

HOUSE BILL No. 2706

By Committee on Commerce, Labor and Economic Development

2-14

1 AN ACT concerning labor; relating to the department of labor industrial
2 safety and health program; public employee safety and health;
3 establishing the public safety and health program; investigation of
4 public employee deaths or serious injury; discrimination against
5 employees who report dangerous conditions; amending K.S.A. 2019
6 Supp. 44-636 and repealing the existing section.

7
8 *Be it enacted by the Legislature of the State of Kansas:*

9 Section 1. K.S.A. 2019 Supp. 44-636 is hereby amended to read as
10 follows: 44-636. (a) *There is hereby established, within the division of*
11 *industrial safety and health of the department of labor, the public*
12 *employee safety and health program. The secretary of labor shall*
13 *administer the program for public employers and their employees. The*
14 *public employee safety and health program shall include, but not be*
15 *limited to:*

16 (1) *Workplace safety and health consultations for all public*
17 *employers to include on-site inspection and interviews with employees;*

18 (2) *ergonomic evaluations of employee workstations; and*

19 (3) *safety and health training to assist in the prevention of accidents*
20 *and the elimination of safety and health hazards.*

21 (b) ~~The secretary of labor shall have power to enter any factory or~~
22 ~~mill, workshop, private works, public works or state agency or institution,~~
23 ~~mercantile establishment, laundry or any other place of business~~
24 ~~workplace where labor is or is intended to be performed for any purpose,~~
25 ~~when the same are such public works or state workplace is open or in~~
26 ~~operation, for the purpose of gathering facts and statistics such as are~~
27 ~~contemplated by this act, and to examine into the methods of protection~~
28 ~~from danger to employees and the sanitary conditions in and around such~~
29 ~~buildings and places and to keep a record thereof of such inspection~~
30 ~~administering the public employee safety and health program.~~

31 (c) ~~If it shall be found upon such investigation finds that the heating,~~
32 ~~lighting, ventilation, occupant capacity or sanitary arrangement work~~
33 ~~conditions, office equipment, furniture, apparatus, facilities or~~
34 ~~environment of any such establishment or place public works or state~~
35 ~~workplace is such as to be injurious to the safety or health of persons~~
36 ~~employed or residing therein the public employees, or that the means of~~

1 egress in case of fire or other disaster are not sufficient, or that ~~the belting,~~
 2 ~~shafting, gearing, elevators, drums, saws, cogs or machinery, tools or any~~
 3 ~~work equipment, apparatus or facilities~~ in any such establishment or place
 4 are so located or are in a condition so as to be dangerous, or are not
 5 sufficiently guarded, or that ~~the vats, pans or any other structures filled~~
 6 ~~with molten metal, hot liquid or hazardous materials or substances~~ are not
 7 surrounded with proper safeguards for preventing accidents, injury or
 8 illness ~~to those persons in, or near them,~~ or that the construction or
 9 condition of any building ~~or buildings,~~ machinery or other appurtenances
 10 in or about any place as described in this section is such as to be dangerous
 11 or injurious to the persons employed or residing therein, or that the
 12 methods of operation ~~are such as to be unnecessarily dangerous or~~
 13 ~~injurious to the persons employed or residing therein,~~ or that any other
 14 condition ~~which~~ that is within the control of the *public employer or the*
 15 owner, proprietor, agent, administrator, *lessor* or lessee of any such
 16 building, establishment or place ~~to be~~ is found to be dangerous or injurious
 17 to ~~any persons employed therein or to any other person or persons~~ *the*
 18 *public employees,* the secretary or the authorized agent of the secretary
 19 after making such inspection shall notify in writing the *public employer,*
 20 owner, proprietor, agent, administrator, *lessor* or lessee of such building,
 21 establishment, or place. Such notification may also include an order that
 22 requires ~~the provisions~~ *provision of such* safeguards or safety devices ~~or~~
 23 ~~the making of such, or alterations or,~~ additions, *eliminations* or changes in
 24 methods of operation ~~or,~~ *machinery, apparatus, equipment, office*
 25 *equipment, furniture or facilities* or the taking of any other measures *that*
 26 the secretary may deem appropriate and necessary for the safety and
 27 protection of the employees or other persons endangered by such
 28 conditions and the amount of time granted by the secretary for ~~making any~~
 29 ~~such alterations, additions, changes or taking such other methods as~~
 30 ~~required~~ *compliance with the order.* Such amount of time shall not exceed
 31 60 days after service of the notice and the order unless an extension
 32 thereof is requested for good cause shown by the person named in the
 33 order, and such extension is granted by the secretary.

34 (b)(d) The notification required by subsection ~~(a)~~ (c) shall include
 35 notice of the right to a hearing concerning any order included therein. Any
 36 such order shall become final unless within 15 days after service of the
 37 notice and order, the person or persons named therein shall request in
 38 writing a hearing by the secretary. If a request is made for a hearing, the
 39 date of the hearing shall not be more than 30 days after such request is
 40 made. Orders under subsection ~~(a)~~ (c), and hearings thereon, shall be
 41 subject to the provisions of the Kansas administrative procedure act.

42 (e)(e) No person, *public employer,* firm or corporation, ~~nor~~ owner,
 43 *proprietor, administrator, lessor or lessee, or any officer, agent or*

1 employee thereof, shall remove or require to be removed, or made
2 ineffective, any practical safeguard around or safety attachment to any
3 machinery, ~~vats, pan,~~ *equipment, tool* or other apparatus or device
4 ~~mentioned in this section~~ while ~~the same~~ is in use, except for the purpose
5 of immediately making repairs thereto, and all safeguards or safety
6 attachments ~~so removed~~ shall be promptly replaced before the dangerous
7 machine, apparatus or device is returned to normal use or operation *and*
8 *shall remain in place during normal use or operation in accordance with*
9 *safety and health standards*. Except as otherwise provided, no person shall
10 require or permit the operation of, or operate, the dangerous machine,
11 apparatus or device without the required safeguards or safety attachments.

12 ~~(d)~~(f) If the secretary of labor determines that conditions or products
13 in any place of *public* employment are such that a danger exists ~~which that~~
14 could reasonably be expected to cause death or serious physical harm
15 immediately, or before such danger can be eliminated through the
16 enforcement provisions otherwise provided by law, the secretary ~~may~~, in
17 accordance with the provisions of K.S.A. 77-536, and amendments
18 thereto, *may* order the immediate taking of any steps necessary to avoid,
19 correct or remove such imminent danger and prohibit the employment or
20 presence of any individual in locations or under conditions where such
21 imminent danger exists, except individuals whose presence is necessary to
22 avoid, correct or remove such imminent danger or to prevent any
23 avoidable loss of production facilities or product. *The secretary may*
24 *investigate the death or serious injury of any public employee occurring at*
25 *the public employee's place of employment or arising from the employee's*
26 *employment*.

27 ~~(e)~~(g) Upon issuance of the order authorized by subsection ~~(d)~~ of this
28 ~~section~~ (f) and upon the request of any party who is adversely affected
29 thereby, the secretary shall fix a place and time for a hearing to be held on
30 such order in accordance with the provisions of the Kansas administrative
31 procedure act.

32 ~~(f)~~(h) No person *or employer* shall discharge or in any manner
33 discriminate against any *public* employee *in pay, promotion, hiring or any*
34 *condition of employment* because such employee has filed a complaint
35 with, or furnished information to, the secretary of labor concerning
36 conditions or situations alleged to be unsafe or hazardous or otherwise
37 covered by the provisions of this act.

38 ~~(g)~~(i) Any person who willfully violates any provision of this section
39 or any lawful order issued pursuant to this section shall be guilty of a
40 misdemeanor and shall be subject to a fine of not less than \$25 nor more
41 than \$100. Each day that such violation exists shall constitute a separate
42 offense.

43 ~~(h)~~(j) An action brought pursuant to this section shall not constitute a

1 bar to enforcement of the provisions of this section by injunction or other
2 appropriate remedy, and upon request of the secretary of labor, the attorney
3 general shall have the power to institute and maintain in the name of the
4 state any and all appropriate enforcement procedures.

5 *(k) The secretary shall adopt rules and regulations as necessary to*
6 *implement and administer the provisions of this act.*

7 Sec. 2. K.S.A. 2019 Supp. 44-636 is hereby repealed.

8 Sec. 3. This act shall take effect and be in force from and after its
9 publication in the statute book.