

Veto No. 1992-8

HB 555

December 18, 1992

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

I hereby publicly proclaim, and file with the Secretary of the Commonwealth, my disapproval of House Bill 555, Printer's No.4270, entitled "An act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, providing for fleet owner transporter registration plates; further providing for the standards for recovered theft vehicles, for the certification of mechanics, for exemption from vehicle registration, for motor vehicle business registration plates, for penalties for exceeding maximum weights, for limitations on use of records, for warrantless arrests and for off-highway motorcycles and trail bikes; and authorizing the Department of Transportation to enter into multijurisdictional permit agreements for oversize or overweight vehicles or loads."

House Bill 555 is an omnibus bill revising various parts of the Vehicle Code. One of its provisions would permit a uniformed police officer to arrest without a warrant the driver of a motor vehicle that was involved in an accident in which someone was seriously injured or killed. The bill allows an arrest of such a person for a violation of any provision of the Vehicle Code. Incident to such an arrest, the officer is authorized to administer a breath, blood or urine test, presumably for the purpose of determining the presence of alcohol or drugs in the system.

Unlike section 1547(a)(1) of the code, this new provision contains no requirement that the police officer have reasonable grounds, i.e., probable cause, to believe the person has been driving while under the influence of alcohol or drugs. The Pennsylvania Supreme Court has very recently struck down another provision which allowed warrantless chemical tests in the absence of probable cause. The court found that section 1547(a)(2) violated the guarantee against unreasonable searches and seizures found in both the Fourth Amendment to the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution.

The new section in House Bill 555 is clearly a legislative response to the court's decision in *Commonwealth v. Kohl* just three months ago. The theory of this bill appears to be that an arrest of the driver for any Vehicle Code offense, regardless of whether it is for speeding or driving with an expired registration or inspection sticker, will be sufficient justification to test for blood alcohol content even in the absence of facts indicating intoxication. The Supreme Court has made very clear in *Kohl*, however, that the officer must have probable cause to believe the operator was driving under the influence. Probable cause to arrest for some other offense will not suffice.

While I am certainly in agreement with the purpose of this legislation to crack down on drunk drivers who cause serious injury and death, I cannot

sign legislation which I am convinced will be found by our courts to violate both the State and Federal constitutions. Fortunately, Pennsylvania's drunk driving law still allows for blood alcohol tests without the driver's consent in cases where probable cause does exist.

I note also that the Department of Environmental Resources has urged my veto of this legislation because it would require the department to license motorcycles for off-highway recreation. Secretary Arthur Davis points out that allowing motorcycles on park and forest trails could cause excessive soil compaction and erosion, create conflict with other State forest users and exacerbate existing law enforcement problems on public lands.

ROBERT P. CASEY