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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1976 Session of  
2021

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INTRODUCED BY HARKINS, D. MILLER, KINSEY, KULIK, HOHENSTEIN,  
CONKLIN, FREEMAN, GALLOWAY, BURGOS, PISCIOTTANO, SAMUELSON,  
MARKOSEK, LONGIETTI, McNEILL, ISAACSON, SCHLOSSBERG, DELLOSO,  
SNYDER, SANCHEZ, DeLUCA, D. WILLIAMS, INNAMORATO, SONNEY,  
MERSKI, SIMS, DEASY, CIRESI, NEILSON AND KRUEGER,  
OCTOBER 18, 2021

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REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, OCTOBER 18, 2021

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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.

6 This act may be referred to as "Jake's Law."

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16 The General Assembly of the Commonwealth of Pennsylvania  
17 hereby enacts as follows:

18 Section 1. Short title.

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

21 Section 2. Legislative declaration.

22 The General Assembly hereby declares as follows:

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

29 (2) A significant percentage of all of those employed in  
30 this Commonwealth are employed by the Commonwealth or by one

1 of its political subdivisions. Many of these public employees  
2 perform job functions comparable to those performed by  
3 workers in the private sector who are protected by the  
4 Occupational Safety and Health Act of 1970. The General  
5 Assembly, therefore, finds it inappropriate to continue two  
6 standards for employee safety, one applicable to those who  
7 work in the private sector and one for those who are employed  
8 by a public employer.

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

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

### 22 Section 3. Definitions.

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

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

29 "Employee organization." An organization of any kind, or any  
30 agency or employee representation committee or plan in which

1 membership includes public employees, and which exists for the  
2 purpose, in whole or in part, of dealing with employers  
3 concerning grievances, employee-employer disputes, wages, rates  
4 of pay, hours of employment or conditions of work. The term does  
5 not include an organization that practices discrimination in  
6 membership because of race, color, creed, national origin or  
7 political affiliation.

8 "Occupational Safety and Health Act of 1970" or "OSHA." The  
9 Occupational Safety and Health Act of 1970 (Public Law 91-596,  
10 29 U.S.C. § 651 et seq.).

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

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

19 "Public employee" or "employee." An individual employed by a  
20 public employer.

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

1 "Review board." The Pennsylvania Occupational Safety and  
2 Health Review Board established under this act.

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

5 Section 4. Application.

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

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

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

25 Section 5. Employer duties.

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

1 employees.

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

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

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

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

24 Section 6. Regulations.

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

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

30 (2) Provide a method of encouraging employers and

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

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

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

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

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

28 Section 7. Standards.

29 (a) General rule.--The secretary shall, by regulation, adopt  
30 all occupational safety and health standards, amendments or

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

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

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

## 21 Section 8. Variances.

22 (a) Variance procedure.--

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

29 (i) The employer is unable to comply with a standard  
30 by its effective date because of unavailability of



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

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

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

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

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

21 (iii) A temporary order may not be in effect for  
22 longer than the period needed by the employer to achieve  
23 compliance with the standard or one year, whichever is  
24 shorter, except that an order may be renewed not more  
25 than twice so long as the requirements of this section  
26 are met and an application for renewal is filed at least  
27 90 days prior to the expiration date of the order.

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

30 (b) Contents of application for variance.--An application

1 for a temporary variance order shall contain all of the  
2 following:

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

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

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

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

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

27 (c) Variance for experimental program.--The secretary may  
28 grant a variance from any standard or portion of the standard  
29 whenever the secretary determines that a variance is necessary  
30 to permit an employer to participate in an experimental program

1 approved by the secretary, which is designed to demonstrate or  
2 validate new and improved techniques to safeguard the health or  
3 safety of workers.

4 (d) Hearing and order.--

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

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

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

29 (e) Challenge to standard or regulation.--A person who may  
30 be adversely affected by a standard or regulation issued under

1 this act may challenge the validity or applicability of the  
2 standard or regulation by bringing an action for declaratory  
3 judgment.

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

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

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

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

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

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

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

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

12 Section 10. Appeal from review board.

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

17 Section 11. Inspection and investigation powers.

18 (a) Right to inspect.--

19 (1) In order to carry out the purposes of this act, the  
20 secretary, upon presenting appropriate credentials to the  
21 employer, may:

22 (i) enter without advance notice and at reasonable  
23 times any workplace or environment where work is  
24 performed by an employee of an employer;

25 (ii) inspect and investigate, during regular working  
26 hours and at other reasonable times and in a reasonable  
27 manner, any place of employment under subparagraph (i)  
28 and all pertinent conditions, structures, machines,  
29 apparatus, devices, equipment and the materials therein;  
30 and

1 (iii) question privately any employer or employee.

2 (2) Whenever the secretary, proceeding pursuant to this  
3 section, is denied admission to any place of employment, the  
4 secretary may obtain a warrant to make an inspection or  
5 investigation of the place of employment from any judge of  
6 Commonwealth Court.

7 (b) Witnesses and evidences.--

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

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

20 (3) A failure to obey an order of the court may be  
21 punishable by the court as a contempt.

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

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

1           (2) No employee who accompanies the secretary on an  
2 inspection may suffer any reduction in wages as a result  
3 thereof.

4 Section 12. Inspection and investigation of violations.

5       (a) Request for inspection.--

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

11          (2) The notice and request shall be in writing, shall  
12 set forth with reasonable particularity the grounds for the  
13 notice and shall be signed by an employee or authorized  
14 employee representative.

15          (3) A copy of the notice shall be provided by the  
16 secretary to the employer or its agent no later than the time  
17 of inspection, except that on the request of the person  
18 giving notice, the names of individual employees or the  
19 authorized employee representative shall be kept  
20 confidential.

21       (b) Action by secretary.--

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

28          (2) If the secretary determines there are no reasonable  
29 grounds to believe that a violation or danger exists, the  
30 secretary shall notify the employer, employee or authorized

1 employee representative in writing of the determination.  
2 Notification may not preclude future enforcement action if  
3 conditions change.

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

5 (1) Prior to or during any inspection of a workplace, an  
6 employee or authorized employee representative employed in  
7 the workplace may notify in writing the secretary or any  
8 representative of the secretary responsible for conducting  
9 the inspection of any violation of this act that the person  
10 has reason to believe exists in the workplace.

11 (2) The secretary shall by regulation establish  
12 procedures for informal review of any refusal by a  
13 representative of the secretary to issue a citation with  
14 respect to any alleged violation and shall furnish a written  
15 statement to the employer and the employees or authorized  
16 employee representative requesting a review of the reasons  
17 for the secretary's final disposition of the case.

18 Notification may not preclude future enforcement action if  
19 conditions change.

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

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

28 Section 13. Recordkeeping.

29 (a) Employer's duties prescribed by regulation.--In  
30 accordance with the secretary's regulations, an employer shall



1 make, keep and preserve and make available to the secretary such  
2 records regarding its activities relating to this act as the  
3 secretary deems necessary or appropriate for developing  
4 information regarding the causes and prevention of occupational  
5 accidents and illnesses. The regulations may include provisions  
6 requiring an employer to conduct periodic inspections. The  
7 secretary also shall issue regulations requiring that an  
8 employer, through posting of notices, training or other  
9 appropriate means, keep its employees informed of their  
10 protections and obligations under this act, including the  
11 provisions and regulations of this act.

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

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

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

1 toxic materials or harmful physical agents.

2 (2) An employer shall promptly notify any employee who  
3 has been or is being exposed to toxic materials or harmful  
4 physical agents in concentrations or at levels that exceed  
5 those prescribed by an occupational safety and health  
6 standard promulgated under this act and shall inform any  
7 employee who is being thus exposed of the corrective action  
8 being taken.

9 Section 14. Compliance orders.

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

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

26 Section 15. Enforcement procedures.

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

28 (1) If, after inspection or investigation, the secretary  
29 issues a compliance order under section 14, the secretary  
30 shall, within a reasonable time after the termination of the

1 inspection or investigation, notify the employer by certified  
2 mail of the penalty, if any, proposed to be assessed under  
3 section 17. The notification shall inform the employer that  
4 the employer has 15 working days from the receipt of notice  
5 within which to notify the secretary that the employer wishes  
6 to contest the compliance order or proposed assessment of  
7 penalty.

8 (2) If the employer fails to notify the secretary within  
9 15 days and if no notice is filed by an employee or  
10 authorized employee representative under subsection (c)  
11 within 15 days, the compliance order and the assessment, as  
12 proposed, shall be deemed a final order of the secretary and  
13 not be subject to review by any court or agency.

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

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

30 (2) If, within 15 days from receipt of notification

1 under this section, the employer fails to notify the  
2 secretary that it intends to contest the notification or  
3 proposed assessment of penalty, the notification and  
4 assessment, as proposed, shall be deemed a final order of the  
5 review board and not be subject to review by any court or  
6 agency.

7 (c) Action by review board.--

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

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

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

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

5 Section 16. Injunction proceedings.

6       (a) Temporary restraining order.--

7           (1) Commonwealth Court shall have jurisdiction, upon  
8 petition of the secretary, pursuant to law and general rules,  
9 to restrain any conditions or practices in any place of  
10 public employment that pose a danger that could reasonably be  
11 expected to cause death or serious physical harm immediately  
12 or before the imminence of the danger can be eliminated  
13 through the abatement procedures otherwise provided for by  
14 this act.

15          (2) An order issued under this section shall require  
16 steps to be taken as may be necessary to avoid, correct or  
17 remove the imminent danger and prohibit the employment or  
18 presence of an individual in locations or under conditions  
19 where the imminent danger exists, except individuals whose  
20 presence is necessary to avoid, correct or remove the  
21 imminent danger.

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

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

30       (c) Failure of secretary to seek relief.--If the secretary

1 arbitrarily or capriciously fails to seek relief under this  
2 section, an employee who may be injured by reason of the  
3 failure, or the authorized employee representative of the  
4 employee, may bring an action against the secretary in  
5 Commonwealth Court to compel the secretary to seek an order and  
6 for such further relief as may be appropriate.

7 Section 17. Penalties.

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

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

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

27 (d) Failure to correct violation.--An employer who fails to  
28 correct a violation for which a compliance order has been issued  
29 under section 14 within the period permitted for its correction,  
30 which period shall not begin to run until the date of the final

1 order of the review board in the case of any review proceeding  
2 under section 15 initiated by the employer in good faith and not  
3 solely for delay or avoidance of penalties, may be assessed a  
4 civil penalty of not more than \$1,000 for each day during which  
5 the failure or violation continues.

6 (e) Violation causing death.--

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

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

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

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

30 (h) Violation of posting requirements.--An employer who

1 violates any of the posting requirements as prescribed under the  
2 provisions of this act shall be assessed a civil penalty of not  
3 more than \$1,000 for each violation.

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

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

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

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



1 not with the exercise of reasonable diligence know of the  
2 presence of the violation.

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

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

15 Section 18. Discrimination against employees.

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

23 (b) Remedy.--

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

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

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

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

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

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

21 (a) Secretary to conduct.--

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

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

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

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

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

15 Section 20. Education programs.

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

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

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

1 secretary shall consult with and advise owners and employers,  
2 employees and organizations representing owners, employers and  
3 employees as to effective means of preventing occupational  
4 injuries and illnesses.

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

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

10 Section 22. Confidentiality of information maintained.

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

21 Section 23. Funding.

22 Nothing in this act may prohibit the secretary from pursuing  
23 Federal or State funding for the purposes of this act.

24 Section 24. Effective date.

25 This act shall take effect in 60 days.