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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1082 Session of  
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INTRODUCED BY HARKINS, O'BRIEN, ROZZI, KOTIK, BROWNLEE, MILLARD,  
READSHAW, W. KELLER, DeLUCA, McNEILL, MAHONEY, COHEN,  
McCARTER, GIBBONS, SABATINA, MURT, GINGRICH AND D. COSTA,  
APRIL 28, 2015

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REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, APRIL 28, 2015

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

15 Section 1. Short title.

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

18 Section 2. Legislative declaration.

19 The General Assembly hereby declares as follows:

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

26 (2) A significant percentage of all of those employed in  
27 this Commonwealth are employed by the Commonwealth or by one  
28 of its political subdivisions. Many of these public employees  
29 perform job functions comparable to those performed by  
30 workers in the private sector who are protected by the

Occupational Safety and Health Act of 1970 (Public Law 91-596, 29 U.S.C. § 651 et seq.). The General Assembly, therefore, finds it inappropriate to continue two standards for employee safety, one applicable to those who work in the private sector and one for those who are employed by a public employer.

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

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

#### Section 3. Definitions.

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

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

"Employee organization." An organization of any kind, or any agency or employee representation committee or plan in which membership includes public employees, and which exists for the purpose, in whole or in part, of dealing with employers

1 concerning grievances, employee-employer disputes, wages, rates  
2 of pay, hours of employment or conditions of work. The term does  
3 not include an organization which practices discrimination in  
4 membership because of race, color, creed, national origin or  
5 political affiliation.

6 "Occupational Safety and Health Act of 1970" or "OSHA." The  
7 Occupational Safety and Health Act of 1970 (Public Law 91-596,  
8 29 U.S.C. § 651 et seq.).

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

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

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

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

30 "Review board." The Pennsylvania Occupational Safety and

1 Health Review Board established under this act.

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

4 Section 4. Application.

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

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

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

24 Section 5. Employer duties.

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

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

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

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

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

23 Section 6. Regulations.

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

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

29 (2) Provide a method of encouraging employers and  
30 employees in their efforts to reduce the number of safety and

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

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

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

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

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

27 Section 7. Standards.

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

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

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

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

20 Section 8. Variances.

21 (a) Variance procedure.--

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

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



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

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

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

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

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

20 (iii) A temporary order shall not be in effect for  
21 longer than the period needed by the employer to achieve  
22 compliance with the standard or one year, whichever is  
23 shorter, except that an order may be renewed not more  
24 than twice so long as the requirements of this section  
25 are met and an application for renewal is filed at least  
26 90 days prior to the expiration date of the order.

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

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

1 following:

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

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

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

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

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

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

1 new and improved techniques to safeguard the health or safety of  
2 workers.

3 (d) Hearing and order.--

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

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

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

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

1 the standard or regulation by bringing an action for declaratory  
2 judgment.

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

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

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

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

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

29 (e) Necessary staff.--Any staff necessary for the purposes  
30 of conducting hearings under this act shall be provided by the

1 Department of Labor and Industry.

2 (f) Subpoena power and oaths.--In the conduct of hearings  
3 the review board member may subpoena and examine witnesses,  
4 require the production of evidence, administer oaths and take  
5 testimony and depositions.

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

10 Section 10. Appeal from review board.

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

15 Section 11. Inspection and investigation powers.

16 (a) Right to inspect.--

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

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

1 Commonwealth Court.

2 (b) Witnesses and evidences.--

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

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

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

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

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

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

1 Section 12. Inspection and investigation of violations.

2 (a) Request for inspection.--

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

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

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

17 (b) Action by secretary.--

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

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

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

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

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

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

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

24 Section 13. Recordkeeping.

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



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

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

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

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

28 (2) An employer shall promptly notify any employee who  
29 has been or is being exposed to toxic materials or harmful  
30 physical agents in concentrations or at levels which exceed

1       those prescribed by an occupational safety and health  
2       standard promulgated under this act and shall inform any  
3       employee who is being thus exposed of the corrective action  
4       being taken.

5 Section 14. Compliance orders.

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

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

22 Section 15. Enforcement procedures.

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

24           (1) If, after inspection or investigation, the secretary  
25      issues a compliance order under section 7, the secretary  
26      shall, within a reasonable time after the termination of the  
27      inspection or investigation, notify the employer by certified  
28      mail of the penalty, if any, proposed to be assessed under  
29      section 17. The notification shall inform the employer that  
30      it has 15 working days from the receipt of notice within

1 which to notify the secretary that it wishes to contest the  
2 compliance order or proposed assessment of penalty.

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

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

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

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

1 agency.

2 (c) Action by review board.--

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

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

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

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

30 Section 16. Injunction proceedings.

1 (a) Temporary restraining order.--

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

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

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

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

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

1 for such further relief as may be appropriate.

2 Section 17. Penalties.

3 (a) Willful or repeated violations.--An employer who  
4 willfully or repeatedly violates the requirements of section 4  
5 or 5, any occupational safety and health standard promulgated  
6 under section 6 or regulations prescribed pursuant to this act  
7 may be assessed a civil penalty of not more than \$10,000 for  
8 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 safety and  
12 health 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 safety and  
18 health 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 initiated by the employer in good faith and not  
28 solely for delay or avoidance of penalties, may be assessed a  
29 civil penalty of not more than \$1,000 for each day during which  
30 such failure or violation continues.

1 (e) Violation causing death.--

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

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

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

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

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

30 (i) Refusing entry for investigation or inspection.--An

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

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

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

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



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

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

13 Section 18. Discrimination against employees.

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

21 (b) Remedy.--

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

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

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

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

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

19       (a) Secretary to conduct.--

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

28           (2) The secretary shall cooperate with the Director of  
29      the National Institute for Occupational Safety and Health of  
30      the Department of Health and Human Services in establishing

1 the programs of medical examinations and tests as may be  
2 necessary to determine the incidence of occupational  
3 illnesses and employee susceptibility to the illnesses.

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

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

12 Section 20. Education programs.

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

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

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

1 injuries and illnesses.

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

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

7 Section 22. Confidentiality of information maintained.

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

18 Section 23. Effective date.

19 This act shall take effect in 60 days.