

No. 1988-166

AN ACT

SB 730

Amending the act of September 1, 1965 (P.L.459, No.235), entitled "An act requiring that certain buildings and facilities constructed with Commonwealth funds adhere to certain principles, standards and specifications to make the same accessible to and usable by the physically handicapped, and providing for enforcement," further providing for standards and the applicability of standards and for enforcement; making editorial changes; and making an appropriation.

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

Section 1. The title of the act of September 1, 1965 (P.L.459, No.235), entitled "An act requiring that certain buildings and facilities constructed with Commonwealth funds adhere to certain principles, standards and specifications to make the same accessible to and usable by the physically handicapped, and providing for enforcement," is amended to read:

AN ACT

Requiring that certain buildings and facilities [constructed with Commonwealth funds] adhere to certain principles, standards and specifications to make the same accessible to and usable by [the physically handicapped] persons with physical handicaps, and providing for enforcement.

Section 2. Section 1 of the act, amended July 9, 1976 (P.L.928, No.176), is amended and the act is amended by adding sections to read:

Section 1. *Findings and Declaration of Policy.*—*The General Assembly finds and declares as follows:*

Many architectural barriers exist in the buildings and facilities within this Commonwealth which impede access to and use of these buildings by a sizeable segment of the population. These architectural barriers effectively prohibit persons with physical handicaps, both permanent and temporary, from pursuing an education, entering the work force and enjoying cultural and social activities. For persons with physical handicaps, accessibility is a necessity which enables them to achieve independence and freedom of movement. For many others, such as senior citizens and small children, accessible features are equally advantageous.

Therefore, in order to provide for the general welfare of all citizens, all new construction of buildings, included within the provisions of this act, shall be accessible to and usable by persons with physical handicaps. As existing buildings are remodeled, accessibility features shall be incorporated into these buildings to the maximum extent feasible. It is recognized by the General Assembly that the degree of accessibility achievable when existing buildings are remodeled will, under certain circumstances, be less than that possible in new construction. When the incorporation of accessibility ele-

ments in existing buildings results in an extreme hardship, then variances may be obtained.

It is the intent of the General Assembly that as many buildings as possible be required to conform to the provisions set forth in this act and in the regulations adopted pursuant to it. Therefore, this act shall be broadly construed when determining which buildings must comply with the statutory and regulatory provisions. When determining which buildings are excluded or exempt from the statutory and regulatory provisions, this act shall be strictly construed.

Section 1.1. Definitions.—The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Accessible.” Describes a building, building site or portion thereof which complies with the specifications and standards established by the department and that can be approached, entered and negotiated by persons with physical handicaps. In the case of existing buildings, the department under certain conditions may allow, by regulation or variance, for a lesser degree of accessibility than that required for new construction. In the case of residential buildings, the department may allow, by regulation, that adaptable units will meet accessibility requirements.

“Accessible route.” A continuous unobstructed path which connects all areas within a building and a building site that can be negotiated by a person with a severe physical handicap using a wheelchair and that is also safe for and usable by people with other physical handicaps. Interior accessible routes include, but are not limited to, corridors, floors, ramps, elevators, lifts and clear floor space at fixtures. Exterior accessible routes include, but are not limited to, parking access aisles, curb cuts, walks, ramps and lifts.

“Adaptable.” The ability of certain building spaces and elements, such as kitchen counters, sinks and grab bars, to be added or altered so as to accommodate the needs of either handicapped or nonhandicapped persons, or to accommodate the needs of persons with different types or degrees of handicaps.

“Building site.” A parcel of land bounded by a property line or a designated portion of a public right-of-way.

“Construction cost.” The total cost or estimated cost of a building, including all labor, materials and fixed equipment at current market rates and a reasonable allowance for overhead and profit for a building contractor, and excluding the cost of architectural fees, other design consultant fees, and the cost of the land. The owner or owner’s agent shall provide the construction cost to the department.

“Construction documents.” Drawings, specifications or both which delineate proposed construction or remodeling.

“Department.” The Department of Labor and Industry of the Commonwealth. In cities of the first class, second class and second class A, “department” means the agency assigned the responsibility of enforcing this act.

"Net floor area." *The surface area included within the surrounding walls of a building, including all areas occupied by equipment or furnishings, and excluding vent shafts, elevator shafts, fire towers and other areas as may be designated by regulation.*

"Persons with physical handicaps." *Individuals who have a physical impairment, including impaired sensory or manual abilities, which results in a functional limitation in access to and use of a building or facility.*

"Public." *Employees, visitors or any other persons who may be on the premises for a lawful purpose.*

"Remodeled," "remodeling," "remodels." *Renovated, reconstructed, altered or added to. The department may, by regulation, exclude specifically from this definition minor repairs and necessary maintenance which do not affect the accessibility or usability of a building by persons with physical handicaps. Regulations shall provide for such exclusions as roofing alterations; energy efficiency improvement measures such as weatherization and the addition of insulation; window repair or replacement; rebuilding or replacement of heating, ventilating and cooling systems; remodelings which are cosmetic in nature, such as painting, plastering, improving wall coverings, and repair and replacement of carpeting and floor coverings; and other similar alterations.*

"Secretary." *The Secretary of Labor and Industry of the Commonwealth. In cities of the first class, second class and second class A, "secretary" means the administrative head of the agency assigned the responsibility of enforcing this act.*

"Variance." *The permitted use of a standard or specification which differs in degree or measurement from the requirements of this act or regulations adopted pursuant to it or a permitted alternative solution to a design problem.*

"Worth of the building." *The value of the building prior to the remodeling as can be reasonably determined, based upon the use of the building and the net floor area, either from a table of standard values established by the department or from an appraisal provided by the owner or owner's agent.*

Section 1.2. Applicability of Standards. (a) **Government Buildings.**—The standards and specifications set forth in this act and in regulations adopted pursuant to it shall apply to all buildings used by the public, including, but not limited to, buildings of assembly, educational institutions and office buildings which are constructed, leased or remodeled on or after the effective date of this act, in whole or in part, by the use of Commonwealth funds[,] or the funds of any instrumentality or political subdivision of the Commonwealth [or which are leased by the Commonwealth or an instrumentality thereof by reason of a lease executed after December 31, 1974 and shall also apply to].

(b) **Private Buildings.**—The standards and specifications set forth in this act and in regulations adopted pursuant to it shall also apply to any building used by the public that is constructed or remodeled on or after the effective date of this act, including, but not limited to:

(1) *Factories, powerplants, mercantile buildings, shopping centers, department stores, [theaters,] retail stores, [sports arenas and to] restaurants with sit-down, interior dining facilities [constructed after the effective date of this amending act: Provided, however, That the provisions of this act shall not apply to any department store, theater, retail store, sports arena and other buildings that are constructed and contain less than 2,800 square feet of usable floor space. All Commonwealth financed or leased buildings and facilities constructed or leased in this Commonwealth shall conform to each of the standards and specifications prescribed herein. All department stores, theaters, retail stores and sports arenas for which contracts for the planning and/or design have been awarded prior to the effective date of this amending act shall be exempt.], hotels, motels, office buildings, financial institutions, hospitals, public and private institutions, convalescent and nursing homes, schools, colleges, dormitories, auditoriums, gymnasiums, transportation stations and terminals, warehouses and garages.*

(2) *Theaters, motion picture theaters, museums, concert halls and summer stock theaters.*

(3) *Public halls, dance halls, banquet halls, lodge halls, skating rinks, armory halls or any other type of auditorium where the public assembles.*

(4) *Places of worship.*

(5) *Apartment houses, multistory condominium complexes, certain multifamily dwellings, clubhouses, lodging houses and rooming houses.*

(6) *Grandstands, sports arenas, stadiums and amphitheaters.*

(7) *Any other building, facility or complex used by the public.*

(c) *Building Sites.—The standards and specifications set forth in this act and in regulations adopted pursuant to it shall also apply to building sites for a building or facility to which this act applies. Such building sites shall provide an accessible route.*

Section 1.3. Degree of Conformity. (a) New Buildings.—All new construction, begun on or after the effective date of this act, of buildings and building sites which must comply with this act pursuant to section 1.2 shall be accessible to and usable by persons with physical handicaps. New construction of buildings and building sites for which the contracts for the planning, design or both have been awarded prior to the effective date of this act shall not be construed as having begun construction on or after the effective date of this act.

(b) Existing Buildings.—

(1) Except as provided in paragraph (2), all remodeling, begun on or after the effective date of this act, of buildings and building sites which must comply with this act pursuant to section 1.2 shall be accessible to and usable by persons with physical handicaps to the degree required as follows:

(i) When the construction cost of the remodeling is less than 30 percent of the worth of the building, only the remodeled area or areas shall be made accessible to and usable by persons with physical handicaps. An accessible route to the remodeled area or areas is not required.

(ii) When the construction cost of the remodeling is greater than or equal to 30 percent but less than 50 percent of the worth of the building, the

remodeled area or areas shall be made accessible to and usable by persons with physical handicaps, and an accessible route to the remodeled area or areas shall be provided. The cost of providing an accessible route to the remodeled area or areas shall not be considered when calculating the required degree of conformity.

(iii) When the construction cost of the remodeling is 50 percent or more of the worth of the building, the entire building and building site shall be made accessible to and usable by persons with physical handicaps.

(iv) When any series of remodeling is made to a building over any three-year period which accumulates in a series of construction costs which total 30 percent or more but less than 50 percent of the worth of the building at the beginning of the three-year period, the remodeled areas shall be made accessible to and usable by persons with physical handicaps and an accessible route to the areas shall be provided. When any series of remodeling is made to a building over any three-year period which accumulates in any series of construction costs which total 50 percent or more of the worth of the building at the beginning of the three-year period, the entire building and building site shall be made accessible to and usable by persons with physical handicaps.

(2) Remodeling of buildings and building sites for which the contracts for the planning, design or both have been awarded prior to the effective date of this act shall not be construed as having begun construction on or after the effective date of this act.

(c) Government Leased Buildings or Building Space.—Commencing one year after promulgation of the regulations necessary to carry out this act, whenever a new lease is entered to lease new building space of 2,800 square feet or more, the lessor shall lease a building or building space which is accessible to and usable by persons with physical handicaps when such building or building space is leased, in whole or in part, by the use of Commonwealth funds, the funds of any instrumentality of the Commonwealth or the funds of any political subdivision of the Commonwealth. When only a part of a building is being leased, an accessible route shall be provided to the leased space.

(d) New or Existing Multifamily Dwellings.—The percentage of the units available for use as multifamily dwellings, in any new residential construction or in remodeling of existing buildings, to be required to conform to the provisions of this act shall be determined by the department in conjunction with the Advisory Board.

Section 1.4. Exclusions. (a) Certain Residential Construction.—Existing single-family, townhouse and multifamily dwellings which are exclusively residential and which house ten or fewer families are excluded from the requirements of this act. New single-family, townhouse and multifamily dwellings which are exclusively residential and which house six or fewer families are excluded from the requirements of this act.

(b) Certain New Construction.—In new construction of a private building as described in section 1.2(b) with less than 2,800 square feet of net floor area, only the ground level floor of the building must be accessible to and

usable by persons with physical handicaps. Existing private buildings that have less than 2,800 square feet of net floor area are excluded from the requirements of this act. If an existing private building is remodeled in such a way so that the resulting net floor area upon completion of the remodeling will be 2,800 square feet or more, then the building must comply with the requirements of this act and be accessible to and usable by persons with physical handicaps to the degree required by section 1.3.

(c) Certain Construction.—In the case of new and existing construction with less than 12,500 square feet of net floor area, an elevator or ramp is not required to provide an accessible route to nongrade-level floors. Access is required to grade-level floors.

(d) Designated Historic Buildings.—Accessibility provisions are not required where the department or the State Historic Preservation Officer or other duly appointed agent for enforcing the historic preservation provisions of the United States Department of Interior determines that renovations cannot be accomplished without threatening or destroying the historic fabric of a building which has been identified and classified by the Pennsylvania Historical and Museum Commission as historic or for which an approval for a Part I application to the United States Department of Interior has been granted.

(e) Comparable Service Areas.—In the case of remodeled construction, an accessible route need not be provided to the remodeled area where an occupant offers goods, services or facilities that are comparable to those the occupant offers elsewhere in the building in an accessible area. The department shall determine if goods, services or facilities are comparable.

(f) Certain Special Purpose Spaces.—Accessibility provisions are not required in the following special purpose spaces: elevator pits, elevator penthouses, mechanical rooms, piping or equipment catwalks, electrical or telephone closets, general utility rooms, walk-in freezers and fur vaults. The department may also, by regulation, identify additional building spaces used for special purposes which may be exempt from complying with all or part of the rules and regulations promulgated pursuant to this act. In addition, compliance with the provisions of this act and regulations promulgated pursuant to it is not required in areas where only employees have occasion to enter and within which the work cannot reasonably be performed by a person with a physical handicap because of the nature of the abilities required.

Section 3. Section 2 of the act is repealed.

Section 4. The act is amended by adding a section to read:

Section 2.1. Special Parking Areas.—At least one parking area shall be made accessible to the building by either placing it at the grade level of the building or providing ramps at curbs or steps between the parking area and the building. Efforts shall be made to determine that an adequate number of handicapped parking spaces for government buildings exist.

Section 5. Section 3 of the act is amended to read:

Section 3. **[Enforcement.—The Department of Labor and Industry shall be responsible for enforcement of this act.] Powers and Duties of Department.** (a) **Regulatory Powers.—The department shall promulgate rules**

and regulations necessary to carry out the purposes of this act and establish specifications and standards for applicable buildings and building sites. In so doing, the department shall consult with the Advisory Board created under section 3.1. When formulating rules and regulations, the department, in consultation with the Advisory Board, shall consider the standards published in the latest edition of the American National Standards Institute (ANSI), the Architectural and Transportation Barriers Compliance Board (ATBCB), the Uniform Federal Accessibility Standards (UFAS), and other applicable recognized barrier-free design and construction standards.

(b) Approval of Plans.—It shall be the duty of the owner or owner's agent of every building or building site covered by this act, hereafter constructed or remodeled, to submit to the department for approval construction documents, requests for variances or other data required by the department showing compliance with the provisions of this act and with regulations adopted pursuant to it. No building or building site covered by this act shall be constructed or remodeled until approval has been given by the department.

(c) Review of Variance Requests.—Construction documents that, due to special circumstances, request variances from the requirement of this act and the regulations promulgated under it shall be reviewed and acted upon by the Advisory Board before the department takes final action. Any requests for a variance not acted upon by the department within 60 days after receipt of the request shall be deemed granted. The department may grant a variance if it finds all of the following:

(1) Compliance with the provisions of this act and regulations promulgated under it would result in an extreme hardship which may include, but is not limited to, instances where compliance would result in prohibitive costs or a conflict with local zoning ordinances or where compliance is not feasible due to inherent dimensional, structural or other physical constraints.

(2) The extreme hardship has not been created by the applicant.

(3) The terms of the variance are consistent with the intent of this act. In existing buildings the terms of a variance may exempt a portion of the remodeled area from a requirement of this act and regulations adopted pursuant to it.

(d) Issuance of Certificate of Occupancy.—The department shall not issue a permit authorizing the use or occupancy of a building until the department finds that the building complies with the requirements of this act and regulations promulgated pursuant to it.

(e) Enforcement.—

(1) If a governmental agency or the owner or owner's agent of a building covered by this act fails to obtain approval from the department, and nevertheless proceeds with construction or remodeling of the building, this shall constitute a violation of this act, and the department shall serve notice on the agency or owner or owner's agent. The department may order the agency, owner or owner's agent to cease all work on the building immediately. When the department orders all work to cease on a building, a notice shall be placed at the building site prohibiting the continuation of work being performed until approval is given by the department.

(2) *If a building covered by this act shall be constructed, remodeled or leased in violation of any provisions of this act or of the regulations promulgated under it, a written order shall be served by the department upon the particular governmental agency or private owner or the owner's agent identifying the conditions which constitute the violation, directing their correction within reasonable and specified time periods and notifying the agency, owner or owner's agent of appeal rights as set forth below.*

(3) *An order issued by the department pursuant to this act may be appealed to the secretary within 30 days of issuance. The appeal may include an application for a variance. The secretary shall consider the guidelines and recommendations of the Advisory Board and issue an adjudication in accordance with Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).*

(4) *The department may secure enforcement of its orders or other appropriate relief through the courts of common pleas. Enforcement of a departmental order shall be initiated by the filing of a complaint in the appropriate court and issuance and service of a copy of the complaint as in proceedings in equity.*

(5) *A governmental agency or private owner who violates a provision of this act or of the regulations promulgated under it and who fails or refuses to observe orders issued by the department for enforcement of this act or regulations promulgated under it shall be subject to a fine of not more than \$300 for each day that the violation continues. Prosecutions for violations of this act or regulations of the department shall be in the form of summary criminal proceedings. Upon conviction, after a hearing, these penalties shall be imposed and shall be final unless an appeal be taken in the manner prescribed by law.*

(6) *Cities of the first class, second class and second class A shall be responsible for the enforcement of this act.*

Section 6. Section 3.1 of the act, added July 9, 1976 (P.L.928, No.176), is amended to read:

Section 3.1. Advisory Board[, Guidelines, Exemptions].—(a) *Creation and Composition.*—There is hereby created an Advisory Board which shall be composed of [five] eleven members appointed by the [Secretary of Labor and Industry] secretary. At least [three] six members of the Advisory Board shall be [consumers and shall be] public members, three of whom shall be persons with physical handicaps, one shall be an architect registered in Pennsylvania, one shall be a member of the business community and one shall be a representative of the multifamily housing industry. The chairman and minority chairman of the Labor Relations Committee of the House of Representatives and the chairman and minority chairman of the Labor and Industry Committee of the Senate, or their designees, shall be members. All members of the Advisory Board, except the representatives of the General Assembly, shall serve for a term of two years and until their successors are appointed [and qualified]. The members of the Advisory Board shall [serve without compensation but shall be reimbursed by the Department of Labor and Industry for the necessary and actual expenses incurred in attending the

meeting of the Advisory Board and] *be paid traveling expenses and other necessary expenses and may receive a per diem compensation at a rate to be determined by the secretary for each day of actual service* in the performance of their duties under this act. Meetings of the Advisory Board shall be called by the [Secretary of Labor and Industry.] *secretary. A quorum of the Advisory Board shall consist of four members.*

(b) *Preparation of Guidelines.*—The Advisory Board shall review the principles, standards and specifications of this act *and the regulations adopted pursuant to it* and the impact of this act *and its regulations* on entities affected by its coverage and shall develop guidelines under which [exemptions and] variances from the provisions of this act *and regulations adopted pursuant to it* may be granted.

(c) *Recommendations for Variances.*—The Advisory Board shall review all applications for [exemptions and] variances from the provisions of this act *and from regulations adopted pursuant to it* and shall advise the [Secretary of Labor and Industry] *secretary* on whether [an exemption or] a variance should be granted.

(d) *Consideration of Guidelines and Recommendations by the Secretary.*—The [Secretary of Labor and Industry] *secretary* may grant a variance [or exemption] from the provisions of this act *and from regulations adopted pursuant to it*. When determining whether to grant [an exemption or] a variance, the secretary shall consider the guidelines of the [board] *Advisory Board* and its recommendations on the particular applications.

Section 7. The act is amended by adding a section to read:

Section 3.2. Private Right of Action.—(a) Citizen Complaints.—Any individual, partnership, agency, association or corporation who reasonably believes there is a violation of this act and the regulations by a governmental agency or private owner may file a complaint with the department. The complaint shall be in writing, shall be verified and shall set forth the grounds for the complaint. Within 60 days after receipt of the complaint, the department shall respond to the complainant by acknowledging receipt of the complaint in writing. The department shall investigate the complaint and respond to the complainant in writing with its findings, determinations and any enforcement measures initiated or contemplated within 120 days after receipt of the complaint. For the purpose of investigating a complaint, an employee of the department may inspect at reasonable times the building or building site which is the subject of the complaint and may make any additional investigation deemed necessary for the full and effective determination of compliance with this act and regulations promulgated pursuant to it.

(b) *Judicial Review.—Any individual, partnership, agency, association or corporation aggrieved by a final determination of the department may file a petition for review within 30 days of the final determination in the Commonwealth Court pursuant to 42 Pa.C.S. § 763(a) (relating to direct appeals from government agencies). The decision of the department shall not be reversed or modified unless it is found to be arbitrary, capricious, illegal or not supported by substantial evidence.*

(c) Original Action.—

(1) Any individual, partnership, agency association or corporation who filed a complaint pursuant to subsection (a) and received no written response from the department acknowledging receipt of its complaint within 60 days, or received a response from the department indicating that a violation was found but enforcement measures were not contemplated or enforcement measures were contemplated but such measures were not initiated after a period of 60 days from said response may either bring suit in the Commonwealth Court against the department for failure to enforce the provisions of this act and regulations promulgated pursuant to it or may bring a civil action in the appropriate court of common pleas against the building owner or owner's agent for a violation of any provisions of this act or regulations promulgated pursuant to it.

(2) If the court finds a violation of this act or of regulations adopted pursuant to it, the court may enjoin construction or remodeling of the building, direct the correction of violations within a reasonable and specified time period or order such other relief deemed appropriate. The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accord with the Rules of Civil Procedure.

(3) An architect or licensed design professional who has complied with the provisions of this act and its regulations and prepared construction documents in accordance with accepted professional standards shall have no further liability pursuant to litigation commenced under this section.

Section 8. The Department of Labor and Industry shall promulgate the rules and regulations required under section 5 (section 3(a) of the act) within 305 days of the effective date of this act.

Section 9. The provisions of section 2214(c) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, shall not apply to this act, and the Industrial Board shall not review the rules and regulations promulgated under this act.

Section 10. This act shall take effect as follows:

(1) Section 3 of this act shall take effect upon promulgation of the rules and regulations required under section 5 (section 3(a) of the act).

(2) The remainder of this act shall take effect in 60 days.

APPROVED—The 20th day of December, A. D. 1988.

ROBERT P. CASEY