

## HOUSE BILL No. 2868

By Representative Bethell

2-13

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AN ACT establishing a state occupational safety plan.

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

Section 1. The purpose of this act is: (a) To preserve human resources by providing for the safety and health of workers; and (b) to provide a coordinated state plan to implement, establish and enforce occupational safety and health standards as or more effective as the standards under the Williams-Steiger Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq.

Sec. 2. As used in this act: (a) "Administrator" means the administrator of the occupational safety and health section of the division of workers compensation.

(b) "Amendment" means such modification or change in a code, standard, regulation, rule or order intended for universal or general application.

(c) "Committee" means the Kansas occupational safety and health advisory committee.

(d) "Department" means the Kansas department of human resources.

(e) "Director" means the director of the division of workers compensation.

(f) "Division" means the division of workers compensation.

(g) "Employee" is as defined in K.S.A. 44-508, and amendments thereto.

(h) "Employer" is as defined in K.S.A. 44-508, and amendments thereto.

(i) "Hearing" means a proceeding as defined by chapter 77, article 5, of the Kansas Statutes Annotated, and amendments thereto.

(j) "Imminent danger" means a danger exists which reasonably could be expected to cause an occupational disease, death or serious physical harm immediately or before the danger could be eliminated through enforcement procedures under this act.

(k) "National consensus standard" means any occupational safety and health standard or modification: (a) Adopted by a nationally recognized standards-producing organization under procedures where it can be de-

1 terminated by the administrator and division that persons interested and  
2 affected by the standard have reached substantial agreement on its adop-  
3 tion; (b) formulated in a manner which affords an opportunity for diverse  
4 views to be considered; and (c) designated as such a standard by the  
5 secretary of the United States department of labor.

6 (l) "Person" means the general public, one or more individuals, part-  
7 nerships, associations, corporations, legal representatives, trustees, re-  
8 ceivers and the state and its political subdivisions, including  
9 municipalities.

10 (m) "Publish" means publication in accordance with chapter 77, ar-  
11 ticle 4, of the Kansas Statutes Annotated, and amendments thereto.

12 (n) "Secretary" means the secretary of the Kansas department of hu-  
13 man resources.

14 (o) "Secretary of the United States department of labor" means the  
15 secretary of the federal department of labor.

16 (p) "Standard" means an occupational safety and health safety stan-  
17 dard or group of standards which requires conditions, or the adoption or  
18 use of one or more practices, means, methods, operations, or processes  
19 reasonably necessary to provide safe and healthful employment and places  
20 of employment.

21 (q) "Variance" means a special, limited modification or change in the  
22 code or standard applicable to the particular establishment of the em-  
23 ployer or person petitioning for the modification or change.

24 (r) "Workplace" means any place of employment.

25 Sec. 3. (a) Administration of this act is vested in the director. The  
26 director: (1) Is vested with jurisdiction and supervision over every work-  
27 place in this state and is empowered to administer all laws and lawful  
28 orders to ensure that every employee in this state has a workplace free  
29 of recognized hazards; (2) through the administrator, shall carry out the  
30 state plan and this act, provided that the administrator is a person with  
31 at least five years' experience or training in the field of occupational safety  
32 and health; (3) shall make, establish, promulgate and enforce all necessary  
33 and reasonable rules, regulations and provisions to carry this act into ef-  
34 fect; and (4) shall have the same authority as that conferred by K.S.A. 44-  
35 551 and amendments thereto to administrative law judges of the division  
36 of workers compensation.

37 (b) This act shall apply to all workplaces in the state except that noth-  
38 ing in this act shall apply to: (1) Working conditions of employees with  
39 respect to which federal agencies and other state agencies acting under  
40 section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C.  
41 2021, exercise statutory authority to prescribe or enforce standards or  
42 regulations affecting occupational safety or health; or (2) working condi-  
43 tions of employers with respect to commercial activity on navigable wa-

1 terways of the state.

2 (c) The expense of the administration of the Kansas occupational  
3 safety and health act shall be financed in the same manner as the admin-  
4 istration of the workers compensation act as set forth in K.S.A. 74-712  
5 through 74-719, and amendments thereto, except that the maximum  
6 amount which shall be collected from any insurance carrier, self-insurer,  
7 or group-funded workers compensation pool shall be limited to up to 1%  
8 of the workers compensation benefits paid by such carrier, self-insurer  
9 or group-funded workers compensation pool.

10 Sec. 4. (a) (1) There is hereby created a Kansas occupational safety  
11 and health advisory committee to assist the division in standard  
12 formulation.

13 (2) Voting members on the committee shall be appointed by the sec-  
14 retary and shall consist of eight persons selected upon the basis of their  
15 experience and competence in the field of occupational safety and health  
16 and shall include: Two representatives of labor; two representatives of  
17 industry; two representatives of the construction industry; and two rep-  
18 resentatives of the public.

19 (3) In addition to the voting members, the secretary or the secretary's  
20 designee shall serve as a nonvoting member.

21 (b) (1) Except as required by paragraph (2) of this subsection, as  
22 terms of current committee members expire, the secretary shall appoint  
23 each new member, or reappointed member, to a four-year term.

24 (2) The secretary shall, at the time of appointment or reappointment,  
25 adjust the length of terms to ensure that the terms of committee members  
26 are staggered so that approximately half of the committee is appointed  
27 every two years.

28 (3) The secretary may reappoint any committee member for addi-  
29 tional terms.

30 (4) The secretary or the secretary's designee shall serve as chair of  
31 the committee and call all necessary meetings. The committee shall con-  
32 fer at least semi-annually.

33 (c) (1) When a vacancy occurs in the membership for any reason, the  
34 replacement shall be appointed for the unexpired term.

35 (2) The secretary shall terminate the term of any committee member  
36 who ceases to be a representative as designated by the member's original  
37 appointment.

38 (d) The administrator shall furnish the committee clerical, secretarial  
39 and other services necessary to conduct the business delegated to the  
40 committee.

41 (e) (1) Members shall receive no compensation or benefits for their  
42 services, but may receive mileage, per diem and expenses incurred in the  
43 performance of the member's official duties at the rates established by

1 K.S.A. 75-3223, and amendments thereto.

2 (2) Members may decline to receive per diem and expenses for their  
3 service.

4 Sec. 5. (a) (1) The director, after consultation with other appropriate  
5 agencies, may conduct, directly or by grants or contracts, whether federal  
6 or otherwise, research, experiments and demonstrations in the area of  
7 occupational safety and health.

8 (2) (A) The director may make rules and regulations requiring em-  
9 ployers to measure, record and make reports on the exposure of employ-  
10 ees to substances or physical agents reasonably believed to endanger the  
11 health or safety of employees;

12 (B) the director may establish programs for medical examinations and  
13 tests necessary for determining the incidence of occupational diseases and  
14 the susceptibility of employees to the diseases;

15 (C) nothing in this act authorizes or requires a medical examination,  
16 immunization or treatment for persons who object on religious grounds,  
17 except when necessary for the protection of the health or safety of others;

18 (3) (A) Following a written request by any employer or authorized  
19 representative of employees, specifying with reasonable particularity the  
20 grounds on which the request is made, the director shall determine  
21 whether any substance normally found in a workplace has toxic effects in  
22 the concentrations used or found, and shall submit its determination to  
23 the employer as soon as possible; and

24 (B) the director shall immediately take action necessary if the director  
25 determines that: (i) Any substance is toxic at the concentrations used or  
26 found in a workplace; and (ii) the substance is not covered by an occu-  
27 pational safety or health standard promulgated under this article.

28 (C) The director may inspect and question employers and employees  
29 as provided in this article to carry out its functions and responsibilities  
30 under this section.

31 (D) The director is authorized to enter into contracts, agreements or  
32 other arrangements with appropriate federal or state agencies or private  
33 organizations to conduct studies about the responsibilities under this act.  
34 In carrying out its responsibilities under this subsection, the director shall  
35 cooperate with the department of health and environment to avoid any  
36 duplication of efforts under this section.

37 Sec. 6. (a) The director shall develop and maintain an effective pro-  
38 gram of collection, compilation and analysis of occupational safety and  
39 health statistics. The program may cover all employments subject to this  
40 article but shall not cover excluded employments.

41 (b) The director may use the functions imposed by subsection (a) to:  
42 (1) Promote, encourage, or directly engage in programs of studies, infor-  
43 mation and communication concerning industrial safety and health sta-

1 tistics; (2) assist agencies or political subdivisions in developing and ad-  
2 ministering programs dealing with occupational safety and health  
3 statistics; (3) arrange, through assistance, for the conduct of research and  
4 investigations which further the objectives of this section; and (4) to oth-  
5 erwise fulfill the purposes of this act.

6 (c) The director may, with the consent of any state agency or political  
7 subdivision of the state, accept and use the services, facilities and em-  
8 ployees of state agencies or political subdivisions of the state, with or  
9 without reimbursement, to assist it in carrying out its functions under this  
10 section.

11 (d) Employers shall file reports with the division in the form and  
12 manner prescribed by the director.

13 (1) The division, after consultation with other appropriate agencies,  
14 shall conduct, directly or by assistance: (a) Educational programs to pro-  
15 vide an adequate supply of qualified personnel to carry out the purpose  
16 of this article; and (b) informational programs on the importance of ad-  
17 equate safety and health equipment.

18 (2) The division is authorized to conduct, directly or by assistance,  
19 training for personnel engaged in work related to its responsibilities under  
20 this act.

21 (3) The division shall: (a) Establish and supervise programs for the  
22 education and training of employers and employees for recognition,  
23 avoidance and prevention of unsafe or unhealthful working conditions;  
24 (b) consult and advise employers and employees about effective means  
25 for prevention of any work-related injury or occupational disease; and (c)  
26 provide safety and health workplace surveys.

27 Sec. 7. (a) Nothing in this act is deemed to limit or repeal require-  
28 ments imposed by any other statute or otherwise recognized by law.

29 (b) Nothing in this act shall be construed or held to supersede or in  
30 any manner affect workers compensation or enlarge or diminish or affect  
31 the common law or statutory rights, duties or liabilities of employers and  
32 employees under any law with respect to injuries, occupational or other  
33 diseases or death of employees arising out of, or in the course of  
34 employment.

35 (c) The secretary of human resources, the director of workers com-  
36 pensation, or the administrator may make application for, receive, ad-  
37 minister and expend any federal funds for the administration of any of  
38 the provisions of this article.

39 Sec. 8. (a) Each employer shall comply with the occupational safety  
40 and health standards, orders and rules and regulations made under this  
41 article.

42 (b) Each employee shall comply with the occupational safety and  
43 health standards, orders and rules and regulations made under this article.

1 Sec. 9. (a) The director, as soon as practicable by rules and regula-  
2 tions, shall issue as standards any national consensus standard, any  
3 adopted federal standard, or any adopted standard, unless the director  
4 determines that issuance of the standard would not result in improved  
5 safety or health.

6 (b) The director may issue, modify or revoke any standard as follows:  
7 (1) (A) Whenever the administrator determines upon the basis of infor-  
8 mation submitted in writing by an interested person, a representative of  
9 any organization of employers or employees, a nationally recognized stan-  
10 dards-producing organization, a state agency or political subdivision, or  
11 on information developed by the director or otherwise available, that a  
12 rule and regulation should be promulgated to promote the objectives of  
13 this act, the administrator may request recommendations from the advi-  
14 sory committee; (B) the administrator shall provide the advisory com-  
15 mittee with proposals, together with all pertinent factual information de-  
16 veloped by the division, or otherwise available, including the results of  
17 research, demonstrations and experiments; (C) the advisory committee  
18 shall submit to the administrator its recommendations.

19 (2) The administrator shall forward recommendations for rules and  
20 regulations to the director.

21 (3) The administrator, in issuing standards for toxic materials or  
22 harmful physical agents under this subsection, shall set the standard  
23 which most adequately assures, to the extent feasible, on the basis of the  
24 best available evidence, that no employee will suffer material impairment  
25 of health or functional capacity even if the employee has regular exposure  
26 to the hazard during an employee's working life. Development of stan-  
27 dards under this subsection shall be based upon research, demonstrations,  
28 experiments and other information deemed appropriate. In addition to  
29 the attainment of the highest degree of health and safety protection for  
30 the employee, other considerations shall be the latest available scientific  
31 data in the field, the feasibility of the standards and experience under this  
32 and other health and safety laws. Whenever practicable, the standard shall  
33 be expressed in terms of objective criteria and of the performance  
34 desired.

35 (4) (A) Any employer may apply to the administrator for a temporary  
36 order granting a variance from a standard issued under this section. Tem-  
37 porary orders shall be granted only if the employer: (i) Files an application  
38 which meets the requirements of this article; (ii) establishes that the em-  
39 ployer is unable to comply with a standard by its effective date because  
40 of unavailability of professional or technical personnel or of materials and  
41 equipment needed for compliance with the standard or because necessary  
42 construction or alteration of facilities cannot be completed by the effec-  
43 tive date; (iii) establishes that the employer is taking all available steps to

1 safeguard the employer's employees against hazards; and (iv) establishes  
2 that the employer has an effective program for compliance as quickly as  
3 practicable.

4 (B) Any temporary order shall prescribe the practices, means, meth-  
5 ods, operations and processes which the employer must adopt and use  
6 while the order is in effect and state in detail the employer's program for  
7 compliance with the standard. A temporary order may not be in effect  
8 longer than the period reasonably required by the employer to achieve  
9 compliance. In no case shall the period of a temporary order exceed one  
10 year.

11 (C) An application for a temporary order shall contain: (i) A specifi-  
12 cation of the standard or part from which the employer seeks a variance;  
13 (ii) a representation by the employer, supported by representations from  
14 qualified persons having first-hand knowledge of the facts represented,  
15 that the employer is unable to comply with the standard or some part of  
16 the standard; (iii) a detailed statement of the reasons the employer is  
17 unable to comply; (iv) a statement of the measures taken and anticipated  
18 with specific dates, to protect employees against the hazard; (v) a state-  
19 ment of when the employer expects to comply with the standard and  
20 what measures the employer has taken and those anticipated, giving spe-  
21 cific dates for compliance; and (vi) a certification that the employer has  
22 informed the employer's employees of the application by: (I) Giving a  
23 copy to their authorized representative; (II) posting a statement giving a  
24 summary of the application and specifying where a copy may be examined  
25 at the place or places where notices to employees are normally posted;  
26 or (III) by other appropriate means.

27 (D) The certification shall contain a description of how employees  
28 have been informed.

29 (E) The information to employees required under paragraph(2)(d)(v)  
30 shall inform the employees of their right to petition the division for a  
31 hearing.

32 (F) The administrator is authorized to grant a variance from any stan-  
33 dard or some part of the standard when the administrator determines that  
34 it is necessary to permit an employer to participate in a research and  
35 development project approved by the administrator to demonstrate or  
36 validate new and improved techniques to safeguard the health or safety  
37 of workers.

38 (G) (i) Any standard issued under this subsection shall prescribe the  
39 use of labels or other forms of warning necessary to ensure that employees  
40 are informed of all hazards, relevant symptoms, emergency treatment and  
41 proper conditions and precautions of safe use or exposure. When appro-  
42 priate, a standard shall prescribe suitable protective equipment and con-  
43 trol or technological procedures for use in connection with such hazards

1 and provide for monitoring or measuring employee exposure at such lo-  
2 cations and intervals in a manner necessary for the protection of employ-  
3 ees. In addition, any such standard shall prescribe the type and frequency  
4 of medical examinations or other tests which shall be made available by  
5 the employer to employees exposed to hazards in order to most effectively  
6 determine whether the health of employees is adversely affected by ex-  
7 posure; (ii) the administrator may by rule and regulation make appropri-  
8 ate modifications in requirements for the use of labels or other forms of  
9 warning, monitoring or measuring and for medical examinations war-  
10 ranted by experience, information or medical or technological develop-  
11 ments acquired subsequent to the promulgation of the relevant standard.

12 (H) Whenever a rule, standard or national consensus standard is  
13 modified by the United States secretary of the department of labor so as  
14 to make less restrictive the federal Williams-Steiger Occupational Safety  
15 and Health Act of 1970, the less restrictive modification shall be imme-  
16 diately applicable to this act and shall be immediately implemented by  
17 the division.

18 (c) The administrator shall provide an emergency temporary standard  
19 to take immediate effect upon publication if the administrator determines  
20 that: (1) Employees are exposed to grave danger from exposure to sub-  
21 stances or agents determined to be toxic or physically harmful or from  
22 new hazards; and (2) that the standard is necessary to protect employees  
23 from danger.

24 (d) (1) Any affected employer may apply to the division for a rule  
25 and regulation or order for a variance from a standard issued under this  
26 section. Affected employees may be given notice of each application and  
27 may participate in a hearing. The administrator shall issue a rule and  
28 regulation or order if the administrator determines on the record, after  
29 opportunity for an inspection where appropriate and a hearing, that the  
30 proponent of the variance has demonstrated by a preponderance of the  
31 evidence that the conditions, practices, means, methods, operations or  
32 processes used or proposed to be used by an employer will provide em-  
33 ployment and a workplace to the employer's employees that are as safe  
34 and healthful as those which would prevail if the employer complied with  
35 the standard.

36 (2) The rule and regulation or order issued under paragraph (4)(A)  
37 shall prescribe the conditions the employer must maintain, and the prac-  
38 tices, means, methods, operations and processes that the employer must  
39 adopt and use to the extent they differ from the standard in question.

40 (3) A rule and regulation or order issued under paragraph (4)(A) may  
41 be modified or revoked upon application by an employer, employees or  
42 by the administrator on its own motion, in the manner prescribed for its  
43 issuance under paragraph (4)(A) at any time after its issuance.



1 (e) The director may adopt rules and regulations as are necessary for  
2 the administration of this act.

3 Sec. 10. Each state agency and each political subdivision of the state,  
4 including but not limited to counties, cities, school districts and other  
5 municipalities may establish and maintain an occupational safety and  
6 health program equivalent to the program for other employments in the  
7 state. The director may not assess monetary penalties against any state  
8 agency or political subdivision under this article.

9 Sec. 11. (a) (1) The director or the director's representative, upon  
10 presenting appropriate credentials to the owner, operator or agent in  
11 charge, may: (A) Enter without delay at reasonable times any workplace  
12 where work is performed by an employee of an employer; (B) inspect  
13 and investigate during regular working hours and at other reasonable  
14 times in a reasonable manner, any workplace, worker injury, occupational  
15 disease or complaint and all pertinent methods, operations, processes,  
16 conditions, structures, machines, apparatus, devices, equipment and ma-  
17 terials in the workplace; and (C) question privately any such employer,  
18 owner, operator, agent or employee.

19 (2) The director, upon an employer's refusal to permit an inspection,  
20 may seek a court order or warrant in addition to the powers contained in  
21 this act.

22 (b) The director may adopt rules and regulations requiring employers  
23 to keep records regarding any work-related death and injury and any  
24 occupational disease. In addition to the reporting requirements of K.S.A.  
25 44-557, and amendments thereto, each employer shall, within 12 hours  
26 of occurrence, notify the administrator of any: (1) Work-related fatality  
27 or; (2) multiple disabling, serious or significant injury incidents; and (3)  
28 multiple occupational disease incidents.

29 (c) The director may compile, analyze and publish, either in summary  
30 or detailed form, all reports or information obtained under this section.

31 (d) A representative of the employer and a representative authorized  
32 by employees, if the employees are organized, shall be given an oppor-  
33 tunity to accompany the division's authorized representative during the  
34 physical inspection of any workplace. If there is no authorized employee  
35 representative, the division's authorized representative may consult with  
36 a reasonable number of employees concerning matters of health and  
37 safety in the workplace.

38 (e) (1) Any employee or representative of employees who believes  
39 that a violation of an adopted safety or health standard exists that threat-  
40 ens physical harm, or that an imminent danger exists, may request an  
41 inspection by giving notice to the division's authorized representative of  
42 the violation or danger. The notice shall be in writing, setting forth with  
43 reasonable particularity the grounds for notice, and signed by the em-

1 ployee or representative of employees. A copy of the notice shall be pro-  
2 vided the employer or the employer's agent no later than at the time of  
3 inspection.

4 (2) (A) If upon receipt of the notice the division's authorized rep-  
5 resentative determines there are reasonable grounds to believe that a  
6 violation or danger exists, the authorized representative shall make a spe-  
7 cial inspection in accordance with this section as soon as practicable to  
8 determine if a violation or danger exists; (B) If the division's authorized  
9 representative determines there are no reasonable grounds to believe that  
10 a violation or danger exists, the authorized representative shall notify the  
11 employee or representative of the employees in writing of that  
12 determination.

13 (3) Prior to or during any inspection of a workplace, any employee  
14 or representative of employees employed in the workplace may notify the  
15 division or its representative of any violation of a standard that they have  
16 reason to believe exists in the workplace.

17 Sec. 12. (a) (1) If upon inspection or investigation, the division or its  
18 authorized representative believes that an employer has violated any stan-  
19 dard, rule and regulation or order issued under this act, it shall with  
20 reasonable promptness issue a citation to the employer.

21 (2) Each citation shall: (A) Be in writing; and (B) describe with par-  
22 ticularity the nature of the violation, including a reference to the provision  
23 of the rule and regulation or order alleged to have been violated.

24 (3) The citation shall fix a reasonable time for the abatement of the  
25 violation. In the case of a review proceeding initiated by the employer in  
26 good faith, and not for the purpose of delay or avoidance of the penalties,  
27 the time for abatement begins to run on the date of the final order of the  
28 division.

29 (4) The division may prescribe procedures for the issuance of a notice  
30 in lieu of a citation with respect to violations that have no direct or im-  
31 mediate relationship to safety or health.

32 (b) Each citation issued under this section or a copy shall be promi-  
33 nently posted by the employer, as required by rule and regulation, at or  
34 near each place a violation referred to in the citation occurred.

35 (c) (1) If the division has reason to believe that an employer has failed  
36 to correct a violation for which a citation has been issued within the time  
37 period permitted, the division shall notify the employer by certified mail:  
38 (A) Of the failure; (B) of the amount proposed to be assessed; and (C)  
39 that the employer has 20 calendar days to notify the division that the  
40 employer intends to contest the division's notification or the proposed  
41 assessment.

42 (2) If the employer fails to notify the division, in writing, within 20  
43 days from the receipt of notification issued by the division, that the em-

1 ployer intends to contest the notification or proposed assessment, the  
2 notification and assessment, as proposed, is final and subject to review  
3 pursuant to chapter 77, article 6, of the Kansas Statutes Annotated, and  
4 amendments thereto.

5 (d) The division may assess fines and penalties under this article or  
6 seek injunctive relief.

7 (e) (1) If an employer notifies the division that the employer intends  
8 to contest a citation, the division shall provide an opportunity for a hearing  
9 pursuant to the Kansas administrative procedure act.

10 (2) Upon a showing by an employer of a good faith effort to comply  
11 with the abatement requirements of a citation, and that the abatement  
12 has not been completed because of factors beyond the employer's rea-  
13 sonable control, the division, after an opportunity for discussion and con-  
14 sideration, shall issue an order affirming or modifying the abatement  
15 requirements in any citation.

16 Sec. 13. (a) The district courts of this state shall have jurisdiction,  
17 upon petition of the secretary, director or administrator to restrain any  
18 conditions or practices in any place of employment where danger exists  
19 which could reasonably be expected to cause death or physical harm im-  
20 mediately or before the imminence of such danger can be eliminated  
21 through enforcement procedures provided by this act. Any order issued  
22 under this section may require that necessary steps be taken to avoid,  
23 correct or remove imminent danger or prohibit the employment or pres-  
24 ence of any individual in locations or under conditions where imminent  
25 danger exists, except individuals whose presence is necessary to avoid,  
26 correct or remove imminent danger or maintain the capacity of a contin-  
27 uous process operation so that normal operations can be resumed without  
28 a complete cessation of operations, or where cessation of operations is  
29 necessary, to permit such to be accomplished in a safe and orderly  
30 manner.

31 (b) The district courts of this state shall have jurisdiction upon peti-  
32 tion to grant injunctive relief or temporary restraining orders pending the  
33 outcome of any enforcement proceeding pursuant to this act and the rules  
34 of civil procedure.

35 (c) Whenever an inspector concludes that imminent serious danger  
36 exists in any place of employment, the inspector shall inform the affected  
37 employees and employers of the danger and that the inspector is rec-  
38 ommending to the administrator that relief be sought.

39 Sec. 14. (a) All information reported to or otherwise obtained by the  
40 administrator or the administrator's representatives or any employee in  
41 connection with any inspection or proceeding under this act which con-  
42 tains or which might reveal a trade secret shall be considered confidential  
43 except that the information may be disclosed to other officers or em-

1 employees concerned with carrying out this act or in any proceeding under  
2 this act.

3 (b) In any such proceeding, the secretary or a court may issue appro-  
4 priate orders to protect a trade secret.

5 Sec. 15. (a) The division may assess civil penalties against any em-  
6 ployer who has received a citation under this article as follows:

7 (1) The director may not assess more than \$7,000 for each cited se-  
8 rious violation. A violation is serious only if: (A) It arises from a condition,  
9 practice, method, operation or process in the workplace of which the  
10 employer knows or should know through the exercise of reasonable dili-  
11 gence; and (B) there is a substantial possibility that the condition, practice,  
12 method, operation or process could result in death or serious physical  
13 harm.

14 (2) The director may assess up to \$70,000 for each cited violation if  
15 the employer has previously been found to have violated the same stan-  
16 dards, code, rule and regulation or order, or if the employer is found to  
17 have willfully ignored the standard, code, regulation, rule or order.

18 (3) After the expiration of the time permitted to an employer to cor-  
19 rect a cited violation, the director may assess up to \$7,000 for each day  
20 the violation continues uncorrected.

21 (b) The director may assess a civil penalty of up to \$1,000 for each  
22 violation of any posting requirement under this article.

23 (c) In deciding the amount to assess for a civil penalty, the director  
24 shall consider all relevant factors, including: (1) The size of the employer's  
25 business; (2) the nature of the violation; (3) the employer's good faith or  
26 lack of good faith; and (4) the employer's previous record of compliance  
27 or noncompliance with this act.

28 (d) Any civil penalty collected under this act shall be paid into the  
29 general fund.

30 (e) Criminal penalties under this act are as follows:

31 (1) Any employer who willfully violates any standard, code, rule and  
32 regulation or order issued under this article is guilty of a class A misde-  
33 meanor if the violation caused the death of an employee. If the violation  
34 causes the death of more than one employee, each death is considered a  
35 separate offense.

36 (2) Any person who gives advance notice of any inspection conducted  
37 under this act without authority from the administrator or the adminis-  
38 trator's representative is guilty of a class A misdemeanor.

39 (3) Any person who knowingly makes a false statement, representa-  
40 tion or certification in any application, record, report, plan or other doc-  
41 ument filed or required to be maintained under this act is guilty of a class  
42 A misdemeanor.

43 (f) In the event of a fatality or multiple fatalities, the civil penalties

1 against an employer shall include that the employer shall immediately  
2 request and receive consultative services from the state.

3 Sec. 16. This act shall take effect and be in force from and after its  
4 publication in the statute book.

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