

## SENATE BILL No. 105

By Committee on Commerce

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AN ACT establishing a state occupational safety plan; repealing K.S.A. 44-636.

*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 than 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 who is certified in the comprehensive practice of industrial hygiene by the American board of industrial hygiene or certified in the comprehensive practice of safety by the board of certified safety professionals, or both.

(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 review 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 article 5 of chapter 77 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 en-

1 enforcement procedures under this act.

2 (k) “National consensus standard” means any occupational safety and  
3 health standard or modification: (1) Adopted by a nationally recognized  
4 standards-producing organization under procedures where it can be de-  
5 termined by the administrator, division and committee that persons in-  
6 terested and affected by the standard have reached substantial agreement  
7 on its adoption; (2) formulated in a manner which affords an opportunity  
8 for diverse views to be considered; or (3) designated and published as  
9 such a standard by the United States department of labor.

10 (l) “Owner” means and includes every person having ownership, con-  
11 trol or custody of any place of employment or of the construction, repair  
12 or maintenance of any place of employment.

13 (m) “Person” means the general public, including but not limited to,  
14 one or more individuals, partnerships, associations, corporations, legal  
15 representatives, trustees, receivers and the state and its political subdi-  
16 visions, including municipalities.

17 (n) “Publish” means publication in accordance with article 4 of chap-  
18 ter 77 of the Kansas Statutes Annotated, and amendments thereto.

19 (o) “Secretary” means the secretary of the Kansas department of hu-  
20 man resources.

21 (p) “Standard” means an occupational safety and health safety stan-  
22 dard or group of standards which requires conditions, or the adoption or  
23 use of one or more practices, means, methods, operations or processes  
24 reasonably necessary to provide safe and healthful employment and places  
25 of employment.

26 (q) “Variance” means a special, limited modification or change in the  
27 code or standard applicable to the particular establishment of the em-  
28 ployer or person petitioning for the modification or change.

29 (r) “Workplace” means any place of employment.

30 Sec. 3. (a) Administration of this act is vested in the director. The  
31 director: (1) Shall have jurisdiction and supervision over every workplace  
32 in this state and is empowered to administer all laws and lawful orders to  
33 ensure that every employee in this state has a workplace free of recog-  
34 nized hazards; (2) shall carry out the state plan and this act through the  
35 administrator; (3) shall make, establish, promulgate and enforce all nec-  
36 essary and reasonable rules, regulations and provisions to carry this act  
37 into effect; and (4) shall have the same authority as that conferred by  
38 K.S.A. 44-551, and amendments thereto, to administrative law judges of  
39 the division of workers compensation.

40 (b) This act shall apply to all workplaces in the state covered by the  
41 workers compensation act except that nothing in this act shall apply to  
42 working conditions of employees with respect to which federal agencies  
43 exercise statutory authority to prescribe or enforce standards or regula-

1 tions affecting occupational safety or health.

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 not more  
8 than 1% of the workers compensation benefits paid by such carrier, self-  
9 insurer or group-funded workers compensation pool.

10 (d) There is hereby created in the state treasury a fund to be called  
11 the occupational safety fee fund. The director shall remit all moneys re-  
12 ceived from fees to the state treasurer. Upon receipt of each such remit-  
13 tance, the state treasurer shall deposit the entire amount thereof in the  
14 state treasury crediting 20% of each such deposit to the state general  
15 fund, subject to the provisions of K.S.A. 75-3170a, and amendments  
16 thereto, the balance shall be credited to the occupational safety fee fund.  
17 All expenditures from the occupational safety fee fund shall be made in  
18 accordance with appropriation acts upon warrants of the director of ac-  
19 counts and reports issued pursuant to vouchers approved by the director  
20 or the director's designee or designees.

21 Sec. 4. (a) (1) There is hereby created a Kansas occupational safety  
22 and health review committee to assist the division in standard formulation  
23 and interpretation.

24 (2) Voting members on the committee shall be appointed by the sec-  
25 retary and shall consist of eight persons selected upon the basis of their  
26 experience and competence in the field of occupational safety and health  
27 and shall include: Two representatives of labor; two representatives of  
28 industry; two representatives of the construction industry and two rep-  
29 resentatives of the public.

30 (3) In addition to the voting members, the administrator shall serve  
31 as a nonvoting member.

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

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

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

41 (4) The administrator shall serve as chair of the committee and call  
42 all necessary meetings. The committee shall confer at least semi-annually.

43 (c) (1) When a vacancy occurs in the membership for any reason, the

1 replacement shall be appointed for the unexpired term.

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

5 (d) The administrator shall furnish the committee clerical, secretarial  
6 and other services necessary to conduct the business delegated to the  
7 committee.

8 (e) (1) Members shall receive no compensation or benefits for their  
9 services, but may receive mileage, per diem and expenses incurred in the  
10 performance of the member's official duties at the rates established by  
11 K.S.A. 75-3223, and amendments thereto.

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

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

18 (b) (1) The director may adopt rules and regulations requiring em-  
19 ployers to measure, record and make reports on the exposure of employ-  
20 ees to substances or physical agents reasonably believed to endanger the  
21 health or safety of employees;

22 (2) the director may establish programs for medical examinations and  
23 tests necessary for determining the incidence of occupational diseases and  
24 the susceptibility of employees to the diseases;

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

28 (c) (1) Following a written request by any employer or authorized  
29 representative of employees, specifying with reasonable particularity the  
30 grounds on which the request is made, the director shall determine  
31 whether any substance normally found in a workplace has toxic effects in  
32 the concentrations used or found, and shall submit its determination to  
33 the employer as soon as possible;

34 (2) the director shall immediately take action necessary if the director  
35 determines that: (i) Any substance is toxic at the concentrations used or  
36 found in a workplace; and (ii) the substance is not covered by an occu-  
37 pational safety or health standard promulgated under this article;

38 (3) the director may inspect and question employers and employees  
39 as provided in this article to carry out its functions and responsibilities  
40 under this section; and

41 (4) the director is authorized to enter into contracts, agreements or  
42 other arrangements with appropriate federal or state agencies or private  
43 organizations to conduct studies about the responsibilities under this act.

1 In carrying out its responsibilities under this subsection, the director shall  
2 cooperate with the department of health and environment to avoid any  
3 duplication of efforts under this section.

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

8 (b) The director may use the functions imposed by subsection (a) to:  
9 (1) Promote, encourage or directly engage in programs of studies, infor-  
10 mation and communication concerning industrial safety and health sta-  
11 tistics; (2) assist agencies or political subdivisions in developing and ad-  
12 ministering programs dealing with occupational safety and health  
13 statistics; (3) arrange, through assistance, for the conduct of research and  
14 investigations which further the objectives of this section; and (4) to oth-  
15 erwise fulfill the purposes of this act.

16 (c) The director, with the consent of any state agency or political  
17 subdivision of the state, may accept and use the services, facilities and  
18 employees of state agencies or political subdivisions of the state, with or  
19 without reimbursement, to assist it in carrying out its functions under this  
20 section.

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

23 (1) The division, after consultation with other appropriate agencies,  
24 shall conduct, directly or by assistance: (A) Educational programs to pro-  
25 vide an adequate supply of qualified personnel to carry out the purpose  
26 of this article; and (B) informational programs on the importance of ad-  
27 equate safety and health equipment.

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

31 (3) The division shall: (A) Establish and supervise programs for the  
32 education and training of employers and employees for recognition,  
33 avoidance and prevention of unsafe or unhealthful working conditions;  
34 (B) consult and advise employers and employees about effective means  
35 for prevention of any work-related injury or occupational disease; and (C)  
36 provide safety and health workplace surveys.

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

39 (b) Nothing in this act shall be construed or held to supersede or in  
40 any manner affect workers compensation or enlarge or diminish or affect  
41 the common law or statutory rights, duties or liabilities of employers and  
42 employees under any law with respect to injuries, occupational or other  
43 diseases or death of employees arising out of, or in the course of

1 employment.

2 (c) The secretary of human resources, the director of workers com-  
3 pensation or the administrator may make application for, receive, admin-  
4 ister and expend any federal funds for the administration of any of the  
5 provisions of this article.

6 Sec. 8. (a) Each employer shall provide a safe and healthy working  
7 environment for employees and shall comply with the occupational safety  
8 and health standards, orders and rules and regulations made under this  
9 article.

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

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

17 (b) The director may issue, modify or revoke any standard as follows:

18 (1) (A) Whenever the administrator determines upon the basis of infor-  
19 mation submitted in writing by an interested person, a representative of  
20 any organization of employers or employees, a nationally recognized stan-  
21 dards-producing organization, a state agency or political subdivision or on  
22 information developed by the director or otherwise available, that a rule  
23 and regulation should be promulgated to promote the objectives of this  
24 act, the administrator may request recommendations from the review  
25 committee; (B) the administrator shall provide the review committee with  
26 proposals, together with all pertinent factual information developed by  
27 the division, or otherwise available, including the results of research, dem-  
28 onstrations and experiments; and (C) the review committee shall submit  
29 to the administrator its recommendations.

30 (2) Any standard issued under this subsection shall prescribe the use  
31 of labels or other forms of warning necessary to ensure that employees  
32 are informed of all hazards, relevant symptoms, emergency treatment and  
33 proper conditions and precautions of safe use or exposure. When appro-  
34 priate, a standard shall prescribe suitable protective equipment and con-  
35 trol or technological procedures for use in connection with such hazards  
36 and provide for monitoring or measuring employee exposure at such lo-  
37 cations and intervals in a manner necessary for the protection of employ-  
38 ees. In addition, any such standard shall prescribe the type and frequency  
39 of medical examinations or other tests which shall be made available by  
40 the employer to employees exposed to hazards in order to most effectively  
41 determine whether the health of employees is adversely affected by ex-  
42 posure. The director may by rule and regulation make appropriate mod-  
43 ifications in requirements for the use of labels or other forms of warning,

1 monitoring or measuring and for medical examinations warranted by ex-  
2 perience, information or medical or technological developments acquired  
3 subsequent to the promulgation of the relevant standard.

4 (3) The director, in issuing standards for toxic materials or harmful  
5 physical agents under this subsection, shall set the standard which most  
6 adequately assures, to the extent feasible, on the basis of the best available  
7 evidence, that no employee will suffer material impairment of health or  
8 functional capacity even if the employee has regular exposure to the haz-  
9 ard during an employee's working life. Development of standards under  
10 this subsection shall be based upon research, demonstrations, experi-  
11 ments and other information deemed appropriate. In addition to the at-  
12 tainment of the highest degree of health and safety protection for the  
13 employee, other considerations shall be the latest available scientific data  
14 in the field, the feasibility of the standards and experience under this and  
15 other health and safety laws. Whenever practicable, the standard shall be  
16 expressed in terms of objective criteria and of the performance desired.

17 (4) (A) Any employer may apply to the secretary for a temporary  
18 order granting a variance from a standard issued under this section. Tem-  
19 porary orders shall be granted only if the employer: (i) Files an application  
20 which meets the requirements of this article; (ii) establishes that the em-  
21 ployer is unable to comply with a standard by its effective date because  
22 of unavailability of professional or technical personnel or of materials and  
23 equipment needed for compliance with the standard or because necessary  
24 construction or alteration of facilities cannot be completed by the effec-  
25 tive date; (iii) establishes that the employer is taking all available steps to  
26 safeguard the employer's employees against hazards; and (iv) establishes  
27 that the employer has an effective program for compliance as quickly as  
28 practicable.

29 (B) Any temporary order shall prescribe the practices, means, meth-  
30 ods, operations and processes which the employer must adopt and use  
31 while the order is in effect and state in detail the time period it is effective  
32 and the employer's program for compliance with the standard. A tem-  
33 porary order may not be in effect longer than the period reasonably re-  
34 quired by the employer to achieve compliance. In no case shall the period  
35 of a temporary order exceed one year.

36 (C) An application for a temporary order shall contain: (i) A specifi-  
37 cation of the standard or part from which the employer seeks a variance;  
38 (ii) a representation by the employer, supported by representations from  
39 qualified persons having first-hand knowledge of the facts represented,  
40 that the employer is unable to comply with the standard or some part of  
41 the standard; (iii) a detailed statement of the reasons the employer is  
42 unable to comply; (iv) a statement of the measures taken and anticipated  
43 with specific dates, to protect employees against the hazard; (v) a state-

1 ment of when the employer expects to comply with the standard and  
2 what measures the employer has taken and those anticipated, giving spe-  
3 cific dates for compliance; and (vi) a certification that the employer has  
4 informed the employer's employees of the application by: (I) Giving a  
5 copy to their authorized representative; (II) posting a statement giving a  
6 summary of the application and specifying where a copy may be examined  
7 at the place or places where notices to employees are normally posted;  
8 or (III) by other appropriate means. The information to employees shall  
9 inform the employees of their right to petition the division for a hearing.

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

12 (E) The secretary is authorized to grant a variance from any standard  
13 or some part of the standard when the secretary determines that it is  
14 necessary to permit an employer to participate in a research and devel-  
15 opment project approved by the secretary to demonstrate or validate new  
16 and improved techniques to safeguard the health or safety of workers.

17 (c) (1) Any affected employer may apply to the division for a variance  
18 from a standard issued under this section. Affected employees may be  
19 given notice of each application and may participate in a hearing. The  
20 secretary shall issue an order for a variance if the secretary determines  
21 on the record, after opportunity for an inspection where appropriate and  
22 a hearing, that the proponent of the variance has demonstrated by a pre-  
23 ponderance of the evidence that the conditions, practices, means, meth-  
24 ods, operations or processes used or proposed to be used by an employer  
25 will provide employment and a workplace to the employer's employees  
26 that are as safe and healthful as those which would prevail if the employer  
27 complied with the standard.

28 (2) The order issued under paragraph (4)(A) of subsection (b) shall  
29 prescribe the conditions the employer must maintain, and the practices,  
30 means, methods, operations and processes that the employer must adopt  
31 and use to the extent they differ from the standard in question.

32 (3) An order issued under paragraph (4)(A) of subsection (b) may be  
33 modified or revoked upon application by an employer, employees, by the  
34 administrator or by the secretary on its own motion, in the manner pre-  
35 scribed for its issuance under paragraph (4)(A) of subsection (b) at any  
36 time after its issuance.

37 (d) The director may adopt rules and regulations as are necessary for  
38 the administration of this act.

39 Sec. 10. Each state agency and each political subdivision of the state,  
40 including but not limited to counties, cities, school districts and other  
41 municipalities may establish and maintain an occupational safety and  
42 health program equivalent to the program for other employments in the  
43 state. The director may not assess monetary penalties against any state



1 agency, political subdivision, municipality or quasi-municipality under this  
2 act.

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

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

16 (b) The director may adopt rules and regulations requiring employers  
17 to keep records regarding any work-related death and injury and any  
18 occupational disease. In addition to the reporting requirements of K.S.A.  
19 44-557, and amendments thereto, each employer, within eight hours of  
20 an occurrence, shall notify the administrator of any: (1) Work-related  
21 fatality or; (2) multiple disabling, serious or significant injury incidents;  
22 and (3) multiple occupational disease incidents. For purposes of this sub-  
23 section, "multiple" shall mean occurring as to three persons and traceable  
24 to a single cause.

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

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

34 (e) (1) Any employee or representative of employees employed in  
35 the workplace may notify the administrator of any violation of a standard  
36 believed to exist in the workplace.

37 (2) Any employee or representative of employees who believes that  
38 a violation of an adopted safety or health standard exists that threatens  
39 physical harm, or that an imminent danger exists, may request an inspec-  
40 tion by giving notice to the administrator of the violation or danger. The  
41 notice shall be in writing, setting forth with reasonable particularity the  
42 grounds for notice, and signed by the employee or representative of em-  
43 ployees. A copy of the notice shall be provided to the employer or the

1 employer's agent no later than at the time of inspection.

2 (3) (A) If upon receipt of the notice the administrator determines  
3 there are reasonable grounds to believe that a violation or danger exists,  
4 the authorized representative shall make a special inspection in accord-  
5 ance with this section as soon as practicable to determine if a violation or  
6 danger exists; (B) if the division's authorized representative determines  
7 there are no reasonable grounds to believe that a violation or danger  
8 exists, the authorized representative shall notify the employee or repre-  
9 sentative of the employees in writing of that determination.

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

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

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

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

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

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

35 (2) If the employer fails to notify the division, in writing, within 20  
36 days from the receipt of notification issued by the division, that the em-  
37 ployer intends to contest the notification or proposed assessment, the  
38 notification and assessment, as proposed, is final and subject to review  
39 pursuant to article 6 of chapter 77 of the Kansas Statutes Annotated, and  
40 amendments thereto.

41 (d) The division may assess fines and penalties under this act or seek  
42 injunctive relief, or both.

43 (e) (1) If an employer notifies the division that the employer intends

1 to contest a citation, the division shall provide an opportunity for a hearing  
2 pursuant to the Kansas administrative procedure act.

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

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

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

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

32 Sec. 14. (a) All information reported to or otherwise obtained by the  
33 director or the director's representatives or any employee in connection  
34 with any inspection or proceeding under this act which contains or which  
35 might reveal a trade secret shall be considered confidential except that  
36 the information may be disclosed to other officers or employees con-  
37 cerned with carrying out this act or in any proceeding under this act.

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

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

42 (1) The director may assess up to \$7,000 for each cited serious vio-  
43 lation. A violation is serious only if: (A) It arises from a condition, practice,

1 method, operation or process in the workplace of which the employer  
2 knows or should know through the exercise of reasonable diligence; and  
3 (B) there is a substantial possibility that the condition, practice, method,  
4 operation or process could result in death or serious physical harm.

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

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

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

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

19 (d) Any civil penalty collected under this act shall be paid into the  
20 general fund. One half of those penalties shall be credited to the occu-  
21 pational safety and health grant program.

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

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

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

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

35 (f) In the event of a fatality or multiple fatalities, the civil penalties  
36 against an employer shall include that the employer shall request and  
37 receive consultative services from the state.

38 (g) When an order assessing a civil penalty becomes final by operation  
39 of law or on appeal, unless the amount of penalty is paid within 30 days  
40 after the order becomes final, it constitutes a judgment and may be re-  
41 corded with the clerk of the district court in any court of this state. The  
42 clerk shall thereupon record the name of the person incurring the penalty  
43 and the amount of the penalty. The penalty provided in the order so

1 recorded shall become a lien upon the title to any interest in property  
2 owned by the person against whom the order is entered, and execution  
3 may be issued upon the order in the same manner as execution upon a  
4 judgment of a court of record.

5 Sec. 16. In order to carry out the purposes of this act and encourage  
6 voluntary compliance with occupational safety and health laws, regula-  
7 tions and standards, and to promote more effective workplace safety pro-  
8 grams, the administrator shall:

9 (a) Develop greater knowledge and interest in the causes and pre-  
10 vention of industrial accidents, occupational diseases and related subjects  
11 through: (1) Research, conferences, lectures and the use of public com-  
12 munications media; (2) the collection and dissemination of accident sta-  
13 tistics; and (3) the publication and distribution of training and accident  
14 prevention materials, including audio and visual aids.

15 (b) Provide consultative services for employers on safety and health  
16 matters and prescribe procedures which will permit any employer to re-  
17 quest a special inspection or investigation, focused on specific problems  
18 or hazards in the place of employment of the employer or to request  
19 assistance in developing a plan to correct such problems or hazards, which  
20 will not directly result in a citation and civil penalty.

21 (c) Place emphasis in the research, education and consultation pro-  
22 gram on development of a model for providing services to groups of small  
23 employers in particular industries and their employees.

24 (d) Separately administer the voluntary compliance and research, ed-  
25 ucation and consultation activities described in this section and the en-  
26 forcement activities.

27 Sec. 17. (a) The director or an authorized representative of the di-  
28 rector with the approval of the director, pursuant to such rules, regula-  
29 tions and procedures as the director may prescribe to preclude exposure  
30 to a condition which, if such exposure occurred would constitute a vio-  
31 lation of any statute, regulation, rule, standard or order affecting em-  
32 ployee safety or health at a place of employment, may preclude exposure  
33 by prohibiting use of the machine, equipment, apparatus or place of em-  
34 ployment constituting such condition. When use is prohibited a red warn-  
35 ing notice shall be posted in plain view of any person likely to use the  
36 same calling attention to the condition, defect, lack of safeguard or unsafe  
37 or unhealthful place of employment and the fact that further use is  
38 prohibited.

39 (b) No person shall use or operate at any place of employment, a  
40 machine, device, apparatus or equipment after the red warning notice  
41 required by this section is posted, before such place of employment, ma-  
42 chine, device, apparatus or equipment is made safe and healthful, and  
43 the required safeguards or safety appliances or devices are provided, and

1 authorization for the removal of such warning notice has been obtained  
2 from the director. Nothing in this subsection prohibits an employer from  
3 directing employees to use or operate at any such place of employment,  
4 a machine, device, apparatus or equipment exclusively for the purpose of  
5 remedying the violation as specifically designated by the director in the  
6 red warning notice.

7 (c) No person shall deface, destroy or remove any red warning notice  
8 posted pursuant to this section until authorization for the removal of such  
9 notice has been obtained from the director.

10 (d) Any person who violates the provisions of this subsection shall be  
11 assessed a civil penalty of not less than \$100 and not more than \$5,000  
12 for each such violation.

13 Sec. 18. No person shall discharge or in any manner discriminate  
14 against any employee because such employee has filed a complaint with,  
15 or furnished information to, the secretary of human resources concerning  
16 conditions or situations alleged to be unsafe or hazardous or otherwise  
17 covered by the provisions of this act.

18 Sec. 19. (a) The director, in consultation with the administrator and  
19 the committee, shall establish an occupational safety and health grant  
20 program to fund the education and training of employees in safe em-  
21 ployment practices and conduct and promote development of employer-  
22 sponsored health and safety programs.

23 (b) The director shall adopt rules and regulations and procedures  
24 establishing: (1) Grant application procedures and criteria for grant ap-  
25 proval; and (2) procedures for revocation of grants to recipients failing to  
26 comply with grant criteria established by the director pursuant to this  
27 section.

28 (c) The director, after reviewing the recommendation of the admin-  
29 istrator and committee, shall approve or deny an application for an oc-  
30 cupational safety and health grant. If the director approved a grant under  
31 this section, the director shall set the amount of the grant awarded to the  
32 grant recipient.

33 (d) The director shall monitor grant recipients for compliance with  
34 grant criteria and procedures established by the director.

35 (e) The grants awarded under this section shall be funded only from  
36  $\frac{1}{2}$  of the civil penalties paid.

37 Sec. 20. (a) No person may purport to be: (1) A certified industrial  
38 hygienist or use the initials CIH unless the person holds a current certi-  
39 fication as an industrial hygienist from the American board of industrial  
40 hygiene; (2) a certified occupational health and safety technologist or use  
41 the initials OHST unless the person holds a current certification as an  
42 occupational health and safety technologist from the American board of  
43 industrial hygiene or the board of certified safety professionals; (3) a cer-

1 tified health and safety technician or use the initials CHST unless the  
2 person holds a current certification as a construction health and safety  
3 technician from the American board of industrial hygiene or the board  
4 of certified safety professionals; (4) a certified safety professional or use  
5 the initials CSP unless the person holds a current designation as a certified  
6 safety professional from the board of certified safety professionals; or (5)  
7 an associate safety professional or use the initials ASP unless the person  
8 holds a current designation as an associate safety professional from the  
9 board of certified safety professionals.

10 (b) The American board of industrial hygiene, the board of certified  
11 safety professionals or a person lawfully practicing a profession listed in  
12 subsection (a) may bring a private cause of action in the appropriate court  
13 to recover damages against any person who violates subsection (a). The  
14 court may provide such equitable relief as it deems necessary or proper.  
15 The court may award reasonable attorney fees to the prevailing party in  
16 an action under this subsection.

17 (c) This subsection does not prevent a person legally regulated in this  
18 state under any other licensing provisions, rules or regulations from en-  
19 gaging in the activities permitted under that designation, certification or  
20 license provided that the person does not use the titles or initials specified  
21 in this subsection.

22 Sec. 21. Nothing in this act requires the installation of railings or  
23 guards on interior or exterior stairways providing access to and egress  
24 from the state capitol building or to the chambers of the senate and house  
25 of representatives in the rotunda of the state capitol building or any stair-  
26 case in any public monument or memorial or building of historic  
27 significance.

28 Sec. 22. K.S.A. 44-636 is hereby repealed.

29 Sec. 23. This act shall take effect and be in force from and after its  
30 publication in the statute book.

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