

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 299 Session of 2023

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AS REPORTED FROM COMMITTEE ON LABOR AND INDUSTRY, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 24, 2023

AN ACT

1 Providing for workplace health and safety standards for public
2 employees; providing for powers and duties of the Secretary
3 of Labor and Industry; establishing the Pennsylvania
4 Occupational Safety and Health Review Board; providing for
5 workplace inspections; and imposing penalties.

6 This act may be referred to as Jake's Law.

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17 The General Assembly of the Commonwealth of Pennsylvania

18 hereby enacts as follows:

19 Section 1. Short title.

20 This act shall be known and may be cited as the Public

21 Employees Occupational Safety and Health Act.

22 Section 2. Legislative declaration.

23 The General Assembly hereby declares as follows:

24 (1) It is a basic right of all employees to work in an

25 environment that is free from hazards and risks to their

26 safety. It is the intent of the General Assembly to ensure

27 that this right is also afforded to employees of the

28 Commonwealth, its counties, cities, towns, boroughs and

29 townships and other public employers who serve the people of

30 this Commonwealth.

1 (2) A significant percentage of all of those employed in
2 this Commonwealth are employed by the Commonwealth or by one
3 of its political subdivisions. Many of these public employees
4 perform job functions comparable to those performed by
5 workers in the private sector who are protected by 29 U.S.C.
6 Ch. 15 (relating to occupational safety and health). The
7 General Assembly, therefore, finds it inappropriate to
8 continue two standards for employee safety, one applicable to
9 those who work in the private sector and one for those who
10 are employed by a public employer.

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

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

24 Section 3. Definitions.

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

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

1 "Department." The Department of Labor and Industry of the
2 Commonwealth.

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

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

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

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

22 "Public employer" or "employer." As follows:

23 (1) The Commonwealth, any of its political subdivisions,
24 including a school district and any office, board,
25 commission, agency, authority, local transportation
26 organization or other instrumentality thereof, any nonprofit
27 organization or institution and any charitable, religious,
28 scientific, literary, recreational, health, educational or
29 welfare institution receiving grants or appropriations from
30 Federal, State or local government.

1 (2) The term does not include an employer covered or
2 presently subject to coverage under 29 U.S.C. Ch. 15
3 (relating to occupational safety and health).

4 "Review board." The Pennsylvania Occupational Safety and
5 Health Review Board established under section 9(a).

6 "Secretary." The Secretary of Labor and Industry or a
7 designated agent.

8 Section 4. Application.

9 (a) Applicability and enforcement generally.--

10 (1) An occupational safety or health standard
11 promulgated under the provisions of this act shall apply to
12 all public employers and public employees.

13 (2) The secretary shall have authority to enforce the
14 occupational safety and health standard in accordance with
15 the provisions of this act.

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

23 (c) Employees not covered by Federal standard.--

24 Notwithstanding any other provision in this act, an occupational
25 safety or health standard promulgated under this act shall apply
26 only to employees not covered by a Federal occupational safety
27 or health standard promulgated under 29 U.S.C. § 655 (relating
28 to standards) or amendments thereto.

29 Section 5. Employer duties.

30 (a) Freedom from hazards.--An employer shall furnish to each

1 of its employees employment and a place of employment free from
2 recognized hazards that are causing or are likely to cause death
3 or serious physical harm and which will provide reasonable and
4 adequate protection to the lives, safety or health of its
5 employees.

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

9 (c) Written statement of substances.--An employer shall,
10 upon the written request of an employee, furnish the employee
11 with a written statement listing the substances that the
12 employee uses or with which the employee comes into contact that
13 have been identified as toxic or hazardous by occupational
14 safety and health standards under 29 CFR Pt. 1910 Subpt. H
15 (relating to hazardous materials) or accessible for inspection
16 and duplication in accordance with the act of February 14, 2008
17 (P.L.6, No.3), known as the Right-to-Know Law, or both.

18 (d) Law compliance with regulations and orders.--An employee
19 and employer shall comply with occupational safety and health
20 standards and all rules, regulations and orders issued in
21 accordance with this act that are applicable to their own
22 actions and conduct.

23 (e) State plan for standards.--The Commonwealth shall
24 promulgate a plan for the development and enforcement of
25 occupational safety and health standards with respect only to
26 public employers and employees, in accordance with 29 U.S.C. §
27 667(b) (relating to State jurisdiction and plans).

28 Section 6. Regulations.

29 The secretary may promulgate regulations to administer and
30 enforce this act and shall:

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

4 (2) Provide a method of encouraging employers and
5 employees in their efforts to reduce the number of safety and
6 health hazards arising from undesirable or inappropriate
7 working conditions at the workplace, and of stimulating
8 employers and employees to institute new programs and to
9 perfect existing programs for providing safe and healthful
10 working conditions.

11 (3) Provide for appropriate reporting procedures by
12 employers with respect to information relating to conditions
13 of employment that will assist in achieving the objectives of
14 this act.

15 (4) Provide for the frequency, method and manner of
16 making inspections of workplaces without advance notice,
17 provided that in the event of an emergency or unusual
18 situation, the secretary may give advance notice.

19 (5) Provide for the publication and dissemination to
20 employers, employees and labor organizations and the posting,
21 where appropriate, by employers of informational, educational
22 or training materials designed to aid and assist in achieving
23 the objectives of this act.

24 (6) Provide for the establishment of new programs and
25 the perfection and expansion of existing programs for
26 occupational safety and health education for employers and
27 employees and institute methods and procedures for the
28 establishment of a program for voluntary compliance by
29 employers and employees with the requirements of this act and
30 all applicable occupational safety and health standards and

1 regulations promulgated under this act.

2 Section 7. Standards.

3 (a) Authorization.--The secretary shall, by regulation,
4 adopt all occupational safety and health standards, amendments
5 or changes adopted or recognized by the United States Secretary
6 of Labor under the authority of 29 U.S.C. Ch. 15 (relating to
7 occupational safety and health) in order to provide reasonable
8 and adequate protection of the lives, safety and health of
9 public employees. Subject to subsection (b), the secretary shall
10 promulgate and repeal regulations as may be necessary to conform
11 to the standards established in accordance with 29 U.S.C. Ch.
12 15. If no Federal standards are applicable, the secretary shall
13 provide for the development of State standards as may be
14 necessary in special circumstances.

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

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

25 Section 8. Variances.

26 (a) Variance procedure.--

27 (1) A public employer may apply to the secretary for a
28 temporary order granting a variance from a standard or any
29 provision of a standard promulgated under this act. A
30 temporary order shall be granted only if the employer files

1 an application that meets the requirements of subsection (b)
2 and establishes all of the following:

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

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

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

15 (2) As follows:

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

21 (ii) A temporary order may be granted only after
22 notice to employees and an opportunity for a hearing,
23 provided that the secretary may issue one interim order
24 to be effective until a decision is made on the basis of
25 a hearing.

26 (iii) A temporary order may not be in effect for
27 longer than the period needed by the employer to achieve
28 compliance with the standard or one year, whichever is
29 shorter, except that an order may be renewed not more
30 than twice so long as the requirements of this section

1 are met and an application for renewal is filed at least
2 90 days prior to the expiration date of the order.

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

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

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

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

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

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

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

1 right to petition the secretary for a hearing.

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

9 (d) Hearing and order.--

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

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

28 (3) A rule or order may be modified or revoked upon
29 application by an employer, employee or authorized employee
30 representative, or by the secretary on the secretary's own

1 motion, in the manner prescribed for its issuance under this
2 section at any time after six months from the date it was
3 entered.

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

9 Section 9. Pennsylvania Occupational Safety and Health Review
10 Board.

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

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

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

28 (d) Schedule for hearing appeals.--A review board member
29 hearing an appeal or appeals under the provisions of this act
30 shall be paid a per diem amount to be determined by the

1 secretary. The members shall alternate the hearing of appeals
2 according to a schedule adopted by the secretary. If a member is
3 unable to hear an appeal, the next available member, in
4 accordance with the schedule, shall hear the appeal. A member
5 shall be selected to hear the appeal within 30 days after the
6 date it was filed.

7 (e) Necessary staff.--The department shall provide the staff
8 necessary for the purposes of conducting hearings under this
9 act.

10 (f) Subpoena power and oaths.--In the conduct of hearings,
11 the review board member may subpoena and examine witnesses,
12 require the production of evidence, administer oaths and take
13 testimony and depositions.

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

18 Section 10. Appeal from review board.

19 A person, including the secretary, adversely affected or
20 aggrieved by an order of the review board, after all
21 administrative remedies provided by this act have been
22 exhausted, is entitled to judicial review.

23 Section 11. Inspection and investigation powers.

24 (a) Right to inspect.--

25 (1) To carry out the purposes of this act, the
26 secretary, upon presenting appropriate credentials to the
27 employer, may:

28 (i) Enter without advance notice and at reasonable
29 times any workplace or environment where work is
30 performed by an employee of an employer.

1 (ii) Inspect and investigate, during regular working
2 hours and at other reasonable times and in a reasonable
3 manner, any place of employment under subparagraph (i)
4 and all pertinent conditions, structures, machines,
5 apparatus, devices, equipment and the materials therein.

6 (iii) Question privately an employer or employee.

7 (2) Whenever the secretary, proceeding in accordance
8 with this section, is denied admission to a place of
9 employment, the secretary may obtain a warrant to make an
10 inspection or investigation of the place of employment from a
11 judge of Commonwealth Court.

12 (b) Witnesses and evidences.--

13 (1) In making inspections and investigations under this
14 section, the secretary may require the attendance and
15 testimony of witnesses and the production of evidence under
16 oath. Witnesses shall be paid the same fees and mileage that
17 are paid witnesses in the courts of this Commonwealth.

18 (2) In case of a failure or refusal of a person to obey
19 an order, the court of common pleas for the judicial district
20 in which the person resides, is found or transacts business
21 shall issue to the person an order requiring the person to
22 appear to produce evidence if asked, and when so ordered, and
23 to give testimony relating to the matter under investigation
24 or in question.

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

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

28 (1) Subject to regulations issued by the secretary, a
29 representative of the employer and an authorized employee
30 representative shall be given an opportunity to accompany the

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

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

9 Section 12. Inspection and investigation of violations.

10 (a) Request for inspection.--

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

16 (2) The notice and request under paragraph (1) shall:

17 (i) Be in writing.

18 (ii) Specify with reasonable particularity the
19 grounds for the notice.

20 (iii) Be signed by an employee or authorized
21 employee representative.

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

28 (b) Action by secretary.--

29 (1) Whenever the secretary receives a request for
30 inspection and determines that there are reasonable grounds

1 to believe that a violation or danger exists, the secretary
2 shall make an inspection as soon as practicable to determine
3 if a violation or danger exists. The inspection may be
4 limited to the alleged violation or danger.

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

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

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

18 (2) The secretary shall by regulation establish
19 procedures for informal review of a refusal by a
20 representative of the secretary to issue a citation with
21 respect to any alleged violation and shall furnish a written
22 statement to the employer and the employees or authorized
23 employee representative requesting a review of the reasons
24 for the secretary's final disposition of the case.
25 Notification may not preclude future enforcement action if
26 conditions change.

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

30 (e) Rules and regulations.--The secretary shall prescribe

1 rules and regulations as the secretary may deem necessary to
2 carry out the secretary's responsibilities under this act,
3 including rules and regulations dealing with the inspection of
4 an employer's or owner's establishment.

5 Section 13. Recordkeeping.

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

19 (b) Records relating to death and injury.--The secretary
20 shall prescribe regulations requiring an employer to maintain
21 accurate records and to make public periodic reports of work-
22 related deaths, injuries and illnesses, other than minor
23 injuries requiring only first aid treatment and not involving
24 lost time from work, medical treatment, loss of consciousness,
25 restriction of work or motion or transfer to another job.

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

27 (1) The secretary shall issue regulations requiring an
28 employer to maintain accurate records of employee exposures
29 to potentially toxic materials or harmful physical agents
30 that are required to be monitored or measured under any

1 occupational safety and health standard adopted under this
2 act. The regulations shall provide employees or the
3 authorized employee representative with an opportunity to
4 observe monitoring or measuring and have access to the
5 records. The regulations shall make appropriate provisions
6 for each employee or former employee to have access to
7 records that will indicate the employee's own exposure to
8 toxic materials or harmful physical agents.

9 (2) An employer shall promptly notify an employee who
10 has been or is being exposed to toxic materials or harmful
11 physical agents in concentrations or at levels that exceed
12 those prescribed by an occupational safety and health
13 standard promulgated under this act and shall inform an
14 employee who is being thus exposed of the corrective action
15 being taken.

16 Section 14. Compliance orders.

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

27 (b) Posting of order.--Each compliance order issued under
28 this section or a copy or copies of the order shall be
29 prominently posted as prescribed in regulations issued by the
30 secretary at or near each place a violation referred to in the

1 compliance order occurred and at other locations within the
2 workplace reasonably accessible to the employees.

3 Section 15. Enforcement procedures.

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

5 (1) If, after inspection or investigation, the secretary
6 issues a compliance order under section 14, the secretary
7 shall, within a reasonable time after the termination of the
8 inspection or investigation, notify the employer by certified
9 mail of the penalty, if any, proposed to be assessed under
10 section 17. The notification shall inform the employer that
11 the employer has 15 working days from the receipt of notice
12 within which to notify the secretary that the employer wishes
13 to contest the compliance order or proposed assessment of
14 penalty.

15 (2) If the employer fails to notify the secretary within
16 15 days and if no notice is filed by an employee or
17 authorized employee representative under subsection (c)
18 within 15 days, the compliance order and the assessment, as
19 proposed, shall be deemed a final order of the secretary and
20 not be subject to review by any court or agency.

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

22 (1) If the secretary has reason to believe that an
23 employer has failed to correct a violation for which a
24 compliance order has been issued within the period permitted
25 for correction, the secretary shall notify the employer by
26 certified mail of the failure and of the penalty proposed to
27 be assessed under section 17 by reason of the failure. In the
28 case, however, of a review proceeding initiated by the
29 employer under this section in good faith and not solely for
30 delay or the avoidance of penalties, the period permitted for

1 correction of the violation may not begin to run until the
2 entry of a final order by the review board. Notification by
3 the secretary shall inform the employer that the employer has
4 15 working days from the receipt of the notice within which
5 to notify the secretary that the employer wishes to contest
6 the notification or the proposed assessment of penalty.

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

14 (c) Action by review board.--

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

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

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

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

12 Section 16. Injunction proceedings.

13 (a) Temporary restraining order.--

14 (1) Commonwealth Court shall have jurisdiction, upon
15 petition of the secretary, in accordance with law and general
16 rules, to restrain any conditions or practices in any place
17 of public employment that pose a danger that could reasonably
18 be expected to cause death or serious physical harm
19 immediately or before the imminence of the danger can be
20 eliminated through the abatement procedures otherwise
21 provided for by this act.

22 (2) An order issued under this section shall require
23 steps to be taken as may be necessary to avoid, correct or
24 remove the imminent danger and prohibit the employment or
25 presence of an individual in locations or under conditions
26 where the imminent danger exists, except individuals whose
27 presence is necessary to avoid, correct or remove the
28 imminent danger.

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

1 (b) Action by inspector.--Whenever and as soon as an
2 inspector concludes that conditions or practices described in
3 subsection (a) exist in any place of public employment, the
4 inspector shall inform the affected employees and employers of
5 the danger and shall further inform them that the inspector is
6 recommending to the secretary that relief be sought.

7 (c) Failure of secretary to seek relief.--If the secretary
8 arbitrarily or capriciously fails to seek relief under this
9 section, an employee who may be injured by reason of the
10 failure, or the authorized employee representative of the
11 employee, may bring an action against the secretary in
12 Commonwealth Court to compel the secretary to seek an order and
13 for such further relief as may be appropriate.

14 Section 17. Penalties.

15 (a) Willful or repeated violations.--An employer who
16 willfully or repeatedly violates the requirements of section 4
17 or 5, an occupational safety and health standard promulgated
18 under section 7 or regulations prescribed under this act may be
19 assessed ~~a civil~~ AN ADMINISTRATIVE penalty of not more than <--
20 \$10,000 for each violation.

21 (b) Compliance order for serious violation.--An employer who
22 has received a compliance order for a serious violation of the
23 requirements of section 4 or 5, an occupational safety and
24 health standard promulgated under section 7 or regulations
25 prescribed under this act shall be assessed ~~a civil~~ AN <--
26 ADMINISTRATIVE penalty of not more than \$1,000 for each
27 violation.

28 (c) Compliance order for lesser violation.--An employer who
29 has received a compliance order for a violation of the
30 requirements of section 4 or 5, an occupational safety and

1 health standard promulgated under section 7 or regulations
2 prescribed under this act, which violation has been determined
3 not to be of a serious nature, may be assessed ~~a civil~~ AN <--
4 ADMINISTRATIVE penalty of not more than \$1,000 for each
5 violation.

6 (d) Failure to correct violation.--An employer who fails to
7 correct a violation for which a compliance order has been issued
8 under section 14 within the period permitted for its correction,
9 which period shall not begin to run until the date of the final
10 order of the review board in the case of any review proceeding
11 under section 15 initiated by the employer in good faith and not
12 solely for delay or avoidance of penalties, may be assessed a- <--
13 ~~civil~~ AN ADMINISTRATIVE penalty of not more than \$1,000 for each <--
14 day during which the failure or violation continues.

15 (e) Violation causing death.--

16 (1) An employer who willfully violates a standard or
17 order promulgated pursuant to section 7 or a regulation
18 adopted under this act, which violation caused death to any
19 employee, commits a misdemeanor and shall, upon conviction,
20 be sentenced to pay a fine of not more than \$10,000 or to
21 imprisonment for not more than six months, or both.

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

26 (f) Providing advance notice of inspection.--A person who
27 gives advance notice of any inspection to be conducted under
28 this act without authority from the secretary commits a
29 misdemeanor and shall, upon conviction, be sentenced to pay a
30 fine of not more than \$1,000 or to imprisonment for not more

1 than six months, or both.

2 (g) False statements.--A person who knowingly makes any
3 false statement, representation or certification in any
4 application, record, report, plan or other document filed or
5 required to be maintained under this act commits a misdemeanor
6 and shall, upon conviction, be sentenced to pay a fine of not
7 more than \$10,000 or to imprisonment for not more than six
8 months, or both.

9 (h) Violation of posting requirements.--An employer who
10 violates any of the posting requirements as prescribed under the
11 provisions of this act shall be assessed ~~a civil~~ AN <--
12 ADMINISTRATIVE penalty of not more than \$1,000 for each
13 violation.

14 (i) Refusing entry for investigation or inspection.--An
15 employer who refuses entry to the secretary while the secretary
16 is attempting to conduct an investigation or inspection under
17 this act or in any way willfully obstructs an authorized
18 representative from carrying out an investigation or inspection
19 commits a misdemeanor and shall, upon conviction, be sentenced
20 to pay a fine of not more than \$1,000 or to imprisonment for not
21 more than six months, or both.

22 (j) Causing bodily harm to secretary.--An employer or
23 individual who willfully causes bodily harm to the secretary
24 while the secretary is attempting to conduct an investigation or
25 inspection under this act commits a misdemeanor and shall, upon
26 conviction, be sentenced to pay a fine of not more than \$10,000
27 or to imprisonment for not more than one year, or both.

28 (k) Authority to assess ~~civil~~ ADMINISTRATIVE penalties.--The <--
29 review board shall have authority to assess all ~~civil~~ <--
30 ADMINISTRATIVE penalties provided for in this act, giving due <--

1 consideration to the appropriateness of the penalty with respect
2 to the size of the business of the employer being charged, the
3 gravity of the violation, the good faith of the employer and the
4 history of previous violations.

5 (l) Determination of serious violation.--For the purposes of
6 this act, a serious violation shall be deemed to exist in a
7 place of employment if there is a substantial probability that
8 death or serious physical harm could result from a condition
9 that exists, or from one or more practices, means, methods,
10 operations or processes that have been adopted or are in use, in
11 the place of employment unless the employer did not and could
12 not with the exercise of reasonable diligence know of the
13 presence of the violation.

14 (m) Disposition of ~~civil~~ ADMINISTRATIVE penalties.--~~Civil~~ <--
15 ADMINISTRATIVE penalties owed under this act shall be paid to <--
16 the secretary for deposit in the State Treasury and may be
17 recovered in a ~~civil~~ AN ADMINISTRATIVE action in the name of the <--
18 Commonwealth brought in Commonwealth Court.

19 (n) Unauthorized disclosure of confidential information.--A
20 person who violates the provisions of section 22 commits a
21 misdemeanor and shall, upon conviction, be sentenced to pay a
22 fine of not more than \$1,000 or to imprisonment for not more
23 than one year, or both. In the event that the person is an
24 officer or employee responsible for carrying out the provisions
25 of this act, the officer or employee shall be removed from
26 office or employment upon conviction under this section.

27 Section 18. Discrimination against employees.

28 (a) General rule.--An employer or other person may not
29 discriminate against an employee because the employee has filed
30 a complaint or instituted or caused to be instituted a

1 proceeding under or related to this act or has testified or is
2 about to testify in a proceeding or because of the exercise by
3 an employee on the employee's own behalf or on behalf of others
4 of a right afforded by this act.

5 (b) Remedy.--

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

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

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

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

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

1 rule or regulation or under any collective bargaining agreement.

2 Section 19. 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 or by
7 grants or contracts. The secretary may prescribe regulations
8 requiring employers to measure, record and make reports on
9 exposure of employees to toxic substances that the secretary
10 believes may endanger the health or safety of employees.

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

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

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

26 Section 20. Education programs.

27 (a) Programs to train personnel.--The secretary shall
28 conduct directly, or by grants or contracts, education programs
29 to provide an adequate supply of qualified personnel to carry
30 out the purposes of this act and informational programs on the

1 importance and proper use of adequate safety and health
2 equipment.

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

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

16 Section 21. Reports to United States Secretary of Labor.

17 In regard to the administration and enforcement of this act,
18 the secretary shall make reports to the United States Secretary
19 of Labor in a form and containing information that the Secretary
20 of Labor shall from time to time require.

21 Section 22. Confidentiality of information maintained.

22 All information reported to or otherwise obtained by the
23 secretary or any member of the review board in connection with
24 an inspection or proceeding under this act that contains or
25 might reveal a trade secret shall be considered confidential,
26 provided that the information may be disclosed to other officers
27 or employees concerned with carrying out this act or when
28 relevant in any proceeding under this act. In proceedings under
29 this act, the secretary, the review board or the court shall
30 issue orders that may be appropriate to protect the

1 confidentiality of trade secrets.

2 Section 23. Funding.

3 Nothing in this act may prohibit the secretary from pursuing
4 Federal or State funding for the purposes of this act.

5 Section 24. Effective date.

6 This act shall take effect in 60 days.