AMENDMENTS TO HOUSE BILL NO. 2412

Sponsor: REPRESENTATIVE HARKINS

Printer's No. 3570

1 Amend Bill, page 1, line 21, by inserting after "provisions"
2 and for public employees occupational safety and health
3 Amend Bill, page 1, lines 25 and 26, by striking out "an
4 article" and inserting
5 articles
6 Amend Bill, page 2, line 13, by inserting after "sale"
7 or rent
8 Amend Bill, page 2, line 15, by inserting after "estate"
9 or entering into a rental agreement
10 Amend Bill, page 3, by inserting between lines 19 and 20
11 (a.1) Mitigation measures.--Waivers under subsection (a)
12 shall only be issued to business activities that can adhere to
13 applicable mitigation measures defined by the Centers for
14 Disease Control, Occupational Health and Safety Administration
15 and the Department of Health to protect workers from and
16 mitigate the spread of COVID-19. A business receiving a waiver
17 under subsection (a) shall implement the applicable mitigation
18 measures.
19 Amend Bill, page 4, line 8, by striking out all of said line
20 and inserting
21 ARTICLE XXII-C
22 PUBLIC EMPLOYEES OCCUPATIONAL SAFETY AND HEALTH
23 Section 2201-C. Scope of article.
24 This article relates to public employees occupational safety
25 and health.
26 Section 2202-C. Legislative declaration.
27 The General Assembly hereby declares as follows:
28 (1) It is a basic right of all employees to work in an
29 environment that is free from hazards and risks to their
30 safety. It is the intent of the General Assembly to ensure
31 that this right is also afforded to employees of the
Commonwealth, its counties, cities, towns, boroughs and other public employers who serve the people of this Commonwealth.

(2) A significant percentage of all of those employed in this Commonwealth are employed by the Commonwealth or by one of its political subdivisions. Many of these public employees perform job functions comparable to those performed by workers in the private sector who are protected by the Occupational Safety and Health Act of 1970. The General Assembly, therefore, finds it inappropriate to continue two standards for employee safety, one applicable to those who work in the private sector and one for those who are employed by a public employer.

(3) The General Assembly has further determined that a safe place in which to work is economically advantageous to employers. Work-related accidents and injuries and the absences caused thereby decrease employee productivity and increase workers' compensation costs. In addition, unsafe premises increase the risk of financial liability for injuries to members of the public who frequent public buildings.

(4) The General Assembly, in an exercise of the Commonwealth's police power, charges the secretary with the responsibility to ensure that all public employees are afforded the same safeguards in their workplace as are granted to employees in the private sector.

Section 2203-C. Definitions.
The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Authorized employee representative." An employee authorized by employees or the designated representative of an employee organization recognized or certified to represent the employees.

"Employee organization." An organization of any kind, or any agency or employee representation committee or plan in which membership includes public employees, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, employee-employer disputes, wages, rates of pay, hours of employment or conditions of work. The term does not include an organization that practices discrimination in membership because of race, color, creed, national origin or political affiliation.

"Occupational Safety and Health Act of 1970" or "OSHA." The Occupational Safety and Health Act of 1970 (Public Law 91-596, 29 U.S.C. § 651 et seq.).

"Occupational safety and health standard." A standard that requires conditions, or the adoption or use of one or more practices, means, methods, operations or processes, reasonably necessary or appropriate to provide safe or healthful employment in places of employment.

"Person." An individual, partnership, association, corporation, business trust, legal representative or an
organized group of any of them.

"Public employee" or "employee." An individual employed by a
public employer.

"Public employer" or "employer." The Commonwealth, any of
its political subdivisions, including a school district and any
office, board, commission, agency, authority, local
transportation organization or other instrumentality thereof and
any nonprofit organization or institution and any charitable,
religious, scientific, literary, recreational, health,
educational or welfare institution receiving grants or
appropriations from Federal, State or local government. The term
does not include an employer covered or presently subject to
coverage under the Occupational Safety and Health Act of 1970.

"Review board." The Pennsylvania Occupational Safety and
Health Review Board established under this article.

"Secretary." The Secretary of Labor and Industry of the
Commonwealth or a designated agent.

Section 2204-C. Application.

(a) General rule.--Any occupational safety or health
standards promulgated under the provisions of this article shall
apply to all public employers and public employees, and the
secretary shall have authority to enforce the standards in
accordance with the provisions of this article.

(b) Statutory and common law rights preserved.--Nothing in
this article may be construed to supersede or in any manner
affect any workers' compensation law or to enlarge, diminish or
affect in any manner common law or statutory rights, duties or
liabilities of employers or employees under any law with respect
to injuries, diseases or death of employees arising out of and
in the course of employment.

(c) Employees not covered by Federal standard.--
Notwithstanding any other provision in this article, an
occupational safety or health standard promulgated under this
article shall apply only to employees not covered by a Federal
occupational safety or health standard promulgated under section
6 of the Occupational Safety and Health Act of 1970 or
amendments thereto.

Section 2205-C. Employer duties.

(a) General rule.--An employer shall furnish to each of its
employees employment and a place of employment free from
recognized hazards that are causing or are likely to cause death
or serious physical harm and which will provide reasonable and
adequate protection to the lives, safety or health of its
employees.

(b) Compliance with article.--An employer shall comply with
the occupational safety and health standards promulgated under
this article.

(c) Written statement of substances.--An employer shall,
upon the written request of an employee, furnish the employee
with a written statement listing the substances that the
employee uses or with which the employee comes into contact that
have been identified as toxic or hazardous by occupational
safety and health standards under 29 CFR Pt. 1910 Subpt. H
(relating to hazardous materials) or pursuant to the act of
February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law,
or both.
(d) Law compliance with regulations and orders.--An employee
and employer shall comply with occupational safety and health
standards and all rules, regulations and orders issued pursuant
to this article that are applicable to their own actions and
conduct.
(e) State plan for standards.--The Commonwealth shall
promulgate a plan for the development and enforcement of
occupational safety and health standards with respect only to
public employers and employees, in accordance with section 18(b)
of the Occupational Safety and Health Act of 1970.
Section 2206-C. Regulations.
The secretary may promulgate regulations to administer and
enforce this article and shall:
(1) Provide for the preparation, adoption, amendment or
repeal of regulations governing the conditions of employment
of general and special application in all workplaces.
(2) Provide a method of encouraging employers and
employees in their efforts to reduce the number of safety and
health hazards arising from undesirable or inappropriate
working conditions at the workplace, and of stimulating
employers and employees to institute new programs and to
perfect existing programs for providing safe and healthful
working conditions.
(3) Provide for appropriate reporting procedures by
employers with respect to information relating to conditions
of employment that will assist in achieving the objectives of
this article.
(4) Provide for the frequency, method and manner of
making inspections of workplaces without advance notice,
provided that in the event of an emergency or unusual
situation, the secretary may give advance notice.
(5) Provide for the publication and dissemination to
employers, employees and labor organizations and the posting,
where appropriate, by employers of informational, educational
or training materials designed to aid and assist in achieving
the objectives of this article.
(6) Provide for the establishment of new programs and
the perfection and expansion of existing programs for
occupational safety and health education for employers and
employees and institute methods and procedures for the
establishment of a program for voluntary compliance by
employers and employees with the requirements of this article
and all applicable occupational safety and health standards
and regulations promulgated under this article.
Section 2207-C. Standards.
(a) General rule.--The secretary shall, by regulation, adopt
all occupational safety and health standards, amendments or
cchanges adopted or recognized by the United States Secretary of
Labor under the authority of the Occupational Safety and Health
Act of 1970 in order to provide reasonable and adequate
protection of the lives, safety and health of public employees.
Subject to subsection (b), the secretary shall promulgate and
repeal such regulations as may be necessary to conform to the
standards established pursuant to the Occupational Safety and
Health Act of 1970. Where no Federal standards are applicable,
the secretary shall provide for the development of such State
standards as may be necessary in special circumstances.

(b) Interstate commerce.--The secretary may not adopt
standards for products distributed or used in interstate
commerce that are different from Federal standards for the
products unless the standards are required by compelling local
conditions and do not unduly burden interstate commerce.

(c) Challenge to standard or regulation.--A person who may
be adversely affected by a standard or regulation issued under
this article may challenge the validity or application of the
standard or regulation by bringing an action for declaratory
 judgment.

Section 2208-C. Variances.

(a) Variance procedure.--

(1) A public employer may apply to the secretary for a
temporary order granting a variance from a standard or any
provision of a standard promulgated under this article. A
temporary order shall be granted only if the employer files
an application that meets the requirements of subsection (b)
and establishes all of the following:

(i) The employer is unable to comply with a standard
by its effective date because of unavailability of
professional or technical personnel or of materials and
equipment needed to come into compliance with the
standard or because necessary construction or alteration
of facilities cannot be completed by the effective date.

(ii) The employer is taking all available steps to
safeguard employees against the hazards covered by the
standard.

(iii) The employer has an effective program for
coming into compliance with the standard as quickly as
practicable.

(2) (i) A temporary order issued under this section
shall prescribe the practices, means, methods, operations
and processes that the employer must adopt and use while
the order is in effect and state in detail the employer's
program for coming into compliance with the standard.

(ii) A temporary order may be granted only after
notice to employees and an opportunity for a hearing,
provided that the secretary may issue one interim order
to be effective until a decision is made on the basis of
a hearing.
(iii) A temporary order may not be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter, except that an order may be renewed not more than twice so long as the requirements of this section are met and an application for renewal is filed at least 90 days prior to the expiration date of the order.

(iv) An interim renewal of an order shall not remain in effect longer than 180 days.

(b) Contents of application for variance.--An application for a temporary variance order shall contain all of the following:

(1) A specification of the standard or portion of the standard from which the employer or owner seeks a variance.

(2) A representation by the employer, supported by representations from qualified persons who have firsthand knowledge of the facts represented, that the employer is unable to comply with the standard or portion of the standard and a detailed statement of the reasons therefor.

(3) A statement of the steps the employer has taken and will take, with specific dates, to protect employees against the hazard covered by the standard.

(4) A statement of when the employer expects to be able to comply with the standard and what steps the employer has taken and will take, with dates specified, to come into compliance with the standard.

(5) A certification that the employer has informed its employees of the application by giving a copy of the application to the authorized employee representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other appropriate means. A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the secretary for a hearing.

(c) Variance for experimental program.--The secretary may grant a variance from any standard or portion of the standard whenever the secretary determines that a variance is necessary to permit an employer to participate in an experimental program approved by the secretary, which is designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

(d) Hearing and order.--

(1) An affected employer may apply to the secretary for a rule or order for a variance from a standard promulgated under this article. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing.

(2) The secretary shall issue a rule or order if the secretary determines on the record, after opportunity for an
inspection where appropriate and a hearing, that the
proponent of the variance has demonstrated by a preponderance
of the evidence that the conditions, practices, means,
methods, operations or processes used or proposed to be used
by an employer will provide employment and places of
employment that are as safe and healthful as those that would
prevail if the employer complied with the standard. The rule
or order shall prescribe the conditions the employer must
maintain and the practices, means, methods, operations and
processes that the employer must adopt and utilize to the
extent they differ from the standard in question.

(3) A rule or order may be modified or revoked upon
application by an employer, employee or authorized employee
representative, or by the secretary on the secretary's own
motion, in the manner prescribed for its issuance under this
section at any time after six months from the date it was
entered.

(e) Challenge to standard or regulation.--A person who may
be adversely affected by a standard or regulation issued under
this article may challenge the validity or applicability of the
standard or regulation by bringing an action for declaratory
judgment.

Section 2209-C. Pennsylvania Occupational Safety and Health
Review Board.

(a) Establishment.--The Pennsylvania Occupational Safety and
Health Review Board is established to have and exercise the
powers and duties provided by the provisions of this article.
The board shall consist of five persons appointed by the
Governor from among persons who, by reason of training,
education or experience, are qualified to carry out the
functions of the review board under this article.

(b) Terms of members.--Members shall serve terms of four
years and until their successors are appointed. The Governor
shall designate one of the members to serve as chairperson.

(c) Power to hear appeals.--A member of the review board
shall hear and rule on appeals from compliance orders,
notifications and penalties issued under the provisions of this
article. The secretary shall adopt and promulgate rules and
regulations with respect to the procedures for review board
hearings.

(d) Schedule for hearing appeals.--A board member hearing an
appeal or appeals under the provisions of this article shall be
paid a per diem amount to be determined by the secretary. The
members shall alternate the hearing of appeals according to a
schedule adopted by the secretary. If a member is unable to hear
an appeal, the next available member, in accordance with the
schedule, shall hear the appeal. A member shall be selected to
hear the appeal within 30 days after the date it was filed.

(e) Necessary staff.--Any staff necessary for the purposes
of conducting hearings under this article shall be provided by
the Department of Labor and Industry.
(f) Subpoena power and oaths.--In the conduct of hearings, the review board member may subpoena and examine witnesses, require the production of evidence, administer oaths and take testimony and depositions.

(g) Ruling on appeal.--After hearing an appeal, the review board member may sustain, modify or dismiss a compliance order or penalty, provided that decision shall be issued within 120 days after the appeal was filed.

Section 2210-C. Appeal from review board.
A person, including the secretary, adversely affected or aggrieved by an order of the review board, after all administrative remedies provided by this article have been exhausted, is entitled to judicial review.

Section 2211-C. Inspection and investigation powers.
(a) Right to inspect.--
(1) In order to carry out the purposes of this article, the secretary, upon presenting appropriate credentials to the employer, may:
   (i) enter without advance notice and at reasonable times any workplace or environment where work is performed by an employee of an employer;
   (ii) inspect and investigate, during regular working hours and at other reasonable times and in a reasonable manner, any place of employment under subparagraph (i) and all pertinent conditions, structures, machines, apparatus, devices, equipment and the materials therein; and
   (iii) question privately any employer or employee.
(2) Whenever the secretary, proceeding pursuant to this section, is denied admission to any place of employment, the secretary may obtain a warrant to make an inspection or investigation of the place of employment from any judge of Commonwealth Court.

(b) Witnesses and evidences.--
(1) In making inspections and investigations under this section, the secretary may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of this Commonwealth.
(2) In case of a failure or refusal of any person to obey an order, the court of common pleas for the judicial district wherein the person resides, is found or transacts business shall issue to the person an order requiring the person to appear to produce evidence if asked, and when so ordered, and to give testimony relating to the matter under investigation or in question.
(3) A failure to obey an order of the court may be punishable by the court as a contempt.

(c) Persons to accompany secretary or representative.--
(1) Subject to regulations issued by the secretary, a representative of the employer and an authorized employee
representative shall be given an opportunity to accompany the
secretary during the physical inspection of any workplace for
the purposes of aiding the inspection. Where there is no
authorized employee representative, the secretary shall
consult with a reasonable number of employees concerning
matters of health and safety in the workplace.

(2) No employee who accompanies the secretary on an
inspection may suffer any reduction in wages as a result
thereof.

Section 2212-C. Inspection and investigation of violations.
(a) Request for inspection.--
(1) An employee or authorized employee representative
who believes that a violation of an occupational safety or
health standard exists or that an imminent danger exists may
request an inspection by giving notice of a violation or
danger to the secretary.

(2) The notice and request shall be in writing, shall
set forth with reasonable particularity the grounds for the
notice and shall be signed by an employee or authorized
employee representative.

(3) A copy of the notice shall be provided by the
secretary to the employer or its agent no later than the time
of inspection, except that on the request of the person
giving notice, the names of individual employees or the
authorized employee representative shall be kept
confidential.

(b) Action by secretary.--

(1) Whenever the secretary receives a request for
inspection and determines that there are reasonable grounds
to believe that a violation or danger exists, the secretary
shall make an inspection as soon as practicable to determine
if a violation or danger exists. The inspection may be
limited to the alleged violation or danger.

(2) If the secretary determines there are no reasonable
grounds to believe that a violation or danger exists, the
secretary shall notify the employer, employee or authorized
employee representative in writing of the determination.
Notification may not preclude future enforcement action if
conditions change.

(c) Notice of violation during inspection.--

(1) Prior to or during any inspection of a workplace, an
employee or authorized employee representative employed in
the workplace may notify in writing the secretary or any
representative of the secretary responsible for conducting
the inspection of any violation of this article that the
person has reason to believe exists in the workplace.

(2) The secretary shall by regulation establish
procedures for informal review of any refusal by a
representative of the secretary to issue a citation with
respect to any alleged violation and shall furnish a written
statement to the employer and the employees or authorized
employee representative requesting a review of the reasons
for the secretary's final disposition of the case.
Notification may not preclude future enforcement action if
conditions change.
(d) Summary by secretary.--The secretary shall compile,
analyze and publish in either summary or detailed form all
reports or information obtained under this section.
(e) Rules and regulations.--The secretary shall prescribe
such rules and regulations as the secretary may deem necessary
to carry out the secretary's responsibilities under this
article, including rules and regulations dealing with the
inspection of an employer's or owner's establishment.
Section 2213-C.  Recordkeeping.
(a) Employer's duties prescribed by regulation.--In
accordance with the secretary's regulations, an employer shall
make, keep and preserve and make available to the secretary such
records regarding its activities relating to this article as the
secretary deems necessary or appropriate for developing
information regarding the causes and prevention of occupational
accidents and illnesses. The regulations may include provisions
requiring an employer to conduct periodic inspections. The
secretary also shall issue regulations requiring that an
employer, through posting of notices, training or other
appropriate means, keep its employees informed of their
protections and obligations under this article, including the
provisions and regulations of this article.
(b) Records relating to death and injury.--The secretary
shall prescribe regulations requiring an employer to maintain
accurate records and to make public periodic reports of work-
related deaths, injuries and illnesses, other than minor
injuries requiring only first aid treatment and not involving
lost time from work, medical treatment, loss of consciousness,
restriction of work or motion or transfer to another job.
(c) Exposure to toxic or harmful agents.--
(1) The secretary shall issue regulations requiring an
employer to maintain accurate records of employee exposures
to potentially toxic materials or harmful physical agents
that are required to be monitored or measured under any
occupational safety and health standard adopted under this
article. The regulations shall provide employees or the
authorized employee representative with an opportunity to
observe monitoring or measuring and have access to the
records. The regulations shall make appropriate provisions
for each employee or former employee to have access to
records that will indicate the employee's own exposure to
toxic materials or harmful physical agents.
(2) An employer shall promptly notify any employee who
has been or is being exposed to toxic materials or harmful
physical agents in concentrations or at levels that exceed
those prescribed by an occupational safety and health
standard promulgated under this article and shall inform any
employee who is being thus exposed of the corrective action being taken.

Section 2214-C. Compliance orders.

(a) Issuance.--Whenever the secretary, upon inspection or investigation, determines that an employer has violated a provision of this article or an occupational safety or health standard or regulation promulgated under this article, the secretary shall with reasonable promptness issue a compliance order to the employer. Each compliance order shall be in writing and shall describe the nature of the violation, including a reference to the provisions of this article or the standard, regulation or order alleged to have been violated. The compliance order shall fix a reasonable time for the abatement of the violation.

(b) Posting of order.--Each compliance order issued under this section or a copy or copies of the order shall be prominently posted as prescribed in regulations issued by the secretary at or near each place a violation referred to in the compliance order occurred and at other locations within the workplace reasonably accessible to the employees.

Section 2215-C. Enforcement procedures.

(a) Notice of order and penalty.--

(1) If, after inspection or investigation, the secretary issues a compliance order under section 2214-C, the secretary shall, within a reasonable time after the termination of the inspection or investigation, notify the employer by certified mail of the penalty, if any, proposed to be assessed under section 2217-C. The notification shall inform the employer that the employer has 15 working days from the receipt of notice within which to notify the secretary that the employer wishes to contest the compliance order or proposed assessment of penalty.

(2) If the employer fails to notify the secretary within 15 days and if no notice is filed by an employee or authorized employee representative under subsection (c) within 15 days, the compliance order and the assessment, as proposed, shall be deemed a final order of the secretary and not be subject to review by any court or agency.

(b) Notice of failure to correct violation.--

(1) If the secretary has reason to believe that an employer has failed to correct a violation for which a compliance order has been issued within the period permitted for correction, the secretary shall notify the employer by certified mail of the failure and of the penalty proposed to be assessed under section 2217-C by reason of the failure. In the case, however, of a review proceeding initiated by the employer under this section in good faith and not solely for delay or the avoidance of penalties, the period permitted for correction of the violation may not begin to run until the entry of a final order by the review board. Notification by the secretary shall inform the employer that the employer has...
15 working days from the receipt of the notice within which to notify the secretary that the employer wishes to contest the notification or the proposed assessment of penalty.

(2) If, within 15 days from receipt of notification under this section, the employer fails to notify the secretary that it intends to contest the notification or proposed assessment of penalty, the notification and assessment, as proposed, shall be deemed a final order of the review board and not be subject to review by any court or agency.

(c) Action by review board.--

(1) If an employer notifies the secretary that it intends to contest a compliance order issued under section 2214-C(a) or a notification issued under subsection (a) or (b) or if, within 15 days after the issuance of a compliance order issued under section 2214-C(a), an employee or authorized employee representative files a notice with the secretary alleging that the period of time fixed in the compliance order for abatement of the violation is unreasonable, the secretary shall immediately advise the review board of the notification, and the review board shall afford an opportunity for a hearing.

(2) The review board shall thereafter issue an order, based on findings of fact, affirming, modifying or vacating the secretary's compliance order or proposed penalty or directing other appropriate relief. The order shall become final 30 days after its issuance.

(3) Upon a showing by an employer of a good faith effort to comply with the abatement requirements of a compliance order and a showing that abatement has not been completed because of factors beyond the employer's reasonable control, the secretary, after an opportunity for a hearing as provided in this subsection, shall issue an order affirming or modifying the abatement requirements in the compliance order.

(4) The rules of procedure prescribed by the secretary shall provide affected employees or the authorized employee representative of affected employees an opportunity to participate as parties to hearings under this subsection.

Section 2216-C. Injunction proceedings.

(a) Temporary restraining order.--

(1) The Commonwealth Court shall have jurisdiction, upon petition of the secretary, pursuant to law and general rules, to restrain any conditions or practices in any place of public employment that pose a danger that could reasonably be expected to cause death or serious physical harm immediately or before the imminence of the danger can be eliminated through the abatement procedures otherwise provided for by this article.

(2) An order issued under this section shall require steps to be taken as may be necessary to avoid, correct or remove the imminent danger and prohibit the employment or
presence of an individual in locations or under conditions
where the imminent danger exists, except individuals whose
presence is necessary to avoid, correct or remove the
imminent danger.
(3) A temporary restraining order issued without notice
may not be effective for more than five days.
(b) Action by inspector.--Whenever and as soon as an
inspector concludes that conditions or practices described in
subsection (a) exist in any place of public employment, the
inspector shall inform the affected employees and employers of
the danger and shall further inform them that the inspector is
recommending to the secretary that relief be sought.
(c) Failure of secretary to seek relief.--If the secretary
arbitrarily or capriciously fails to seek relief under this
section, an employee who may be injured by reason of the
failure, or the authorized employee representative of the
employee, may bring an action against the secretary in
Commonwealth Court to compel the secretary to seek an order and
for such further relief as may be appropriate.

Section 2217-C. Penalties.
(a) Willful or repeated violations.--An employer who
willfully or repeatedly violates the requirements of section
2204-C or 2205-C, an occupational safety and health standard
promulgated under section 2207-C or regulations prescribed under
this article may be assessed a civil penalty of not more than
$10,000 for each violation.
(b) Compliance order for serious violation.--An employer who
has received a compliance order for a serious violation of the
requirements of section 2204-C or 2205-C, an occupational safety
and health standard promulgated under section 2207-C or
regulations prescribed under this article shall be assessed a
civil penalty of not more than $1,000 for each violation.
(c) Compliance order for lesser violation.--An employer who
has received a compliance order for a violation of the
requirements of section 2204-C or 2205-C, an occupational safety
and health standard promulgated under section 2207-C or
regulations prescribed under this article, which violation has
been determined not to be of a serious nature, may be assessed a
civil penalty of not more than $1,000 for each violation.
(d) Failure to correct violation.--An employer who fails to
correct a violation for which a compliance order has been issued
under section 2214-C within the period permitted for its
correction, which period shall not begin to run until the date
of the final order of the board in the case of any review
proceeding under section 2215-C initiated by the employer in
good faith and not solely for delay or avoidance of penalties,
may be assessed a civil penalty of not more than $1,000 for each
day during which the failure or violation continues.
(e) Violation causing death.--
(1) An employer who willfully violates a standard or
order promulgated pursuant to section 2207-C or a regulation
adopted under this article, which violation caused death to
any employee, commits a misdemeanor and shall, upon
conviction, be sentenced to pay a fine of not more than
$10,000 or to imprisonment for not more than six months, or
both.
(2) If a conviction is for a violation committed after a
first conviction, the person shall be sentenced to pay a fine
of not more than $20,000 or to imprisonment for not more than
one year, or both.
(f) Providing advance notice of inspection.--A person who
gives advance notice of any inspection to be conducted under
this article without authority from the secretary commits a
misdemeanor and shall, upon conviction, be sentenced to pay a
fine of not more than $1,000 or to imprisonment for not more
than six months, or both.
(g) False statements.--A person who knowingly makes any
false statement, representation or certification in any
application, record, report, plan or other document filed or
required to be maintained under this article commits a
misdemeanor and shall, upon conviction, be sentenced to pay a
fine of not more than $10,000 or to imprisonment for not more
than six months, or both.
(h) Violation of posting requirements.--An employer who
violates any of the posting requirements as prescribed under the
provisions of this article shall be assessed a civil penalty of
not more than $1,000 for each violation.
(i) Refusing entry for investigation or inspection.--An
employer who refuses entry to the secretary while the secretary
is attempting to conduct an investigation or inspection under
this article or in any way willfully obstructs an authorized
representative from carrying out an investigation or inspection
commits a misdemeanor and shall, upon conviction, be sentenced
to pay a fine of not more than $1,000 or to imprisonment for not
more than six months, or both.
(j) Causing bodily harm to secretary.--An employer or
individual who willfully causes bodily harm to the secretary
while the secretary is attempting to conduct an investigation or
inspection under this article commits a misdemeanor and shall,
upon conviction, be sentenced to pay a fine of not more than
$10,000 or to imprisonment for not more than one year, or both.
(k) Authority to assess civil penalties.--The review board
shall have authority to assess all civil penalties provided for
in this article, giving due consideration to the appropriateness
of the penalty with respect to the size of the business of the
employer being charged, the gravity of the violation, the good
faith of the employer and the history of previous violations.
(l) Determination of serious violation.--For the purposes of
this article, a serious violation shall be deemed to exist in a
place of employment if there is a substantial probability that
death or serious physical harm could result from a condition
that exists, or from one or more practices, means, methods,
operations or processes that have been adopted or are in use, in
the place of employment unless the employer did not and could
not with the exercise of reasonable diligence know of the
presence of the violation.

(m) Disposition of civil penalties.--Civil penalties owed
under this article shall be paid to the secretary for deposit in
the State Treasury and may be recovered in a civil action in the
name of the Commonwealth brought in Commonwealth Court.

(n) Unauthorized disclosure of confidential information.--A
person who violates the provisions of section 2222-C commits a
misdemeanor and shall, upon conviction, be sentenced to pay a
fine of not more than $1,000 or to imprisonment for not more
than one year, or both. In the event that the person is an
officer or employee responsible for carrying out the provisions
of this article, the officer or employee shall be removed from
office or employment upon conviction under this section.

Section 2218-C. Discrimination against employees.

(a) General rule.--An employer or any other person may not
discriminate against an employee because the employee has filed
a complaint or instituted or caused to be instituted a
proceeding under or related to this article or has testified or
is about to testify in a proceeding or because of the exercise
by an employee on the employee's own behalf or on behalf of
others of a right afforded by this article.

(b) Remedy.--

(1) An employee who believes that the employee has been
discharged, disciplined or otherwise discriminated against by
a person in violation of this section may, within 30 days
after a violation occurs, file a complaint with the secretary
alleging discrimination.

(2) Upon receipt of the complaint, the secretary shall
cause an investigation to be made as deemed appropriate and
shall, if requested, withhold the name of the complainant
from the employer.

(3) If, upon investigation, the secretary determines
that the provisions of this section have been violated, the
secretary shall request the Attorney General to bring an
action in Commonwealth Court against the person or persons
alleged to have violated this article. In any such action,
the Commonwealth Court shall have jurisdiction, for cause,
shown, to restrain violations of this article and to order
all appropriate relief, including reinstatement of the
employee to the employee's former position with back pay and
benefits.

(c) Notice of determination of complaint.--Within 90 days of
receipt of a complaint filed under this section, the secretary
shall notify the complainant and the complainant's
representative by registered mail of the secretary's
determination of the complaint.

(d) Other rights preserved.--Nothing in this article may be
construed to diminish the rights of an employee under any law,
rule or regulation or under any collective bargaining agreement.

Section 2219-C. Research and demonstration projects.

(a) Secretary to conduct.--

(1) The secretary shall conduct research and undertake demonstration projects relating to occupational safety and health issues and problems either within the Department of Labor and Industry or by grants or contracts. The secretary may prescribe regulations requiring employers to measure, record and make reports on exposure of employees to toxic substances that the secretary believes may endanger the health or safety of employees.

(2) The secretary shall cooperate with the Director of the National Institute for Occupational Safety and Health of the United States Department of Health and Human Services in establishing the programs of medical examinations and tests as may be necessary to determine the incidence of occupational illnesses and employee susceptibility to the illnesses.

(3) The programs, on the request of the employer, may be paid for by the secretary, and the secretary shall provide other assistance as may be required.

(b) Confidentiality.--Information obtained under this article shall be made public without revealing the names of individual workers covered by physical examination or special studies and shall be made available to employers, employees and their respective organizations.

Section 2220-C. Education programs.

(a) Programs to train personnel.--The secretary shall conduct directly, or by grants or contracts, education programs to provide an adequate supply of qualified personnel to carry out the purposes of this article and informational programs on the importance and proper use of adequate safety and health equipment.

(b) Short-term training.--The secretary may conduct directly, or by grants or contracts, short-term training of personnel engaged in work related to the secretary's responsibilities under this article.

(c) Additional programs.--The secretary shall provide for the establishment and supervision of programs for the education and training of employers, owners and employees in the recognition, avoidance and prevention of unsafe or unhealthful working conditions in employment covered under this article. The secretary shall consult with and advise owners and employers, employees and organizations representing owners, employers and employees as to effective means of preventing occupational injuries and illnesses.

Section 2221-C. Reports to United States Secretary of Labor.

In regard to the administration and enforcement of this article, the secretary shall make reports to the United States Secretary of Labor in a form and containing information that the Secretary of Labor shall from time to time require.
Section 2222-C. Confidentiality of information maintained.
All information reported to or otherwise obtained by the secretary or any member of the review board in connection with an inspection or proceeding under this article that contains or might reveal a trade secret shall be considered confidential, provided that the information may be disclosed to other officers or employees concerned with carrying out this article or when relevant in any proceeding under this article. In proceedings under this article, the secretary, the review board or the court shall issue orders that may be appropriate to protect the confidentiality of trade secrets.

Section 2223-C. Funding.
Nothing in this article may prohibit the secretary from pursuing Federal or State funding for the purposes of this article.

Section 2. This act shall take effect as follows:
(1) The addition of Article XXII-C of the act shall take effect in 60 days.
(2) The remainder of this act shall take effect immediately.