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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL**

**No. 617**      Session of  
2005

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INTRODUCED BY KASUNIC, TARTAGLIONE, LOGAN, LAVALLE, COSTA,  
STOUT, KITCHEN, PUNT, BOSCOLA AND STACK, APRIL 4, 2005

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REFERRED TO LABOR AND INDUSTRY, APRIL 4, 2005

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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 or other  
21 instrumentality thereof and any nonprofit organization or  
22 institution and any charitable, religious, scientific, literary,  
23 recreational, health, educational or welfare institution  
24 receiving grants or appropriations from Federal, State or local  
25 government. The term does not include an employer covered or  
26 presently subject to coverage under the Occupational Safety and  
27 Health Act of 1970 (Public Law 91-596, 29 U.S.C. § 651 et seq.).

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

30 "Secretary." The Secretary of Labor and Industry of the

1 Commonwealth or a designated agent.

2 Section 4. Application.

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

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

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

22 Section 5. Employer duties.

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

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

1 act.

2 (c) Written statement of substances.--An employer shall,  
3 upon the written request of an employee, furnish the employee  
4 with a written statement listing the substances which the  
5 employee uses or with which the employee comes into contact that  
6 have been identified as toxic or hazardous by occupational  
7 health and safety standards under 29 CFR Pt. 1910 Subpt. H  
8 (relating to hazardous materials) or pursuant to the act of June  
9 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know  
10 Law, or both.

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

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

21 Section 6. Regulations.

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

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

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

1 employers and employees to institute new, and to perfect  
2 existing, programs for providing safe and healthful working  
3 conditions.

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

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

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

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

25 Section 7. Standards.

26 (a) General rule.--The secretary shall, by regulation, adopt  
27 all occupational safety and health standards, amendments or  
28 changes adopted or recognized by the United States Secretary of  
29 Labor under the authority of the Occupational Safety and Health  
30 Act of 1970 in order to provide reasonable and adequate

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

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

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

18 Section 8. Variances.

19 (a) Variance procedure.--

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

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

1 of facilities cannot be completed by the effective date.

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

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

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

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

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

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

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

30 (1) A specification of the standard or portion thereof

1 from which the employer or owner seeks a variance.

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

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

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

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

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

1 (d) Hearing and order.--

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

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

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

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

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

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

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

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

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

27 (e) Necessary staff.--Any staff necessary for the purposes  
28 of conducting hearings under this act shall be provided by the  
29 Department of Labor and Industry.

30 (f) Subpoena power and oaths.--In the conduct of hearings

1 the review board member may subpoena and examine witnesses,  
2 require the production of evidence, administer oaths and take  
3 testimony and depositions.

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

8 Section 10. Appeal from review board.

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

13 Section 11. Inspection and investigation powers.

14 (a) Right to inspect.--

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

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

30 (b) Witnesses and evidences.--

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

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

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

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

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

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

29 Section 12. Inspection and investigation of violations.

30           (a) Request for inspection.--

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

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

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

15          (b) Action by secretary.--

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

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

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

29           (1) Prior to or during any inspection of a workplace, an  
30 employee or representative of employees employed in the

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

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

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

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

22 Section 13. Recordkeeping.

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

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

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

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

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

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

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

3 Section 14. Compliance orders.

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

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

20 Section 15. Enforcement procedures.

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

22 (1) If, after inspection or investigation, the secretary  
23 issues a compliance order under section 7 (relating to  
24 standards), the secretary shall, within a reasonable time  
25 after the termination of the inspection or investigation,  
26 notify the employer by certified mail of the penalty, if any,  
27 proposed to be assessed under section 17 (relating to  
28 penalties). 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) (relating to compliance orders) or a notification  
5 issued under subsection (a) or (b) or if, within 15 days  
6 after the issuance of a compliance order issued under section  
7 14(a), an employee or employee representative files a notice  
8 with the secretary alleging that the period of time fixed in  
9 the compliance order for abatement of the violation is  
10 unreasonable, the secretary shall immediately advise the  
11 review board of the notification, and the review board shall  
12 afford an 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 such steps to be taken as may be necessary to avoid, correct  
11 or 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 the  
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 (relating to application) or 5 (relating to employer duties),  
5 any occupational health and safety standard promulgated under  
6 section 6 (relating to regulations) or regulations prescribed  
7 pursuant to this act may be assessed a civil penalty of not more  
8 than \$10,000 for each violation.

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

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

22 (d) Failure to correct violation.--An employer who fails to  
23 correct a violation for which a compliance order has been issued  
24 under section 15 within the period permitted for its correction,  
25 which period shall not begin to run until the date of the final  
26 order of the board in the case of any review proceeding under  
27 section 16 (relating to injunction proceedings) initiated by the  
28 employer in good faith and not solely for delay or avoidance of  
29 penalties, may be assessed a civil penalty of not more than  
30 \$1,000 for each day during which such failure or violation

1 continues.

2 (e) Violation causing death.--

3 (1) An employer who willfully violates any standard or  
4 order promulgated pursuant to section 6 or any regulation  
5 adopted pursuant to this act, which violation caused death to  
6 any employee, commits a misdemeanor and shall, upon  
7 conviction, be sentenced to pay a fine of not more than  
8 \$10,000 or to imprisonment for not more than six months, or  
9 both.

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

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

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

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

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

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

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

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

1 presence of the violation.

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

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

15 Section 18. Discrimination against employees.

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

23 (b) Remedy.--

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

29 (2) Upon receipt of the complaint, the secretary shall  
30 cause investigation to be made as deemed appropriate and

1 shall, if requested, withhold the name of the complainant  
2 from the employer.

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

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

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

21 (a) Secretary to conduct.--

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

30 (2) The secretary shall cooperate with the Director of

1 the National Institute for Occupational Safety and Health of  
2 the Department of Health and Human Services in establishing  
3 the programs of medical examinations and tests as may be  
4 necessary to determine the incidence of occupational  
5 illnesses and employee susceptibility to the illnesses.

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

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

14 Section 20. Education programs.

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

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

25 (c) Additional programs.--The secretary shall provide for  
26 the establishment and supervision of programs for the education  
27 and training of employers, owners and employees in the  
28 recognition, avoidance and prevention of unsafe or unhealthful  
29 working conditions in employment covered by this act. The  
30 secretary shall consult with and advise owners and employers,

1 employees and organizations representing owners, employers and  
2 employees as to effective means of preventing occupational  
3 injuries and illnesses.

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

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

9 Section 22. Confidentiality of information maintained.

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

20 Section 23. Effective date.

21 This act shall take effect in 60 days.