

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1363 Session of  
1999

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McNAUGHTON AND SURRA, MAY 3, 1999

REFERRED TO COMMITTEE ON LABOR RELATIONS, MAY 3, 1999

AN ACT

1 Requiring public employers to protect the occupational safety  
2 and health of its employees; and providing for enforcement  
3 and 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 finds and 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 United  
30 States Occupational Safety and Health Act of 1970. The

1 General Assembly, therefore, finds it inappropriate to  
2 continue two standards for employee safety, one applicable to  
3 those who work in the private sector and one for those who  
4 are employed by a public employer.

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

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

18 Section 3. Definitions.

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

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

25 "Employee organization." An organization of any kind, or any  
26 agency or employee representation committee or plan in which  
27 membership includes public employees, and which exists for the  
28 purpose, in whole or in part, of dealing with employers  
29 concerning grievances, employee-employer disputes, wages, rates  
30 of pay, hours of employment or conditions of work but shall not

1 include any organization which practices discrimination in  
2 membership because of race, color, creed, national origin or  
3 political affiliation.

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

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

12 "Person." One or more individuals, partnerships,  
13 associations, corporations, business trusts, legal  
14 representatives or any organized group of persons.

15 "Public employee" or "employee." Any individual employed by  
16 a public employer.

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

27 "Review board." The Pennsylvania Occupational Safety and  
28 Health Review Board established under this act.

29 "Secretary." The Secretary of Labor and Industry of the  
30 Commonwealth or his or her designated agent.

1 Section 4. Application.

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

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

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

20 Section 5. Duties.

21 (a) Hazard-free location.--Each employer shall furnish to  
22 each of its employees, employment and a place of employment free  
23 from recognized hazards that are causing or are likely to cause  
24 death or serious physical harm to its employees and which will  
25 provide reasonable and adequate protection to the lives, safety  
26 or health of its employees.

27 (b) Compliance.--Each employer shall comply with the  
28 occupational safety and health standards promulgated under this  
29 act.

30 (c) Statement.--Each employer shall, upon the written

1 request of any employee, furnish such employee with a written  
2 statement listing the substances which the employee uses or with  
3 which the employee comes into contact that have been identified  
4 as toxic or hazardous by occupational health and safety  
5 standards, under CFR 1910.1000 (relating to air contaminants),  
6 and/or pursuant to the act of June 21, 1957 (P.L.390, No.212),  
7 referred to as the Right-to-Know Law.

8 (d) Compliance.--Each employee and employer shall comply  
9 with occupational safety and health standards and all rules,  
10 regulations and orders issued pursuant to this act which are  
11 applicable to his or her own actions and conduct.

12 (e) Plan.--The Commonwealth shall promulgate a plan for the  
13 development and enforcement of occupational safety and health  
14 standards with respect only to public employers and employees,  
15 in accordance with section 18(b) of the Occupational Safety and  
16 Health Act, which provides: "Any State which, at any time,  
17 desires to assume responsibility for development and enforcement  
18 therein of occupational safety and health standards relating to  
19 any occupational safety or health issue with respect to which a  
20 Federal standard has been promulgated under section 6 shall  
21 submit a State plan for the development of such standards and  
22 their enforcement."

#### 23 Section 6. Regulations.

24 The secretary may promulgate such procedural regulations as  
25 he or she shall consider necessary and proper to effectuate the  
26 purposes and provisions of this act and shall:

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

30 (2) Provide a method of encouraging employers and

1 employees in their efforts to reduce the number of safety and  
2 health hazards arising from undesirable or inappropriate  
3 working conditions at the workplace and of stimulating  
4 employers and employees to institute new and to perfect  
5 existing programs for providing safe and healthful working  
6 conditions.

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

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

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

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

29 Section 7. Standards.

30 (a) Adoption.--The secretary shall by rule adopt all

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

12 (b) Exception.--No standards shall be adopted for products  
13 distributed or used in interstate commerce which are different  
14 from Federal standards for such products unless such standards  
15 are required by compelling local conditions and do not unduly  
16 burden interstate commerce.

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

## 21 Section 8. Variances.

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

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



1 to come into compliance with the standard or because  
2 necessary construction or alteration of facilities cannot be  
3 completed by the effective date.

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

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

9 Any temporary order issued under this section shall prescribe  
10 the practices, means, methods, operations and processes which  
11 the employer must adopt and use while the order is in effect and  
12 state in detail the employer's program for coming into  
13 compliance with the standard. A temporary order may be granted  
14 only after notice to employees and an opportunity for a hearing,  
15 provided that the secretary may issue one interim order to be  
16 effective until a decision is made on the basis of the hearing.  
17 A temporary order shall not be in effect for longer than the  
18 period needed by the employer to achieve compliance with the  
19 standard or one year, whichever is shorter, except that such an  
20 order may be renewed not more than twice if the requirements of  
21 this section are met and if an application for renewal is filed  
22 at least 90 days prior to the expiration date of the order. An  
23 interim renewal of an order shall not remain in effect longer  
24 than 180 days.

25 (b) Temporary variance.--An application for a temporary  
26 variance order shall contain:

27 (1) a specification of the standard or portion thereof  
28 from which the employer or owner seeks a variance;

29 (2) a representation by the employer, supported by  
30 representations from qualified persons who have firsthand

1 knowledge of the facts represented, that the employer is  
2 unable to comply with the standard or portion thereof, and a  
3 detailed statement of the reasons therefor;

4 (3) a statement of the steps the employer has taken and  
5 will take, with specific dates, to protect employees against  
6 the hazard covered by the standard;

7 (4) a statement of when the employer expects to be able  
8 to comply with the standard and what steps the employer has  
9 taken and will take, with dates specified, to come into  
10 compliance with the standard; and

11 (5) a certification that the employer has informed its  
12 employees of the application by giving a copy thereof to  
13 their authorized representative, posting a statement giving a  
14 summary of the application and specifying where a copy may be  
15 examined at the place or places where notices to employees  
16 are normally posted and by other appropriate means.

17 A description of how employees have been informed shall be  
18 contained in the certification. The information to employees  
19 shall also inform them of their right to petition the secretary  
20 for a hearing.

21 (c) Experimental program.--The secretary is authorized to  
22 grant a variance from any standard or portion thereof whenever  
23 he or she determines that such variance is necessary to permit  
24 an employer to participate in an experimental program approved  
25 by the secretary, which is designed to demonstrate or validate  
26 new and improved techniques to safeguard the health or safety of  
27 workers.

28 (d) Notice to employees.--An affected employer may apply to  
29 the secretary for a rule or order for a variance from a standard  
30 promulgated under this act. Affected employees shall be given

1 notice of each such application an opportunity to participate in  
2 a hearing. The secretary shall issue a rule or order if he or  
3 she determines on the record, after opportunity for an  
4 inspection where appropriate and a hearing, that the proponent  
5 of the variance has demonstrated by a preponderance of the  
6 evidence that the conditions, practices, means, methods,  
7 operations or processes used or proposed to be used by an  
8 employer will provide employment and places of employment which  
9 are as safe and healthful as those which would prevail if he  
10 complied with the standard. The rule or order shall prescribe  
11 the conditions the employer must maintain, and the practices,  
12 means, methods, operations and processes which he or she must  
13 adopt and utilize to the extent they differ from the standard in  
14 question. A rule or order may be modified or revoked upon  
15 application by an employer, any employee or employee  
16 representative, or by the secretary on his or her own motion, in  
17 the manner prescribed for its issuance under this section at any  
18 time after six months from its issuance.

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

23 Section 9. Pennsylvania Occupational Safety and Health Review  
24 Board.

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

1 functions of the review board under this act.

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

5 (c) Hearings, appeals.--A member of the board shall hear and  
6 rule on appeals from compliance orders, notifications and  
7 penalties issued under the provisions of this act.

8 (d) Regulations.--The secretary shall adopt and promulgate  
9 rules and regulations with respect to the procedural aspect of  
10 the review board hearings.

11 (e) Per diems, schedules.--Any review board member hearing  
12 an appeal or appeals under the provision of this act shall be  
13 paid a per diem amount to be determined by the secretary. The  
14 members shall alternate the hearing of such appeals according to  
15 a schedule adopted by the secretary. If a member is unable to  
16 hear an appeal, the next available member, in accordance with  
17 the schedule, shall hear the appeal. A member shall be selected  
18 to hear the appeal within 30 days after the date it was filed.

19 (f) Staff.--Any staff necessary for the purposes of such  
20 hearing shall be provided by the Department of Labor and  
21 Industry.

22 (g) Powers.--In the conduct of hearings the review board  
23 member may subpoena and examine witnesses, require the  
24 production of evidence, administer oaths and take testimony and  
25 depositions.

26 (h) Final action.--After hearing an appeal, the review board  
27 member may sustain, modify or dismiss a compliance order or  
28 penalty, provided such decision shall be issued within 120 days  
29 after the appeal was filed.

30 Section 10. Appeal from review board.

1 Any person, including the secretary, adversely affected or  
2 aggrieved by an order of the review board, after all  
3 administrative remedies provided by this act have been  
4 exhausted, is entitled to judicial review.

5 Section 11. Inspection and investigation powers.

6 (a) Authorization.--In order to carry out the purposes of  
7 this act, the secretary or his or her designated agent, upon  
8 presenting appropriate credentials to the employer, is  
9 authorized to enter without advance notice and at reasonable  
10 times any workplace or environment where work is performed by an  
11 employee of an employer and to inspect and investigate, during  
12 regular working hours and at other reasonable times and in a  
13 reasonable manner, any such place of employment and all  
14 pertinent conditions, structures, machines, apparatus, devices,  
15 equipment and the materials therein and to question, privately,  
16 any such employer or employee. Whenever the secretary,  
17 proceeding pursuant to this section, is denied admission to any  
18 such place of employment, he or she shall obtain a warrant to  
19 make an inspection or investigation of such place of employment  
20 from any judge of the Commonwealth Court.

21 (b) Witnesses and evidence.--In making his or her  
22 inspections and investigations under this section, the secretary  
23 may require the attendance and testimony of witnesses and the  
24 production of evidence under oath. Witnesses shall be paid the  
25 same fees and mileage that are paid witnesses in the courts of  
26 this Commonwealth. In case of a failure or refusal of any person  
27 to obey such an order, the common pleas court for the judicial  
28 district wherein such person resides, is found or transacts  
29 business shall issue to such person an order requiring such  
30 person to appear to produce evidence if asked and when so

1 ordered and to give testimony relating to the matter under  
2 investigation or in question. Any failure to obey such order of  
3 the court may be punished by the court as a contempt thereof.

4 (c) Authorized accompanying persons.--Subject to regulations  
5 issued by the secretary, a representative of the employer and a  
6 representative authorized by the employees shall be given an  
7 opportunity to accompany the secretary or his or her authorized  
8 representative during the physical inspection of any workplace  
9 for the purposes of aiding such inspection. Where there is no  
10 authorized employee representative, the secretary or his or her  
11 authorized representative shall consult with a reasonable number  
12 of employees concerning matters of health and safety in the  
13 workplace. No employee who accompanies the secretary or his or  
14 her authorized representative on an inspection shall suffer any  
15 reduction in wages.

16 Section 12. Inspection and investigation of violations.

17 (a) Request for inspection.--Any employee or authorized  
18 employee representative who believes that a violation of an  
19 occupational safety or health standard exists or that an  
20 imminent danger exists may request an inspection by giving  
21 notice to the secretary of such violation or danger. The notice  
22 and request shall be in writing, shall set forth with reasonable  
23 particularity the grounds for the notice and shall be signed by  
24 the employee or representative of employees. A copy of the  
25 notice shall be provided by the secretary to the employer or its  
26 agent no later than the time of inspection, except that, on the  
27 request of the person giving such notice, the names of  
28 individual employees or representatives of employees shall be  
29 kept confidential.

30 (b) Inspection warranted.--Whenever the secretary receives a

1 request for inspection and determines that there are reasonable  
2 grounds to believe that such violation or danger exists, he or  
3 she shall make an inspection as soon as practicable to determine  
4 if such violation or danger exists. The inspection may be  
5 limited to the alleged violation or danger. If the secretary  
6 determines there are no reasonable grounds to believe that such  
7 violation or danger exists, he or she shall notify the employer,  
8 employee or representative of employees in writing of such  
9 determination. The notification shall not preclude future  
10 enforcement action if conditions change.

11 (c) Notice of suspected violations.--Prior to or during any  
12 inspection of a workplace, any employee or representative of  
13 employees employed in such workplace may notify the secretary or  
14 any representative of the secretary responsible for conducting  
15 the inspection in writing of any violation of this act which  
16 they have reason to believe exists in the workplace. The  
17 secretary shall by regulation establish procedures for informal  
18 review of any refusal by a representative of the secretary to  
19 issue a citation with respect to any such alleged violation and  
20 shall furnish the employer and the employees or representative  
21 of the employees requesting such review a written statement of  
22 the reasons for the secretary's final disposition of the case.  
23 The notification shall not preclude future enforcement action if  
24 conditions change.

25 (d) Authorization.--The secretary is authorized to compile,  
26 analyze and publish in either summary or detailed form all  
27 reports or information obtained under this section.

28 (e) Regulations.--The secretary shall prescribe such rules  
29 and regulations as he may deem necessary to carry out his  
30 responsibilities under this act, including rules and regulations

1 dealing with the inspection of an employer's or owner's  
2 establishment.

3 Section 13. Recordkeeping.

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

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

23 (c) Exposure to toxic materials.--The secretary shall issue  
24 regulations requiring employers to maintain accurate records of  
25 employee exposures to potentially toxic materials or harmful  
26 physical agents which are required to be monitored or measured  
27 under any occupational health and safety standard adopted under  
28 this act. The regulations shall provide employees or their  
29 representatives with an opportunity to observe such monitoring  
30 or measuring and have access to the records thereof. The



1 regulations shall make appropriate provisions for each employee  
2 or former employee to have access to such records as will  
3 indicate his or her own exposure to toxic materials or harmful  
4 physical agents. Each employer shall promptly notify any  
5 employee who has been or is being exposed to toxic materials or  
6 harmful physical agents in concentrations or at levels which  
7 exceed those prescribed by an occupational safety and health  
8 standard promulgated under this act and shall inform any  
9 employee who is being thus exposed of the corrective action  
10 being taken.

11 Section 14. Compliance orders.

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

22 (b) Posted.--Each compliance order issued under this section  
23 or a copy or copies thereof shall be prominently posted as  
24 prescribed in regulations issued by the secretary at or near  
25 each place a violation referred to in the compliance order  
26 occurred and at such locations within the workplace reasonably  
27 accessible to the employees.

28 Section 15. Enforcement procedures.

29 (a) Employer notification.--If, after inspection or  
30 investigation, the secretary issues a compliance order pursuant

1 to section 14, he or she shall, within a reasonable time after  
2 the termination of such inspection or investigation, notify the  
3 employer by certified mail of the penalty, if any, proposed to  
4 be assessed pursuant to section 17. Such notification shall  
5 inform the employer that it has 15 working days from the receipt  
6 of notice within which to notify the secretary that it wishes to  
7 contest the compliance order or proposed assessment of penalty.  
8 If the employer fails to so notify the secretary within 15 days  
9 and if no notice is filed by any employee or representative of  
10 employees pursuant to subsection (c) within 15 days, the  
11 compliance order and the assessment, as proposed, shall be  
12 deemed a final order of the secretary and not subject to review  
13 by any court or agency.

14 (b) Compliance failure.--If the secretary has reason to  
15 believe that an employer has failed to correct a violation for  
16 which a compliance order has been issued within the period  
17 permitted for such correction, the secretary shall notify the  
18 employer by certified mail of the failure and of the penalty  
19 proposed to be assessed pursuant to section 17 by reason of such  
20 failure, provided that, in the case of a review proceeding  
21 initiated by the employer under this section in good faith and  
22 not solely for delay or the avoidance of penalties, the period  
23 permitted for correction of the violation shall not begin to run  
24 until the entry of a final order by the review board. The  
25 notification by the secretary shall inform the employer that it  
26 has 15 working days from the receipt of the notice within which  
27 to notify the secretary that it wishes to contest the  
28 notification or the proposed assessment of penalty. If, within  
29 15 days from receipt of notification under this section, the  
30 employer fails to notify the secretary that it intends to

1 contest the notification or proposed assessment of penalty, the  
2 notification and assessment as proposed shall be deemed a final  
3 order of the review board and not subject to review by any court  
4 or agency.

5 (c) Contesting of order.--If an employer notifies the  
6 secretary that it intends to contest a compliance order issued  
7 under section 14(a) or a notification issued under subsection  
8 (a) or (b) of this section, or if, within 15 days after the  
9 issuance of a compliance order issued under section (14)(a), any  
10 employee or employee representative files a notice with the  
11 secretary alleging that the period of time fixed in the  
12 compliance order for abatement of the violation is unreasonable,  
13 the secretary shall immediately advise the review board of such  
14 notification, and the review board shall afford an opportunity  
15 for a hearing. The review board shall thereafter issue an order  
16 based on findings of fact affirming, modifying or vacating the  
17 secretary's compliance order or proposed penalty or directing  
18 other appropriate relief. The order shall become final 30 days  
19 after its issuance. Upon a showing by an employer of a good  
20 faith effort to comply with the abatement requirements of a  
21 compliance order and a showing that abatement has not been  
22 completed because of factors beyond the employer's reasonable  
23 control, the secretary, after an opportunity for a hearing as  
24 provided in this subsection, shall issue an order affirming or  
25 modifying the abatement requirements in such compliance order.  
26 The rules of procedure prescribed by the secretary shall provide  
27 affected employees or employee representatives of affected  
28 employees an opportunity to participate as parties to hearings  
29 under this subsection.

30 Section 16. Injunction proceedings.

1 (a) Commonwealth Court.--The Commonwealth Court shall have  
2 jurisdiction upon petition of the secretary, pursuant to the law  
3 and general rules, to restrain any conditions or practices in  
4 any place of public employment which are such that a danger  
5 exists which could reasonably be expected to cause death or  
6 serious physical harm immediately or before the imminence of  
7 such danger can be eliminated through the abatement procedures  
8 otherwise provided for by this act. Any order issued under this  
9 section shall require such steps to be taken as may be necessary  
10 to avoid, correct or remove such imminent danger and prohibit  
11 the employment or presence of any individual in locations or  
12 under conditions where such imminent danger exists, except  
13 individuals whose presence is necessary to avoid, correct or  
14 remove such imminent danger. No temporary restraining order  
15 issued without notice shall be effective more than five days.

16 (b) Inform employees.--Whenever and as soon as an inspector  
17 concludes that conditions or practices described in subsection  
18 (a) exist in any place of public employment, he or she shall  
19 inform the affected employees and employers of the danger and  
20 shall further inform such persons that he or she is recommending  
21 to the secretary that relief be sought.

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

29 Section 17. Discrimination against employees.

30 (a) Prohibition.--An employer or any other person shall not

1 discriminate against any employee because such employee has  
2 filed any complaint or instituted or caused to be instituted any  
3 proceeding under or related to this act, or has testified or is  
4 about to testify in any such proceeding, or because of the  
5 exercise by such employee on their behalf or on behalf of  
6 others, of any right afforded by this act.

7 (b) Complaint.--Any employee who believes that he or she has  
8 been discharged, disciplined or otherwise discriminated against  
9 by any person in violation of this section may, within 30 days  
10 after such violation occurs, file a complaint with the secretary  
11 alleging such discrimination. Upon receipt of the complaint, the  
12 secretary shall cause investigation to be made as deemed  
13 appropriate and shall, if requested, withhold the name of the  
14 complainant from the employer. If, upon investigation, the  
15 secretary determines that the provisions of this section have  
16 been violated, the secretary shall request the Attorney General  
17 to bring an action in the Commonwealth Court against the person  
18 or persons alleged to have violated this act. In any such action  
19 the Commonwealth Court shall have jurisdiction for cause shown  
20 to restrain violations of this act and order all appropriate  
21 relief, including reinstatement of the employee to his or her  
22 former position with back pay and benefits.

23 (c) Determination.--Within 90 days of receipt of a complaint  
24 filed under this section, the secretary shall notify the  
25 complainant and his representative by registered mail of his or  
26 her determination of such complaint.

27 (d) Rights preserved.--Nothing in this act shall be deemed  
28 to diminish the rights of any employee under any law, rule or  
29 regulation or under any collective bargaining agreement.

30 Section 18. Research and demonstration projects.

1       The secretary shall conduct research and undertake  
2 demonstration projects relating to occupational safety and  
3 health issues and problems either within the Department of Labor  
4 and Industry or by grants or contracts. The secretary may  
5 prescribe regulations requiring employers to measure, record and  
6 make reports on exposure of employees to toxic substances which  
7 the secretary believes may endanger the health or safety of  
8 employees. The secretary shall cooperate with the Director of  
9 the National Institute for Occupational Safety and Health of the  
10 Department of Health and Human Services of the United States in  
11 establishing such programs of medical examinations and tests as  
12 may be necessary to determine the incidence of occupational  
13 illnesses and employee susceptibility to such illnesses. Such  
14 programs, on the request of the employer, may be paid for by the  
15 secretary together with such other assistance as may be  
16 required. Information obtained under this act shall be made  
17 public without revealing the names of individual workers covered  
18 by physical examination or special studies and shall be made  
19 available to employers, employees and their respective  
20 organizations.

21 Section 19. Education programs.

22       (a) Adequate personnel.--The secretary shall conduct  
23 directly or by grants or contracts education programs to provide  
24 an adequate supply of qualified personnel to carry out the  
25 purposes of this act and informational programs on the  
26 importance and proper use of adequate safety and health  
27 equipment.

28       (b) Short-term training.--The secretary is authorized to  
29 conduct directly or by grants or contracts short-term training  
30 of personnel engaged in work related to the secretary's

1 responsibilities under this act.

2 (c) Avoidance and prevention.--The secretary shall provide  
3 for the establishment and supervision of programs for the  
4 education and training of employers, owners and employees in the  
5 recognition, avoidance and prevention of unsafe or unhealthful  
6 working conditions in employment covered by this act. The  
7 secretary shall consult with and advise owners and employers,  
8 employees and organizations representing employers, owners and  
9 employees as to effective means of preventing occupational  
10 injuries and illnesses.

11 Section 20. Reports to United States Secretary of Labor.

12 In regard to the administration and enforcement of this act,  
13 the secretary shall make such reports to the Secretary of Labor  
14 of the United States in such form and containing such  
15 information as the secretary shall time to time require.

16 Section 21. Confidentiality of information obtained.

17 All information reported to or otherwise obtained by the  
18 secretary or his or her representatives or any member of the  
19 review board in connection with any inspection or proceeding  
20 under this act which contains or might reveal a trade secret  
21 shall be considered confidential, provided that such information  
22 may be disclosed to other officers or employees concerned with  
23 carrying out this act or when relevant in any proceeding under  
24 this act. In any such proceedings the secretary, the review  
25 board or the court shall issue such orders as may be appropriate  
26 to protect the confidentiality of trade secrets.

27 Section 22. Penalties.

28 (1) Any employer who willfully or repeatedly violates  
29 the requirements of section 4 or 5, any occupational health  
30 and safety standard promulgated pursuant to section 6 or

1 regulations prescribed pursuant to this act may be assessed a  
2 civil penalty of not more than \$10,000 for each violation.

3 (2) Any employer who has received a compliance order for  
4 a serious violation of the requirements of section 4 or 5,  
5 any occupational health and safety standard promulgated  
6 pursuant to section 6 or regulations prescribed pursuant to  
7 this act shall be assessed a civil penalty of up to \$1,000  
8 for each violation.

9 (3) Any employer who has received a compliance order for  
10 a violation of the requirements of sections 4 or 5, any  
11 occupational health and safety standard promulgated pursuant  
12 to section 6 or regulations prescribed pursuant to this act,  
13 which violation has been determined not to be of a serious  
14 nature, may be assessed a civil penalty of up to \$1,000 for  
15 each violation.

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

25 (5) Any employer who willfully violates any standard or  
26 order promulgated pursuant to section 6 or of any regulation  
27 adopted pursuant to this act, which violation caused death to  
28 any employee shall be fined not more than \$10,000 or  
29 imprisoned not more than six months or both provided that, if  
30 the conviction is for a violation committed after a first



1 conviction of such person, punishment shall be by fine of not  
2 more than \$20,000 or by imprisonment for not more than one  
3 year or both.

4 (6) Any person who gives advance notice of any  
5 inspection to be conducted under this act without authority  
6 from the secretary or his or her designees shall be fined not  
7 more than \$1,000 or imprisoned not more than six months or  
8 both.

9 (7) Any person who knowingly makes any false statement,  
10 representation or certification in any application, record,  
11 report, plan or other document filed or required to be  
12 maintained under this act shall be fined not more than  
13 \$10,000 or imprisoned not more than six months, or both.

14 (8) Any employer who violates any of the posting  
15 requirements as prescribed under this act shall be assessed a  
16 civil penalty of up to \$1,000 for each violation.

17 (9) Any employer who refuses entry to any authorized  
18 representative of the secretary while such representative is  
19 attempting to conduct an investigation or inspection pursuant  
20 to the provisions of this act or in any way willfully  
21 obstructs him from carrying out his investigation or  
22 inspection shall be fined not more than \$1,000 or imprisoned  
23 not more than six months or both.

24 (10) Any employer or individual who willfully causes  
25 bodily harm to any authorized representative of the secretary  
26 while such representative is attempting to conduct an  
27 investigation or inspection pursuant to the provision of this  
28 act shall be fined not more than \$10,000 or imprisoned not  
29 more than one year or both.

30 (11) The review board shall have authority to assess all

1 civil penalties provided in this act, giving due  
2 consideration to the appropriateness of the penalty with  
3 respect to the size of the business of the employer being  
4 charged, the gravity of the violation, the good faith of the  
5 employer and the history of previous violations.

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

15 (13) Civil penalties owed under this chapter shall be  
16 paid to the secretary for deposit in to the treasury of the  
17 Commonwealth and may be recovered in a civil action in the  
18 name of the Commonwealth brought in the Commonwealth Court.

19 (14) Any person who violates section 22 shall be fined  
20 not more than \$1,000 or imprisoned not more than one year or  
21 both. In the event that such person is an officer or employee  
22 responsible for carrying out the provisions of this act, he  
23 or she shall be removed from office or employment upon  
24 conviction under this section.

25 Section 23. Effective date.

26 This act shall take effect in 60 days.