

monwealth's share of the annual rentals to an authority or the sponsor or sinking fund or debt-service payments and other leases upon submission of a community college requisition in the form required by the Commonwealth, the reimbursement or payment to be made from funds appropriated for that purpose.

Section 3. The act is amended by adding at the end thereof a new section to read:

Section 17. Severability.—The provisions of this act are severable and, if any provision, phrase, clause or part hereof shall be held invalid or unconstitutional or inapplicable to any person or circumstances, such invalidity, unconstitutionality or inapplicability shall not affect or impair the remaining provisions of the act. It is hereby declared to be the legislative intent that this act would have been adopted if such invalid, unconstitutional or inapplicable provisions had not been included therein.

Section 4. This act shall take effect July 1, 1965.

APPROVED—The 26th day of October, A. D. 1965.

WILLIAM W. SCRANTON

No. 323

AN ACT

HB 977

Regulating the transportation of hazardous substances on highways and toll roads, including the Pennsylvania Turnpike; creating the Hazardous Substances Transportation Board, prescribing its powers, duties and procedures; providing for the imposition of duties upon the Department of Revenue, the State Police and other departments and commissions of the Commonwealth; prescribing penalties; repealing inconsistent acts and making an appropriation.

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 "Hazardous Substances Transportation Act."

Section 2. Definitions.—The following words and phrases shall have the meanings ascribed to them in this section:

(1) "Hazardous substance." A flammable liquid, flammable solid,

oxidizing substance, corrosive liquid, compressed gas, poisonous substance, radioactive substance, explosive, or similar substance.

(2) "Similar substance." Any substance, which the board, by procedure herein prescribed, shall declare a hazardous substance.

(3) "Board." The Hazardous Substances Transportation Board created by this act.

(4) "Highway." A highway, street or other public way, or a toll road, including the Pennsylvania Turnpike.

(5) "Transportation." Carriage by vehicle upon a highway.

(6) "Carrier." Any person who or which, as owner, lessee or other possessor of one or more vehicles, directs and controls the transportation of hazardous substances either for his or its own account or for hire.

Section 3. Findings of Fact; Standards of Administration.—(a) It is hereby found as a fact that hazardous substances are essential for various industrial, commercial and other purposes, that their transportation is a necessary incident of their use, and therefore that such transportation is required for the employment and economic prosperity of the people. It is also found as a fact that the transportation of hazardous substances may involve risk of injury to persons and damage to property, and that the degree of such risk can and should be kept at a minimum consistent with technical feasibility and economic reasonableness.

(b) The purpose of this act, and the primary standard by which it shall be administered, is to so regulate the transportation of hazardous substances, that there is established and maintained a reasonable balance between the interests of the people in the safety of themselves and their property, on the one hand, and the interests of the people in their employment and economic prosperity, on the other.

Section 4. Creation of Board.—(a) There is hereby established within the Department of Revenue a Hazardous Substances Transportation Board, composed of eight ex officio members and seven appointed members.

(b) The eight ex officio members shall be the Secretary of Revenue, who shall be the chairman, the Attorney General, the Secretary of Commerce, the Secretary of Labor and Industry, the Secretary of Health, the Secretary of Highways, the Commissioner of the Pennsylvania State Police, and a member of Pennsylvania Public Utility Commission to be designated by the Governor. Any ex officio member except the member of Pennsylvania Public Utility Commission may designate a representative of his department to serve in his stead, which rep-

representative shall be approved by the Governor. Ex officio members, or their representatives, shall serve without pay.

(c) The seven appointed members shall be appointed by the Governor by and with the advice and consent of two-thirds of the Senate for a term of six years, and shall be removed for cause only. Of the first board three members shall be appointed for a term of six years, two for a term of four years and two for a term of two years. Each of the seven appointed members shall have had at least five years' experience with one or more hazardous substances. One member shall have had such experience as a manufacturer or shipper; one member shall have had such experience as a consignee or user; one member shall have had such experience in the management and operation of a common carrier by motor vehicle; one member shall have had such experience in the management and operation of a private carrier by motor vehicle; one member shall have had such experience in the fire services of the State; one member shall have had such experience in the practical application of principles of highway safety and the remaining member shall be selected from the general public. Each appointed member shall be paid fifty dollars for each day, or part thereof, upon which he attends a board meeting, or performs any duty assigned to him by the chairman, and he shall be reimbursed for reasonable traveling and other expenses incurred incident to such attendance and to such assigned duty.

(d) Eight members of the board shall constitute a quorum; and the affirmative vote of eight members shall be required for the issuance of any formal order pursuant to section 8 hereof.

Section 5. Technical Assistance; Advisory Committees.—(a) The board in its discretion and from time to time may create advisory committees and appoint the members thereof, to perform such tasks and render such technical advice and assistance as the board may require. Members of an advisory committee shall be chosen for their competence in the subject to which the work of the committee pertains. All members of advisory committees shall serve without pay, but the board, in its discretion, may authorize reimbursement of a committee member's traveling expenses whenever it deems such authorization necessary to obtain his services.

(b) The board in its discretion and from time to time may avail itself of the services of personnel in the departments, boards and commissions of the Commonwealth, for technical advice and assistance, investigation, clerical work, and such other work as the board may require.

Section 6. General Power and Duty of the Board.—The board shall

have the general power and duty to prescribe regulations for the transportation of hazardous substances, consistent with the purpose and primary standard declared in subsection (b) of section 3 hereof. In exercising such general power and duty the board may:

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

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

(3) Declare any substance, not defined in section 2 hereof, to be a hazardous substance and thereby subject its transportation to the provisions of this act.

(4) Employ personnel and purchase or lease equipment, office space and materials needed to carry out the provisions of this act.

Section 7. Correspondence with Federal Requirements.—In the case of any person who is subject to jurisdiction of the Interstate Commerce Commission, the board's regulations shall, and in any other case the board's regulations may, as far as practicable, correspond with the regulations of such commission. It is the purpose of this section to avoid, as far as practicable, the imposition of dual or conflicting regulations upon persons who operate vehicles subject to Interstate Commerce Commission jurisdiction in this Commonwealth. It is also the purpose of this section to empower, but not require, the board to prescribe, for persons not subject to Interstate Commerce Commission jurisdiction, regulations identical with or similar to those of the Interstate Commerce Commission and the Atomic Energy Commission.

Section 8. Board Procedure.—(a) Whenever the board, pursuant to clause (2) of section 6 hereof, shall propose to prescribe or amend any regulation pertaining to transportation of a hazardous substance or a class thereof, its procedure shall be as follows:

(1) The board shall mail a notice to each person who, shall have submitted a letter stating his interest in such hazardous substance or the class of hazardous substances to which it belongs. Such notice shall state briefly the general scope of the proposed regulation or amendment, and shall invite the addressee to participate in a meeting at a

place, date and time specified in the notice. The date so specified shall be not less than fifteen days nor more than thirty days after the date of mailing the notice.

(2) The board or a representative designated by it shall hold and preside at the meeting referred to in clause (1) hereof. Such meeting shall be informal, and shall be conducted with the objectives of informing the invitees of the nature of the problem for which the board proposes to prescribe or amend the regulation, receiving the comments and suggestions of the invitees in attendance, and determining upon a plan, through advisory committees or otherwise, for evolving a suitable draft of the regulation or amendment. It is the purpose of this subsection that the regulations of the board, to the extent consistent with the sovereignty of the Commonwealth and the purpose and primary standard declared in subsection (b) of section 3 hereof, shall be evolved by the board in cooperation with persons to whom such regulations will apply. The board may hold additional meetings in furtherance of this purpose, by giving oral or written notice to invitees attending the meeting first mentioned in this clause.

(3) The board or a representative designated by it, after reasonable notice to all persons to whom a notice was mailed pursuant to clause (1) hereof, shall hold one or more hearings, at which it shall be the duty of the board to develop evidence from which it can ascertain whether the proposed regulation or amendment is necessary to accomplish the purpose, and consistent with the primary standard, declared in subsection (b) of section 3 hereof. For such purpose, the board or its designated representative shall have the power to subpoena witnesses, to administer oaths, or take such testimony, or compel the production of such records or other papers as may be necessary or proper to the subject matter of the hearing. The board shall not be bound by technical rules of evidence, and may receive all relevant evidence of reasonable probative value. All testimony shall be recorded stenographically, and a transcript may be obtained by anyone at his own expense.

(4) Every regulation or amendment shall be prescribed in an order issued by the board.

(b) Whenever the board, pursuant to clause (3) of section 6 hereof, shall propose to declare a substance, not defined in section 2 hereof, to be a hazardous substance, its procedure shall be as follows:

(1) The board shall make diligent inquiry of trade associations and such other sources of information as may be known to it, to ascertain the names and addresses of persons who, as manufacturers, shippers, carriers, consignees or users, have an interest in such substance. The board shall

mail a notice to each person whose name and address has been so ascertained, or, if there be more than one hundred of them to at least one hundred of them. The notice shall state briefly the general scope of the proposed declaration, and shall invite the addressee to participate in a meeting at a place, date and time specified in the notice. The date so specified shall not be less than fifteen days or more than thirty days after the date of mailing the notice.

(2) The meeting referred to in clause (1) hereof shall be held in the same manner and for the same purpose as is prescribed in clause (2) of subsection (a) hereof, except that the subject matter shall be the proposed declaration of the board.

(3) The board or a representative designated by it, after reasonable notice to all persons to whom a notice was mailed pursuant to clause (1) hereof, shall hold one or more hearings, in the same manner and terms, and with the same powers, as are prescribed in clause (3) of subsection (a) hereof, except that at such hearing it shall be the duty of the board to develop evidence from which it can ascertain whether the proposed declaration is necessary to accomplish the purpose and consistent with the primary standard, declared in subsection (b) of section 3 hereof.

(4) If at the hearing held pursuant to clause (3) hereof there is developed substantial evidence that transportation of the substance, because of its flammable, oxidizing, corrosive, pressure, poisonous, explosive or other characteristic, is in fact hazardous and involves risk of injury to persons and damage to property, the board shall issue an order declaring such substance to be a hazardous substance.

(c) Whenever the board shall issue an order pursuant to subsection (a) or (b) of this section, it shall mail a copy thereof to each person to whom a notice was mailed pursuant to clause (1) of that subsection. The order shall become effective on the date specified therein, which shall be not less than thirty-five days after the date of mailing of such copies. The board shall provide copies of its orders to any person who so requests, and on its own initiative may provide copies to any other person who is known by the board to have an interest in the subject matter.

Section 9. Appeals.—(a) Any person having an interest in the subject matter of a board order or regulation may appeal therefrom at any time before such order or regulation becomes effective pursuant to subsection (c) of section 8 hereof, upon one or more of the following grounds, namely, that (1) the board failed to comply with the procedure prescribed by section 8 hereof, or (2) the board's order or regulation is not necessary to accomplish the purpose, or is incon-

sistent with the primary standard, declared in subsection (b) of section 3 hereof. Any such appeal shall be made to the Court of Common Pleas of Dauphin County. If the appellant shall be a person to whom a notice of hearing was mailed pursuant to clause (3) of subsection (a) of section 8, or subsection (b) of section 8 hereof, the court shall dispose of the appeal upon the record made before the board; otherwise, the court may receive such additional evidence as to it shall seem just and right in the circumstances. The court may affirm, modify, or set aside the board order or regulation, or remand the proceeding to the board for further disposition in accordance with the order of the court.

(b) An appeal shall not operate as a supersedeas, unless the court shall so order after hearing, and then only upon such terms and conditions, if any, as the court may prescribe.

(c) Within thirty days of the filing of the court's order disposing of an appeal, the board or the appellant may appeal therefrom to the Superior Court.

Section 10. Enforcement of Regulations.—The board shall, with the approval of the Governor, assign among the several departments and commissions represented by its ex officio members the duty of enforcing its regulations and the several parts thereof. It is the intent of this section that a board order or regulation pertaining to vehicle operation shall be enforced by the State Police or by any other department having the duty of enforcing laws pertaining to vehicle operation; that a board order or regulation pertaining to vehicle inspection shall be enforced by the Department of Revenue or by any other department having the duty of enforcing laws pertaining to vehicle inspection; and that in like manner each order or regulation or part thereof shall be enforced by the Bureau of Motor Vehicles.

Section 11. Injunction and Other Remedies.—(a) The Attorney General, upon request of the board or upon his own motion, may proceed in the name of the Commonwealth, by injunction, mandamus, quo warranto, or other appropriate remedy at law or in equity, to restrain violations of the board's regulations or orders or to enforce obedience thereto. Such proceedings may be brought in the Court of Common Pleas of Dauphin County or in the court of common pleas of the county in which the violation occurred or in which the violator may be found, or in any district court of the United States, as the Attorney General shall deem appropriate.

(b) Whenever the Attorney General shall have reason to believe that a person has violated any regulation or order of the board but is

outside the jurisdiction of this Commonwealth, the Attorney General may petition the Court of Common Pleas of Dauphin County for an order authorizing the seizure and confiscation of such person's vehicles or hazardous substances wherever and whenever they may be found in the Commonwealth. The court may thereupon require the Attorney General to send a copy of such petition to the person by registered mail or such other means as the court deems appropriate, together with a notice that unless such person answers the petition and submits himself to the jurisdiction of the Commonwealth for the purpose of prosecution under this act within twenty days after receipt of such notice, the petition will be granted. If the person answers the petition and submits himself to the jurisdiction of the Commonwealth as aforesaid, the court shall deny the petition; otherwise, the court shall issue the order as prayed for in the petition.

Section 12. Penalties.—(a) Any person who, as operator of a vehicle, shall knowingly or wilfully violate any regulation of the board pertaining to routing, parking or other act in the actual operation of a vehicle, shall be guilty of a misdemeanor, and, upon conviction thereof in the court of quarter sessions of the county in which the offense occurred, shall be sentenced to pay a fine of not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500), or to undergo imprisonment in the county jail for not more than thirty (30) days, or both. Any such person, having been convicted of a first offense under this subsection, who shall at a later time commit a second or subsequent offense and be convicted thereof, shall be sentenced to pay a fine as aforesaid, or to undergo imprisonment in the county jail for not less than sixty (60) days nor more than one (1) year, or both.

(b) Any person who, as shipper, carrier, consignee or user of a hazardous substance, shall knowingly or wilfully violate any regulation of the board, shall be guilty of a misdemeanor, and, upon conviction thereof in the court of quarter sessions of the county in which the offense occurred, shall be sentenced to pay a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5000), or to undergo imprisonment in the county jail for not more than sixty (60) days, or both. Any person, having been convicted of a first offense under this subsection, who shall at a later time commit a second or subsequent offense and be convicted thereof, shall be sentenced to pay a fine as aforesaid, or to undergo imprisonment in the county jail for not less than sixty (60) days nor more than one (1) year, or both. If such person be a firm, partnership, joint venture or association, then the member thereof responsible for the violation, or if such person be a corporation,

then the officer, agent or employe thereof responsible for the violation, shall have the sentence of imprisonment, herein prescribed, imposed upon him.

Section 13. Specific Repeals.—The following parts of acts are hereby repealed:

(a) The definitions of “Explosives” and “Flammable Liquid” in section 102, all of section 833, section 837 in so far as it pertains to the transportation of flammable liquids, flammable or combustible chemicals, or explosives, and all of section 1117, act of April 29, 1959 (P. L. 58), known as “The Vehicle Code.”

(b) Section 11, act of July 1, 1937 (P. L. 2681), entitled “An act relating to, and regulating the manufacture, storing and possession of explosives; requiring permits for magazines, and prescribing permit fees; and providing penalties,” in so far as said section pertains to the transportation of explosives upon a highway, or upon a toll road, including the Pennsylvania Turnpike.

Section 14. General Repealer.—It is the intent of this act that this be the exclusive method of regulating and controlling the transportation of hazardous substances on state highways. To that end all acts and parts of acts, ordinances and regulations promulgated thereunder are hereby repealed and declared unenforceable in so far as they are inconsistent herewith.

Section 15. Appropriation.—The sum of one hundred thousand dollars (\$100,000) or as much thereof as may be necessary, is hereby appropriated out of the Motor ¹ License Fund for the purposes of carrying out the provisions of this act.

Section 16. Effective Date.—This act shall take effect immediately except sections 10, 11, 12, 13 and 14 which shall take effect January 1, 1966.

APPROVED—The 9th day of November, A. D. 1965, except for the appropriation from the Motor License Fund for the purposes of carrying out the provisions of legislation, which I approve in the sum of \$50,000. I withhold my approval from the remainder of said appropriation because a part of the fiscal year has already elapsed.

WILLIAM W. SCRANTON

¹ “Licensed” in original.