

Veto-1656

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1986

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ENROLLED

Com. Sub. for
HOUSE BILL No. 1656

(By ~~Mr.~~ Del. Davis & Del. Leary)

— ● —

Passed March 8, 1986

In Effect Ninety Days From Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 1656
(By DELEGATE DAVIS and DELEGATE LEARY)

[Passed March 8, 1986; in effect ninety days from passage]

AN ACT to amend chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-a, relating to creating an occupational safety and health division for public employees within the department of labor; providing for the adoption of occupational health and safety standards; authorizing the commissioner of labor to conduct appropriate inspections and investigations; establishing an occupational health and safety review commission to review the commissioner's citations and determinations; authorizing circuit courts to enjoin certain dangerous conditions or practices in places of employment; advisory board; membership; appointment; vacancies; compensation.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article three-a, to read as follows:

ARTICLE 3A. OCCUPATIONAL SAFETY AND HEALTH ACT.

§21-3A-1. Short title.

1 This article shall be known and cited as the "West
2 Virginia Occupational Safety and Health Act."

§21-3A-1a. Legislative policy.

1 The Legislature finds that the safety and health of
2 public employees in the workplace is of primary public
3 concern. Personal injuries and illnesses arising out of
4 work situations result not only in wage loss and
5 increased medical expenses for public employees, but
6 also in decreased productivity and increased workers'
7 compensation expenses for public employers. The
8 Legislature therefore declares:

9 (a) That it is the policy of this state to ensure that all
10 public employees be provided with safe and healthful
11 work environments free from recognized and avoidable
12 hazards;

13 (b) That it is the responsibility of the state to
14 promulgate standards for the protection of the health
15 and safety of its public workforce; and

16 (c) That it is in the public interest for public employ-
17 ers and public employees to join in a cooperative effort
18 to enforce these standards.

§21-3A-2. Definitions.

1 As used in this chapter, unless the context clearly
2 indicates otherwise:

3 (a) "Commission" means the occupational safety and
4 health review commission established under this article;

5 (b) "Commissioner" means the labor commissioner or
6 his designated agent;

7 (c) "Employee" means any public employee of the
8 state, or any state agency;

9 (d) "Employer" means public employer and shall
10 include the state, or any department, division, bureau,
11 board, council, agency or authority of the state;

12 (e) "Occupational safety and health standard" means
13 a standard for health or safety which requires conditions
14 or the adoption or use of one or more practices, means,

15 methods, operations or processes reasonably necessary
16 or appropriate to provide safe and healthful employment
17 in places of employment;

18 (f) "Person" means one or more individuals; and

19 (g) "Workplace" means a place where public em-
20 ployees are assigned to work but shall not include any
21 place where public employees are assigned to work that
22 is inspected and regulated in accordance with Federal
23 Occupational Safety and Health standards or Mine
24 Safety and Health Administration standards.

**§21-3A-3. Division of occupational safety and health;
coordination of activities with workers'
compensation commissioner.**

1 (a) There is hereby created in the labor department
2 a division of occupational safety and health, comprised
3 of a subdivision for safety, a subdivision for health and
4 such other subdivisions as the commissioner considers
5 necessary. This division shall administer all matters
6 pertaining to occupational safety and occupational
7 health.

8 (b) The labor commissioner may request the assist-
9 ance of other state agencies and may enter into
10 agreements with other state agencies and political
11 subdivisions of the state for the administration of this
12 chapter.

13 (c) The labor commissioner shall provide for coordi-
14 nation between the division of occupational safety and
15 health and the workers' compensation commissioner
16 including, but not limited to, the establishment of
17 standardized procedures and reportings.

§21-3A-4. Application of article.

1 (a) This article applies to all public employers, public
2 employees and public workplaces within the state of
3 West Virginia.

4 (b) This article shall not apply to any privately owned
5 or operated business, or to such privately owned or
6 operated business location, workplace or establishment,
7 even if such privately owned or operated business,

8 business location workplace or establishment shall work
9 for or in any manner, either directly or indirectly,
10 provide services to state government: *Provided*, That
11 such business, business location, workplace or establish-
12 ment is regulated in accordance with Federal
13 Occupational Safety and Health standards or Mine
14 Safety and Health Administration standards.

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

§21-3A-5. Duties of employer and employee.

1 (a) Each employer shall furnish to each of his
2 employees employment and a place of employment
3 which are free from recognized hazards causing or are
4 likely to cause death or serious physical harm or serious
5 illness to his employees.

6 (b) Each employer shall, upon the written request of
7 any employee, furnish the employee with a written
8 statement listing the substances which the employee
9 uses or with which the employee comes into contact,
10 which substances have been identified as toxic and
11 hazardous by occupational safety and health standards,
12 under Title 29 CFR 1910.1000 "Air Contaminant Code
13 of Federal Regulations" through 1910.1046, or listed in
14 the most recent National Institute for Occupational
15 Safety and Health Registry of the Toxic Effects of
16 Chemical Substances (RTECS).

17 (c) Each employer shall comply with occupational
18 safety and health standards promulgated under this
19 article.

20 (d) Each employee shall comply with occupational
21 safety and health standards and all regulations and
22 orders issued pursuant to this article which are
23 applicable to his actions and conduct.

§21-3A-6. Rules.

1 In rules adopted under the authority of this article
2 pursuant to the procedures of chapter twenty-nine-a of
3 this code, the commissioner shall:

4 (a) Provide for the preparation, adoption, amendment
5 or repeal of rules necessary to effectuate the health and
6 safety purposes of this article;

7 (b) Provide educational programs to encourage em-
8 ployers and employees in their efforts to reduce the
9 number of safety and health hazards and to stimulate
10 employers and employees to institute new programs,
11 and to perfect existing programs to provide for safe and
12 healthful working conditions;

13 (c) Provide for appropriate reporting procedures by
14 employers with respect to information relating to
15 conditions of employment which will assist in achieving
16 the objectives of this article.

17 (d) Provide for the frequency, method and manner of
18 making inspections of workplaces without advance
19 notice: *Provided*, That in the event of an emergency or
20 unusual situation, the commissioner may give advance
21 notice;

22 (e) Provide for the publication and dissemination to
23 employers, employees and labor organizations and the
24 posting, where appropriate, by employers of informa-
25 tional, educational or training materials calculated to
26 aid and assist in achieving the objectives of this article;
27 and

28 (f) Provide for the establishment of new programs,
29 and the perfection and expansion of existing programs
30 for occupational safety and health education for employ-
31 ers and employees and institute methods and procedures
32 to establish a program for voluntary compliance by
33 employers and employees with the requirements of this
34 article and all applicable safety and health standards
35 and regulations promulgated pursuant to the authority
36 of this article.

**§21-3A-7. Adoption of federal and state standards;
variances.**

1 (a) The commissioner, on or before the first day of
2 July, one thousand nine hundred eighty-seven, shall
3 provide at the minimum, for the adoption of all
4 occupational safety and health standards, amendments
5 or changes, adopted or recognized by the United States
6 Secretary of Labor under the authority of the
7 Occupational Safety and Health Act of 1970. Where no
8 federal standards are applicable, or where standards
9 more stringent than the federal standards are deemed
10 advisable, the commissioner shall provide for the
11 development of such state standards as will comport
12 with the purposes of this act. Standards shall be adopted
13 through state administrative procedures.

14 (b) No standards may be adopted for products distrib-
15 uted or used in interstate commerce which are different
16 from federal standards for those products unless the
17 standards are required by compelling local conditions
18 and do not unduly burden interstate commerce.

19 (c) In the event of emergency or unusual situations,
20 the commissioner shall provide for an emergency
21 temporary standard to take effect immediately if he
22 determines:

23 (1) Employees are exposed to grave danger from
24 exposure to substances or agents determined to be toxic
25 or physically harmful or from new hazards; and

26 (2) The emergency standard is necessary to protect
27 employees from such danger.

28 The emergency standard may be in effect not longer
29 than one hundred eighty days or, if renewed in com-
30 pliance with the laws of this state governing the
31 adoption or extension of rules, not longer than sixty
32 additional days. On or before the expiration date of the
33 emergency standard or renewal thereof, the commis-
34 sioner shall develop a permanent standard to replace the
35 emergency standard.

36 (d) Any standard promulgated shall prescribe the use
37 of labels or other appropriate forms of warning neces-
38 sary to ensure that employees are apprised of all
39 hazards to which they are exposed, relevant symptoms

40 and appropriate emergency treatment and, where
41 appropriate, proper conditions and precautions of safe
42 use or exposure. The standard shall also prescribe
43 suitable protective equipment and control procedures
44 for use in connection with such hazards and shall
45 provide for measuring employee exposure in the manner
46 necessary for the protection of employees. In addition,
47 where appropriate, the standard shall prescribe the type
48 and frequency of medical examinations or other tests
49 which shall be made available to employees exposed to
50 such hazards in order to determine any adverse effect
51 from that exposure.

52 (e) Any employer may apply to the commissioner for
53 a temporary order granting a variance from a standard,
54 or any provision thereof, promulgated under this
55 section. A temporary order shall be granted if the
56 employer files an application which meets the require-
57 ments of subsection (f) of this section and establishes
58 that:

59 (1) He is unable to comply with a standard by its
60 effective date because of unavailability of professional or
61 technical personnel or of materials and equipment
62 needed to come into compliance with the standard or
63 because necessary construction or alteration of facilities
64 cannot be completed by the effective date;

65 (2) He is taking all available steps to safeguard
66 employees against the hazards covered by the standard;
67 and

68 (3) He has an effective program for coming into
69 compliance with the standard as quickly as practicable.

70 Any temporary order issued under this subsection
71 shall prescribe the practices, means, methods, opera-
72 tions and processes which the employer must adopt and
73 use while the order is in effect and state in detail his
74 program for coming into compliance with the standard.
75 A temporary order may be granted only after notice, by
76 the commissioner, to employees, and an opportunity for
77 a hearing before the commissioner: *Provided*, That the
78 commissioner may issue one interim order to be
79 effective until a decision is made on the basis of the

80 hearing. No temporary order may be in effect for longer
81 than the period needed by the employer to achieve
82 compliance with the standard or one year, whichever is
83 shorter: *Provided, however,* That an order may be
84 renewed not more than once if the requirements of this
85 subsection are met and if an application for renewal is
86 filed at least ninety days prior to the expiration date of
87 the order. No interim renewal of an order may remain
88 in effect longer than one hundred eighty days.

89 (f) An application for a temporary variance order
90 shall contain:

91 (1) A specification of the standard or portion thereof
92 from which the employer seeks a variance;

93 (2) A representation by the employer, supported by
94 representations from qualified persons who have
95 firsthand knowledge of the facts represented, that he is
96 unable to comply with the standard or portion thereof
97 and a detailed statement of the reasons therefor;

98 (3) A statement of the steps he has taken and will
99 take, with specific dates, to protect employees against
100 the hazard covered by the standards;

101 (4) A statement of when he expects to comply with the
102 standard and what steps he has taken and what steps
103 he will take, with dates specified, to come into com-
104 pliance with the standard; and

105 (5) A certification that he has informed his employees
106 of the application by giving a copy thereof to their
107 authorized representative, and posting a statement
108 giving a summary of the application and specifying
109 where a copy may be examined at the place or places
110 where notices to employees are normally posted and by
111 other appropriate means. A description of how em-
112 ployees have been informed shall be contained in the
113 certification. The information to employees shall inform
114 them of their right to petition the commissioner for a
115 hearing. The commissioner is authorized to grant a
116 variance from any standard or portion thereof whenever
117 he determines that a variance is necessary to permit an
118 employer to participate in an experiment, approved by

119 the commissioner, designed to demonstrate or validate
120 new and improved techniques to safeguard the health
121 or safety of workers.

122 (g) Any affected employer may apply to the commis-
123 sioner for an order granting a variance from a standard
124 promulgated under this section. Affected employees
125 shall be given notice of each such application and an
126 opportunity to participate in a hearing before the
127 commissioner. The commissioner shall issue such order
128 if he determines on the record, after opportunity for an
129 inspection where appropriate and a hearing, that the
130 proponent of the variance has demonstrated by a
131 preponderance of the evidence that the conditions,
132 practices, means, methods, operations or processes used
133 or proposed to be used by an employer will provide
134 employment and places of employment which are as safe
135 and healthful as those which would prevail if he
136 complied with the standard. The order issued shall
137 prescribe the conditions the employer must maintain,
138 and the practices, means, methods, operations and
139 processes which he must adopt and utilize to the extent
140 they differ from the standard in question. The order
141 may be modified or revoked upon application by an
142 employer or employees, or by the commissioner on his
143 own motion, in the manner prescribed for its issuance
144 under this subsection at any time after six months from
145 its issuance.

146 (h) Any employee who may be adversely affected by
147 a standard or variance or regulation issued under this
148 section may challenge the validity or applicability of a
149 standard or variance or regulation by bringing an action
150 for a declaratory judgment.

§21-3A-8. Inspections and investigations; records.

1 (a) In order to carry out the purposes of this article,
2 the commissioner or his agent, upon presenting appropri-
3 ate credentials to the employer, is authorized:

4 (1) To enter without advance notice, except as pro-
5 vided in subsection (d) of section six, and at reasonable
6 times may enter any workplace or environment where
7 work is performed by an employee of an employer; and

8 (2) To inspect and investigate, during regular work-
9 ing hours and at other reasonable times and within
10 reasonable limits and in a reasonable manner, any place
11 of employment and all pertinent conditions, structures,
12 machines, apparatus, devices, equipment and the
13 materials therein, and to question privately any em-
14 ployer or employee. No public employer may refuse to
15 allow a representative of the commissioner to inspect a
16 place of employment. If an employer attempts to prevent
17 a representative of the department from conducting an
18 inspection, the commissioner may obtain an inspection
19 warrant from the circuit court of Kanawha County or
20 the circuit court of the circuit where the employer is
21 located.

22 (b) In making his inspections and investigations
23 under this entire article the commissioner may require
24 the attendance and testimony of witnesses and the
25 production of evidence under oath. Witnesses shall be
26 paid the same fees and mileage that are paid witnesses
27 in the courts of this state. In case of contumacy or failure
28 or refusal of any person to obey such an order, the
29 circuit court for the judicial district wherein the person
30 resides, is found or transacts business has jurisdiction
31 to issue to the person an order requiring the person to
32 appear, to produce evidence if asked, and when so
33 ordered, and to give testimony relating to the matter
34 under investigation or in question. Any failure to obey
35 such order of the court may be punished by the court
36 as a contempt thereof.

37 (c) (1) Each employer shall make, keep, preserve and
38 make available to the commissioner and the United
39 States secretary of labor records regarding his activities
40 relating to this entire article as the commissioner may
41 prescribe by rule as necessary or appropriate for the
42 enforcement of this article or for developing information
43 regarding the causes and prevention of occupational
44 accidents and illnesses. In order to carry out the
45 provisions of this subdivision, these rules may include
46 provisions requiring employers to conduct periodic
47 inspections. The commissioner shall also issue rules
48 requiring that employers, through posting of notices or

49 other appropriate means, keep their employees informed
50 of their protections and obligations under this entire
51 article, including the provisions of applicable standards.

52 (2) The commissioner shall prescribe rules requiring
53 employers to maintain accurate records of and to make
54 periodic reports on work-related deaths, injuries and
55 illnesses other than minor injuries requiring only first-
56 aid treatment and not involving medical treatment, loss
57 of consciousness, restriction of work or motion, or
58 transfer to another job.

59 (3) The commissioner shall issue rules requiring
60 employers to maintain accurate records of employee
61 exposures to potentially toxic materials or harmful
62 physical agents which are required to be monitored or
63 measured under any occupational safety and health
64 standard adopted under this entire chapter. These
65 regulations shall provide employees or their
66 representatives an opportunity to observe the monitor-
67 ing or measuring and to have access to the records. The
68 regulations shall also make appropriate provisions for
69 each employee or former employee to have such access
70 to the records as will indicate his own exposure to toxic
71 materials or harmful physical agents. Each employer
72 shall promptly notify any employee who has been or is
73 being exposed to toxic materials or harmful physical
74 agents in concentrations or at levels which exceed those
75 prescribed by an applicable occupational safety and
76 health standard promulgated under section six of this
77 article and shall inform any employee who is being thus
78 exposed of the corrective action being taken.

79 (d) Any information obtained by the commissioner
80 under this entire article shall be obtained with a
81 minimum burden upon employers. Unnecessary dupli-
82 cation of efforts in obtaining information shall be
83 eliminated to the maximum extent feasible.

84 (e) Subject to rules issued by the commissioner, a
85 representative of the employer and a representative
86 authorized by the employees of the employer shall be
87 given an opportunity to accompany the commissioner or
88 his authorized representative during the physical

89 inspection of any workplace for the purpose of aiding the
90 inspection. Where there is no authorized employee
91 representative, the commissioner or his authorized
92 representative shall consult with a reasonable number
93 of employees concerning matters of health and safety in
94 the workplace.

95 (f) (1) Any employee or representative of employees
96 who believes that there is a violation of an occupational
97 safety or health standard or that there is an imminent
98 danger of physical harm may request an inspection by
99 giving notice to the commissioner or his authorized
100 representative of the violation or danger. The notice
101 shall be reduced to writing, shall set forth with
102 reasonable particularity the grounds for the notice and
103 shall be signed by the employees or their representative.
104 A copy of the notice shall be provided the employer or
105 his agent no later than the time of the inspection:
106 *Provided*, That upon the request of the person giving the
107 notice, his name and the names of individual employees
108 referred to therein shall not appear in the copy or on
109 any record published, released or made available
110 pursuant to subsection (g) of this section. If, upon receipt
111 of the notification, the commissioner determines there
112 are reasonable grounds to believe that such violation or
113 danger exists, he shall make an inspection in accordance
114 with the provisions of this section as soon as practicable
115 to determine if the violation or danger exists. The
116 commissioner shall maintain records of the results of
117 any such investigation, which shall be made available
118 to the public upon request. The authority of the
119 commissioner to inspect any premises for purposes of
120 investigating an alleged violation of safety standards
121 shall not be limited to the alleged violation but shall
122 extend to any other area of the premises in which he
123 has reason to believe that a violation of the safety
124 standards promulgated under this act exists. If the
125 commissioner determines there are no reasonable
126 grounds to believe that the violation or danger exists,
127 he shall notify the employer, employee or representative
128 of employees in writing of the determination. The
129 notification does not preclude future enforcement action
130 if conditions change.

131 (2) Prior to or during any inspection of a workplace,
132 any employees or representative of employees employed
133 in the workplace may notify the commissioner, or any
134 representative of the commissioner responsible for
135 conducting the inspection, in writing of any violation of
136 this entire article which they have reason to believe
137 exists in the workplace. The commissioner shall by rule
138 establish procedures for review of any refusal by a
139 representative of the commissioner to issue a citation
140 with respect to any alleged violation and shall furnish
141 the employer and the employees or representative of
142 employees requesting the review a written statement of
143 the reasons for the commissioner's final disposition of
144 the case. The notification does not preclude future
145 enforcement action if conditions change.

146 (g) (1) The commissioner is authorized to compile,
147 analyze and publish in either summary or detail form
148 all reports or information obtained under this section.

149 (2) The commissioner shall prescribe such rules as he
150 considers necessary to carry out his responsibilities
151 under this article, including rules dealing with the
152 inspection of an employer's or owner's establishment.

§21-3A-9. Citation for violation.

1 (a) If, upon inspection or investigation, the commis-
2 sioner or his authorized representative believes that an
3 employer or employee has violated any safety and health
4 standards or variance or the commissioner finds a
5 condition which poses a recognized hazard likely to
6 cause death or serious physical harm or illness, the
7 commissioner shall, with reasonable promptness issue a
8 citation to the employer or employee. Each citation shall
9 be in writing and shall describe with particularity the
10 nature of the violation, including a reference to the
11 provision of this article, or the standard, rule or order
12 alleged to have been violated. The citation shall fix a
13 reasonable time for the abatement of the violation.

14 (b) Each citation issued under this section or a copy
15 or copies thereof shall be prominently posted as
16 prescribed in rules issued by the commissioner at or
17 near each place a violation referred to in the citation

18 occurred.

§21-3A-10. Occupational safety and health review commission.

1 (a) There is hereby created a West Virginia occupa-
2 tional safety and health review commission within the
3 labor department for administrative purposes only. The
4 commission shall consist of three members appointed by
5 the governor, by and with consent of the Senate, from
6 among persons who, by reason of training, education or
7 experience, are qualified to carry out the functions of
8 the commission under this article. The governor shall
9 designate one of the members of the commission to serve
10 as chairman.

11 (b) Members of the review commission shall serve
12 terms of four years and until their successors are
13 appointed.

14 (c) The review commission shall hold monthly meet-
15 ings and such additional meetings as necessary. A
16 majority of the review commission shall constitute a
17 quorum for the transaction of business. Special meetings
18 of the review commission may be called upon reasonable
19 notice by the commissioner or by any two members of
20 the commission.

21 (d) The review commission shall hear and rule on
22 appeals from citations, variances and notifications
23 issued under the provisions of this article and shall
24 adopt and promulgate rules with respect to the proced-
25 ural aspects of its hearings. The rules shall provide
26 affected employees and their representatives an oppor-
27 tunity to participate as parties at hearings under this
28 section. Such employees shall be given time off by their
29 employers to participate in these hearings.

30 (e) The review commission may employ a secretary,
31 and such other employees as may be necessary.

32 (f) The chairman of the commission and each of the
33 other two members shall be paid a per diem allowance
34 for days in performance of their duties at the rate of one
35 hundred dollars per diem, together with their expenses
36 at a rate determined by law.

37 (g) The salaries, per diem, compensation or wages of
38 all employees of the commission shall be determined by
39 the commissioner of labor.

40 (h) The commissioners and the secretary and em-
41 ployees of the commission shall be reimbursed for
42 necessary expenses actually incurred in the perfor-
43 mance of their duties.

44 (i) To conduct hearings, the review commission or
45 chairman may subpoena and examine witnesses,
46 require the production of evidence, administer oaths and
47 take testimony and depositions.

48 (j) After hearing an appeal the review commission
49 may sustain, modify or dismiss a citation.

**§21-3A-11. Notice to employer of contest period; action by
commissioner; action by review commission.**

1 (a) If, after inspection or investigation, the commis-
2 sioner issues a citation pursuant to section nine, he shall,
3 within a reasonable time after the termination of the
4 inspection or investigation, notify the employer or
5 employee by certified mail. The notification shall inform
6 the employer or employee that he has fifteen working
7 days from the receipt of notice within which to notify
8 the commissioner that he wishes to contest the citation
9 or to seek a variance. If the employer or employee fails
10 to so notify the commissioner within fifteen days, and
11 if no notice is filed by any employee or representative
12 of employees pursuant to subsection (c) of this section
13 within fifteen days, the citation, as proposed, becomes
14 a final order and not subject to review by any court or
15 agency.

16 (b) If the commissioner has reason to believe that an
17 employer or employee has failed to correct a violation
18 for which a citation has been issued within the period
19 permitted for correction, the commissioner shall notify
20 the employer or employee by certified mail or personal
21 service of such failure and the commissioner shall seek
22 judicial enforcement of such citation order: *Provided,*
23 That in the case of a review proceeding initiated by the
24 employer or employee under this section in good faith

25 and not solely for delay, the period permitted for
26 correction of the violation does not begin to run until the
27 entry of a final order by the review commission. The
28 notification by the commissioner shall inform the
29 employer or employee that he has fifteen working days
30 from the receipt of the notice within which to notify the
31 commissioner that he wishes to contest the notification.
32 If, within fifteen days from receipt of notification under
33 this section, the employer or employee fails to notify the
34 commissioner that he intends to contest the notification,
35 the notification and assessment as proposed become a
36 final order of the commission and not subject to review
37 by any court or agency.

38 (c) An employer or employee may notify the commis-
39 sioner within five working days of receipt of the
40 certified letter that he intends to contest the notification
41 issued under subsection (b) of this section. The commis-
42 sioner shall immediately advise the commission of the
43 notification and the commission shall afford an oppor-
44 tunity for a hearing. Upon a showing by an employer
45 or employee of a good faith effort to comply with the
46 abatement requirements of a citation and a showing that
47 abatement has not been completed because of factors
48 beyond his reasonable control, the commissioner, after
49 an opportunity for a hearing as provided in this
50 subsection, shall issue an order affirming or modifying
51 the abatement requirements in the citation. The rules
52 of procedure prescribed by the commission shall provide
53 affected employees or representatives of affected
54 employees an opportunity to participate as parties to
55 hearings under this subsection.

56 (d) If the employer or employee at a hearing under
57 subsection (c) of this section, does not prove he made a
58 good faith effort to comply, the commission shall seek
59 judicial enforcement to compel compliance.

§21-3A-12. Appeal from review commission.

1 Any employer or employee, or the commissioner,
2 adversely affected or aggrieved by an order of the
3 review commission, after all administrative remedies
4 provided by this article have been exhausted, is entitled

5 to judicial review pursuant to section four, article five,
6 chapter twenty-nine-a of this code.

**§21-3A-13. Discrimination against employee filing
complaint.**

1 (a) No employer may discharge or in any manner
2 discriminate against any employee because the em-
3 ployee has filed any complaint, instituted or caused to
4 be instituted or participated in any proceedings under
5 or related to this article or has testified or is about to
6 testify in any such proceedings or because of the
7 exercise by such employee on behalf of himself or others
8 of any right afforded by this article.

9 (b) Any employee who believes that he has been
10 discharged or otherwise discriminated against by any
11 person in violation of this section may, within thirty
12 days after the violation occurs, file a complaint with the
13 commissioner alleging such discrimination. Upon
14 receipt of the complaint the commissioner shall cause
15 the investigation to be made. If upon such investigation
16 the commissioner determines that the provisions of this
17 section have been violated, he shall bring an action in
18 the circuit court for Kanawha County against the
19 employer. In any such action the court has jurisdiction,
20 for cause shown, to restrain violations of subsection (a)
21 of this section and to order all appropriate relief
22 including rehiring or reinstatement of the employee to
23 his former position with back pay plus interest at the
24 statutory rate in this state.

25 (c) Within thirty days of the receipt of a complaint
26 filed under this section, the commissioner shall notify
27 the complainant and the employer of his determination
28 concerning the complaint.

**§21-3A-14. Enjoining of conditions or practices at places
of employment; mandamus against commis-
sioner for failure to act.**

1 (a) The circuit court has jurisdiction upon petition by
2 the commissioner to restrain or enjoin any conditions or
3 practices in any workplace which are such that a danger
4 exists which could reasonably be expected to cause

5 death or serious physical harm immediately or before
6 the imminence of the danger can be eliminated through
7 the enforcement procedures otherwise provided by this
8 article. Any order issued under this section may require
9 such steps to be taken as are necessary to avoid, correct
10 or remove the imminent danger and prohibit the
11 employment or presence of any individual in locations
12 or under conditions where the imminent danger exists,
13 except the presence of those individuals whose presence
14 is necessary to avoid, correct or remove such imminent
15 danger or to maintain the capacity of a continuous
16 process operation, to resume normal operations without
17 a complete cessation of operations or, where a cessation
18 of operation is necessary, to permit such to be accom-
19 plished in a safe and orderly manner. No temporary
20 restraining order issued without notice may be effective
21 for more than five days.

22 (b) Whenever and as soon as an inspector concludes
23 that conditions or practices described in subsection (a)
24 of this section exist in any place of employment, he shall
25 inform the affected employees and employer of the
26 danger and shall further inform those persons that he
27 is recommending to the commissioner that relief be
28 sought. If the commissioner fails to seek relief under this
29 section within forty-eight hours of being notified of such
30 conditions, any employee who may have been injured by
31 reason of such failure or the authorized representative
32 of such employee may seek injunctive relief.

§21-3A-15. Research and demonstration projects.

1 The commissioner shall conduct research and under-
2 take demonstration projects, relating to occupational
3 safety and health issues and problems, either within the
4 labor department or by grants or contracts. The
5 commissioner may prescribe rules requiring employers
6 to measure, record and make reports on exposure of
7 employees to toxic substances which he believes may
8 endanger the health or safety of employees. The
9 commissioner shall cooperate with the director of the
10 national institute for occupational safety and health of
11 the department of health and human services of the
12 United States in establishing programs of medical

13 examinations and tests necessary to determine the
 14 incidence of occupational illness and employee suscep-
 15 tibility to such illnesses. Such programs, on the request
 16 of the employer, may be paid for by the commissioner,
 17 together with such other assistance as may be required.
 18 Information obtained under this section shall be made
 19 public without revealing the names of individual
 20 workers covered by physical examination or special
 21 studies and shall be made available to employers,
 22 employees and their authorized representative.

§21-3A-16. Education program.

1 (a) The commissioner shall conduct directly or by
 2 grants or contracts education programs to provide an
 3 adequate supply of qualified personnel to carry out the
 4 purposes of this article and information programs on the
 5 importance and proper use of adequate safety and
 6 health equipment.

7 (b) The commissioner is authorized to conduct di-
 8 rectly or by grants or contracts short-term training of
 9 personnel engaged in work related to this responsibility
 10 under this article.

11 (c) The commissioner shall provide for the establish-
 12 ment and supervision of programs for the education and
 13 training of employers and employees in the recognition,
 14 avoidance and prevention of unsafe or unhealthful
 15 working conditions in employment covered by this
 16 article. The commissioner shall consult with and advise
 17 employers, employees and organizations representing
 18 employers, and employees as to effective means of
 19 preventing occupational injuries and illnesses.

§21-3A-17. Reports to United States secretary of labor.

1 In regard to the administration and enforcement of
 2 this article, the commissioner shall make reports to the
 3 secretary of labor of the United States in such form and
 4 containing such information as the secretary shall from
 5 time to time require.

**§21-3A-18. Occupational safety and health advisory
 board created; qualifications of members;
 members appointed by governor; term;**

filling of vacancies; payment of expenses.

1 There is created a public employees occupational
2 safety and health advisory board to assist the commis-
3 sioner in establishing standards for the occupational
4 safety and health of public employees. The board shall
5 make itself available to receive information regarding
6 matters of concern to public employees in the areas of
7 occupational safety and health.

8 The board shall be composed of nine members in
9 addition to the commissioner of labor who shall be an
10 ex officio member and shall sit as chairman of the
11 advisory board. The members of the board shall be
12 citizens and residents of this state, who shall be selected
13 on the basis of their responsibility, experience,
14 competence and commitment in the field of public
15 employee occupational safety and health.

16 The members of the board shall be appointed by, and
17 serve at the will and pleasure of, the governor. There
18 shall be three members representing public employers,
19 three members who are public employees in the various
20 areas of state and local government, and three members
21 who are not employers or employees as defined in this
22 section and do not represent by their occupation either
23 party. No more than five members appointed by the
24 governor shall be from the same political party.

25 The terms of all members shall commence on the first
26 day of July, one thousand nine hundred eighty-six. The
27 terms of one member representing public employers,
28 one member representing public employees, and one
29 member representing the general public shall run
30 through the thirtieth day of June, one thousand nine
31 hundred eighty-seven. The terms of one other member
32 representing public employers, one other member
33 representing public employees, and one other member
34 representing the general public shall run through the
35 thirtieth day of June, one thousand nine hundred eighty-
36 eight. The terms of the remaining member representing
37 public employers, the remaining member representing
38 public employees, and the remaining member represent-
39 ing the general public shall run through the thirtieth

40 day of June, one thousand nine hundred eighty-nine.
41 Thereafter, terms of members shall be for three years.

42 All members shall be eligible for reappointment by
43 the governor. A member shall, unless sooner removed,
44 continue to serve until his term expires and his
45 successor has been appointed by the governor and has
46 qualified. A vacancy caused by the death, resignation,
47 or removal of a member prior to the expiration of his
48 term shall be filled by the governor and only for the
49 remainder of such term.

50 The members of the advisory board shall serve
51 without compensation but shall be entitled to reimbur-
52 sement for their necessary expenses actually incurred in
53 the performance of their duties.

§21-3A-19. Optional coverage by subdivisions.

1 The governing body of any county or municipality or
2 any department, division, bureau, board, council, agency
3 or authority of any county or municipality or of any
4 school district or special purposes district created
5 pursuant to law may by ordinance, resolution or other
6 procedure explicitly elect that some or all of its
7 workplaces or employees shall be covered by the
8 provisions of this article. The commissioner shall issue
9 rules and regulations and prescribe forms and proce-
10 dures regarding such optional coverage. The commis-
11 sioner may issue rules and regulations providing for
12 variances from the procedural and substantive require-
13 ments of this article in the case of the optional coverage
14 described herein.

Enr. Com. Sub. for H. B. 1656] 22

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Beverly C. Williams
Chairman Senate Committee

Floyd Fuller
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Ladd C. Smith
Clerk of the Senate

Donald J. Kopp
Clerk of the House of Delegates

Don Tonkovich
President of the Senate

Joseph P. Allright
Speaker of the House of Delegates

The within *disappeared* this the *26th*
day of *March*, 1986.

Arthur A. Shaffer
Governor

TO THE

GOVERNOR

Date 3/21/86

Time 4:53 pm

RECEIVED

1986 MAR 23 PM 6 23

SECRETARY OF STATE

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/26/86