

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.

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12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. Short title.

15 This act shall be known and may be cited as the Public
16 Employees Occupational Safety and Health Act.

17 Section 2. Legislative declaration.

18 The General Assembly hereby declares as follows:

19 (1) It is a basic right of all employees to work in an
20 environment that is free from hazards and risks to their
21 safety. It is the intent of the General Assembly to insure
22 that this right is also afforded to employees of the
23 Commonwealth, its counties, cities, towns, boroughs and other
24 public employers who serve the people of this Commonwealth.

25 (2) A significant percentage of all of those employed in
26 this Commonwealth are employed by the Commonwealth or by one
27 of its political subdivisions. Many of these public employees
28 perform job functions comparable to those performed by
29 workers in the private sector who are protected by the
30 Occupational Safety and Health Act of 1970 (Public Law 91-

1 596, 29 U.S.C. § 651 et seq.). The General Assembly,
2 therefore, finds it inappropriate to continue two standards
3 for employee safety, one applicable to those who work in the
4 private sector and one for those who are employed by a public
5 employer.

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

14 (4) The General Assembly, in an exercise of the
15 Commonwealth's police power, charges the Secretary of Labor
16 and Industry with the responsibility to insure that all
17 public employees are afforded the same safeguards in their
18 workplace as are granted to employees in the private sector.

19 Section 3. Definitions.

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

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

26 "Employee organization." An organization of any kind, or any
27 agency or employee representation committee or plan in which
28 membership includes public employees, and which exists for the
29 purpose, in whole or in part, of dealing with employers
30 concerning grievances, employee-employer disputes, wages, rates

1 of pay, hours of employment or conditions of work. The term does
2 not include an organization which practices discrimination in
3 membership because of race, color, creed, national origin or
4 political affiliation.

5 "Occupational Safety and Health Act of 1970" or "OSHA." The
6 Occupational Safety and Health Act of 1970 (Public Law 91-596,
7 29 U.S.C. § 651 et seq.).

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

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

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

18 "Public employer" or "employer." The Commonwealth, any of
19 its political subdivisions, including a school district and any
20 office, board, commission, agency, authority, local
21 transportation organization or other instrumentality thereof and
22 any nonprofit organization or institution and any charitable,
23 religious, scientific, literary, recreational, health,
24 educational or welfare institution receiving grants or
25 appropriations from Federal, State or local government. The term
26 does not include an employer covered or presently subject to
27 coverage under the Occupational Safety and Health Act of 1970
28 (Public Law 91-596, 29 U.S.C. § 651 et seq.).

29 "Review board." The Pennsylvania Occupational Safety and
30 Health Review Board established under this act.

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

3 Section 4. Application.

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

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

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

23 Section 5. Employer duties.

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

30 (b) Compliance with act.--An employer shall comply with the

1 occupational safety and health standards promulgated under this
2 act.

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

12 (d) Law compliance with regulations and orders.--An employee
13 and employer shall comply with occupational safety and health
14 standards and all rules, regulations and orders issued pursuant
15 to this act which are applicable to their own actions and
16 conduct.

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

22 Section 6. Regulations.

23 The secretary may promulgate regulations to administer and
24 enforce this act and shall:

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

28 (2) Provide a method of encouraging employers and
29 employees in their efforts to reduce the number of safety and
30 health hazards arising from undesirable or inappropriate

1 working conditions at the workplace, and of stimulating
2 employers and employees to institute new and to perfect
3 existing programs for providing safe and healthful working
4 conditions.

5 (3) Provide for appropriate reporting procedures by
6 employers with respect to such information relating to
7 conditions of employment as will assist in achieving the
8 objectives of this act.

9 (4) Provide for the frequency, method and manner of
10 making inspections of workplaces without advance notice,
11 provided that in the event of an emergency or unusual
12 situation, the secretary may give advance notice.

13 (5) Provide for the publication and dissemination to
14 employers, employees and labor organizations and the posting,
15 where appropriate, by employers of informational, educational
16 or training materials designed to aid and assist in achieving
17 the objectives of this act.

18 (6) Provide for the establishment of new and the
19 perfection and expansion of existing programs for
20 occupational safety and health education for employers and
21 employees and institute methods and procedures for the
22 establishment of a program for voluntary compliance by
23 employers and employees with the requirements of this act and
24 all applicable occupational safety and health standards and
25 regulations promulgated under this act.

26 Section 7. Standards.

27 (a) General rule.--The secretary shall, by regulation, adopt
28 all occupational safety and health standards, amendments or
29 changes adopted or recognized by the United States Secretary of
30 Labor under the authority of the Occupational Safety and Health

1 Act of 1970 in order to provide reasonable and adequate
2 protection to the lives, safety and health of public employees.
3 Subject to subsection (b), the secretary shall promulgate and
4 repeal such regulations as may be necessary to conform to the
5 standards established pursuant to the Occupational Safety and
6 Health Act of 1970. Where no Federal standards are applicable,
7 the secretary shall provide for the development of such State
8 standards as may be necessary in special circumstances.

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

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

19 Section 8. Variances.

20 (a) Variance procedure.--

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

27 (i) The employer is unable to comply with a standard
28 by its effective date because of unavailability of
29 professional or technical personnel or of materials and
30 equipment needed to come into compliance with the

1 standard or because necessary construction or alteration
2 of facilities cannot be completed by the effective date.

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

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

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

14 (ii) A temporary order may be granted only after
15 notice to employees and an opportunity for a hearing,
16 provided that the secretary may issue one interim order
17 to be effective until a decision is made on the basis of
18 a hearing.

19 (iii) A temporary order shall not be in effect for
20 longer than the period needed by the employer to achieve
21 compliance with the standard or one year, whichever is
22 shorter, except that an order may be renewed not more
23 than twice so long as the requirements of this section
24 are met and an application for renewal is filed at least
25 90 days prior to the expiration date of the order.

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

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

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

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

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

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

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

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

1 workers.

2 (d) Hearing and order.--

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

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

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

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

1 judgment.

2 Section 9. Pennsylvania Occupational Safety and Health Review
3 Board.

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

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

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

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

28 (e) Necessary staff.--Any staff necessary for the purposes
29 of conducting hearings under this act shall be provided by the
30 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 10. 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 act have been
13 exhausted, is entitled to judicial review.

14 Section 11. Inspection and investigation powers.

15 (a) Right to inspect.--

16 (1) In order to carry out the purposes of this act, the
17 secretary or a designated agent, upon presenting appropriate
18 credentials to the employer, may enter without advance notice
19 and at reasonable times any workplace or environment where
20 work is performed by an employee of an employer and to
21 inspect and investigate, during regular working hours and at
22 other reasonable times and in a reasonable manner, any such
23 place of employment and all pertinent conditions, structures,
24 machines, apparatus, devices, equipment and the materials
25 therein and to question privately any employer or employee.

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

1 (b) Witnesses and evidences.--

2 (1) In making inspections and investigations under this
3 section, the secretary may require the attendance and
4 testimony of witnesses and the production of evidence under
5 oath. Witnesses shall be paid the same fees and mileage that
6 are paid witnesses in the courts of this Commonwealth.

7 (2) In case of a failure or refusal of any person to
8 obey such an order, the court of common pleas for the
9 judicial district wherein the person resides, is found or
10 transacts business shall issue to the person an order
11 requiring the person to appear to produce evidence if asked,
12 and when so ordered, and to give testimony relating to the
13 matter under investigation or in question.

14 (3) A failure to obey an order of the court may be
15 punished by the court as a contempt.

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

17 (1) Subject to regulations issued by the secretary, a
18 representative of the employer and a representative
19 authorized by the employees shall be given an opportunity to
20 accompany the secretary or an authorized representative
21 during the physical inspection of any workplace for the
22 purposes of aiding the inspection. Where there is no
23 authorized employee representative, the secretary or an
24 authorized representative shall consult with a reasonable
25 number of employees concerning matters of health and safety
26 in the workplace.

27 (2) No employee who accompanies the secretary or an
28 authorized representative on an inspection shall suffer any
29 reduction in wages as a result thereof.

30 Section 12. Inspection and investigation of violations.

1 (a) Request for inspection.--

2 (1) An employee or authorized employee representative
3 who believes that a violation of an occupational safety or
4 health standard exists or that an imminent danger exists may
5 request an inspection by giving notice of a violation or
6 danger to the secretary.

7 (2) The notice and request shall be in writing, shall
8 set forth with reasonable particularity the grounds for the
9 notice and shall be signed by an employee or representative
10 of employees.

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

16 (b) Action by secretary.--

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

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

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

30 (1) Prior to or during any inspection of a workplace, an

1 employee or representative of employees employed in the
2 workplace may notify in writing the secretary or any
3 representative of the secretary responsible for conducting
4 the inspection of any violation of this act which the person
5 has reason to believe exists in the workplace.

6 (2) The secretary shall by regulation establish
7 procedures for informal review of any refusal by a
8 representative of the secretary to issue a citation with
9 respect to any alleged violation and shall furnish the
10 employer and the employees or representative of the employees
11 requesting a review a written statement of the reasons for
12 the secretary's final disposition of the case. Notification
13 shall not preclude future enforcement action if conditions
14 change.

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

18 (e) Rules and regulations.--The secretary shall prescribe
19 such rules and regulations as the secretary may deem necessary
20 to carry out the secretary's responsibilities under this act,
21 including rules and regulations dealing with the inspection of
22 an employer's or owner's establishment.

23 Section 13. Recordkeeping.

24 (a) Employer's duties prescribed by regulation.--In
25 accordance with the secretary's regulations, an employer shall
26 make, keep and preserve and make available to the secretary such
27 records regarding its activities relating to this act as the
28 secretary deems necessary or appropriate for developing
29 information regarding the causes and prevention of occupational
30 accidents and illness. The regulations may include provisions

1 requiring an employer to conduct periodic inspections. The
2 secretary also shall issue regulations requiring that an
3 employer, through posting of notices, training or other
4 appropriate means, keep its employees informed of their
5 protections and obligations under this act, including the
6 provisions and regulations of this act.

7 (b) Records relating to death and injury.--The secretary
8 shall prescribe regulations requiring an employer to maintain
9 accurate records and to make public periodic reports of work-
10 related deaths, injuries and illnesses, other than minor
11 injuries requiring only first aid treatment and not involving
12 lost time from work, medical treatment, loss of consciousness,
13 restriction of work or motion or transfer to another job.

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

15 (1) The secretary shall issue regulations requiring an
16 employer to maintain accurate records of employee exposures
17 to potentially toxic materials or harmful physical agents
18 which are required to be monitored or measured under any
19 occupational safety and health standard adopted under this
20 act. The regulations shall provide employees or their
21 representatives with an opportunity to observe monitoring or
22 measuring and have access to the records. The regulations
23 shall make appropriate provisions for each employee or former
24 employee to have access to such records as will indicate the
25 employee's own exposure to toxic materials or harmful
26 physical agents.

27 (2) An employer shall promptly notify any employee who
28 has been or is being exposed to toxic materials or harmful
29 physical agents in concentrations or at levels which exceed
30 those prescribed by an occupational safety and health

1 standard promulgated under this act and shall inform any
2 employee who is being thus exposed of the corrective action
3 being taken.

4 Section 14. Compliance orders.

5 (a) Issuance.--Whenever the secretary, upon inspection or
6 investigation, determines that an employer has violated a
7 provision of this act or an occupational safety or health
8 standard or regulation promulgated under this act, the secretary
9 shall with reasonable promptness issue a compliance order to the
10 employer. Each compliance order shall be in writing and shall
11 describe the nature of the violation, including a reference to
12 the provisions of this act or the standard, regulation or order
13 alleged to have been violated. The compliance order shall fix a
14 reasonable time for the abatement 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 15. 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 7, 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 17. The notification shall inform the employer that
29 it has 15 working days from the receipt of notice within
30 which to notify the secretary that it wishes to contest the

1 compliance order or proposed assessment of penalty.

2 (2) If the employer fails to notify the secretary within
3 15 days and if no notice is filed by any employee or
4 representative of employees pursuant to subsection (c) within
5 15 days, the compliance order and the assessment, as
6 proposed, shall be deemed a final order of the secretary and
7 not be subject to review by any court or agency.

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

9 (1) If the secretary has reason to believe that an
10 employer has failed to correct a violation for which a
11 compliance order has been issued within the period permitted
12 for correction, the secretary shall notify the employer by
13 certified mail of the failure and of the penalty proposed to
14 be assessed under section 17 by reason of the failure. In the
15 case, however, of a review proceeding initiated by the
16 employer under this section in good faith and not solely for
17 delay or the avoidance of penalties, the period permitted for
18 correction of the violation shall not begin to run until the
19 entry of a final order by the review board. Notification by
20 the secretary shall inform the employer that it has 15
21 working days from the receipt of the notice within which to
22 notify the secretary that it wishes to contest the
23 notification or the proposed assessment of penalty.

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

1 (c) Action by review board.--

2 (1) If an employer notifies the secretary that it
3 intends to contest a compliance order issued under section
4 14(a) or a notification issued under subsection (a) or (b) or
5 if, within 15 days after the issuance of a compliance order
6 issued under section 14(a), an employee or employee
7 representative files a notice with the secretary alleging
8 that the period of time fixed in the compliance order for
9 abatement of the violation is unreasonable, the secretary
10 shall immediately advise the review board of the
11 notification, and the review board shall afford an
12 opportunity for a hearing.

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

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

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

29 Section 16. Injunction proceedings.

30 (a) Temporary restraining order.--

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

9 (2) Any order issued under this section shall require
10 steps to be taken as may be necessary to avoid, correct or
11 remove the imminent danger and prohibit the employment or
12 presence of any individual in locations or under conditions
13 where the imminent danger exists, except individuals whose
14 presence is necessary to avoid, correct or remove the
15 imminent danger.

16 (3) A temporary restraining order issued without notice
17 shall not be effective for more than five days.

18 (b) Action by inspector.--Whenever and as soon as an
19 inspector concludes that conditions or practices described in
20 subsection (a) exist in any place of public employment, the
21 inspector shall inform the affected employees and employers of
22 the danger and shall further inform them that the inspector is
23 recommending to the secretary that relief be sought.

24 (c) Failure of secretary to seek relief.--If the secretary
25 arbitrarily or capriciously fails to seek relief under this
26 section, any employee who may be injured by reason of the
27 failure, or the authorized employee representative of such
28 employees, may bring an action against the secretary in
29 Commonwealth Court to compel the secretary to seek an order and
30 for such further relief as may be appropriate.

1 Section 17. Penalties.

2 (a) Willful or repeated violations.--An employer who
3 willfully or repeatedly violates the requirements of section 4
4 or 5, any occupational safety and health standard promulgated
5 under section 6 or regulations prescribed pursuant to this act
6 may be assessed a civil penalty of not more than \$10,000 for
7 each violation.

8 (b) Compliance order for serious violation.--An employer who
9 has received a compliance order for a serious violation of the
10 requirements of section 4 or 5, any occupational safety and
11 health standard promulgated pursuant to section 6 or regulations
12 prescribed pursuant to this act shall be assessed a civil
13 penalty of not more than \$1,000 for each violation.

14 (c) Compliance order for lesser violation.--An employer who
15 has received a compliance order for a violation of the
16 requirements of section 4 or 5, any occupational safety and
17 health standard promulgated pursuant to section 6 or regulations
18 prescribed pursuant to this act, which violation has been
19 determined not to be of a serious nature, may be assessed a
20 civil penalty of not more than \$1,000 for each violation.

21 (d) Failure to correct violation.--An employer who fails to
22 correct a violation for which a compliance order has been issued
23 under section 15 within the period permitted for its correction,
24 which period shall not begin to run until the date of the final
25 order of the board in the case of any review proceeding under
26 section 16 initiated by the employer in good faith and not
27 solely for delay or avoidance of penalties, may be assessed a
28 civil penalty of not more than \$1,000 for each day during which
29 such failure or violation continues.

30 (e) Violation causing death.--

1 (1) An employer who willfully violates any standard or
2 order promulgated pursuant to section 6 or any regulation
3 adopted pursuant to this act, which violation caused death to
4 any employee, commits a misdemeanor and shall, upon
5 conviction, be sentenced to pay a fine of not more than
6 \$10,000 or to imprisonment for not more than six months, or
7 both.

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

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

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

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

29 (i) Refusing entry for investigation or inspection.--An
30 employer who refuses entry to any authorized representative of

1 the secretary while the representative is attempting to conduct
2 an investigation or inspection under this act or in any way
3 willfully obstructs an authorized representative from carrying
4 out an investigation or inspection commits a misdemeanor and
5 shall, upon conviction, be sentenced to pay a fine of not more
6 than \$1,000 or to imprisonment for not more than six months, or
7 both.

8 (j) Causing bodily harm to authorized representative.--Any
9 employer or individual who willfully causes bodily harm to any
10 authorized representative of the secretary while the
11 representative is attempting to conduct an investigation or
12 inspection under this act commits a misdemeanor and shall, upon
13 conviction, be sentenced to pay a fine of not more than \$10,000
14 or to imprisonment for not more than one year, or both.

15 (k) Authority to assess civil penalties.--The review board
16 shall have authority to assess all civil penalties provided for
17 in this act, giving due consideration to the appropriateness of
18 the penalty with respect to the size of the business of the
19 employer being charged, the gravity of the violation, the good
20 faith of the employer and the history of previous violations.

21 (l) Determination of serious violation.--For the purposes of
22 this act, a serious violation shall be deemed to exist in a
23 place of employment if there is a substantial probability that
24 death or serious physical harm could result from a condition
25 which exists, or from one or more practices, means, methods,
26 operations or processes which have been adopted or are in use,
27 in the place of employment unless the employer did not and could
28 not with the exercise of reasonable diligence know of the
29 presence of the violation.

30 (m) Disposition of civil penalties.--Civil penalties owed

1 under this act shall be paid to the secretary for deposit in the
2 State Treasury and may be recovered in a civil action in the
3 name of the Commonwealth brought in Commonwealth Court.

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

12 Section 18. Discrimination against employees.

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

20 (b) Remedy.--

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

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

30 (3) If, upon investigation, the secretary determines

1 that the provisions of this section have been violated, the
2 secretary shall request the Attorney General to bring an
3 action in Commonwealth Court against the person or persons
4 alleged to have violated this act. In any such action the
5 Commonwealth Court shall have jurisdiction, for cause shown,
6 to restrain violations of this act and to order all
7 appropriate relief, including reinstatement of the employee
8 to the employee's former position with back pay and benefits.

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

14 (d) Other rights preserved.--Nothing in this act shall be
15 construed to diminish the rights of an employee under any law,
16 rule or regulation or under any collective bargaining agreement.
17 Section 19. Research and demonstration projects.

18 (a) Secretary to conduct.--

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

27 (2) The secretary shall cooperate with the Director of
28 the National Institute for Occupational Safety and Health of
29 the Department of Health and Human Services in establishing
30 the programs of medical examinations and tests as may be

1 necessary to determine the incidence of occupational
2 illnesses and employee susceptibility to the illnesses.

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

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

11 Section 20. Education programs.

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

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

22 (c) Additional programs.--The secretary shall provide for
23 the establishment and supervision of programs for the education
24 and training of employers, owners and employees in the
25 recognition, avoidance and prevention of unsafe or unhealthful
26 working conditions in employment covered by this act. The
27 secretary shall consult with and advise owners and employers,
28 employees and organizations representing owners, employers and
29 employees as to effective means of preventing occupational
30 injuries and illnesses.

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

2 In regard to the administration and enforcement of this act
3 the secretary shall make such reports to the United States
4 Secretary of Labor in such form and containing such information
5 as the Secretary of Labor shall from time to time require.

6 Section 22. Confidentiality of information maintained.

7 All information reported to or otherwise obtained by the
8 secretary or the secretary's representatives or any member of
9 the review board in connection with any inspection or proceeding
10 under this act which contains or might reveal a trade secret
11 shall be considered confidential, provided that the information
12 may be disclosed to other officers or employees concerned with
13 carrying out this act or when relevant in any proceeding under
14 this act. In any such proceedings the secretary, the review
15 board or the court shall issue such orders as may be appropriate
16 to protect the confidentiality of trade secrets.

17 Section 23. Effective date.

18 This act shall take effect in 60 days.