under the will shall satisfy pro tanto the twenty thousand dollar allowance; or

(4) No Issue or Other Designated Person. All of the estate if the decedent is survived by no issue, parent, brother, sister, child of a brother or sister, grandparent, uncle or aunt.

*(b) Should the spouse of a person missing in military action remarry before the spouse missing in military action is declared or found to be dead, the spouse who has remarried shall forfeit all rights to the estate of the deceased.*

Section 2. Section 3 of the act, amended December 10, 1959 (P.L.1747) and December 22, 1965 (P.L.1191), is amended to read:

Section 3. Shares of Others Than Surviving Spouse.—(a) The share of the estate, if any, to which the surviving spouse is not entitled, and the entire estate if there is no surviving spouse, shall descend in the following order:

(1) Issue. To the issue of the decedent.

(2) Parents. If no issue survives the decedent, then to the parents or parent of the decedent.

(3) Brothers, Sisters, or Their Issue. If no parent survives the decedent, then to the issue of each of the decedent's parents.

(4) Grandparents. If no issue of either of the decedent's parents but

at least one grandparent survives the decedent, then half to the paternal grandparents or grandparent, or if both are dead, to the children of each of them and the children of the deceased children of each of them, and half to the maternal grandparents or grandparent, or if both are dead to the children of each of them and the children of the deceased children of each of them. If both of the paternal grandparents or both of the maternal grandparents are dead leaving no child or grandchild to survive the decedent, the half which would have passed to them or to their children and grandchildren shall be added to the half passing to the grandparents or grandparent on the other side.

(5) Uncles, Aunts and Their Children and Grandchildren. If no grandparent survives the decedent, then to the uncles and aunts and the children and grandchildren of deceased uncles and aunts of the decedent as provided in clause (1) of section 4.

(6) Commonwealth. In default of all persons hereinbefore described, then to the Commonwealth of Pennsylvania.

*(b) If the issue are children of a spouse not entitled to a share of the estate by reason of subsection (b) of section 2 and if the issue were born nine months after the deceased was declared missing in military action, such issue shall not be entitled to any share of the estate of the deceased spouse missing in action.*

Section 3. This act shall apply to the estates of persons missing in action on the effective date of this act and thereafter declared or found to be dead.

Section 4. This act shall take effect immediately.

December 29, 1972

I file herewith, in the Office of the Secretary of the Commonwealth, with my objections, House Bill No. 2142, Printer's No. 2834, entitled "An Act amending the act of April 24, 1947 (P.L.80), entitled 'An act relating to the descent of the real and personal estates of persons dying intestate and the procedure in reference thereto,' removing the rights of a remarried spouse of a person missing in military action and of certain issue of the remarried spouse."

No one can fail to be moved by the trauma and hardship suffered by our soldiers missing in action and by their families. Our country owes a great debt of gratitude to all our veterans and especially to those who have suffered as prisoners of war. Though we can never compensate for their sacrifices and suffering, we can attempt to ease their hardships upon their return to civilian life. To assist in this effort, I have today signed House Bill No. 2329, Printer's No. 3080, which will broaden the term "veteran" as used in all of our laws to include those who have served in the Vietnam conflict. I have also signed into law today the Vietnam Conflict Prisoners of War Compensation Act, Senate Bill No. 1241, Printer's No. 1578, which will provide cash grants to each Pennsylvanian who has been a prisoner of war in the Vietnam conflict.

These acts provide positive help to those who have sacrificed so much for their country.

However, House Bill 2142 would cause the spouse of a person missing in military action to forfeit all rights to the estate of the deceased if said spouse remarries "before the one missing in military action is declared or found to be dead." House Bill No. 2142 would also cause the children of such a spouse to forfeit any share of the estate of the deceased spouse missing in action "if the issue were born nine months after the deceased was declared missing in military action."

This bill is extremely punitive and entirely too vague. If, for example, a wife remarries at a time her husband is listed as "missing in military action" even if twenty years have passed and even if he was in fact dead at the time of her remarriage, the forfeiture penalty applies. Moreover, this bill does not specify who has the authority to declare or find that a person missing in military action is dead.

Nor does this bill specify whether it would affect those missing in action in wars prior to the Vietnam conflict. Would it, for example, require the forfeiture of the estates of certain survivors of those missing in conflicts such as World War II and the Korean War? The bill is so vague that it is totally devoid of definition as to what is a "military action." This legislation does not even specify that a "military action" has to involve the armed forces of the United States or that those "missing in military action" must be soldiers and not others, such as foreign correspondents and business people who just happen to be where a military action occurs.

I recognize the legitimate concern which led to the passage of this bill. Nevertheless, the lack of specificity in the highly punitive language of House Bill No. 2142 precludes its just application and may make the bill unconstitutionally vague.

I therefore feel that I have no choice but to veto this piece of legislation.

MILTON J. SHAPP

Governor



No. 13

## AN ACT

HB 1611

Amending the act of August 12, 1971 (P.L.299), entitled "An act regulating snowmobiles, providing for registrations and fees, and providing penalties," transferring certain functions to the Department of Revenue, designating county treasurers as agents for certain purposes, changing the fees, registration requirements, safety requirements, and providing for the disposition of fees and penalties.

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

Section 1. Sections 2 and 3, subsection (c) of section 4, sections 13 and 14, and subsection (b) of section 18, act of August 12, 1971 (P.L.299), entitled "An act regulating snowmobiles, providing for registrations and fees, and providing penalties," are amended to read:

Section 2. Registration.—(a) Upon application therefor upon a form prescribed and furnished by the [department] *Department of Revenue* which shall contain a full description of the snowmobile, the actual and bona fide name and address of the owner, proof of ownership and any other information he may reasonably require and which shall be accompanied by the fee required under the provisions of this act, the [secretary] *Secretary of Revenue* shall issue a certificate of registration of a snowmobile to the owner. *The county treasurers of the several counties shall be agents of the Commonwealth for the issuance of registrations for snowmobiles, for the collection of fees for registration of snowmobiles, and for the issuance of replacement certificates or decals.*

(b) Fees for registration of snowmobiles, to be collected by the [secretary] *Secretary of Revenue*, under this act are as follows:

(1) A fee of [five dollars (\$5)] *ten dollars (\$10) for two years* for each individual resident registration *plus an additional fee of twenty cents (20¢) for the issuance of each registration which fee shall be retained by the county.*

(2) A fee of [five dollars (\$5)] *ten dollars (\$10) for two years* for each individual nonresident registration *plus an additional fee of twenty cents (20¢) for the issuance of each registration which fee shall be retained by the county.*

(3) A fee of twenty-five dollars (\$25) *annually* for each dealer registration.

(4) A fee of one dollar (\$1) for replacement of loss, mutilated or destroyed certificate *or decal plus an additional fee of twenty cents (20¢) for the issuance of the replacement certificate or decal which fee shall be retained by the county.*

(c) Any person who is in the business of selling snowmobiles shall register as a dealer. The [secretary] *Secretary of Revenue*, upon receipt of

application and the required fee, shall assign a distinguishing dealer registration number to the registrant and issue appropriate registration certificate to him. Dealer registrations are not transferable.

Section 3. Certificates of Registration.—(a) Certificates of registration and [five inch high decals treated with special materials so as to make them reflective which shall bear a number assigned to the snowmobile,] *a decal showing the expiration date* shall be issued to the applicant. *Numbers corresponding to the permanent registration number of the snowmobile, shown on the certificate of registration, shall be obtained by the applicant and affixed to the snowmobile. The permanent registration number displayed on the snowmobile shall be of a color which will contrast with the surface to which applied, shall be reflective, and shall be at least three inches high.* The decals and the permanent registration number shall be displayed on both sides of the cowling of the snowmobile for which issued. No number other than the number assigned to a snowmobile by the [department] *Department of Revenue* or the identification number of the registration in another state shall be attached to or displayed on the cowling. The certificate of registration issued for a snowmobile shall expire and the decal shall become invalid when title to the snowmobile is transferred.

The [secretary] *Secretary of Revenue* shall maintain a central file of the certificate of registration number, name and address of the owner of each snowmobile for which a certificate of registration is issued and such information shall be made available to all enforcement agencies.

(b) Except as hereinafter provided, it shall be unlawful to operate a snowmobile unless a certificate of registration has been issued therefor and unless there is displayed thereon [a] *the permanent registration number and a valid decal.*

Certificates of registration and decals shall be issued without the payment of a fee, for snowmobiles owned by the Commonwealth of Pennsylvania or a political subdivision thereof or snowmobiles owned by volunteer organizations and used exclusively for emergency purposes, upon application therefor, provided, however, that each such snowmobile shall display the proper decal issued for it.

No certificate of registration or decal shall be required for the following described snowmobiles:

(1) Snowmobiles owned and used by the United States, another state, or a political subdivision thereof, but such snowmobiles shall display the name of the owner on the cowling thereof.

(2) Snowmobiles covered by a valid registration or license of another state, province or country.

(3) Snowmobiles owned and operated on lands owned by the owner or operator or on lands to which he has a contractual right other than as a member of a club or association, provided the snowmobile is not operated elsewhere within the State.

The provisions of this act relating to certificates of registration and decals shall not apply to nonresident owners who have complied with the registration and licensing laws of the state, province, district or country of residence, provided that the snowmobile is appropriately identified in accordance with the laws of the state of residence. Nothing in this act shall be construed to authorize the operation of any snowmobile contrary to the provisions of this act.

(c) None of the provisions of the act shall apply to duly constituted law enforcement officers while in the performance of their official duties.

Section 4. Operation.—\* \* \*

(c) Except as otherwise provided in this act, it shall be unlawful to operate a snowmobile on any street or highway which is not designated and posted as a snowmobile road by the governmental agency having jurisdiction.

\* \* \*

Section 13. Brakes.—It shall be unlawful to operate a snowmobile which is not equipped with at least one brake *of a design approved by the secretary* operated either by hand or by foot, capable of bringing the snowmobile to a stop, under normal conditions, within [fifty] *forty* feet when traveling at a speed of twenty miles per hour with a hundred fifty pound driver on hard packed snow, [The brake shall be of sound design with the disk or brake drum directly connected or integral with the belt drive shaft and with an internal-expanding brake shoe or engaging disks.] *or locking its traction belt or belts.* The design shall permit simple and easy adjustment to compensate for wear.

Section 14. Mufflers.—It shall be unlawful to operate a snowmobile which is not equipped at all times with a muffler in good working order which blends the exhaust noise into the overall snowmobile noise and is in constant operation to prevent excessive or unusual noise. The exhaust system shall not emit or produce a sharp popping or crackling sound. *The sound intensity produced by a snowmobile shall not exceed 82 dbA when measured in accordance with SAE Recommended Practice J192 Exterior Sound Level for Snowmobiles, as amended. The secretary may by regulation adopt more stringent noise requirements. It shall be unlawful to modify a muffler or to operate a snowmobile with a modified muffler.* This section does not apply to organized races or similar competitive events.

Section 18. Disposition of Fees and Penalties.—\* \* \*

- (b) The secretary *or Secretary of Revenue as the case may be* shall deposit all moneys received by him from the registration of snowmobiles, the sale of snowmobile registration information, snowmobile publications and other services provided by the department *or Secretary of Revenue as the case may be*, all fines and penalties resulting from violations of this act and all fees collected by him under this act to the credit of the General Fund *to be appropriated in full from time to time but not less frequently*

*than annually to the department and the Department of Revenue as appropriate for their several functions as provided by this act for use in the administration of this act generally or in connection with registration, for the construction and maintenance of snowmobile trails, and for any other objective of this act.*

Section 2. Section 19 of the act is repealed.

Section 3. This act shall take effect immediately.

December 29, 1972

I file herewith, in the Office of the Secretary of the Commonwealth, with my objections, House Bill No. 1611, Printer's No. 3582, entitled "An Act amending the act of August 12, 1971 (P.L.299), entitled 'An act regulating snowmobiles, providing for registrations and fees, and providing penalties,' transferring certain functions to the Department of Revenue, designating county treasurers as agents for certain purposes, changing the fees, registration requirements, safety requirements, and providing for the disposition of fees and penalties."

This bill makes a number of changes in the way snowmobiles are regulated in Pennsylvania. It has several desirable features. It would require that snowmobiles have improved brakes and that their noise level not exceed an established maximum. Other provisions would reduce certain administrative costs to the State. I endorse these measures and hope they are soon enacted into law.

The bill as written, however, conflicts with this Administration's program to put the conduct of State business on a rational and efficient basis. It would transfer the licensing of snowmobiles into the Department of Revenue, a department whose administrative functions are totally unrelated to the regulation of snowmobiles. The General Assembly itself recognized the logic of grouping related functions when in 1970 it transferred the Bureau of Motor Vehicles from the Department of Revenue into the Department of Transportation. Other regulatory functions formerly in the Department of Revenue have also been removed, leaving its function exclusively that of collecting revenue. Approval of this bill today would be a step backwards.

Furthermore, under this bill, moneys collected in fees and fines in connection with snowmobile regulation could only be appropriated by the General Assembly for snowmobile-related purposes, such as administrative costs of regulation and building snowmobile trails. This is poor fiscal policy. State government must not handcuff itself. It needs the flexibility to respond to new problems as they arise and to use State funds accordingly.

For these reasons, I must veto this bill.

MILTON J. SHAPP

Governor

