

## 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

1 presence of an individual in locations or under conditions  
2 where the imminent danger exists, except individuals whose  
3 presence is necessary to avoid, correct or remove the  
4 imminent danger.

5 (3) A temporary restraining order issued without notice  
6 may not be effective for more than five days.

7 (b) Action by inspector.--Whenever and as soon as an  
8 inspector concludes that conditions or practices described in  
9 subsection (a) exist in any place of public employment, the  
10 inspector shall inform the affected employees and employers of  
11 the danger and shall further inform them that the inspector is  
12 recommending to the secretary that relief be sought.

13 (c) Failure of secretary to seek relief.--If the secretary  
14 arbitrarily or capriciously fails to seek relief under this  
15 section, an employee who may be injured by reason of the  
16 failure, or the authorized employee representative of the  
17 employee, may bring an action against the secretary in  
18 Commonwealth Court to compel the secretary to seek an order and  
19 for such further relief as may be appropriate.

20 Section 2217-C. Penalties.

21 (a) Willful or repeated violations.--An employer who  
22 willfully or repeatedly violates the requirements of section  
23 2204-C or 2205-C, an occupational safety and health standard  
24 promulgated under section 2207-C or regulations prescribed under  
25 this article may be assessed a civil penalty of not more than  
26 \$10,000 for each violation.

27 (b) Compliance order for serious violation.--An employer who  
28 has received a compliance order for a serious violation of the  
29 requirements of section 2204-C or 2205-C, an occupational safety  
30 and health standard promulgated under section 2207-C or  
31 regulations prescribed under this article shall be assessed a  
32 civil penalty of not more than \$1,000 for each violation.

33 (c) Compliance order for lesser violation.--An employer who  
34 has received a compliance order for a violation of the  
35 requirements of section 2204-C or 2205-C, an occupational safety  
36 and health standard promulgated under section 2207-C or  
37 regulations prescribed under this article, which violation has  
38 been determined not to be of a serious nature, may be assessed a  
39 civil penalty of not more than \$1,000 for each violation.

40 (d) Failure to correct violation.--An employer who fails to  
41 correct a violation for which a compliance order has been issued  
42 under section 2214-C within the period permitted for its  
43 correction, which period shall not begin to run until the date  
44 of the final order of the board in the case of any review  
45 proceeding under section 2215-C initiated by the employer in  
46 good faith and not solely for delay or avoidance of penalties,  
47 may be assessed a civil penalty of not more than \$1,000 for each  
48 day during which the failure or violation continues.

49 (e) Violation causing death.--

50 (1) An employer who willfully violates a standard or  
51 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.