

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 295
SENATE BILL 342

AN ACT TO PROVIDE FOR THE SAFETY AND HEALTH OF EMPLOYEES IN THE STATE OF NORTH CAROLINA AND TO PROVIDE FOR THE ENFORCEMENT AND ADMINISTRATION OF THIS ACT IN CONFORMITY WITH PLANS ENTERED INTO BETWEEN THE STATE AND THE FEDERAL GOVERNMENT.

The General Assembly of North Carolina enacts:

Section 1. Short title and legislative purpose, (a) This act shall be known as the "Occupational Safety and Health Act of North Carolina" and also may be referred to by abbreviations as "OSHANC."

(b) Legislative findings and purpose:

- (1) The General Assembly finds that the burden of employers and employees of this State resulting from personal injuries and illnesses arising out of work situations is substantial; that the prevention of these injuries and illnesses is an important objective of the government of this State; that the greatest hope of attaining this objective lies in programs of research, education and enforcement, and in the earnest cooperation of the Federal and State governments, employers and employees.
- (2) The General Assembly of North Carolina declares it to be its purpose and policy through the exercise of its powers to assure so far as possible every working man and woman in the State of North Carolina safe and healthful working conditions and to preserve our human resources;
 - (i) by encouraging employers and employees in their effort to reduce the number of occupational safety and health hazards at the place of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;
 - (ii) by providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;
 - (iii) by authorizing the Commissioner to develop occupational safety and health standards applicable to business giving consideration to the needs of employers and employees and to adopt standards promulgated from time to time by the Secretary of Labor under the Occupational Safety and Health Act of 1970, and by creating a safety and health review board for carrying out adjudicatory functions under this act;
 - (iv) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;
 - (v) by providing occupational health criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience;

- (vi) by providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health;
- (vii) by providing an effective enforcement program which shall include a prohibition against giving advance notice of an inspection and sanctions for any individual violating this prohibition;
- (viii) by providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this act and accurately describe the nature of the occupational safety and health problem;
- (ix) by encouraging joint employer • employee efforts to reduce injuries and diseases arising out of employment;
- (x) by providing for research in the field of occupational safety and health, by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;
- (xi) by exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;
- (xii) by authorizing the Commissioner to enter into contracts with the State Board of Health, or any other state or local units, to the end that the Commissioner and the State Board of Health and other state or local units may fully cooperate and carry out the ends and purposes of this act.

(c) The General Assembly of North Carolina appoints and elects the North Carolina Department of Labor as the designated agency to administer the Occupational Safety and Health Act of North Carolina.

Sec. 2. Definitions. In this act, unless the context otherwise requires:

- (1) The term "Department" means the Department of Labor of North Carolina.
- (2) The term "Commissioner" means the Commissioner of Labor of North Carolina.
- (3) The term "Director" means the officer or agent appointed by the Commissioner of Labor for the purpose of assisting in the administration of the Occupational Safety and Health Act of North Carolina.
- (4) The term "State" means the State of North Carolina.
- (5) The term "person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives.
- (6) The term "employer" means a person engaged in a business who has employees, including any state or political subdivision of a state, but does not include the employment of domestic workers employed in the place of residence of his or her employer.
- (7) The term "Secretary" means the United States Secretary of Labor.
- (8) The term "employee" means an employee of an employer who is employed in a business or other capacity of his employer, including any and all business units and agencies owned and/or controlled by the employer.
- (9) The term "Classified Service" means a position included in the State Merit System of Personnel Administration subject to the laws, rules and regulations of the State Personnel Board as administered by the State Personnel Director and as set forth in Chapter 126 of the General Statutes, 1971 Cumulative Supplement to Volume 3B.

- (10) The term "issue" means an industrial, occupational or hazard grouping.
- (11) The term "Federal Act," as referred to in this act, means the Occupational Safety and Health Act of 1970 (Public Law 91-596, 91st Congress, Act of December 29, 1970, 84 Stat. 1950).
- (12) The term "established federal standard" means any operative occupational safety and health standard established by any agency of the United States and presently in effect, or contained in any Act of Congress in force on the date of enactment of this act, and adopted by the Secretary of Labor under the Occupational Safety and Health Act of 1970.
- (13) The term "imminent danger" means any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death, or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this act.
- (14) The term "Occupational Safety and Health Standards" means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, safety devices, operations or processes reasonably necessary and appropriate to provide safe and healthful employment and places of employment, and shall include all occupational safety and health standards adopted and promulgated by the Secretary which also may be and are adopted by the State of North Carolina under the provisions of this act. This term includes but is not limited to interim federal standards, consensus standards, any proprietary standards or permanent standards, as well as temporary emergency standards which may be adopted by the Secretary, promulgated as provided by the Occupational Safety and Health Act of 1970, and which standards or regulations are published in the Code of Federal Regulations or otherwise properly promulgated under the federal act or any appropriate federal agencies.
- (15) The term "board" means the Safety and Health Review Board established under this act.
- (16) The term "advisory council" shall mean the advisory council or body established under this act.
- (17) The term "days" shall mean a calendar day unless otherwise noted.
- (18) A "serious violation" shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use at such place of employment, unless the employer did not know, and could not, with the exercise of reasonable diligence, know of the presence of the violation.
- (19) The term "Deputy Commissioner" means the Deputy Commissioner of the North Carolina Department of Labor, who is appointed by the Commissioner to aid and assist the Commissioner in the performance of his duties. The Deputy Commissioner shall exercise such power and authority as delegated to him by the Commissioner.

Sec. 3. Coverage. The provisions of this act or any standard or regulation promulgated pursuant to this act shall apply to all employers and employees except:

- (a) the federal government, including its departments, agencies and instrumentalities;
- (b) employees whose safety and health are subject to protection under the Atomic Energy Act of 1954, as amended;

(c) employees whose safety and health are subject to protection under the Federal Coal Mine Health and Safety Act of 1969 (30 USC 801) and the Federal Metal and Nonmetallic Mine Safety Act (30 USC 725), or the Federal Railroad Safety Act of 1970 (45 USC 431-41);

(d) railroad employees whose safety and health are subject to protection under the Federal Safety Appliance Act (45 USC 1-50), or the Federal Railroad Safety Act of 1970 (45 USC 431-41);

(e) employees engaged in all maritime operations;

(f) employees whose employer is within that class and type of employment which does not permit federal funding, on a matching basis, to the State in return for state enforcement of all occupational safety and health issues.

Sec. 4. Rights and duties of employers. Rights and duties of employers shall include but are not limited to the following provisions:

(a) each employer shall furnish to each of his employees conditions of employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious injury or serious physical harm to his employees;

(b) each employer shall comply with occupational safety and health standards or regulations promulgated pursuant to this act;

(c) each employer shall refrain from any unreasonable restraint on the right of the Commissioner or Director, or their lawfully appointed agents, to inspect the employer's place of business. Each employer shall assist the Commissioner, the Director or the lawful agents of either or both of them, in the performance of their inspection duties by supplying or by making available information, any necessary personnel or necessary inspection aides;

(d) any employer, or association of employers, is entitled to participate in the development of standards by submission of comments on proposed standards, participation in hearings on proposed standards, or by requesting the development of standards on a given issue under Section 6 of this act;

(e) any employer is entitled, under Section 12, to review of any citation issued because of his alleged violation of any standard promulgated under this act, or the length of the abatement period allowed for the correction of an alleged violation;

(f) any employer is entitled, under Section 12, to a review of any penalty in the form of civil damages assessed against him because of his alleged violation of this act;

(g) any employer is entitled, under Section 7, to seek an order granting a variance from any occupational safety or health standard;

(h) any employer is entitled, under Section 27, to protection of his trade secrets and other legally privileged communications.

Sec. 5. Rights and duties of employees. Rights and duties of employees shall include but are not limited to the following provisions:

(a) Employees shall comply with occupational safety and health standards and all rules, regulations and orders issued pursuant to this act which are applicable to their own actions and conduct.

(b) Employees and representatives of employees are entitled to participate in the development of standards by submission of comments on proposed standards, participation in hearings on proposed standards, or by requesting the development of standards on a given issue under Section 6 of this act.

(c) Employees shall be notified by their employer of any application for a temporary order granting the employer a variance from any provision of this act or standard or regulation promulgated pursuant to this act.

(d) Employees shall be given the opportunity to participate in any hearing which concerns an application by their employer for a variance from a standard promulgated under this act.

(e) Any employee who may be adversely affected by a standard or variance issued pursuant to this act may file a petition for review with the Commissioner who shall review the matters set forth and alleged in the petition.

(f) Any employee who has been exposed or is being exposed to toxic materials or harmful physical agents in concentrations or at levels in excess of that provided for by any applicable standard shall have a right to file a petition for review with the Commissioner who shall investigate and pass upon same.

(g) Subject to regulations issued pursuant to this act any employee or authorized representative of employees shall be given the right to request an inspection and to consult with the Commissioner, Director, or their agents, at the time of the physical inspection of any work place as provided by the inspection provision of this act.

(h) No employee shall be discharged or discriminated against because such employee has filed any complaint or instituted or caused to be instituted any proceeding or inspection under or related to this act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this act.

(i) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of (h) hereinafter mentioned may, within 30 days after such violation occurs, file a complaint with the Commissioner alleging such discrimination. Upon receipt of such complaint, the Commissioner shall cause such investigation to be made as he deems appropriate. If upon such investigation, the Commissioner determines that the provisions of the above subsection have been violated, he shall bring an action against such person in the Superior Court Division of the General Court of Justice in the county wherein the discharge or discrimination occurred. In any such action the Superior Court shall have jurisdiction, for cause shown to restrain violations of paragraph (h) of this section and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.

(j) Within 90 days of the receipt of a complaint filed under subparagraph (i) above the Commissioner shall notify the complainant of his determination.

(k) Any employee or representative of employees who believes that any period of time fixed in the citation given to his employer for correction of a violation is unreasonable has the right to contest such time for correction by filing a written and signed notice within 20 days from the date the citation is posted within the establishment.

(l) Nothing in this or any other provision of this act shall be deemed to authorize or require medical examination, immunization, or treatment for those who object thereto on religious grounds, except where such is necessary for the protection of the health or safety of others.

Sec. 6. Development and promulgation of standards; adoption of federal standards and regulations. (a) All occupational safety and health standards promulgated under the Federal Act by the Secretary, and any modifications, revision, amendments or revocations in accordance with the authority conferred by the Federal Act or any other federal act or agency relating to safety and health and adopted by the Secretary shall in all respects be the rules and regulations of the Commissioner of this State unless the Commissioner shall make, promulgate and publish an alternative State rule, regulation or standard as effective as the federal requirement and providing safe and healthful employment in places of employment as required by the Federal Act and standards and regulations heretofore referred to and as provided by the Occupational Safety and Health Act of 1970. All standards and regulations promulgated under the Federal Act by the Secretary, and any modifications, revisions, or revocations in accordance with the authority conferred by the Federal Act, or any other federal act or agency relating to safety and health and adopted by the Secretary, shall become effective upon the date the same is filed by the Commissioner in the office of the Secretary of State.

(b) In the event the Commissioner shall develop his own standards and regulations relating to occupational safety and health which he shall consider to be as effective and efficient as any of the federal regulations or standards, then the Commissioner may by regulation promulgate, modify, or revoke any occupational safety or health standard developed by him in the following manner:

- (1) Whenever the need or desirability of promulgating a regulation or standard by the Commissioner which serves the objective of this act is indicated by information submitted in writing to the Commissioner by any interested person, employer, employee, or representative of any organization of employers or employees or upon information derived from recognized standards-producing organizations or upon the basis of information developed by the Commissioner or otherwise available to him, he shall determine the scope of issues to be covered by such standard or regulation and the method to be followed in the development of such standard or regulation. If the Commissioner finds it desirable he may request the recommendation of the Advisory Council appointed under this act and shall provide such Advisory Council with any proposals of his own, together with all pertinent factual information developed by technical experts or otherwise available, including the result of research, demonstrations, experiments, and experience. Recommendations of the Advisory Council shall be submitted to the Commissioner within 90 days from the date of the receipt of such request or within such longer or shorter period as may be prescribed by the Commissioner, but in no event for a period which is longer than 270 days.
- (2) When the Commissioner wishes to promulgate a regulation or standard in this section, he shall consider any proposed revisions prior to publication of proposed standards and regulations under paragraph (3) of this subsection, and may make revisions appropriate to the effectiveness of the proposed standards and regulations.
- (3) The Commissioner shall, following the review provided for in paragraph (2) above, publish a notice that he intends to issue a standard or regulation modifying or revoking an occupational safety or health standard or regulation in one newspaper of general circulation in Asheville, Charlotte, Durham, Greensboro, Raleigh, Wilmington and Winston-Salem, and shall afford interested persons a period of 30 days after publication to submit written data or comments. The notice shall describe the content of the proposed regulation and shall state where copies of the proposed rule, regulation or standard may be obtained.
- (4) On or before the last day of the period provided for the submission of written data or comment under paragraph (3) above, any interested person may file with the Commissioner written objections to the proposed regulation, rule or standard, stating the grounds therefor and requesting a public hearing on such objections. Within 30 days after the last day for filing such objections, the Commissioner shall issue a call for a public hearing on the proposed occupational safety or health rule, regulation or standard to which such objections have been filed. The notice of hearing shall be published in one newspaper of general circulation in Asheville, Charlotte, Durham, Greensboro, Raleigh, Wilmington and Winston-Salem, 30 days prior to the hearing. The notice shall include the date, time, and place of the hearing and shall indicate concisely and accurately the subject matter of the proposed rule, regulation or standard to which objections have been filed. It shall also

- state where copies of the full text of the proposed rule, regulation or standard may be obtained.
- (5) The hearing shall be presided over by the Commissioner or any authorized agent of the department, or he may delegate such presiding to the Director and shall provide reasonable opportunity for reception of opinions, memoranda and advice concerning such proposed regulation, rule or standard by interested persons and organizations.
 - (6) Within 60 days after the expiration of the period provided for the submission of written data or comments as provided by this section, or within 60 days after the completion of any hearing held under the provision of this section, the Commissioner shall issue a regulation promulgating, modifying, or revoking such occupational safety or health standard, rule or regulation so developed by him, or make a determination that such rule, standard or regulation shall not be issued. In addition, he shall issue a statement of reasons for any changes made from the proposed regulation, rule or standard, or reasons why no regulation, rule or standard was issued. Such regulation, rule or standard may contain a provision delaying its effective date for such period (not in excess of 90 days) as the Commissioner determines may be necessary to insure that affected employers and employees will be informed of the existence of the rule, regulation or standard and of its terms and that employers affected are given an opportunity to familiarize themselves and their employees with the existence of the requirements of the rule, regulation or standard. Notice of such promulgation, modification or revocation, shall be published in the same manner as heretofore provided in this section and as related to the publication of proposed rules, regulations and standards. Copies of the Commissioner's ruling shall be made available without cost to reasonably interested parties.
 - (7) Upon adoption by the enactment of this act of the occupational safety or health standards, rules or regulations, promulgated under the Federal Act by the Secretary, and modifications, revisions, or revocations in accordance with the authority conferred by the Federal Act or any other federal act or agency relating to safety and health adopted by the Secretary, such rules, regulations and standards may be issued and promulgated without meeting the requirements of publication of proposed regulations, rules or standards and without meeting the requirements of hearings as provided in this section. Notice published in the Federal Register, with reference to proposed change of standards, shall be deemed to be notice to employers and employees with regard to that change. Hearings and the findings of the Secretary of Labor with reference to the proposed change of standards, shall be substituted for the hearing and findings of the Commissioner.
- (c) (1) The Commissioner shall provide, without regard to the aforementioned paragraph in this section, for an emergency temporary standard to take immediate effect upon publication of such emergency temporary standard in one newspaper of general circulation in Asheville, Charlotte, Durham, Greensboro, Raleigh, Wilmington and Winston-Salem if he determines (i) that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and (ii) that such emergency standard is necessary to protect employees from such danger.

- (2) Emergency standards may cover issues not dealt with by statutes or regulations in existence and may displace standards heretofore promulgated.
 - (3) Any such emergency temporary standard shall be effective until superseded by a standard promulgated in accordance with the procedures prescribed in paragraph (4) of this subsection.
 - (4) Upon publication of such emergency temporary standard, the Commissioner shall commence a proceeding in accordance with Section 6(c) of this act, and the emergency standard as published shall also serve as a proposed regulation for the proceeding. He shall thereupon promulgate a standard under this paragraph no later than six months after publication of the emergency standard as provided in paragraph (1) of this subsection.
- (d) (1) Regulations issued under subsections (b) and (c) of this section shall provide insofar as possible the highest degree of safety and health protection for employees; other considerations shall be the latest available scientific data in the field, the feasibility of the standard, and experience gained under this and other health and safety laws. Whenever practical the standards promulgated shall be expressed in terms of objective criteria and of the performance desired. In promulgating standards dealing with toxic materials or harmful physical agents, the Commissioner, after consultation and recommendations of the State Board of Health, shall set a standard which most adequately assures, to the extent possible, on the basis of the most available evidence that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life.
- (2) Upon adoption of this act, all rules and procedures set forth in Section 6(b)(7) of the Federal Act will be hereinafter adopted and applied.
- (e) The Commissioner shall not develop or promulgate State standards, for products distributed or used in interstate commerce, which are different from federal standards for such products unless the promulgation of such State standard, or standards, are required by compelling local conditions and do not unduly burden interstate commerce.

Sec. 7. Variances.

A. Temporary variances. (a) The Commissioner may upon written application by an employer issue an order granting such employer a temporary variance from standards adopted by this act or promulgated by the Commissioner under this act. Any such order shall prescribe the practices, means, methods, operations and processes which the employer must adopt or use while the variance is in effect and state in detail a program for coming into compliance with the standard.

(b) An application for a temporary variance shall contain all information required as enumerated in 29 CFR 1905.10(b) which is hereby incorporated by reference, as if herein fully set out.

(c) Upon receipt of an application for an order granting a temporary variance, the Commissioner to whom such application is addressed may issue an interim order granting such a temporary variance, for the purpose of permitting time for an orderly consideration of such application. No such interim order may be effective for longer than 180 days.

(d) Such a temporary variance may be granted only after notice to employees and interested parties and opportunity for hearing. The temporary variance may be for a period of no longer than required to achieve compliance or one year, whichever is shorter and may be renewed only once. Application for renewal of a variance must be filed in accordance with provisions in the initial grant of the temporary variance.

(e) An order granting a temporary variance shall be issued only if the employer establishes (1)(i) that he is unable to comply with the standard by the effective date because of

unavailability of professional or technical personnel or materials and equipment required or necessary construction or alteration of facilities or technology, (ii) that all available steps have been taken to safeguard his employees against the hazards covered by the standard, and (iii) that he has an effective program for coming into compliance with the standard as quickly as practicable, or (2) that he is engaged in an experimental program as described in subsection C of this section as hereinafter stated.

B. Permanent variances. — (a) Any affected employer may apply to the Commissioner for a rule or order for a permanent variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The Commissioner shall issue such rule or order if he determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard.

(b) The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question.

(c) Such a rule or order may be modified or revoked upon application by an employer, employees, or by the Commissioner on his own motion, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

C. Experimental variances. — (a) The Commissioner is authorized to grant a variance from any standard or portion thereof whenever he determines that such variance is necessary to permit an employer to participate in an experiment approved by him designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

Sec. 8. Creation of the Office of Director of Occupational Safety and Health. (a) There is hereby created and established in the North Carolina Department of Labor a division to be known as the office of Occupational Safety and Health. The Commissioner shall appoint a Director to administer this division who shall be subject to the direction and supervision of the Commissioner. The Director shall carry out the responsibilities of the State of North Carolina as prescribed under the Occupational Safety and Health Act of 1970, and any subsequent federal laws or regulations relating to occupational safety and health, and this act, as written, revised or amended by legislative enactment and as delegated or authorized by the Commissioner. The Commissioner shall make and promulgate such rules, amendments, or revisions in rules, as he may deem advisable for the administration of the office, he shall also accept and use the services, facilities, and personnel of any agency of the State or of any subdivision of State government, either as a free service or by reimbursement. The Director shall devote full time to his duties of office and shall not hold any other office. The Director, subject to the approval of the Commissioner shall select a professional staff of qualified and competent employees to assist in the statewide administration of the act. All of the employees referred to herein shall be under the Classified Service, as herein defined in Section 2, subsection 9.

(b) Duties of the Director. Subject to the general supervision of the Commissioner and Deputy Commissioner, the Director shall be responsible for the administration and enforcement of all laws, rules and regulations which it is the duty of the Office to administer and enforce. The Director shall have the power, jurisdiction and authority to:

- (1) uniformly superintend, enforce and administer applicable occupational safety and health laws of the State of North Carolina;
- (2) make or cause to be made all necessary inspections, analyses and research for the purpose of seeing that all laws and rules and regulations which the

- office has the duty, power and authority to enforce are promptly and effectively carried out;
- (3) make all necessary investigations, develop information and reports upon conditions of employee safety and health, and upon all matters relating to the enforcement of this act and all lawful regulations issued thereunder;
 - (4) report to the Federal Occupational Safety and Health Administration any information which it may require;
 - (5) recommend to the Commissioner such rules, regulations, standards, or changes in rules, regulations and standards which the Director deems advisable for the prevention of accidents, occupational hazards or the prevention of industrial or occupational diseases;
 - (6) recommend to the Commissioner that he institute proceedings to remove from his or her position any employee of the Office who accepts any favor, privilege, money, object of value, or property of any kind whatsoever or who shall give prior notice of a compliance inspection of a work place unless authorized under the provisions of this act;
 - (7) employ experts, consultants or organizations for work related to the Occupational Safety and Health Program of the Office and compensate same with the approval of the Commissioner;
 - (8) institute hearings, investigations, request the issuance of citations and propose such penalties as he may in his judgment consider necessary to carry out the provisions of this act;
 - (9) The Commissioner shall have the power and authority to issue all types of notices, citations, cease and desist orders, or any other pleading, form or notice necessary to enforce compliance with this act as hereinafter set forth. The Commissioner is also empowered and authorized to apply to the courts of the State having jurisdiction for orders or injunctions restraining unlawful acts and practices prohibited by this act or not in compliance with this act and to apply for mandatory injunctions to compel enforcement of the act. and the Commissioner is authorized, and further authorized by and through his agents, to institute criminal actions or proceedings for such violations of the act as are subject to criminal penalties. The Director shall recommend to the Commissioner the imposition and amount of civil penalties provided by this act, and the Commissioner may institute such proceedings as necessary for the enforcement and payment of such civil penalties subject to such review of the board as hereinafter set forth.
 - (10) The Director may recommend to the Commissioner that any person, firm, corporation or witness be cited for contempt or for punishment as of contempt, and the Commissioner is authorized to enter any order of contempt or as of contempt as he may deem proper and necessary, and any hearing examiner may recommend to the Commissioner that such order or citation for contempt be made.
 - (11) The Commissioner or the Director, or their authorized agents, shall have the power and authority to issue subpoenas for witnesses and for the production of any and all papers and documents necessary for any hearing or other proceeding and to require the same to be served by the process officers of the State. The Commissioner and the Director may administer any and all oaths that are necessary in the enforcement of this act and may certify as to the authenticity of all records, papers, documents and transcripts under the seal of the Department of Labor.

- (12) All orders, citations, cease and desist orders, stop orders, sanctions and contempt orders, civil penalties and the proceedings thereon shall be subject to review by the Board as hereinafter provided, including all assessments for civil penalties.

Sec. 9. Establishment of advisory council. (a) There is hereby established a State Advisory Council on Occupational Safety and Health, consisting of seven members, appointed by the Commissioner, composed of two representatives from management, two representatives from organized labor, and three representatives of the public sector with knowledge of occupational safety and occupational health professions. The Commissioner shall designate one of the members from the public sector as chairman and all members of the State Advisory Council shall be selected insofar as possible upon the basis of their experience and competence in the field of occupational safety and health.

(b) The Council shall advise, consult with, and make recommendations to the Commissioner on matters relating to the administration of this act. The Council shall hold no fewer than two meetings during each calendar year. All meetings of the Advisory Council shall be open to the public and a transcript shall be kept and made available for public inspection.

(c) The Director shall furnish to the Advisory Council such secretarial, clerical and other services as he deems necessary to conduct the business of the Advisory Council. The members of the Advisory Council shall be compensated for reasonable expenses incurred, including necessary time spent in traveling to and from their place of residence within the State to the place of meeting, and mileage and subsistence as allowed to State officials. The members of the Advisory Council shall be compensated on a per diem basis which shall be fixed by the Governor and the Advisory Budget Commission.

(d) In addition to its other duties, the Advisory Council shall assist the Commissioner in formulating and setting standards under the provisions of this act. For this purpose the Commissioner may appoint persons qualified by experience and affiliation to present the viewpoint of the employers involved, persons similarly qualified to present the viewpoint of the workers involved, and some persons to represent the health and safety agencies of the State. The Commissioner for this purpose may include representatives of professional organizations of technicians or professionals specializing in occupational safety or health. Such persons appointed for temporary purposes may be paid such per diem and expenses of attending meetings as may be fixed by the Commissioner and Advisory Budget Commission.

Sec. 10. Safety and Health Review Board. (a) The Safety and Health Review Board is hereby established. The Board shall be composed of three members from among persons who, by reason of training, education or experience, are qualified to carry out the functions of the Board under this act. The Governor shall appoint the members of the board and name one of the members as chairman of the board. The terms of the members of the board shall be six years except that the members of the board first taking office shall serve, as designated by the Governor at the time of appointment, one for a term of two years, one for a term of four years, and the member of the board designated as chairman shall serve for a term of six years. Any vacancy caused by the death, resignation, or removal of a member prior to the expiration of the term for which he was appointed shall be filled by the Governor for the remainder of the unexpired term. The Governor shall fill all vacancies occurring by reason of the expiration of the term of any members of the board.

(b) The board shall hear and issue decisions on appeals entered from citations and abatement periods and from all types of penalties. Appeals from orders of the Director dealing with conditions or practices that constitute imminent danger shall not be stayed by the Board until after full and adequate hearing. The board in the discharge of its duties under this act is authorized and empowered to administer oaths and affirmations and institute motions, cause the taking of depositions, interrogatories, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and

other records deemed necessary as evidence in connection with any appeal or proceeding for review before the board.

(c) The board shall meet at least once each calendar quarter but it may hold call meetings or hearings upon at least three days notice to each member by the chairman and at such time and place as the chairman may fix. The chairman shall be responsible on behalf of the board for the administrative operations of the board and shall appoint such hearing examiners and other employees as he deems necessary to assist in the performance of the board's functions and fix the compensation of such employees with the approval of the Governor. The assignment and removal of hearing examiners shall be made by the board, and any hearing examiner may be removed for misfeasance, malfeasance, misconduct, immoral conduct, incompetency, the commission of any crime, or for any other good and adequate reason as found by the board. The board shall give notice to such hearing examiner, along with written allegations as to the charges against him, and the same shall be heard by the board, and its decision shall be final. The compensation of the members of the board shall be on a per diem basis and shall be fixed by the Governor with the approval of the Advisory Budget Commission. The chairman of the board may be paid a higher rate of compensation than the other two members of the board. For the purpose of carrying out its duties and functions under this act, two members of the board shall constitute a quorum and official action can be taken only on the affirmative vote of at least two members of the board. On matters properly before the board the chairman may issue temporary orders, subpoenas, and other temporary types of orders subject to the subsequent review of the board. The issuance of subpoenas, orders to take depositions, orders requiring interrogatories and other procedural matters of evidence issued by the chairman shall not be subject to review.

(d) Every official act of the board shall be entered of record and its hearings and records shall be open to the public. The board is authorized and empowered to make such procedural rules as are necessary for the orderly transaction of its proceedings. Unless the board adopts a different rule, the proceedings, as nearly as possible, shall be in accordance with the Rules of Civil Procedure, G.S. 1A-1. The board may order testimony to be taken by deposition in any proceeding pending before it at any stage of such proceeding. Any person, firm or corporation, and its agents or officials, may be compelled to appear and testify and produce like documentary evidence before the board. Witnesses whose depositions are taken under this section, and the persons taking such depositions, shall be entitled to the same fees as are paid for like services in the courts of the State.

(e) The rules of procedure prescribed or adopted by the board shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this section.

(f) Any member of the board may be removed by the Governor for inefficiency, neglect of duty, or any misfeasance or malfeasance in office. Before such removal the Governor shall give notice of hearing and state the allegations against the member of the board, and the same shall be heard by the Governor, and his decision shall be final. The principal office of the board shall be in Raleigh, North Carolina, but whenever it deems that the convenience of the public or of the parties may be promoted, or delay or expense may be minimized, the board may hold hearings or conduct other proceedings at any place in the State.

(g) In case of a contumacy, failure or refusal of any person to testify before the board, give any type of evidence, or to produce any books, records, papers, correspondence, memoranda or other records, such person upon such failure to obey the orders of the board may be punished for contempt or any other matter involving contempt as set forth and described by the general laws of the State. The board shall issue no order for contempt without first finding the facts involved in the proceeding. Witnesses appearing before the board shall be entitled to the same fees as those paid for the services of said witnesses in the courts of the State, and all

such fees shall be taxed against the interested parties according to the judgment and discretion of the board.

(h) The Director shall consult with the chairman of the board with respect to the preparation and presentation to the board for adoption of all necessary forms or citations, notices of all kinds, forms of stop orders, all forms and orders imposing penalties and all forms of notices or applications for review by the board, and any and all other procedural papers and documents necessary for the administration of the act as applied to employers and employees and for all procedures and proceedings brought before the board for review.

(i) A hearing examiner appointed by the chairman of the board shall hear, and make a determination upon, any proceeding instituted before the board and may hear any motion in connection therewith, assigned to such hearing examiner, and shall make a report of any such determination which constitutes his final disposition of the proceedings. A copy of the report of the hearing examiner shall be furnished to the Director and all interested parties involved in any appeal or any proceeding before the hearing examiner for his determination. The report of the hearing examiner shall become the final order of the board 30 days from the date of said report as determined by the hearing examiner, unless within such period any member of the board had directed that such report shall be reviewed by the entire board as a whole. Upon application for review of any report or determination of a hearing examiner, before the 30 day period expires, the board shall schedule the matter for hearing, on the record, except the board may allow the introduction of newly discovered evidence, or in its discretion the taking of further evidence upon any question or issue. All interested parties to the original hearing shall be notified of the date, time and place of such hearing and shall be allowed to appear in person or by attorney at such hearing. Upon review of said report and determination by the hearing examiner the board may adopt, modify or vacate the report of the hearing examiner and notify the interested parties. The report, decision or determination of the board upon review shall be final unless further appeal is made to the courts under the provisions of Article 33 of Chapter 143 of the General Statutes, as amended, entitled: "Judicial Review of Decisions of Certain Administrative Agencies."

Sec. 11. Inspections. (a) In order to carry out the purposes of this act, the Commissioner or Director, or their duly authorized agents, upon presenting appropriate credentials to the owner, operator, or agent in charge, are authorized:

- (1) to enter without delay, and at any reasonable time, any factory, plant, establishment, construction site, or other area, work place or environment where work is being performed by an employee of an employer; and
- (2) to inspect and investigate during regular working hours, and at other reasonable times, and within reasonable limits, and in a reasonable manner, any such place of employment and all pertinent conditions, processes, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent or employee.

(b) In making his inspections and investigations under this act, the Commissioner may issue subpoenas to require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be reimbursed for all travel and other necessary expenses which shall be claimed and paid in accordance with the prevailing travel regulations of the State. In case of a failure or refusal of any person to obey a subpoena under this section, the District Judge or Superior Court Judge of the county in which the inspection or investigation is conducted shall have jurisdiction upon the application of the Commissioner to issue an order requiring such person to appear and testify or produce evidence as the case may require, and any failure to obey such order of the Court may be punished by such court as contempt thereof.

(c) Subject to regulations issued by the Commissioner a representative of the employer and an employee authorized by the employees shall be given an opportunity to consult with or

to accompany the Commissioner, Director, or their authorized agents, during the physical inspection of any work place described under subsection (a) for the purpose of aiding such inspection. Where there is no authorized employee representative, the Commissioner, Director, or their authorized agents, shall consult with a reasonable number of employees concerning matters of health and safety in the work place.

- (d) (1) Any employees or an employee representative of the employees who believe that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice of such violation or danger to the Commissioner or Director. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by employees or the employee representatives of the employees, and a copy shall be provided the employer or his agent no later than at the time of inspection. Upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy of any record published, released or made available pursuant to subsection (e) of this section. If upon receipt of such notification the Commissioner or Director determines there are reasonable grounds to believe that such violation or danger exists, the Commissioner or Director or their authorized agents shall promptly make a special investigation in accordance with the provisions of this section as soon as practicable to determine if such violation or danger exists. If the Commissioner or Director determines there are not reasonable grounds to believe that a violation or danger exists he shall notify the employees or representatives of the employees, in writing, of such determination.
- (2) Prior to, during and after any inspection of a work place, any employees or representative of employees employed in such work place may notify the inspecting Commissioner, Director, or their agents, in writing, of any violation of this act which they have reason to believe exists in such work place. The Commissioner shall, by regulation, establish procedures for informal review of any refusal by a representative of the Commissioner or Director to issue a citation with respect to any such alleged violation and shall furnish the employees or representatives of employees requesting such review a written statement of the reason for the Commissioner's or Director's final disposition of the case.
- (e) The Commissioner is authorized to compile, analyze, and publish, in summary or detailed form, all reports or information obtained under this section.
- (f) (1) Inspections conducted under this section shall be accomplished without advance notice, subject to the exceptions in paragraph (2) below this subsection.
- (2) The Commissioner or Director may authorize the giving to any employer or employee advance notice of an inspection only when the giving of such notice is essential to the effectiveness of such inspection, and in keeping with regulations issued by the Commissioner.
- (g) The Commissioner shall prescribe such rules and regulations as he may deem necessary to carry out his responsibilities under this act, including rules and regulations dealing with the inspection of an employer's establishment.

Sec. 12. Issuance of citations. (a) If, upon inspection or investigation, the Director or his authorized representative has reasonable grounds to believe that an employer has not fulfilled his duties as prescribed in this act, or has violated any standard, regulation, rule or order promulgated under this act, he shall with reasonable promptness issue a citation to the

employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provisions of the act, standards, rules and regulations, or orders alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The Director may prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimus violations which have no direct or immediate relationship to safety or health, and violations of State agencies or political subdivisions thereof. Each citation or notice in lieu of citation issued under this section, or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the Director, at or near such place a violation referred to in the citation occurred.

(b) Procedure for enforcement.

- (1) If, after an inspection or investigation, the Director issues a citation under any provisions of this act, he shall, within a reasonable time after the termination of such inspection or investigation, notify the employer by certified mail of any penalty, if any, he has recommended to the Commissioner to be proposed under the provisions of this act and that the employer has 15 working days within which to notify the Director that he wishes to contest the citation or proposed assessment of penalty. If, within 15 working days from the receipt of the notice issued by the Director, the employer fails to notify the Director that he intends to contest the citation or proposed assessment of penalty, and no notice is filed by any employee or representative of employees under the provisions of this act within such time, the citation and the assessment as proposed to the Commissioner shall be deemed final and not subject to review by any court.
- (2) If the Director has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the period permitted for its correction (which period shall not begin to run until the entry of a final order by the board in case of any review proceedings under this act initiated by the employer in good faith and not solely for a delay or avoidance of penalties), the Director shall notify the employer by certified mail of such failure and of the penalty proposed to be assessed under this act by reason of such failure and that the employer has 15 working days within which to notify the Director that he wishes to contest the Director's notification of the proposed assessment of penalty. If, within 15 working days from the receipt of notification issued by the Director, an employer fails to notify the Director that he intends to contest the notification or proposed recommendation of penalty, the notification and the proposed assessment made by the Director shall be final and not subject to review by any court.
- (3) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.
- (4) If an employer notifies the Director that he intends to contest a citation issued under the provisions of this act or notification issued under the provisions of this act, or if, within 15 working days of the receipt of a citation under this act, any employee or his representative files a notice with the Director alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the Director shall immediately advise the board of such notification, and the board shall afford an opportunity for a hearing. The board shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the Director's citation or the proposed penalty fixed by the Commissioner, or directing other appropriate relief, and such order shall become final 30 days after its issuance. Upon showing by an employer of a good faith effort to comply

with the abatement requirements of a citation, and that an abatement has not been completed because of factors beyond his reasonable control, the Director, after an opportunity for a hearing as provided in this act, shall issue an order affirming or modifying the abatement requirements in such citation. The rules of procedure prescribed by the chairman of the board shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this section.

Sec. 13. Civil penalties. (a) Any employer who willfully or repeatedly violates the requirements of this act, any standard, rule or order promulgated pursuant to this act, or regulations prescribed pursuant to this act, may upon the recommendation of the Director to the Commissioner be assessed by the Commissioner a civil penalty of not more than ten thousand dollars (\$10,000) for each violation. Any employer who has received a citation for a serious violation of the requirements of this act or any standard, rule, or order promulgated under this act or of any regulation prescribed pursuant to this act, shall be assessed by the Commissioner a civil penalty of up to one thousand dollars (\$1,000) for each such violation. If the violation is adjudged not to be of a serious nature, then the employer may be assessed a civil penalty of up to one thousand dollars (\$1,000) for each such violation. Any employer who fails to correct a violation for which a citation has been issued under this act within the period allowed for its correction (which period shall not begin to run until the date of the final order of the board in the case of any review proceedings in this act initiated by the employer in good faith and not solely for the delay or avoidance of penalties), may be assessed a civil penalty of not more than one thousand dollars (\$1,000). Such assessment shall be made to apply to each day during which such failure or violation continues. Any employer who violates any of the posting requirements, as prescribed under the provision of this act, shall be assessed a civil penalty of not more than one thousand dollars (\$1,000) for such violation. The Commissioner upon recommendation of the Director, or the board in case of a review, shall have authority to assess all civil penalties provided by this act, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer and the record of previous violations.

(b) All civil penalties and interest recovered by the Commissioner, together with the costs thereof, shall be paid into the General Fund of the State Treasury.

Sec. 14. Criminal penalties. Any employer who willfully violates any standard, rule, regulation or order promulgated pursuant to the authority of this act, and said violation causes the death of any employee, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars (\$10,000) or by imprisonment for not more than six months, or by both; except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be a fine of not more than twenty thousand dollars (\$20,000) or by imprisonment for not more than one year, or by both. This section shall not prevent any prosecuting officer of the State of North Carolina from proceeding against such employer on a prosecution charging any degree of willful or culpable homicide. Any person who gives advance notice of any inspection to be conducted under this act, without authority from the Commissioner, Director, or any of their agents to whom such authority has been delegated, shall be guilty of a misdemeanor, and upon conviction thereof, be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than six months, or by both. Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or any other document filed or required to be maintained pursuant to this act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars (\$10,000) or by imprisonment for not more than six months, or by both. Whoever shall commit any kind of assault upon or whoever kills a person engaged in or on account of the performance of investigative, inspection, or law enforcement functions shall be

subject to prosecution under the general criminal laws of the State and upon such charges as the proper prosecuting officer shall charge or allege.

Sec. 15. Procedures to counteract imminent dangers. (a) The Superior Courts of this State shall have jurisdiction, upon petition of the Commissioner, to restrain any conditions or practices in any place of employment which are such that a danger exists, which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this act. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except those individuals whose presence is necessary to avoid, correct or remove such imminent danger or to maintain the capacity of a continuous process operation to assume normal operations without a complete cessation of operations, or where a cessation of operations is necessary to permit such to be accomplished in a safe and orderly manner.

(b) Upon the filing of any such petition the Superior Court shall, without the necessity of showing an adequate remedy at law, have jurisdiction to grant injunctive relief or temporary restraining order pending the outcome of an enforcement proceeding pursuant to this act. The proceeding shall be as provided under the statutes and Rules of Civil Procedure of this State except that no temporary restraining order issued without notice shall be effective for a period longer than five days.

(c) Whenever and as soon as an inspector concludes that conditions or practices described in this section exist in any place of employment, he shall inform the affected employees and employers of the danger and that he is recommending to the Commissioner that relief be sought. If the Commissioner arbitrarily or capriciously fails to seek relief under this section, any employee who may be injured by reason of such failure, or the representative of such employee, may bring an action against the Commissioner in the Superior Court of the district in which the imminent danger is alleged to exist or the employer has its principal office or place of business, for a writ of mandamus to compel the Commissioner to seek such an order for such relief as may be appropriate.

Sec. 16. Judicial Review. Any person or party in interest who has exhausted all administrative remedies available under this act and who is aggrieved by a final decision in a contested case is entitled to judicial review in accordance with Article 33 of Chapter 143, as amended, the same being entitled: "Judicial Review of Decisions of Certain Administrative Agencies." The Commissioner may file in the office of the clerk of the Superior Court of the county wherein the person, firm or corporation under order resides, or, if a corporation is involved, in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred, a certified copy of a final order of the Commissioner unappealed from, or of a final order of the Commissioner affirmed upon appeal. Whereupon, the clerk of said court shall enter judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though said judgment had been rendered in a suit duly heard and determined by the Superior Court of the General Court of Justice.

Sec. 17. Legal Representation of the Department of Labor. It shall be the duty of the Attorney General to represent the Department of Labor or designate some member of his staff to represent them in all actions or proceedings in connection with this act.

Sec. 18. Record Keeping and Reporting. (a) Each employer shall make available to the Commissioner, or his agents, in such manner as the Commissioner shall require, copies of the same records and reports regarding his activities relating to this act as are required to be made, kept, or preserved by Section 8(c) of the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596) and regulations made pursuant thereto.

(b) Each employer shall make, keep and preserve and make available to the Commissioner such records regarding his activities relating to this act as the Commissioner may prescribe by regulation as necessary and appropriate for the enforcement of this act or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this section such regulations may include provisions requiring employers to conduct periodic inspections. The Commissioner shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep the employees informed of their protections and obligations under this act, including the provisions of applicable standards. The Commissioner shall prescribe regulations requiring employers to maintain accurate records of, and to make periodic reports on, work-related deaths, injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(c) The Commissioner shall issue regulations requiring employers to maintain accurate records of employee exposure to potentially toxic materials of harmful physical agents which are required to be monitored or measured under this act. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provisions for each employee or former employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable safety and health standard promulgated under this act and shall inform any employee who is being thus exposed of the corrective action being taken.

(d) Any information obtained by the Commissioner or his duly authorized agents under this act shall be obtained with a minimum burden upon employers, especially those operating small businesses. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible.

Sec. 19. Statistics. (1) In order to further the purposes of this act, the Commissioner shall develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics. The Commissioner shall compile accurate statistics on work injuries and illnesses which shall include all disabling, serious or significant injuries or illnesses, whether or not involving loss of time from work, other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job. On the basis of records made and kept pursuant to the provisions of this act, employers shall file such reports with the Commissioner as he shall prescribe by regulations and as may be necessary to carry out his functions.

(2) A listing of employment by area and industry of employers who have an assigned account number by the Employment Security Commission shall be supplied annually to the Commissioner by the Employment Security Commission of this State. The listing of employment by area and industry shall contain at least the following: employer name; Employment Security Commission account number; indication of whether multiple or a single report unit; number of reporting units; average employment; establishment size code; geographical area; any four-digit code; and any other information deemed necessary by the Commissioner to meet federal reporting requirements.

Sec. 20. Reports to the Secretary. (a) The Commissioner shall require employers in the State to make reports to the secretary in the same manner and to the same extent as if the plan in force under this act were not in effect, and

(b) The Commissioner shall make such reports to the secretary in such form and containing such information as the secretary from time to time shall require.

Sec. 21. Continuation and Effectiveness of this Act. The Commissioner shall from time to time furnish to the secretary information and assurances that this act is being administered by adequate methods and by standards and enforcement procedures which are and will continue to be as effective as federal standards.

Sec. 22. Training and Employee Education. (a) The Commissioner, after consultation with appropriate departments and agencies of the State and subdivisions of government, shall conduct, directly or by grants or contracts, (1) education programs to provide an adequate supply of qualified personnel to carry out the purposes of this act, and (2) informational, educational and training programs on the importance of and proper use of adequate safety and health equipment to encourage voluntary compliance.

(b) The Commissioner is also authorized to conduct, directly or by grants or contracts, short-term training of personnel engaged in work related to the Commissioner's responsibilities under this act.

(c) The Commissioner shall provide employers and employees programs covering recognition, avoidance and prevention of unsafe and unhealthful working conditions in places of employment and shall advise employers and employees, or their representatives, effective means to prevent occupational injuries and illnesses.

Sec. 23. Safety and Health Programs of State Agencies and Local Governments. It shall be the responsibility of each administrative department, commission, board, division or other agency of the State and of counties, cities, towns and subdivisions of government to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards and regulations promulgated under this act. The head of each agency shall:

(a) provide safe and healthful places and conditions of employment, consistent with the standards and regulations promulgated by this act;

(b) acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees;

(c) consult with, and encourage employees to cooperate in achieving safe and healthful working conditions;

(d) keep adequate records of all occupational accidents and illnesses for proper evaluation and corrective action;

(e) consult with the Commissioner as to the adequacy as to form and content of records kept pursuant to this section;

(f) make an annual report to the Commissioner with respect to occupational accidents and injuries and the agency's program under this section.

(g) The Commissioner shall transmit annually to the Governor and the General Assembly a report of the activities of the State agency and instrumentalities under this section. If the Commissioner has reason to believe that any local government program or program of any agency of the State is ineffective, he shall, after unsuccessfully seeking by negotiations to abate such failure, include this in his annual report to the Governor and the General Assembly, together with the reasons therefor, and may recommend legislation intended to correct such condition.

(h) The Commissioner shall have access to the records and reports kept and filed by State agencies and instrumentalities pursuant to this section unless such records and reports are required to be kept secret in the interest of national defense, in which case the Commissioner shall have access to such information as will not jeopardize national defense.

(i) The Commissioner will not impose civil or criminal penalties against any State agency or political subdivision for violations described and covered by this act.

(j) Employees of any agency or department covered under this section are afforded the same rights and protections as granted employees in the private sector.

Sec. 24. Authority to enter into Contracts with other State Agencies and Subdivisions of Government. The Commissioner is authorized and empowered to enter into contracts with the Department of Public Health or any other State officer or State agency or State instrumentality, or any municipality, county, or other political subdivision of the State, for the enforcement, administration, and any other application of the provisions of this act.

Sec. 25. Assurance of Adequate Funds to Enforce Act. The Commissioner shall submit to the General Assembly a budget and request for appropriations to adequately administer this act which shall be sufficient to give satisfactory assurance that this State will devote adequate funds to the administration and enforcement of the standards herein provided and the proper administration of this act as required by federal standards.

Sec. 26. Discrimination. No employer, employee, or any other person related to the administration of this act shall be discriminated against in any work, procedure, or employment by reason of sex, race, ethnic origin, or by reason of religious affiliation.

Sec. 27. Confidentiality of Trade Secrets. All information reported to or otherwise obtained by the Commissioner or his agents or representatives in connection with any inspection or proceeding under this act which contains or which might reveal a trade secret shall be considered confidential, as provided by Section 1905 of Title 18 of USC, except as to carrying out this act or when it is relevant in any proceeding under this act. In any such proceeding the Commissioner, the board or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

Sec. 28. (Reserve for future codification purposes.)

Sec. 29. Authorization for Similar Safety and Health Federal-State Programs. Consistent with the requirements and conditions provided in this act the State, upon the recommendation of the Commissioner of Labor and approval of the Governor, may enter into agreements or arrangements with other federal agencies for the purpose of administering occupational safety and health measures for such employees and employers within the State of North Carolina as may be covered by such federal safety and health statutes.

Sec. 30. Construction of Act and Severability. This act shall receive a liberal construction to the end that the safety and health of the employees of the State may be effectuated and protected. If any provision of this act or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Sec. 31. This act shall become effective on July 1, 1973, with respect to those employers and employees engaged in private employment and business and effective as to public employers, governmental subdivisions, and their employees, one year and 90 days after ratification.

In the General Assembly read three times and ratified, this the 1st day of May, 1973.