
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 299 Session of
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MARCH 10, 2023

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, MARCH 10, 2023

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
28 townships and other public employers who serve the people of
29 this Commonwealth.

30 (2) A significant percentage of all of those employed in

1 this Commonwealth are employed by the Commonwealth or by one
2 of its political subdivisions. Many of these public employees
3 perform job functions comparable to those performed by
4 workers in the private sector who are protected by 29 U.S.C.
5 Ch. 15 (relating to occupational safety and health). The
6 General Assembly, therefore, finds it inappropriate to
7 continue two standards for employee safety, one applicable to
8 those who work in the private sector and one for those who
9 are employed by a public employer.

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

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

23 Section 3. Definitions.

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

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

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

1 Commonwealth.

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

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." As follows:

22 (1) The Commonwealth, any of its political subdivisions,
23 including a school district and any office, board,
24 commission, agency, authority, local transportation
25 organization or other instrumentality thereof, any nonprofit
26 organization or institution and any charitable, religious,
27 scientific, literary, recreational, health, educational or
28 welfare institution receiving grants or appropriations from
29 Federal, State or local government.

30 (2) The term does not include an employer covered or

1 presently subject to coverage under 29 U.S.C. Ch. 15

2 (relating to occupational safety and health).

3 "Review board." The Pennsylvania Occupational Safety and
4 Health Review Board established under section 9(a).

5 "Secretary." The Secretary of Labor and Industry or a
6 designated agent.

7 Section 4. Application.

8 (a) Applicability and enforcement generally.--

9 (1) An occupational safety or health standard
10 promulgated under the provisions of this act shall apply to
11 all public employers and public employees.

12 (2) The secretary shall have authority to enforce the
13 occupational safety and health standard in accordance with
14 the provisions of this act.

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

22 (c) Employees not covered by Federal standard.--

23 Notwithstanding any other provision in this act, an occupational
24 safety or health standard promulgated under this act shall apply
25 only to employees not covered by a Federal occupational safety
26 or health standard promulgated under 29 U.S.C. § 655 (relating
27 to standards) or amendments thereto.

28 Section 5. Employer duties.

29 (a) Freedom from hazards.--An employer shall furnish to each
30 of its employees employment and a place of employment free from

1 recognized hazards that are causing or are likely to cause death
2 or serious physical harm and which will provide reasonable and
3 adequate protection to the lives, safety or health of its
4 employees.

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

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

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

22 (e) State plan for standards.--The Commonwealth shall
23 promulgate a plan for the development and enforcement of
24 occupational safety and health standards with respect only to
25 public employers and employees, in accordance with 29 U.S.C. §
26 667(b) (relating to State jurisdiction and plans).

27 Section 6. Regulations.

28 The secretary may promulgate regulations to administer and
29 enforce this act and shall:

30 (1) Provide for the preparation, adoption, amendment or

1 repeal of regulations governing the conditions of employment
2 of general and special application in all workplaces.

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

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

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

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

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

1 Section 7. Standards.

2 (a) Authorization.--The secretary shall, by regulation,
3 adopt all occupational safety and health standards, amendments
4 or changes adopted or recognized by the United States Secretary
5 of Labor under the authority of 29 U.S.C. Ch. 15 (relating to
6 occupational safety and health) in order to provide reasonable
7 and adequate protection of the lives, safety and health of
8 public employees. Subject to subsection (b), the secretary shall
9 promulgate and repeal regulations as may be necessary to conform
10 to the standards established in accordance with 29 U.S.C. Ch.
11 15. If no Federal standards are applicable, the secretary shall
12 provide for the development of State standards as may be
13 necessary in special circumstances.

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

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

24 Section 8. Variances.

25 (a) Variance procedure.--

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

1 and establishes all of the following:

2 (i) The employer is unable to comply with a standard
3 by its effective date because of unavailability of
4 professional or technical personnel or of materials and
5 equipment needed to come into compliance with the
6 standard or because necessary construction or alteration
7 of facilities cannot be completed by the effective date.

8 (ii) The employer is taking all available steps to
9 safeguard employees against the hazards covered by the
10 standard.

11 (iii) The employer has an effective program for
12 coming into compliance with the standard as quickly as
13 practicable.

14 (2) As follows:

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

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

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

1 90 days prior to the expiration date of the order.

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

4 (b) Contents of application for variance.--An application
5 for a temporary variance order shall contain all of the
6 following:

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

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

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

17 (4) A statement of when the employer expects to be able
18 to comply with the standard and what steps the employer has
19 taken and will take, with dates specified, to come into
20 compliance with the standard.

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

1 (c) Variance for experimental program.--The secretary may
2 grant a variance from any standard or portion of the standard
3 whenever the secretary determines that a variance is necessary
4 to permit an employer to participate in an experimental program
5 approved by the secretary, which is designed to demonstrate or
6 validate new and improved techniques to safeguard the health or
7 safety of workers.

8 (d) Hearing and order.--

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

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

27 (3) A rule or order may be modified or revoked upon
28 application by an employer, employee or authorized employee
29 representative, or by the secretary on the secretary's own
30 motion, in the manner prescribed for its issuance under this

1 section at any time after six months from the date it was
2 entered.

3 (e) Challenge to standard or regulation.--A person who may
4 be adversely affected by a standard or regulation issued under
5 this act may challenge the validity or applicability of the
6 standard or regulation by bringing an action for declaratory
7 judgment.

8 Section 9. Pennsylvania Occupational Safety and Health Review
9 Board.

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

17 (b) Terms of members.--Members of the review board shall
18 serve terms of four years and until their successors are
19 appointed. The Governor shall designate one of the members of
20 the review board to serve as chairperson.

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

27 (d) Schedule for hearing appeals.--A review board member
28 hearing an appeal or appeals under the provisions of this act
29 shall be paid a per diem amount to be determined by the
30 secretary. The members shall alternate the hearing of appeals

1 according to a schedule adopted by the secretary. If a member is
2 unable to hear an appeal, the next available member, in
3 accordance with the schedule, shall hear the appeal. A member
4 shall be selected to hear the appeal within 30 days after the
5 date it was filed.

6 (e) Necessary staff.--The department shall provide the staff
7 necessary for the purposes of conducting hearings under this
8 act.

9 (f) Subpoena power and oaths.--In the conduct of hearings,
10 the review board member may subpoena and examine witnesses,
11 require the production of evidence, administer oaths and take
12 testimony and depositions.

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

17 Section 10. Appeal from review board.

18 A person, including the secretary, adversely affected or
19 aggrieved by an order of the review board, after all
20 administrative remedies provided by this act have been
21 exhausted, is entitled to judicial review.

22 Section 11. Inspection and investigation powers.

23 (a) Right to inspect.--

24 (1) To carry out the purposes of this act, the
25 secretary, upon presenting appropriate credentials to the
26 employer, may:

27 (i) Enter without advance notice and at reasonable
28 times any workplace or environment where work is
29 performed by an employee of an employer.

30 (ii) Inspect and investigate, during regular working

1 hours and at other reasonable times and in a reasonable
2 manner, any place of employment under subparagraph (i)
3 and all pertinent conditions, structures, machines,
4 apparatus, devices, equipment and the materials therein.

5 (iii) Question privately an employer or employee.

6 (2) Whenever the secretary, proceeding in accordance
7 with this section, is denied admission to a place of
8 employment, the secretary may obtain a warrant to make an
9 inspection or investigation of the place of employment from a
10 judge of Commonwealth Court.

11 (b) Witnesses and evidences.--

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

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

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

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

27 (1) Subject to regulations issued by the secretary, a
28 representative of the employer and an authorized employee
29 representative shall be given an opportunity to accompany the
30 secretary during the physical inspection of any workplace for

1 the purposes of aiding the inspection. If there is no
2 authorized employee representative, the secretary shall
3 consult with a reasonable number of employees concerning
4 matters of health and safety in the workplace.

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

8 Section 12. Inspection and investigation of violations.

9 (a) Request for inspection.--

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

15 (2) The notice and request under paragraph (1) shall:

16 (i) Be in writing.

17 (ii) Specify with reasonable particularity the
18 grounds for the notice.

19 (iii) Be signed by an employee or authorized
20 employee representative.

21 (3) A copy of the notice under this subsection shall be
22 provided by the secretary to the employer or its agent no
23 later than the time of inspection, except that on the request
24 of the person giving notice, the names of individual
25 employees or the authorized employee representative shall be
26 kept confidential.

27 (b) Action by secretary.--

28 (1) Whenever the secretary receives a request for
29 inspection and determines that there are reasonable grounds
30 to believe that a violation or danger exists, the secretary

1 shall make an inspection as soon as practicable to determine
2 if a violation or danger exists. The inspection may be
3 limited to the alleged violation or danger.

4 (2) If the secretary determines there are no reasonable
5 grounds to believe that a violation or danger exists, the
6 secretary shall notify the employer, employee or authorized
7 employee representative in writing of the determination.
8 Notification may not preclude future enforcement action if
9 conditions change.

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

11 (1) Prior to or during any inspection of a workplace, an
12 employee or authorized employee representative employed in
13 the workplace may notify in writing the secretary or any
14 representative of the secretary responsible for conducting
15 the inspection of any violation of this act that the person
16 has reason to believe exists in the workplace.

17 (2) The secretary shall by regulation establish
18 procedures for informal review of a refusal by a
19 representative of the secretary to issue a citation with
20 respect to any alleged violation and shall furnish a written
21 statement to the employer and the employees or authorized
22 employee representative requesting a review of the reasons
23 for the secretary's final disposition of the case.
24 Notification may not preclude future enforcement action if
25 conditions change.

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

29 (e) Rules and regulations.--The secretary shall prescribe
30 rules and regulations as the secretary may deem necessary to

1 carry out the secretary's responsibilities under this act,
2 including rules and regulations dealing with the inspection of
3 an employer's or owner's establishment.

4 Section 13. Recordkeeping.

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

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

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

26 (1) The secretary shall issue regulations requiring an
27 employer to maintain accurate records of employee exposures
28 to potentially toxic materials or harmful physical agents
29 that are required to be monitored or measured under any
30 occupational safety and health standard adopted under this

1 act. The regulations shall provide employees or the
2 authorized employee representative with an opportunity to
3 observe monitoring or measuring and have access to the
4 records. The regulations shall make appropriate provisions
5 for each employee or former employee to have access to
6 records that will indicate the employee's own exposure to
7 toxic materials or harmful physical agents.

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

15 Section 14. Compliance orders.

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

26 (b) Posting of order.--Each compliance order issued under
27 this section or a copy or copies of the order shall be
28 prominently posted as prescribed in regulations issued by the
29 secretary at or near each place a violation referred to in the
30 compliance order occurred and at other locations within the

1 workplace reasonably accessible to the employees.

2 Section 15. Enforcement procedures.

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

4 (1) If, after inspection or investigation, the secretary
5 issues a compliance order under section 14, the secretary
6 shall, within a reasonable time after the termination of the
7 inspection or investigation, notify the employer by certified
8 mail of the penalty, if any, proposed to be assessed under
9 section 17. The notification shall inform the employer that
10 the employer has 15 working days from the receipt of notice
11 within which to notify the secretary that the employer wishes
12 to contest the compliance order or proposed assessment of
13 penalty.

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

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

21 (1) If the secretary has reason to believe that an
22 employer has failed to correct a violation for which a
23 compliance order has been issued within the period permitted
24 for correction, the secretary shall notify the employer by
25 certified mail of the failure and of the penalty proposed to
26 be assessed under section 17 by reason of the failure. In the
27 case, however, of a review proceeding initiated by the
28 employer under this section in good faith and not solely for
29 delay or the avoidance of penalties, the period permitted for
30 correction of the violation may not begin to run until the

1 entry of a final order by the review board. Notification by
2 the secretary shall inform the employer that the employer has
3 15 working days from the receipt of the notice within which
4 to notify the secretary that the employer wishes to contest
5 the notification or the proposed assessment of penalty.

6 (2) If, within 15 days from receipt of notification
7 under this section, the employer fails to notify the
8 secretary that it intends to contest the notification or
9 proposed assessment of penalty, the notification and
10 assessment, as proposed, shall be deemed a final order of the
11 review board and not be subject to review by any court or
12 agency.

13 (c) Action by review board.--

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

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

30 (3) Upon a showing by an employer of a good faith effort

1 to comply with the abatement requirements of a compliance
2 order and a showing that abatement has not been completed
3 because of factors beyond the employer's reasonable control,
4 the secretary, after an opportunity for a hearing as provided
5 in this subsection, shall issue an order affirming or
6 modifying the abatement requirements in the compliance order.

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

11 Section 16. Injunction proceedings.

12 (a) Temporary restraining order.--

13 (1) Commonwealth Court shall have jurisdiction, upon
14 petition of the secretary, in accordance with law and general
15 rules, to restrain any conditions or practices in any place
16 of public employment that pose a danger that could reasonably
17 be expected to cause death or serious physical harm
18 immediately or before the imminence of the danger can be
19 eliminated through the abatement procedures otherwise
20 provided for by this act.

21 (2) An order issued under this section shall require
22 steps to be taken as may be necessary to avoid, correct or
23 remove the imminent danger and prohibit the employment or
24 presence of an individual in locations or under conditions
25 where the imminent danger exists, except individuals whose
26 presence is necessary to avoid, correct or remove the
27 imminent danger.

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

30 (b) Action by inspector.--Whenever and as soon as an

1 inspector concludes that conditions or practices described in
2 subsection (a) exist in any place of public employment, the
3 inspector shall inform the affected employees and employers of
4 the danger and shall further inform them that the inspector is
5 recommending to the secretary that relief be sought.

6 (c) Failure of secretary to seek relief.--If the secretary
7 arbitrarily or capriciously fails to seek relief under this
8 section, an employee who may be injured by reason of the
9 failure, or the authorized employee representative of the
10 employee, may bring an action against the secretary in
11 Commonwealth Court to compel the secretary to seek an order and
12 for such further relief as may be appropriate.

13 Section 17. Penalties.

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

20 (b) Compliance order for serious violation.--An employer who
21 has received a compliance order for a serious 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 shall be assessed a civil penalty of
25 not more than \$1,000 for each violation.

26 (c) Compliance order for lesser violation.--An employer who
27 has received a compliance order for a violation of the
28 requirements of section 4 or 5, an occupational safety and
29 health standard promulgated under section 7 or regulations
30 prescribed under this act, which violation has been determined

1 not to be of a serious nature, may be assessed a civil penalty
2 of not more than \$1,000 for each violation.

3 (d) Failure to correct violation.--An employer who fails to
4 correct a violation for which a compliance order has been issued
5 under section 14 within the period permitted for its correction,
6 which period shall not begin to run until the date of the final
7 order of the review board in the case of any review proceeding
8 under section 15 initiated by the employer in good faith and not
9 solely for delay or avoidance of penalties, may be assessed a
10 civil penalty of not more than \$1,000 for each day during which
11 the failure or violation continues.

12 (e) Violation causing death.--

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

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

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

29 (g) False statements.--A person who knowingly makes any
30 false statement, representation or certification in any

1 application, record, report, plan or other document filed or
2 required to be maintained under this act commits a misdemeanor
3 and shall, upon conviction, be sentenced to pay a fine of not
4 more than \$10,000 or to imprisonment for not more than six
5 months, or both.

6 (h) Violation of posting requirements.--An employer who
7 violates any of the posting requirements as prescribed under the
8 provisions of this act shall be assessed a civil penalty of not
9 more than \$1,000 for each violation.

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

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

24 (k) Authority to assess civil penalties.--The review board
25 shall have authority to assess all civil penalties provided for
26 in this act, giving due consideration to the appropriateness of
27 the penalty with respect to the size of the business of the
28 employer being charged, the gravity of the violation, the good
29 faith of the employer and the history of previous violations.

30 (l) Determination of serious violation.--For the purposes of

1 this act, a serious violation shall be deemed to exist in a
2 place of employment if there is a substantial probability that
3 death or serious physical harm could result from a condition
4 that exists, or from one or more practices, means, methods,
5 operations or processes that have been adopted or are in use, in
6 the place of employment unless the employer did not and could
7 not with the exercise of reasonable diligence know of the
8 presence of the violation.

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

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

21 Section 18. Discrimination against employees.

22 (a) General rule.--An employer or other person may not
23 discriminate against an employee because the employee has filed
24 a complaint or instituted or caused to be instituted a
25 proceeding under or related to this act or has testified or is
26 about to testify in a proceeding or because of the exercise by
27 an employee on the employee's own behalf or on behalf of others
28 of a right afforded by this act.

29 (b) Remedy.--

30 (1) An employee who believes that the employee has been

1 discharged, disciplined or otherwise discriminated against by
2 a person in violation of this section may, within 30 days
3 after a violation occurs, file a complaint with the secretary
4 alleging discrimination.

5 (2) Upon receipt of the complaint, the secretary shall
6 cause an investigation to be made as deemed appropriate and
7 shall, if requested, withhold the name of the complainant
8 from the employer.

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

18 (c) Notice of determination of complaint.--Within 90 days of
19 receipt of a complaint filed under this section, the secretary
20 shall notify the complainant and the complainant's
21 representative by registered mail of the secretary's
22 determination of the complaint.

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

27 (a) Secretary to conduct.--

28 (1) The secretary shall conduct research and undertake
29 demonstration projects relating to occupational safety and
30 health issues and problems either within the department or by

1 grants or contracts. The secretary may prescribe regulations
2 requiring employers to measure, record and make reports on
3 exposure of employees to toxic substances that the secretary
4 believes may endanger the health or safety of employees.

5 (2) The secretary shall cooperate with the Director of
6 the National Institute for Occupational Safety and Health of
7 the United States Department of Health and Human Services in
8 establishing the programs of medical examinations and tests
9 as may be necessary to determine the incidence of
10 occupational illnesses and employee susceptibility to the
11 illnesses.

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

15 (b) Confidentiality.--Information obtained under this act
16 shall be made public without revealing the names of individual
17 workers covered by physical examination or special studies and
18 shall be made available to employers, employees and their
19 respective organizations.

20 Section 20. Education programs.

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

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

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

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

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

15 Section 22. Confidentiality of information maintained.

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

26 Section 23. Funding.

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

29 Section 24. Effective date.

30 This act shall take effect in 60 days.