

70: 315

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1987

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ENROLLED

Com. Sub. for Com. Sub. for
SENATE BILL NO. 315

(By Senator *Boettner, et al.*)

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PASSED *March 14,* 1987

In Effect *ninety days from* Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR
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FOR
Senate Bill No. 315

(SENATORS BOETTNER, HOLLIDAY, HOLMES, CHERNENKO, KAUFMAN,
LUCHT AND CHAFIN, *original sponsors*)

[Passed March 14, 1987; 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; definitions; application of article; duties of employer and employee; providing for the adoption of rules relating to occupational health and safety standards; adoption of federal and state standards; variances; emergency standards; authorizing the commissioner of labor to conduct appropriate inspections and investigations; records to be kept; issuance of citations by commissioner for violations; establishing an occupational health and safety review commission to review the commissioner's citations and determinations; terms; compensation; notification to employer of violation; hearing; appeal from review commission; discrimination against employee;

investigation; civil action; authorizing circuit courts to enjoin certain dangerous conditions or practices in places of employment; research and demonstration projects; education programs; reports to United States secretary of labor; advisory board; membership; appointment; terms; vacancies; and 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 public
2 employees in the workplace is of primary public concern.
3 Personal injuries and illnesses arising out of work
4 situations result not only in wage loss and increased
5 medical expenses for public employees, but also in
6 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 work
11 environments free from recognized and avoidable hazards;

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

15 (c) That it is in the public interest for public employers
16 and public employees to join in a cooperative effort to
17 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 state,
8 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, but shall
12 not include the department of corrections, the department
13 of health and the Legislature;

14 (e) "Occupational safety and health standard" means a
15 standard for health or safety which requires the adoption or
16 use of one or more practices, means, methods, operations or
17 processes reasonably necessary or appropriate to provide
18 safe and healthful employment in places of employment;

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

20 (g) "Workplace" means a place where public employees
21 are assigned to work but shall not include any place where
22 public employees are assigned to work that is inspected and
23 regulated in accordance with federal occupational safety
24 and health standards or mine safety and health
25 administration standards, or facilities under the authority
26 of the department of corrections, the department of health,
27 or the Legislature.

**§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 a
2 division of occupational safety and health, comprised of a
3 subdivision for safety, a subdivision for health and such
4 other subdivisions as the commissioner considers
5 necessary. This division shall administer all matters
6 pertaining to occupational safety and occupational health.

7 (b) The labor commissioner may require the assistance
8 of other state agencies and may enter into agreements with
9 other state agencies and political subdivisions of the state
10 for the administration of this chapter.

11 (c) The labor commissioner shall provide for
12 coordination between the division of occupational safety
13 and health and the workers' compensation commissioner
14 including, but not limited to, the establishment of
15 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 West
3 Virginia.

4 (b) Nothing in this article may be construed to
5 supersede or in any manner affect any workers'
6 compensation law or to diminish in any manner common
7 law or statutory rights, duties or liabilities of employers or
8 employees, under any law with respect to injuries, diseases
9 or death of employees arising out of and in the course of
10 employment.

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

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

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

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

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

§21-3A-6. Rules.

1 In the rules adopted under the authority of this article,
2 the commissioner shall:

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

6 (b) Provide educational programs to encourage

7 employers and employees in their efforts to reduce the
8 number of safety and health hazards and to stimulate
9 employers and employees to institute new programs, and to
10 perfect existing programs to provide for safe and healthful
11 working conditions;

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

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

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

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

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

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

14 (b) In the event of emergency or unusual situations, the
15 commissioner shall provide for an emergency temporary
16 standard to take effect immediately if he determines:

17 (1) Employees are exposed to grave danger from
18 exposure to substances or agents determined to be toxic or
19 physically harmful or from new hazards; and

20 (2) The emergency standard is necessary to protect
21 employees from such danger.

22 The emergency standard may be in effect not longer than
23 one hundred eighty days or, if renewed in compliance with
24 the laws of this state governing the adoption or extension of
25 rules, not longer than sixty additional days. On or before the
26 expiration date of the emergency standard or renewal
27 thereof, the commissioner shall develop a permanent
28 standard to replace the emergency standard.

29 (c) Any standard promulgated shall prescribe the use of
30 labels or other appropriate forms of warning necessary to
31 ensure that employees are apprised of all hazards to which
32 they are exposed, relevant symptoms and appropriate
33 emergency treatment and, where appropriate, proper
34 conditions and precautions of safe use or exposure. The
35 standard shall also prescribe suitable protective equipment
36 and control procedures for use in connection with such
37 hazards and shall provide for measuring employee
38 exposure in the manner necessary for the protection of
39 employees. In addition, where appropriate, the standard
40 shall prescribe the type and frequency of medical
41 examinations or other tests which shall be made available
42 to employees exposed to such hazards in order to determine
43 any adverse effect from that exposure.

44 (d) Any employer may apply to the commissioner for a
45 temporary order granting a variance from a standard, or
46 any provision thereof, promulgated under this section. A
47 temporary order shall be granted if the employer files an
48 application which meets the requirements of subsection (e)
49 of this section and establishes that:

50 (1) He is unable to comply with a standard by its
51 effective date because of unavailability of professional or
52 technical personnel or of materials and equipment needed
53 to come into compliance with the standard or because
54 necessary construction or alteration of facilities cannot be
55 completed by the effective date;

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

58 (3) He has an effective program for coming into

59 compliance with the standard as quickly as practicable.
 60 Any temporary order issued under this subsection shall
 61 prescribe the practices, means, methods, operations and
 62 processes which the employer must adopt and use while the
 63 order is in effect and state in detail his program for coming
 64 into compliance with the standard. A temporary order may
 65 be granted only after notice by the commissioner to
 66 employees and an opportunity for a hearing before the
 67 commissioner: *Provided*, That the commissioner may issue
 68 one interim order to be effective until a decision is made on
 69 the basis of the hearing. No temporary order may be in
 70 effect for longer than the period needed by the employer to
 71 achieve compliance with the standard or one year,
 72 whichever is shorter: *Provided, however*, That an order may
 73 be renewed if the requirements of this subsection are met
 74 and if an application for renewal is filed at least ninety days
 75 prior to the expiration date of the order. No interim renewal
 76 of an order may remain in effect longer than one hundred
 77 eighty days.

78 (e) An application for a temporary variance order shall
 79 contain:

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

82 (2) A representation by the employer, supported by
 83 representations from qualified persons who have firsthand
 84 knowledge of the facts represented, that he is unable to
 85 comply with the standard or portion thereof and a detailed
 86 statement of the reasons therefor;

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

90 (4) A statement of when he expects to comply with the
 91 standard and what steps he has taken and what steps he will
 92 take, with dates specified, to come into compliance with the
 93 standard; and

94 (5) A certification that he has informed his employees of
 95 the application by giving a copy thereof to their authorized
 96 representative, posting a statement giving a summary of the
 97 application and specifying where a copy may be examined
 98 at the place or places where notices to employees are
 99 normally posted and by other appropriate means. A
 100 description of how employees have been informed shall be
 101 contained in the certification. The information to

102 employees shall inform them of their right to petition the
103 commissioner for a hearing. The commissioner is
104 authorized to grant a variance from any standard or portion
105 thereof whenever he determines that a variance is necessary
106 to permit an employer to participate in an experiment,
107 approved by the commissioner, designed to demonstrate or
108 validate new and improved techniques to safeguard the
109 health or safety of workers.

110 (f) Any affected employer may apply to the
111 commissioner for an order granting a variance from a
112 standard promulgated under this section. Affected
113 employees shall be given notice of each such application
114 and an opportunity to participate in a hearing before the
115 commissioner. The commissioner shall issue such order if he
116 determines on the record, after opportunity for an
117 inspection where appropriate and a hearing, that the
118 proponent of the variance has demonstrated by a
119 preponderance of the evidence that the conditions,
120 practices, means, methods, operations or processes used or
121 proposed to be used by an employer will provide
122 employment and places of employment which are as safe
123 and healthful as those which would prevail if he complied
124 with the standard. The order issued shall prescribe the
125 conditions the employer must maintain and the practices,
126 means, methods, operations and processes which he must
127 adopt and utilize to the extent they differ from the standard
128 in question. The order may be modified or revoked upon
129 application by an employer or employees, or by the
130 commissioner on his own motion, in the manner prescribed
131 for its issuance under this subsection at any time after six
132 months from its issuance.

133 (g) Any employee who may be adversely affected by a
134 standard or variance or regulation issued under this section
135 may challenge the validity or applicability of a standard or
136 variance or regulation by bringing an action for a
137 declaratory judgment.

138 (h) It is the expressed intent of the Legislature that an
139 unlimited number of variances may be granted, if the
140 conditions of this section are met.

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

1 (a) In order to carry out the purposes of this article, the
2 commissioner or his agent, upon presenting appropriate

3 credentials to the employer, is authorized:

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

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

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

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

46 notices or other appropriate means, keep their employees
47 informed of their protections and obligations under this
48 entire article, including the provisions of applicable
49 standards.

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

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

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

82 (e) Subject to rules issued by the commissioner, a
83 representative of the employer and a representative
84 authorized by the employees of the employer shall be given
85 an opportunity to accompany the commissioner or his
86 authorized representative during the physical inspection of
87 any workplace for the purpose of aiding the inspection.
88 Where there is no authorized employee representative, the
89 commissioner or his authorized representative shall consult

90 with a reasonable number of employees concerning matters
91 of health and safety in the workplace.

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

126 (2) Prior to or during any inspection of a workplace, any
127 employees or representative of employees employed in the
128 workplace may notify the commissioner, or any
129 representative of the commissioner responsible for
130 conducting the inspection, in writing of any violation of this
131 entire article which they have reason to believe exists in the
132 workplace. The commissioner shall, by rule, establish

133 procedures for review of any refusal by a representative of
134 the commissioner to issue a citation with respect to any
135 alleged violation, and shall furnish the employer and the
136 employees or representative of employees requesting the
137 review a written statement of the reasons for the
138 commissioner's final disposition of the case. The
139 notification does not preclude future enforcement action if
140 conditions change.

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

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

§21-3A-9. Citation for violation.

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

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

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

1 (a) There is hereby created a West Virginia occupational
2 safety and health review commission within the labor
3 department for administrative purposes only. The
4 commission shall consist of three members appointed by the
5 governor; by and with consent of the Senate, from among
6 persons who, by reason of training, education or
7 experience, are qualified to carry out the functions of the

8 commission under this article. The governor shall designate
9 one of the members of the commission to serve as chairman.

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

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

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

27 (e) The chairman of the commission and each of the
28 other two members shall be paid a per diem allowance for
29 days in performance of their duties at the rate of one
30 hundred dollars per diem, together with their expenses at a
31 rate determined by law.

32 (f) To conduct hearings, the review commission or
33 chairman may subpoena and examine witnesses, require
34 the production of evidence, administer oaths and take
35 testimony and depositions.

36 (g) After hearing an appeal the review commission may
37 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
2 commissioner issues a citation pursuant to section nine, he
3 shall, 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 days
7 from the receipt of notice within which to notify the
8 commissioner that he wishes to contest the citation or to
9 seek a variance. If the employer or employee fails to so
10 notify the commissioner within fifteen days, and if no notice

11 is filed by any employee or representative of employees
12 pursuant to subsection (c) of this section within fifteen
13 days, the citation, as proposed, becomes a final order and
14 not subject to review by any court or agency.

15 (b) If the commissioner has reason to believe that an
16 employer or employee has failed to correct a violation for
17 which a citation has been issued within the period
18 permitted for correction, the commissioner shall notify the
19 employer or employee by certified mail or personal service
20 of such failure and the commissioner shall seek judicial
21 enforcement of such citation order: *Provided*, That in the
22 case of a review proceeding initiated by the employer or
23 employee under this section in good faith and not solely for
24 delay, the period permitted for correction of the violation
25 does not begin to run until the entry of a final order by the
26 review commission. The notification by the commissioner
27 shall inform the employer or employee that he has fifteen
28 working days from the receipt of the notice within which to
29 notify the commissioner that he wishes to contest the
30 notification. If, within fifteen days from receipt of
31 notification under this section, the employer or employee
32 fails to notify the commissioner that he intends to contest
33 the notification, the notification and assessment as
34 proposed become a final order of the commission and not
35 subject to review by any court or agency.

36 (c) If an employer or employee notifies the
37 commissioner within the fifteen day period provided for in
38 subsection (b) of this section that he wishes to contest the
39 notification, the commissioner shall immediately advise the
40 commission of the notification and the commission shall
41 afford an opportunity for a hearing. Upon a showing by an
42 employer or employee of a good faith effort to comply with
43 the abatement requirements of a citation and a showing
44 that abatement has not been completed because of factors
45 beyond his reasonable control, the commissioner, after an
46 opportunity for a hearing as provided in this subsection,
47 shall issue an order affirming or modifying the abatement
48 requirements in the citation. The rules of procedure
49 prescribed by the commission shall provide affected
50 employees or representatives of affected employees an
51 opportunity to participate as parties to hearings under this
52 subsection.

53 (d) If the employer or employee, at a hearing under
54 subsection (c) of this section, does not prove he made a good

55 faith effort to comply, the commission shall seek judicial
56 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 review
3 commission, after all administrative remedies provided by
4 this article have been exhausted, is entitled to judicial
5 review pursuant to section four, article five, chapter
6 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 employee
3 has filed any complaint, instituted or caused to be instituted
4 or participated in any proceedings under or related to this
5 article, has testified or is about to testify in any such
6 proceedings or has exercised on behalf of himself or others
7 any right afforded by this article.

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

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

1 (a) The circuit court of Kanawha County or the circuit
2 court in the county wherein the workplace is located has
3 jurisdiction, upon petition by the commissioner, to restrain
4 or enjoin any conditions or practices in any workplace
5 which are such that a danger exists which could reasonably

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

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

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

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

14 susceptibility to such illnesses. Such programs, upon the
15 request of the employer, may be paid for by the
16 commissioner, together with such other assistance as may
17 be required. Information obtained under this section shall
18 be made public without revealing the names of individual
19 workers covered by physical examination or special studies
20 and shall be made available to employers, employees and
21 their authorized representatives.

§21-3A-16. Education program.

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

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

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

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

1 In regard to the administration and enforcement of this
2 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 safety
2 and health advisory board to assist the commissioner in
3 establishing standards for the occupational safety and
4 health of public employees. The board shall make itself

5 available to receive information regarding matters of
6 concern to public employees in the areas of occupational
7 safety and health.

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

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

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

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

48 The members of the advisory board shall serve without
49 compensation but shall be entitled to reimbursement for
50 their necessary expenses actually incurred in the
51 performance of their duties.

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

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

[Handwritten signatures and initials]

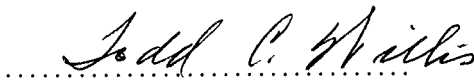
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee

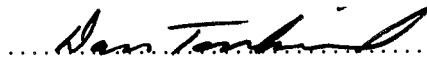

Chairman House Committee

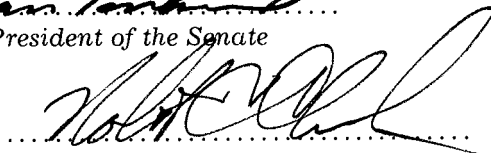
Originated in the Senate.


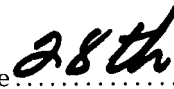

In effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within  this the 
day of  1987.


Governor

PRESENTED TO THE
GOVERNOR

Date 3/23/87

Time 3:08 p.m.

RECEIVED

CO MR 30 4/11/25

OFFICE OF THE
SECRETARY