

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

1 Commonwealth, its counties, cities, towns, boroughs and other
2 public employers who serve the people of this Commonwealth.

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

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

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

26 Section 2203-C. Definitions.

27 The following words and phrases when used in this article
28 shall have the meanings given to them in this section unless the
29 context clearly indicates otherwise:

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

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

42 "Occupational Safety and Health Act of 1970" or "OSHA." The
43 Occupational Safety and Health Act of 1970 (Public Law 91-596,
44 29 U.S.C. § 651 et seq.).

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

50 "Person." An individual, partnership, association,
51 corporation, business trust, legal representative or an

1 organized group of any of them.

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

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

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

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

18 Section 2204-C. Application.

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

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

31 (c) Employees not covered by Federal standard.--
32 Notwithstanding any other provision in this article, an
33 occupational safety or health standard promulgated under this
34 article shall apply only to employees not covered by a Federal
35 occupational safety or health standard promulgated under section
36 6 of the Occupational Safety and Health Act of 1970 or
37 amendments thereto.

38 Section 2205-C. Employer duties.

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

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

48 (c) Written statement of substances.--An employer shall,
49 upon the written request of an employee, furnish the employee
50 with a written statement listing the substances that the
51 employee uses or with which the employee comes into contact that

1 have been identified as toxic or hazardous by occupational
2 safety and health standards under 29 CFR Pt. 1910 Subpt. H
3 (relating to hazardous materials) or pursuant to the act of
4 February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law,
5 or both.

6 (d) Law compliance with regulations and orders.--An employee
7 and employer shall comply with occupational safety and health
8 standards and all rules, regulations and orders issued pursuant
9 to this article that are applicable to their own actions and
10 conduct.

11 (e) State plan for standards.--The Commonwealth shall
12 promulgate a plan for the development and enforcement of
13 occupational safety and health standards with respect only to
14 public employers and employees, in accordance with section 18(b)
15 of the Occupational Safety and Health Act of 1970.

16 Section 2206-C. Regulations.

17 The secretary may promulgate regulations to administer and
18 enforce this article and shall:

19 (1) Provide for the preparation, adoption, amendment or
20 repeal of regulations governing the conditions of employment
21 of general and special application in all workplaces.

22 (2) Provide a method of encouraging employers and
23 employees in their efforts to reduce the number of safety and
24 health hazards arising from undesirable or inappropriate
25 working conditions at the workplace, and of stimulating
26 employers and employees to institute new programs and to
27 perfect existing programs for providing safe and healthful
28 working conditions.

29 (3) Provide for appropriate reporting procedures by
30 employers with respect to information relating to conditions
31 of employment that will assist in achieving the objectives of
32 this article.

33 (4) Provide for the frequency, method and manner of
34 making inspections of workplaces without advance notice,
35 provided that in the event of an emergency or unusual
36 situation, the secretary may give advance notice.

37 (5) Provide for the publication and dissemination to
38 employers, employees and labor organizations and the posting,
39 where appropriate, by employers of informational, educational
40 or training materials designed to aid and assist in achieving
41 the objectives of this article.

42 (6) Provide for the establishment of new programs and
43 the perfection and expansion of existing programs for
44 occupational safety and health education for employers and
45 employees and institute methods and procedures for the
46 establishment of a program for voluntary compliance by
47 employers and employees with the requirements of this article
48 and all applicable occupational safety and health standards
49 and regulations promulgated under this article.

50 Section 2207-C. Standards.

51 (a) General rule.--The secretary shall, by regulation, adopt

1 all occupational safety and health standards, amendments or
2 changes adopted or recognized by the United States Secretary of
3 Labor under the authority of the Occupational Safety and Health
4 Act of 1970 in order to provide reasonable and adequate
5 protection of the lives, safety and health of public employees.
6 Subject to subsection (b), the secretary shall promulgate and
7 repeal such regulations as may be necessary to conform to the
8 standards established pursuant to the Occupational Safety and
9 Health Act of 1970. Where no Federal standards are applicable,
10 the secretary shall provide for the development of such State
11 standards as may be necessary in special circumstances.

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

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

22 Section 2208-C. Variances.

23 (a) Variance procedure.--

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

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

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

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

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

47 (ii) A temporary order may be granted only after
48 notice to employees and an opportunity for a hearing,
49 provided that the secretary may issue one interim order
50 to be effective until a decision is made on the basis of
51 a hearing.

1 (iii) A temporary order may not be in effect for
2 longer than the period needed by the employer to achieve
3 compliance with the standard or one year, whichever is
4 shorter, except that an order may be renewed not more
5 than twice so long as the requirements of this section
6 are met and an application for renewal is filed at least
7 90 days prior to the expiration date of the order.

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

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

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

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

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

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

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

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

44 (d) Hearing and order.--

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

50 (2) The secretary shall issue a rule or order if the
51 secretary determines on the record, after opportunity for an

1 inspection where appropriate and a hearing, that the
2 proponent of the variance has demonstrated by a preponderance
3 of the evidence that the conditions, practices, means,
4 methods, operations or processes used or proposed to be used
5 by an employer will provide employment and places of
6 employment that are as safe and healthful as those that would
7 prevail if the employer complied with the standard. The rule
8 or order shall prescribe the conditions the employer must
9 maintain and the practices, means, methods, operations and
10 processes that the employer must adopt and utilize to the
11 extent they differ from the standard in question.

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

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

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

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

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

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

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

49 (e) Necessary staff.--Any staff necessary for the purposes
50 of conducting hearings under this article shall be provided by
51 the Department of Labor and Industry.

1 (f) Subpoena power and oaths.--In the conduct of hearings,
2 the review board member may subpoena and examine witnesses,
3 require the production of evidence, administer oaths and take
4 testimony and depositions.

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

9 Section 2210-C. Appeal from review board.

10 A person, including the secretary, adversely affected or
11 aggrieved by an order of the review board, after all
12 administrative remedies provided by this article have been
13 exhausted, is entitled to judicial review.

14 Section 2211-C. Inspection and investigation powers.

15 (a) Right to inspect.--

16 (1) In order to carry out the purposes of this article,
17 the secretary, upon presenting appropriate credentials to the
18 employer, may:

19 (i) enter without advance notice and at reasonable
20 times any workplace or environment where work is
21 performed by an employee of an employer;

22 (ii) inspect and investigate, during regular working
23 hours and at other reasonable times and in a reasonable
24 manner, any place of employment under subparagraph (i)
25 and all pertinent conditions, structures, machines,
26 apparatus, devices, equipment and the materials therein;
27 and

28 (iii) question privately any employer or employee.

29 (2) Whenever the secretary, proceeding pursuant to this
30 section, is denied admission to any place of employment, the
31 secretary may obtain a warrant to make an inspection or
32 investigation of the place of employment from any judge of
33 Commonwealth Court.

34 (b) Witnesses and evidences.--

35 (1) In making inspections and investigations under this
36 section, the secretary may require the attendance and
37 testimony of witnesses and the production of evidence under
38 oath. Witnesses shall be paid the same fees and mileage that
39 are paid witnesses in the courts of this Commonwealth.

40 (2) In case of a failure or refusal of any person to
41 obey an order, the court of common pleas for the judicial
42 district wherein the person resides, is found or transacts
43 business shall issue to the person an order requiring the
44 person to appear to produce evidence if asked, and when so
45 ordered, and to give testimony relating to the matter under
46 investigation or in question.

47 (3) A failure to obey an order of the court may be
48 punishable by the court as a contempt.

49 (c) Persons to accompany secretary or representative.--

50 (1) Subject to regulations issued by the secretary, a
51 representative of the employer and an authorized employee

1 representative shall be given an opportunity to accompany the
2 secretary during the physical inspection of any workplace for
3 the purposes of aiding the inspection. Where there is no
4 authorized employee representative, the secretary shall
5 consult with a reasonable number of employees concerning
6 matters of health and safety in the workplace.

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

10 Section 2212-C. Inspection and investigation of violations.

11 (a) Request for inspection.--

12 (1) An employee or authorized employee representative
13 who believes that a violation of an occupational safety or
14 health standard exists or that an imminent danger exists may
15 request an inspection by giving notice of a violation or
16 danger to the secretary.

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

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

27 (b) Action by secretary.--

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

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

40 (c) Notice of violation during inspection.--

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

47 (2) The secretary shall by regulation establish
48 procedures for informal review of any refusal by a
49 representative of the secretary to issue a citation with
50 respect to any alleged violation and shall furnish a written
51 statement to the employer and the employees or authorized

1 employee representative requesting a review of the reasons
2 for the secretary's final disposition of the case.
3 Notification may not preclude future enforcement action if
4 conditions change.

5 (d) Summary by secretary.--The secretary shall compile,
6 analyze and publish in either summary or detailed form all
7 reports or information obtained under this section.

8 (e) Rules and regulations.--The secretary shall prescribe
9 such rules and regulations as the secretary may deem necessary
10 to carry out the secretary's responsibilities under this
11 article, including rules and regulations dealing with the
12 inspection of an employer's or owner's establishment.
13 Section 2213-C. Recordkeeping.

14 (a) Employer's duties prescribed by regulation.--In
15 accordance with the secretary's regulations, an employer shall
16 make, keep and preserve and make available to the secretary such
17 records regarding its activities relating to this article as the
18 secretary deems necessary or appropriate for developing
19 information regarding the causes and prevention of occupational
20 accidents and illnesses. The regulations may include provisions
21 requiring an employer to conduct periodic inspections. The
22 secretary also shall issue regulations requiring that an
23 employer, through posting of notices, training or other
24 appropriate means, keep its employees informed of their
25 protections and obligations under this article, including the
26 provisions and regulations of this article.

27 (b) Records relating to death and injury.--The secretary
28 shall prescribe regulations requiring an employer to maintain
29 accurate records and to make public periodic reports of work-
30 related deaths, injuries and illnesses, other than minor
31 injuries requiring only first aid treatment and not involving
32 lost time from work, medical treatment, loss of consciousness,
33 restriction of work or motion or transfer to another job.

34 (c) Exposure to toxic or harmful agents.--

35 (1) The secretary shall issue regulations requiring an
36 employer to maintain accurate records of employee exposures
37 to potentially toxic materials or harmful physical agents
38 that are required to be monitored or measured under any
39 occupational safety and health standard adopted under this
40 article. The regulations shall provide employees or the
41 authorized employee representative with an opportunity to
42 observe monitoring or measuring and have access to the
43 records. The regulations shall make appropriate provisions
44 for each employee or former employee to have access to
45 records that will indicate the employee's own exposure to
46 toxic materials or harmful physical agents.

47 (2) An employer shall promptly notify any employee who
48 has been or is being exposed to toxic materials or harmful
49 physical agents in concentrations or at levels that exceed
50 those prescribed by an occupational safety and health
51 standard promulgated under this article and shall inform any

1 employee who is being thus exposed of the corrective action
2 being taken.

3 Section 2214-C. Compliance orders.

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

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

21 Section 2215-C. Enforcement procedures.

22 (a) Notice of order and penalty.--

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

33 (2) If the employer fails to notify the secretary within
34 15 days and if no notice is filed by an employee or
35 authorized employee representative under subsection (c)
36 within 15 days, the compliance order and the assessment, as
37 proposed, shall be deemed a final order of the secretary and
38 not be subject to review by any court or agency.

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

40 (1) If the secretary has reason to believe that an
41 employer has failed to correct a violation for which a
42 compliance order has been issued within the period permitted
43 for correction, the secretary shall notify the employer by
44 certified mail of the failure and of the penalty proposed to
45 be assessed under section 2217-C by reason of the failure. In
46 the case, however, of a review proceeding initiated by the
47 employer under this section in good faith and not solely for
48 delay or the avoidance of penalties, the period permitted for
49 correction of the violation may not begin to run until the
50 entry of a final order by the review board. Notification by
51 the secretary shall inform the employer that the employer has

1 15 working days from the receipt of the notice within which
2 to notify the secretary that the employer wishes to contest
3 the notification or the proposed assessment of penalty.

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

11 (c) Action by review board.--

12 (1) If an employer notifies the secretary that it
13 intends to contest a compliance order issued under section
14 2214-C(a) or a notification issued under subsection (a) or
15 (b) or if, within 15 days after the issuance of a compliance
16 order issued under section 2214-C(a), an employee or
17 authorized employee representative files a notice with the
18 secretary alleging that the period of time fixed in the
19 compliance order for abatement of the violation is
20 unreasonable, the secretary shall immediately advise the
21 review board of the notification, and the review board shall
22 afford an opportunity for a hearing.

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

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

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

39 Section 2216-C. Injunction proceedings.

40 (a) Temporary restraining order.--

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

49 (2) An order issued under this section shall require
50 steps to be taken as may be necessary to avoid, correct or
51 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

1 adopted under this article, which violation caused death to
2 any employee, commits a misdemeanor and shall, upon
3 conviction, be sentenced to pay a fine of not more than
4 \$10,000 or to imprisonment for not more than six months, or
5 both.

6 (2) If a conviction is for a violation committed after a
7 first conviction, the person shall be sentenced to pay a fine
8 of not more than \$20,000 or to imprisonment for not more than
9 one year, or both.

10 (f) Providing advance notice of inspection.--A person who
11 gives advance notice of any inspection to be conducted under
12 this article without authority from the secretary commits a
13 misdemeanor and shall, upon conviction, be sentenced to pay a
14 fine of not more than \$1,000 or to imprisonment for not more
15 than six months, or both.

16 (g) False statements.--A person who knowingly makes any
17 false statement, representation or certification in any
18 application, record, report, plan or other document filed or
19 required to be maintained under this article commits a
20 misdemeanor and shall, upon conviction, be sentenced to pay a
21 fine of not more than \$10,000 or to imprisonment for not more
22 than six months, or both.

23 (h) Violation of posting requirements.--An employer who
24 violates any of the posting requirements as prescribed under the
25 provisions of this article shall be assessed a civil penalty of
26 not more than \$1,000 for each violation.

27 (i) Refusing entry for investigation or inspection.--An
28 employer who refuses entry to the secretary while the secretary
29 is attempting to conduct an investigation or inspection under
30 this article or in any way willfully obstructs an authorized
31 representative from carrying out an investigation or inspection
32 commits a misdemeanor and shall, upon conviction, be sentenced
33 to pay a fine of not more than \$1,000 or to imprisonment for not
34 more than six months, or both.

35 (j) Causing bodily harm to secretary.--An employer or
36 individual who willfully causes bodily harm to the secretary
37 while the secretary is attempting to conduct an investigation or
38 inspection under this article commits a misdemeanor and shall,
39 upon conviction, be sentenced to pay a fine of not more than
40 \$10,000 or to imprisonment for not more than one year, or both.

41 (k) Authority to assess civil penalties.--The review board
42 shall have authority to assess all civil penalties provided for
43 in this article, giving due consideration to the appropriateness
44 of the penalty with respect to the size of the business of the
45 employer being charged, the gravity of the violation, the good
46 faith of the employer and the history of previous violations.

47 (l) Determination of serious violation.--For the purposes of
48 this article, a serious violation shall be deemed to exist in a
49 place of employment if there is a substantial probability that
50 death or serious physical harm could result from a condition
51 that exists, or from one or more practices, means, methods,

1 operations or processes that have been adopted or are in use, in
2 the place of employment unless the employer did not and could
3 not with the exercise of reasonable diligence know of the
4 presence of the violation.

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

9 (n) Unauthorized disclosure of confidential information.--A
10 person who violates the provisions of section 2222-C commits a
11 misdemeanor and shall, upon conviction, be sentenced to pay a
12 fine of not more than \$1,000 or to imprisonment for not more
13 than one year, or both. In the event that the person is an
14 officer or employee responsible for carrying out the provisions
15 of this article, the officer or employee shall be removed from
16 office or employment upon conviction under this section.
17 Section 2218-C. Discrimination against employees.

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

25 (b) Remedy.--

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

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

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

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

50 (d) Other rights preserved.--Nothing in this article may be
51 construed to diminish the rights of an employee under any law,

1 rule or regulation or under any collective bargaining agreement.
2 Section 2219-C. Research and demonstration projects.

3 (a) Secretary to conduct.--

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

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

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

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

27 Section 2220-C. Education programs.

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

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

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

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

48 In regard to the administration and enforcement of this
49 article, the secretary shall make reports to the United States
50 Secretary of Labor in a form and containing information that the
51 Secretary of Labor shall from time to time require.

1 Section 2222-C. Confidentiality of information maintained.

2 All information reported to or otherwise obtained by the
3 secretary or any member of the review board in connection with
4 an inspection or proceeding under this article that contains or
5 might reveal a trade secret shall be considered confidential,
6 provided that the information may be disclosed to other officers
7 or employees concerned with carrying out this article or when
8 relevant in any proceeding under this article. In proceedings
9 under this article, the secretary, the review board or the court
10 shall issue orders that may be appropriate to protect the
11 confidentiality of trade secrets.

12 Section 2223-C. Funding.

13 Nothing in this article may prohibit the secretary from
14 pursuing Federal or State funding for the purposes of this
15 article.

16 Section 2. This act shall take effect as follows:

17 (1) The addition of Article XXII-C of the act shall take
18 effect in 60 days.

19 (2) The remainder of this act shall take effect
20 immediately.