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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 464 Session of  
2019

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INTRODUCED BY TARTAGLIONE, FONTANA, FARNESE, COSTA, HUGHES AND  
BREWSTER, MARCH 21, 2019

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REFERRED TO LABOR AND INDUSTRY, MARCH 21, 2019

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AN ACT

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

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 ensure  
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 employees in this  
26 Commonwealth are employed by the Commonwealth or by one of  
27 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. The General

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

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

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

18 Section 3. Definitions.

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

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

25 "Employee." An individual employed by a public employer.

26 "Employee organization." An organization of any kind, or an  
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 that practices discrimination in  
3 membership because of race, color, creed, national origin or  
4 political affiliation.

5 "Employer." The Commonwealth, any of its political  
6 subdivisions, including a school district, and any office,  
7 board, commission, agency, authority, local transportation  
8 organization or other instrumentality or nonprofit organization  
9 or institution or a charitable, religious, scientific, literary,  
10 recreational, health, educational or welfare institution  
11 receiving grants or appropriations from Federal, State or local  
12 government. The term does not include an employer covered or  
13 presently subject to coverage under the Occupational Safety and  
14 Health Act of 1970.

15 "Occupational Safety and Health Act of 1970" or "OSHA." The  
16 Occupational Safety and Health Act of 1970 (Public Law 91-596,  
17 29 U.S.C. § 651 et seq.).

18 "Occupational safety and health standard." A standard which  
19 requires conditions, or the adoption or use of one or more  
20 practices, means, methods, operations or processes, reasonably  
21 necessary or appropriate to provide safe or healthful employment  
22 in places of employment.

23 "Person." An individual, partnership, association,  
24 corporation, business trust, legal representative or an  
25 organized group of individuals, partnerships, associations,  
26 corporations, business trusts or legal representatives.

27 "Review board." The Pennsylvania Occupational Safety and  
28 Health Review Board established under section 9.

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

1 Section 4. Application.

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

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

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

20 Section 5. Employer duties.

21 (a) General rule.--An employer shall furnish to each  
22 employee:

23 (1) Employment.

24 (2) A place of employment:

25 (i) Free from recognized hazards that are causing or  
26 are likely to cause death or serious physical harm.

27 (ii) Which will provide reasonable and adequate  
28 protection to the lives, safety or health of the  
29 employees.

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

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

3 (c) Written statement of substances.--An employer shall,  
4 upon the written request of an employee, furnish the employee  
5 with a written statement listing the substances the employee  
6 uses or with which the employee comes into contact that have  
7 been identified as toxic or hazardous by occupational safety and  
8 health standards under 29 CFR Pt. 1910 Subpt. H (relating to  
9 hazardous materials) or under the act of February 14, 2008  
10 (P.L.6, No.3), known as the Right-to-Know 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 under  
14 this act which are applicable to the employer's or employee's  
15 own actions and 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) Prepare, adopt, amend or repeal regulations  
25 governing the conditions of employment of general and special  
26 application in all workplaces.

27 (2) Provide:

28 (i) A method of encouraging employers and employees  
29 in efforts to reduce the number of safety and health  
30 hazards arising from undesirable or inappropriate working

1 conditions at the workplace.

2 (ii) A method of stimulating employers and employees  
3 to institute new or to perfect existing programs for safe  
4 and healthful working conditions.

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

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

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

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

26 Section 7. Standards.

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

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

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

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

19 Section 8. Variances.

20 (a) Variance procedure.--

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

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



1 with the standard or because necessary construction or  
2 alteration of facilities cannot be completed by the  
3 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 complying with the standard as quickly as practicable.

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

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

18 (iii) A temporary order may 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. An order may be renewed not more than twice so  
22 long as the requirements of this section are met and an  
23 application for renewal is filed at least 90 days prior  
24 to the expiration date of the order.

25 (iv) An interim renewal of an order may 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 from

1 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 and a detailed  
6 statement of the reasons.

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 the  
15 employees of the application by giving a copy of the  
16 application to the authorized employee representative,  
17 posting a statement giving a summary of the application and  
18 specifying where a copy may be examined at the place or  
19 places where notices to employees are normally posted, and by  
20 other appropriate means. A description of how employees have  
21 been informed shall be contained in the certification. The  
22 information to employees shall also inform them of the right  
23 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 whenever the  
26 secretary determines that a variance is necessary to permit an  
27 employer to participate in an experimental program approved by  
28 the secretary, which is designed to demonstrate or validate new  
29 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 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 the employer complied with the standard. The  
16 rule or order shall prescribe the conditions the employer  
17 must maintain and the practices, means, methods, operations  
18 and processes which the employer must adopt and utilize to  
19 the 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, an employee, an authorized  
22 employee representative, or by the secretary on the  
23 secretary's own motion, in the manner prescribed for issuance  
24 under this section at any time after six months from the date  
25 the rule or order was 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 section may challenge the validity or applicability of the  
29 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 under this act. The review board  
6 shall consist of five persons appointed by the Governor from  
7 among persons who by reason of training, education or experience  
8 are qualified to carry out the functions of the review board.

9 (b) Terms of members.--Each member shall serve a term of  
10 four years and until the member's successor is appointed. The  
11 Governor shall designate one of the members to serve as  
12 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 this act. The secretary  
16 shall adopt and promulgate rules and regulations with respect to  
17 the procedures for review board hearings.

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

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

29 (f) Subpoena power and oaths.--In the conduct of hearings  
30 the review board member may subpoena and examine witnesses,

1 require the production of evidence, administer oaths and take  
2 testimony and depositions.

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

7 Section 10. Appeal from review board.

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

12 Section 11. Inspection and investigation powers.

13 (a) Right to inspect.--

14 (1) To carry out the purposes of this act, the secretary  
15 or a designated representative, upon presenting appropriate  
16 credentials to the employer, may enter a workplace or  
17 environment where work is performed by an employee, without  
18 advance notice and at reasonable times, to inspect and  
19 investigate a place of employment and all pertinent  
20 conditions, structures, machines, apparatus, devices,  
21 equipment and materials and question an employer or employee  
22 privately.

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

28 (b) Witnesses and evidences.--

29 (1) In making inspections and investigations under this  
30 section, the secretary may require the attendance and

1 testimony of witnesses and the production of evidence under  
2 oath. Witnesses shall be paid the same fees and mileage that  
3 are paid witnesses in the courts of this Commonwealth.

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

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

13 (c) People to accompany secretary or representative.--

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

23 (2) An employee who accompanies the secretary or an  
24 authorized representative on an inspection may not suffer any  
25 reduction in wages as a result.

26 Section 12. Inspection and investigation of violations.

27 (a) Request for inspection.--

28 (1) An employee or authorized employee representative  
29 who believes that a violation of an occupational safety or  
30 health standard exists or that an imminent danger exists may

1 request an inspection by giving notice of a violation or  
2 danger to the secretary.

3 (2) The notice and request shall be in writing, set  
4 forth with reasonable particularity the grounds for the  
5 notice and be signed by an employee or authorized employee  
6 representative.

7 (3) A copy of the notice shall be provided by the  
8 secretary to the employer or an agent of the employer no  
9 later than at the time of inspection, except that on the  
10 request of the person giving notice, the names of individual  
11 employees or the authorized employee representative shall be  
12 kept confidential.

13 (b) Action by secretary.--

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

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

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

27 (1) Prior to or during an inspection of a workplace, an  
28 employee or authorized employee representative in the  
29 workplace may notify in writing the secretary or a  
30 representative of the secretary responsible for conducting

1 the inspection of a violation of this act which the person  
2 has reason to believe exists in the workplace.

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

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

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

20 Section 13. Recordkeeping.

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



1 keep employees informed of the protections and obligations under  
2 this act, including the provisions and regulations of this act.

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

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

11 (1) The secretary shall issue regulations requiring an  
12 employer to maintain accurate records of employee exposures  
13 to potentially toxic materials or harmful physical agents  
14 which are required to be monitored or measured under any  
15 occupational safety and health standard adopted under this  
16 act. The regulations shall provide employees or the  
17 authorized employee representative with an opportunity to  
18 observe monitoring or measuring and have access to the  
19 records. The regulations shall allow each employee or former  
20 employee to have access to records that indicate the  
21 employee's own exposure to toxic materials or harmful  
22 physical agents.

23 (2) An employer shall promptly notify each employee who  
24 has been or is being exposed to toxic materials or harmful  
25 physical agents in concentrations or at levels that exceed  
26 those prescribed by an occupational safety and health  
27 standard promulgated under this act and shall inform each  
28 employee who is being exposed of the corrective action taken.

29 Section 14. Compliance orders.

30 (a) Issuance.--Whenever the secretary, upon inspection or

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

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

16 Section 15. Enforcement procedures.

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

18 (1) If, after inspection or investigation, the secretary  
19 issues a compliance order under section 14(a), the secretary  
20 shall, within a reasonable time after the termination of the  
21 inspection or investigation, notify the employer by certified  
22 mail of the penalty, if any, proposed to be assessed under  
23 section 17. The notification shall inform the employer that  
24 the employer has 15 working days from the receipt of notice  
25 within which to notify the secretary that the employer wishes  
26 to contest the compliance order or proposed assessment of  
27 penalty.

28 (2) If the employer fails to notify the secretary within  
29 15 days and if no notice is filed by any employee or  
30 authorized employee representative under subsection (c)

1 within 15 days, the compliance order and the assessment, as  
2 proposed, shall be deemed a final order of the secretary and  
3 not subject to review by any court or agency.

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

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

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

27 (c) Action by review board.--

28 (1) If an employer notifies the secretary that the  
29 employer intends to contest a compliance order issued under  
30 section 14(a) or a notification issued under subsection (a)

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

9 (2) The review board shall issue an order, based on  
10 findings of fact, affirming, modifying or vacating the  
11 secretary's compliance order or proposed penalty or directing  
12 other appropriate relief. The order shall become final 30  
13 days after the order's issuance.

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

21 (4) The rules of procedure prescribed by the secretary  
22 shall provide affected employees or the authorized employee  
23 representative of affected employees an opportunity to  
24 participate as parties to hearings under this subsection.

25 Section 16. Injunction proceedings.

26 (a) Temporary restraining order.--

27 (1) The Commonwealth Court shall have jurisdiction, upon  
28 petition of the secretary, to restrain conditions or  
29 practices in any place of employment when a danger exists  
30 that could reasonably be expected to cause death or serious

1 physical harm immediately or before the imminence of the  
2 danger can be eliminated through the abatement procedures  
3 otherwise provided for by this act.

4 (2) An order issued under this section shall require  
5 necessary actions to avoid, correct or remove the imminent  
6 danger and prohibit the employment or presence of any  
7 individual in locations or under conditions where the  
8 imminent danger exists, except individuals whose presence is  
9 necessary to avoid, correct or remove the imminent danger.

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

12 (b) Action by inspector.--As soon as an inspector concludes  
13 that conditions or practices described in subsection (a) exist  
14 in a place of employment, the inspector shall inform the  
15 affected employees and employers of the danger and shall further  
16 inform them that the inspector is recommending to the secretary  
17 that relief be sought.

18 (c) Failure of secretary to seek relief.--If the secretary  
19 arbitrarily or capriciously fails to seek relief under this  
20 section, an employee who may be injured by reason of the failure  
21 or the authorized employee representative may bring an action  
22 against the secretary in Commonwealth Court to compel the  
23 secretary to seek an order and for further relief as may be  
24 appropriate.

25 Section 17. Penalties.

26 (a) Willful or repeated violations.--An employer who  
27 willfully or repeatedly violates the requirements of section 4  
28 or 5, an occupational safety and health standard promulgated  
29 under section 7 or regulations prescribed under this act may be  
30 assessed a civil penalty of not more than \$10,000 for each

1 violation.

2 (b) Compliance order for serious violation.--An employer who  
3 has received a compliance order for a serious violation of the  
4 requirements of section 4 or 5, an occupational safety and  
5 health standard promulgated under section 7 or regulations  
6 prescribed under this act shall be assessed a civil penalty of  
7 not more than \$1,000 for each violation.

8 (c) Compliance order for lesser violation.--An employer who  
9 has received a compliance order for a violation of the  
10 requirements of section 4 or 5, an occupational safety and  
11 health standard promulgated under section 7 or regulations  
12 prescribed under this act, which violation has been determined  
13 not to be of a serious nature, may be assessed a civil penalty  
14 of not more than \$1,000 for each violation.

15 (d) Failure to correct violation.--An employer who fails to  
16 correct a violation for which a compliance order has been issued  
17 under section 14 within the period permitted for its correction,  
18 the period may not begin to run until the date of the final  
19 order of the review board in the case of a review proceeding  
20 under section 15 initiated by the employer in good faith and not  
21 solely for delay or avoidance of penalties, may be assessed a  
22 civil penalty of not more than \$1,000 for each day during which  
23 the failure or violation continues.

24 (e) Violation causing death.--

25 (1) An employer who willfully violates a standard or  
26 order promulgated under section 7 or a regulation adopted  
27 under this act, which violation caused death to an employee,  
28 commits a misdemeanor and shall, upon conviction, be  
29 sentenced to pay a fine of not more than \$10,000 or to  
30 imprisonment for not more than six months, or both.

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

5           (f) Providing advance notice of inspection.--A person who  
6 gives advance notice of an inspection to be conducted under this  
7 act without authority from the secretary or a designee commits a  
8 misdemeanor and shall, upon conviction, be sentenced to pay a  
9 fine of not more than \$1,000 or to imprisonment for not more  
10 than six months, or both.

11          (g) False statements.--A person who knowingly makes a false  
12 statement, representation or certification in an application,  
13 record, report, plan or other document filed or required to be  
14 maintained 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 six months, or both.

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

21          (i) Refusing entry for investigation or inspection.--An  
22 employer who refuses entry to the secretary or an authorized  
23 representative while the secretary or representative is  
24 attempting to conduct an investigation or inspection under this  
25 act or willfully obstructs the secretary or an authorized  
26 representative from carrying out an investigation or inspection  
27 commits a misdemeanor and shall, upon conviction, be sentenced  
28 to pay a fine of not more than \$1,000 or to imprisonment for not  
29 more than six months, or both.

30          (j) Causing bodily harm to the secretary or authorized

1 representative.--An employer or individual who willfully causes  
2 bodily harm to the secretary or an authorized representative  
3 while the secretary or representative is attempting to conduct  
4 an investigation or inspection under this act commits a  
5 misdemeanor and shall, upon conviction, be sentenced to pay a  
6 fine of not more than \$10,000 or to imprisonment for not more  
7 than one year, or both.

8 (k) Authority to assess civil penalties.--The review board  
9 shall have authority to assess all civil penalties under this  
10 act, giving due consideration to all of the following:

11 (1) The appropriateness of the penalty with respect to  
12 the size of the business of the employer being charged.

13 (2) The gravity of the violation.

14 (3) The good faith of the employer.

15 (4) The history of previous violations.

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

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

29 (n) Unauthorized disclosure of confidential information.--A  
30 person who violates the provisions of section 22 commits a



1 misdemeanor and shall, upon conviction, be sentenced to pay a  
2 fine of not more than \$1,000 or to imprisonment for not more  
3 than one year, or both. In the event that the person is an  
4 officer or employee responsible for carrying out the provisions  
5 of this act, the officer or employee shall be removed from  
6 office or employment upon conviction under this section.

7 Section 18. Discrimination against employees.

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

15 (b) Remedy.--

16 (1) An employee who believes that the employee has been  
17 discharged, disciplined or otherwise discriminated against by  
18 a person in violation of this section may, within 30 days  
19 after a violation occurs, file a complaint with the secretary  
20 alleging discrimination.

21 (2) Upon receipt of the complaint, the secretary shall  
22 investigate as deemed appropriate and shall, if requested,  
23 withhold the name of the complainant from the employer.

24 (3) If, upon investigation, the secretary determines  
25 that the provisions of this section have been violated, the  
26 secretary shall request the Attorney General to bring an  
27 action in Commonwealth Court against the person or persons  
28 alleged to have violated this act. The Commonwealth Court  
29 shall have jurisdiction, for cause shown, to restrain  
30 violations of this act and to order all appropriate relief,

1 including reinstatement of the employee to the employee's  
2 former position with back pay and benefits.

3 (c) Notice of determination of complaint.--Within 90 days of  
4 receipt of a complaint filed under this section, the secretary  
5 shall notify the complainant and the complainant's  
6 representative by registered mail of the secretary's  
7 determination of the complaint.

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

12 (a) Secretary to conduct.--

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

21 (2) The secretary shall cooperate with the Director of  
22 the National Institute for Occupational Safety and Health of  
23 the United States Department of Health and Human Services in  
24 establishing the programs of medical examinations and tests  
25 as may be necessary to determine the incidence of  
26 occupational illnesses and employee susceptibility to the  
27 illnesses.

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

1 (b) Confidentiality.--Information obtained under this act  
2 shall be made public without revealing the names of individual  
3 workers covered by physical examination or special studies and  
4 shall be made available to employers, employees and the  
5 respective organizations.

6 Section 20. Education programs.

7 (a) Programs to train personnel.--The secretary shall  
8 conduct directly or by grants or contracts education programs to  
9 provide an adequate supply of qualified personnel to carry out  
10 this act and informational programs on the importance and proper  
11 use of adequate safety and health equipment.

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

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

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

26 The secretary shall make reports to the United States  
27 Secretary of Labor as required by the Secretary of Labor  
28 regarding the administration and enforcement of this act.

29 Section 22. Confidentiality of information maintained.

30 All information reported to or otherwise obtained by the

1 secretary or an authorized representative or a member of the  
2 review board in connection with any inspection or proceeding  
3 under this act which contains or might reveal a trade secret  
4 shall be considered confidential. The information may be  
5 disclosed to other officers or employees concerned with carrying  
6 out this act or when relevant in a proceeding under this act. In  
7 a proceeding, the secretary, the review board or the court shall  
8 issue orders as may be appropriate to protect the  
9 confidentiality of trade secrets.

10 Section 23. Effective date.

11 This act shall take effect in 60 days.