

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

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Legislative Document

No. 1868

H. P. 1402

House of Representatives, April 4, 1973

Referred to the Committee on Labor. Sent up for concurrence and ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mr. Martin of Eagle Lake.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-THREE

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AN ACT to Improve the Occupational Safety and Health Act of the  
State in Accordance with Federal Standards.

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Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 5, Part 13, additional. Title 5 of the Revised Statutes is amended by adding a new Part 13 to read as follows:

PART 13

CHAPTER 339

OCCUPATIONAL SAFETY AND HEALTH

§ 5001. Occupational Safety and Health Review Commission

1. The Occupational Safety and Health Review Commission is hereby established. The commission shall be composed of 3 members who shall be appointed by the Governor from among persons who by training, education, or experience are qualified to carry out the quasi-judicial functions of the commission. The Governor shall appoint a chairman, who shall be an attorney admitted to practice law in Maine and who shall represent the general public. Of the remaining 2 members, one member shall be representative of the viewpoint of employers and one member representative of the viewpoint of employees.

2. Terms of office. The terms of members of the commission shall be 4 years, except that the members of the commission first taking office shall serve, as designated by the Governor at the time of appointment, one for a term of 2 years, one for a term of 3 years and one for a term of 4 years. A

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 only for the remainder of such unexpired term.

3. **Principal office.** The commission shall have an office at Augusta. The Department of Manpower Affairs shall provide suitable office space, necessary furniture, equipment and supplies. The commission is authorized to employ necessary personnel for the carrying out of its functions and duties as provided under this chapter. Whenever the commission deems that the convenience of the public or of the parties may be promoted, it may hold hearings or conduct other proceedings at any other place in the State.

4. **Compensation.** Compensation of the members of the commission shall be fixed by the Governor and Executive Council.

5. **Quorum requirements.** For the purpose of carrying out its functions under this chapter, 2 members of the commission shall constitute a quorum and official action can be taken only on the affirmative vote of at least 2 members.

6. **Jurisdiction.** The commission shall hear and rule on appeals from citations and notifications issued under Title 22, chapter 102 and Title 26, chapter 4.

7. **Powers.** After hearing an appeal, the commission may sustain, modify or dismiss a citation or penalty.

8. **Public hearings.** Every official act of the commission shall be entered of record, and its hearings and records shall be open to the public. The commission is authorized to make such rules of procedure as are necessary for the orderly transaction of its proceedings. Unless the commission has adopted a different rule, its proceedings shall be in accordance with the rules of procedure adopted by the Federal Occupational Safety and Health Review Commission.

9. **Depositions and testimony.** The commission may order testimony to be taken by deposition in any proceeding pending before it at any state of such proceeding. Any person may be compelled to appear and depose and to produce books, papers or documents in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before district courts of any county. Witnesses whose depositions are taken under this subsection, the persons taking such depositions, shall be entitled to the same fees as are paid for like services in the Superior Court.

10. **Appeals heard expeditiously.** Appeals to the commission shall be heard expeditiously.

## § 5002. Judicial review

1. **Review.** Any person adversely affected or aggrieved by an order of the commission issued under Title 22, section 316, subsection 3 and Title 26, section 75, subsection 3, may obtain a review of such order in the superior court of the county in which the violation is alleged to have occurred

or where the employer has its principal office in Maine by filing in such court within 60 days following the issuance of such order a written petition that the order be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the commission and to all parties to the proceedings before the commission, and thereupon the Commission shall promptly file in the court the transcript of record in the proceedings. Upon such filing, the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony and proceedings set forth in such record a decree affirming, modifying or setting aside in whole or in part, the order of the commission and enforcing the same to the extent that such order is affirmed or modified. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the commission. No objection which has not been urged before the commission shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the commission, the court may order such additional evidence to be taken before the commission and to be made a part of the record. The commission may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed, and it shall file such modified or new findings with the court, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. The commission's copy of the testimony shall be available to all parties for examination at all reasonable times, without cost, and for the purpose of judicial review of the commission's orders. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Judicial Court sitting as the Law Court. Petitions filed under this subsection shall be heard expeditiously, and determined upon the transcript filed without requirement for printing.

2. —Superior Court. The commissioner may also obtain review or enforcement of any final order of the commission by filing a petition for such relief in the superior court of the county in which the alleged violation occurred or in which the employer has its principal office and subsection 1 shall govern such proceedings to the extent applicable. If no petition for review, as provided in subsection 1, is filed within 60 days after service of the commission's order, the commission's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the commissioner after the expiration of such 60-day period. In any such case, as well as in the case of a non-contested citation or notification by the commissioner which has become a final order of the commission under Title

22, section 316, subsections 1 or 2 and Title 26, section 75, subsection 1 or 2, a justice of the court shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the commission and the employer named in the petition.

Sec. 2. R. S., T. 22, c. 103, additional. Title 22 of the Revised Statutes is amended by adding a new chapter 103 to read as follows:

### CHAPTER 103

## OCCUPATIONAL HEALTH REGULATIONS

### § 301. Declaration of policy and purposes

It is hereby declared to be the public policy of this State and the purpose of this chapter to assure so far as possible every working man and woman in Maine healthful working conditions and to preserve our human resources.

To these ends it is the purpose of this chapter to provide for a coordinated state plan for implementation, establishment and enforcement of occupational health standards at least as effective as the federal Williams-Steiger "Occupational Safety and Health Act of 1970" (P.L. 91-596, 84 Stat. 1590, December 29, 1970).

### § 302. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. Commission. "Commission" shall mean the Occupational Safety and Health Review Commission established under Title 5, section 5001.
2. Commissioner. "Commissioner" shall mean the Commissioner of the Department of Health and Welfare.
3. Department. "Department" shall mean the Department of Health and Welfare.
4. Employee. "Employee" shall mean any person, including a minor whether lawfully or unlawfully employed, who engages to furnish his services for a remuneration, subject to the direction and control of an employer and includes salaried, elected and appointed officials of the State, state agencies, counties, cities, school districts and other public corporations.
5. Employer. "Employer" shall mean any person, including partnerships, joint ventures, associations, corporations, receiver, administrator, executor or trustee, and the State, state agencies, counties, municipal corporations, school districts and other public corporations or political subdivisions, who contracts to pay a remuneration for and secures the right to direct and control the services of any person.
6. Imminent danger. "Imminent danger" shall mean a condition or practice in any workplace which is such that a danger exists which could reasonably be expected to cause death or serious physical injury immediately or before the imminence of such danger can be eliminated through the enforcement provisions otherwise provided in this chapter.

7. Trade secret. "Trade secret" shall mean a plan or process, tool, mechanism, compound or secret formula known only to its owner and those of his employees in whom it is necessary to confide.

8. Variance. "Variance" shall mean a special, limited, modification or change in a safety standard, which is applicable only to the particular establishment of the employer or person petitioning for such modification or change.

9. Workplace. "Workplace" shall mean any plant, yard, premises, room or other place where an employee or employees are employed for the performance of labor or service over which the employer has the right of access or control.

### § 303. General duty

Each employer, subject to the provisions of this chapter:

1. Free from hazards. Shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;

2. Compliance. Shall comply with the occupational health standards promulgated under this chapter.

Each employee of an employer subject to the provisions of this chapter shall comply with the occupational health standards promulgated under this chapter and with all rules, regulations and orders issued pursuant thereto which are applicable to his own actions and conduct.

### § 304. Rules and regulations

The commissioner shall issue such rules and regulations as he shall think necessary and proper for the protection of the health of employees. The rules and regulations so adopted shall be at least as effective as federally adopted standards of occupational health. Such rules and regulations shall become effective 90 days after the date of their adoption. Before any rules and regulations are adopted, a public hearing shall be held after suitable notice has been published in at least three daily newspapers in the State, provided that the commissioner may make any such rule or regulation effective on the date of its adoption in the event another state agency has adopted such rule or regulation in accordance with procedures consistent with due process and said agency is enforcing such rule or regulation at the time of its adoption by the commissioner.

The commissioner may at his discretion appoint ad hoc single industry's committees to advise and counsel him on rules and regulations needed for the protection of the workers engaged in the industry. Such committees shall be composed of an equal number of representatives of employers and from employees engaged in the single industry and not less than one member representing safety engineers engaged by insurance companies licensed to write workmen's compensation insurance in the State. Such committee members

shall serve without salary and shall receive their actual expenses in the performance of their duties as members of such committees.

Standards promulgated pursuant to this section shall not be different from federal standards applying to products distributed or used in interstate commerce unless such standards are required by compelling local conditions and do not unduly burden interstate commerce. This provision does not apply to customized products or parts not normally available on the open market, or to optional parts or additions to products which are ordinarily available with such optional parts or additions.

Any person who may be adversely affected by a standard issued under this section or under section 305 may at any time prior to the 60th day after such standard is promulgated file a petition challenging the validity of such standard with the Superior Court in the county wherein such person resides or has his principal place of business, for a judicial review of such standard. A copy of the petition shall be forthwith transmitted by the clerk of the court to the commissioner. The filing of such petition shall not, unless otherwise ordered by the court, operate as a stay of the standard. The determinations of the commissioner shall be conclusive if supported by substantial evidence in the record considered as a whole.

#### § 305. Information to employees; toxics

Where appropriate, any standard promulgated by the commissioner shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such standards shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such location and intervals and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such standard shall prescribe the type or frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure.

The commissioner shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured by standards issued pursuant to this chapter. 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 provision 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 who is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable health standard promulgated pursuant to this chapter, and shall inform any employee who is being thus exposed of the corrective action being taken by such exposure.

### § 306. Emergency temporary standards

The commissioner shall provide for an emergency temporary standard to take immediate effect if he determines that employees of employers subject to this chapter are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or to new hazards and if he determines that such emergency temporary standard is necessary to protect the employees from such danger.

Such standard shall be effective until superseded by a standard promulgated in accordance with the procedures prescribed in paragraph 3 of this section.

Upon publication of notice of such standard in the state paper the commissioner shall commence a proceeding in accordance with section 304 of this chapter, and the standard, notice of which has been published, shall also serve as a proposed ruling for the proceeding. The commissioner shall promulgate a standard under this paragraph no later than 6 months after publication of the emergency standard as provided in paragraph 2 of this section.

### § 307. Variances

#### 1. Temporary variances.

A. Any employer may apply to the commissioner for a temporary order granting a variance from a standard or any provision thereof promulgated under this chapter. Such temporary order shall be granted only if the employer files an application which meets the requirements of paragraph B and establishes that he is unable to comply with the standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standards or because necessary construction or operation of the facilities cannot be completed by the effective date, that he is taking all available steps to safeguard his employees against the hazards that are covered by the standard, and that he has an effective program for coming into compliance with this standard as quickly as practicable. Any temporary order issued under this paragraph shall prescribe the practices, means, methods, operations and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing, provided that the commissioner may issue one interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect longer than the period needed by the employer to achieve compliance with the standard, or one year, whichever is shorter, except that such an order may be renewed not more than twice so long as the requirements of this paragraph are met and an application for renewal is filed at least 90 days prior to the expiration date of the order. No interim renewal of an order may remain in effect for longer than 180 days.

B. An application for a temporary order under this subsection shall contain:



- (1) A specification of the standard or portion thereof from which the employer seeks a variance;
- (2) A representation by the employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof and a detailed statement of those reasons therefor;
- (3) A statement of the steps he has taken and will take, with specific dates, to protect employees against the hazard covered by the standard;
- (4) A statement of when he expects to be able to comply with the standard and what steps he has taken and what steps he will take, with dates specified, to come into compliance with the standard;
- (5) A certification that he has informed his employees of any application by giving a copy thereof to their authorized employee representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other reasonably appropriate means as may be directed by the commissioner;
- (6) A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the commissioner for a hearing.

2. Permanent variances. Any affected employer may apply to the commissioner for a rule or order for a permanent variance from a standard promulgated under this chapter. Affected employees shall be given notice of each such application and 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. 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 that they differ from the standard in question. 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 6 months from its issuance.

### § 308. Right of access

The department shall be authorized and empowered to enter and inspect workplaces for the purpose of enforcing the occupational health standards promulgated pursuant to this chapter and the rules and regulations adopted pursuant thereto.

The commissioner, or his authorized agent, in carrying out his duties under this chapter, upon the presentation of appropriate credentials to the owner, manager, operator or agent in charge, is authorized:

1. Injunctive relief. To enter without delay and at all reasonable times the factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer. Upon petition of the commissioner, a Superior Court in the county in which any refusal was alleged to have occurred may order appropriate injunctive relief against an owner, proprietor or any person in charge of said industrial establishment or place of employment who refuses entry to the commissioner or his duly authorized agent.

2. Inspection. To inspect, survey, 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, structures, machines, apparatus, devices, equipment and materials therein, and to question privately any such employer, owner, operator, agent or employee.

3. Witnesses and evidence. In making inspections and making investigations under this chapter the commissioner may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the superior courts. In the case of contumacy, failure or refusal of any person to obey such an order, any Superior Court within the jurisdiction of which such person is found or resides, or transacts business, upon the application of the commissioner shall have jurisdiction to issue to such person an order requiring such person to appear to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said courts as a contempt thereof.

#### § 309. Walk-around inspections

Subject to regulations issued by the commissioner, a representative of the employer and an authorized employee representative shall be given an opportunity to accompany the commissioner or his authorized agent during the physical inspection of the workplace or any employer subject to this chapter for the purpose of aiding such inspection. Where there is no authorized employee representative, the commissioner or his authorized agent shall consult with a reasonable number of employees concerning matters of health in the workplace.

Prior to or during any inspection, an employee or representative of an employee may notify the commissioner or his authorized agent responsible for conducting the inspection in writing of any violation of section 303 or the rules and regulations promulgated pursuant thereto which he has reason to believe exists in such workplace. The commissioner shall, by regulation, establish procedures for informal review of any refusal by his agent to issue an order with respect to any such alleged violation and shall furnish the

employee requesting such a review a written statement of the reasons for his final disposition of the case.

### § 310. Imminent danger orders

1. **Restrain.** A Superior Court in the county in which an imminent danger is alleged to exist 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 will 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 chapter. 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 individuals whose presence is necessary to avoid, correct or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operations, or where a cessation or reduction of operations is necessary, to permit such to be accomplished in a safe and orderly manner.

2. **Injunctive relief.** Upon the filing of any such petition, the Superior Court shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of an enforcement proceeding pursuant to this chapter. The proceeding shall be as provided by Rule 65 of the Maine Rules of Civil Procedure, except that no temporary restraining order shall be effective for a period longer than 5 days unless the court specifically finds that the safety and health of the employees requires an extension of said period.

3. **Information.** Whenever and as soon as an inspector concludes that conditions or practices described in subsection 1 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.

4. **Action against commissioner.** 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 employees, may bring an action against the commissioner in the Superior Court in the county in which the imminent danger is alleged to exist or the employer has his principal place of business for a writ in the nature of mandamus to compel the commissioner to seek such an order and for such further relief as may be appropriate.

### § 311. Inspection in response to complaint

Any employee or representative of an employee who believes that a violation of an occupational health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the commissioner or his authorized agent of such violation or danger. Except in cases of imminent danger, any such notice shall be in writing,

shall set forth with reasonable particularity the grounds for the notice, shall be signed by the employee or his representative no later than the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in any such copy or upon any record published, released or made available in any other respect. If upon the receipt of such notification the commissioner or his authorized agent determines that there are reasonable grounds to believe that such violation or danger exists, he shall make a special investigation as soon as practicable to determine if such violation or danger in fact exists. If the commissioner or his authorized agent determines that there are no reasonable grounds to believe that a violation or danger exists, he shall notify the employee or his representative in writing of such determination.

### § 312. Prohibition against discrimination

No person shall discharge or in any manner discriminate against an employee because such person has filed any complaint or has given written notice to an inspector concerning alleged violations of health standards, or has instituted or caused to be instituted any proceeding relating to employee health as authorized by this chapter 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 granted to him by this chapter.

Any employee who believes that he has been discharged or otherwise discriminated against in violation of this section 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 completion of such investigation, the commissioner determines that this section has been violated, he shall bring an action in an appropriate Superior Court in the county in which the violation was alleged to have occurred against the person deemed in violation of this section. In any such action the Superior Court shall have jurisdiction, for cause shown, to restrain a violation of this section and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.

Within 60 days of the receipt of a complaint filed under this section, the commissioner shall notify the complainant of his determination under the 2nd paragraph of this section.

### § 313. Confidentiality of information

All information reported to or otherwise obtained by the commissioner or his authorized agent in connection with any inspection or proceeding authorized under this chapter, which contains or might reveal a trade secret as defined in this chapter, shall be considered confidential; except that such information may be disclosed to other officers or employees of the department when involved in any proceeding pursuant to this chapter. In any such proceeding, the commissioner or his authorized agent shall issue each orders as may be appropriate to protect the confidentiality of trade secrets.

Notwithstanding any other provision of Title 22, all information reported to or otherwise obtained by the court, the commission, the commissioner or his authorized agent in connection with any inspection or proceeding authorized under this chapter which does not contain or reveal a trade secret as defined in this chapter shall not be considered confidential and shall be a matter of public record.

§ 314. Facts and statistics; seal; testimony; sources confidential; penalty

In carrying out his duties under this chapter, the commissioner may furnish a written or printed list of interrogatories to any person, to the proper officer of any industrial activity or to the person in charge of any workplace within the State and may require full and complete answers thereto under oath. The commissioner shall have a seal and may take and preserve testimony, issue subpoenas, administer oaths and examine witnesses under oath in all proceedings conducted pursuant to this chapter and the rules and regulations promulgated thereto. Such testimony shall be taken in some suitable place in the vicinity to which the testimony is applicable. Witnesses summoned and testifying before the commissioner shall be paid from any funds at the disposal of the department the same fees as witnesses before the Superior Court.

In case of failure or refusal of any person to obey an order of the commissioner issued pursuant to this section, a Superior Court in the county in which such person is found or resides or transacts business, upon the application by the commissioner, shall have jurisdiction to issue to such person an order requiring such person to appear, to produce evidence, if, as and when so ordered and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

§ 315. Citations

If, upon inspection or investigation, the commissioner or his authorized agent believes that an employer has violated section 303, or any standard, rule or rules promulgated pursuant to section 304, or of any regulations or order issued pursuant to this chapter, 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 this chapter, the standard, rules, regulations or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The commissioner may prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimis violations which have no direct or immediate relationship to the health of employees.

Each citation issued under this section, or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the commissioner, at or near each place where a violation referred to in the citation occurred or existed.

No citation may be issued under this section after the expiration of 6 months following the occurrence of any violation.

1. Penalties.

A. Willful violations. Any employer who willfully or repeatedly violates any requirement of section 303, or of any standard, rule, or order issued pursuant to section 304, may be assessed a fine of not more than \$1,000 for each day during which such violation continues.

B. Serious violations. Any employer who has received a citation for a serious violation of the requirements of section 303, or of any standard, rule, or order issued pursuant to section 304, shall be assessed a fine of up to \$1,000 for each such violation.

C. Nonserious violations. Any employer who has received a citation for a violation of the requirements of section 303, or of any standard, rule or order issued pursuant to section 304, and such violation is specifically determined not to be of a serious nature, may be assessed a fine of up to \$500 for each such violation.

D. Failure to correct. Any employer who fails to correct a violation for which a citation has been issued under paragraph A of this subsection within the period permitted for its correction, which period shall not begin to run until the date of the final order of the commission in the case of any review proceeding initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a fine of not more than \$1,000 for each day during which such failure or violation continues.

E. Willful violations causing death. Any employer who willfully violates any standard, rule, or order promulgated pursuant to this chapter and that violation caused death to any employee, shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than 6 months, or by both such fine and imprisonment; except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than \$20,000 or by imprisonment of not more than one year, or by both such fine and imprisonment.

F. Filing false documents. Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment of not more than 6 months, or by both such fine and imprisonment.

G. Prohibition against advance notice. Any person who gives advance notice of any inspection to be conducted by the department without authority from the commissioner shall, upon conviction, be punished by a fine of not less than \$500 nor more than \$1,000 or by imprisonment for not more than 3 months or by both.

H. Posting violation. Any employer who violates any of the posting requirements, as prescribed under this chapter, shall be assessed a fine of not more than \$1,000 for each violation.

I. Refusal of entry. Any person who refuses entry to the commissioner or his duly authorized agent without just cause, as prescribed under this chapter, may be assessed a fine of not more than \$1,000 for each day during which such refusal continues, and shall be personally liable for the payment thereof.

J. Altering the scene of an accident. Any person who, before the completion of an investigation by the commissioner or his duly authorized agent, materially alters the condition of a workplace at which a death or serious physical injury, has occurred may be assessed a fine of not more than \$1,000 unless such alteration is necessary to protect the safety and health of the employees in the workplace.

K. Assessment of penalties. The commission shall have the authority to assess all fines provided in this section, 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 history of previous violations.

L. Collection of penalties. Fines owed under this chapter shall be paid to the commissioner for deposit with the Treasurer of State and shall accrue to the State and may be recovered in a civil action in the name of the State brought in the superior court of the county where the violation is alleged to have occurred or where the employer has its principal office.

M. Definition of serious violation. For purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is 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, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

#### § 316. Procedure for enforcement

1. Post inspection penalty notification. If, after an inspection or an investigation, the commissioner or his authorized representative issues a citation pursuant to section 315, he shall within a reasonable time after the termination of such inspection or investigation notify the employer by certified mail of the penalty, if any, proposed to be assessed under said section and that the employer has 15 working days within which to notify the commissioner that he wishes to contest the citation or proposed assessment of penalties. If, within 15 working days from the receipt of the notification issued by the commissioner, the employer fails to notify the commissioner that he intends to contest the citation or proposed assessment of penalty, and no notice is filed by any employees or authorized employee representative under subsection 3 within such time, the citation and the assessment, as proposed, shall be deemed a final order of the commission and not subject to review by any court or agency.

2. Noncompliance notice. If the commissioner has reason to believe that an employer has failed to correct the 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 commission in the case of any review proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties, the commissioner shall notify the employer by certified mail of such failure and of the penalty proposed to be assessed under this section by reason of such failure, and that the employer has 15 working days within which to notify the commissioner that he wishes to contest the commissioner's notification of the proposed assessment of penalty. If, within 15 working days from the receipt of notification issued by the commissioner, the employer fails to notify the commissioner that he intends to contest the notification of proposed assessment of penalty, the notification and assessment, as proposed, shall be deemed the final order of the commission and not subject to review by any court or agency.

3. Contested notice. If an employer notifies the commissioner that he intends to contest a citation issued under section 315 of this chapter or notification issued under subsection 1 or 2 of this section or if, within 15 working days of the issuance of a citation under said section, any employee or authorized employee representative files a notice with the commissioner alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the commissioner shall immediately advise the commission of such notification, and the commission shall afford an opportunity for a hearing. The commission shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the commissioner's citation or proposed penalty 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 abatement has not been completed because of factors beyond his reasonable control, the commission, after an opportunity for a hearing, shall issue an order affirming or modifying the abatement requirements in such citation. The rules of procedure prescribed by the commission shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this subsection, and shall conform to the Rules of Procedure of the Federal Occupational Safety and Health Review Commission.

### § 317. Records

Each employer shall make, keep and preserve, and make available to the commissioner or his authorized agent, such records regarding his activities relating to this chapter as the commissioner may prescribe by regulation as necessary or appropriate for the enforcement of this chapter or for developing information regarding the causes and prevention of occupational accidents, diseases and illnesses. Any information shall be obtained with a minimum of burden upon employers, especially those operating small businesses. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible.

The commissioner shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees



informed of their protections and obligations under this chapter, including the provisions of applicable standards.

Sec. 3. R. S., T. 22, § 42, amended. The first sentence of section 42 of Title 22 of the Revised Statutes, as amended by chapter 233 of the public laws of 1967, is further amended to read as follows:

The department shall issue such rules and regulations as it shall think necessary and proper for the protection of life, health and welfare ~~including protection of health of employees of industrial establishments and places of employment~~ and the successful operation of the health and welfare laws.

Sec. 4. R. S., T. 22, § 42-A, sub-§§ 1, 7 and 8, repealed. Subsections 1, 7 and 8 of section 42-A of Title 22 of the Revised Statutes, as enacted by section 1 of chapter 554 of the public laws of 1969, are repealed as follows:

1. ~~Formulate, amend and repeal rules and regulations. To formulate, amend and repeal such rules and regulations as may be necessary for the protection of life, health and welfare of employees in industrial establishments and places of employment;~~

7. ~~Inspections. To enter and inspect industrial establishments and places of employment and to enforce the rules and regulations promulgated under this section;~~

8. ~~Penalties. Any person who violates any provision of this section or the rules and regulations made thereunder shall be punished by a fine of not less than \$50 nor more than \$200 for each offense~~

Sec. 5. R. S., T. 26, c. 4, additional. Title 26 of the Revised Statutes is amended by adding a new chapter 4 to read as follows:

#### CHAPTER 4

### OCCUPATIONAL SAFETY STANDARDS

#### § 61. Declaration of policy and purposes

It is hereby declared to be the public policy of this State and the purpose of this chapter to assure so far as possible every working man and woman in Maine safe working conditions and to preserve our human resources.

To these ends it is the purpose of this chapter to provide for a coordinated state plan for implementation, establishment and enforcement of occupational safety standards at least as effective as the federal Williams-Steiger "Occupational Safety and Health Act of 1970" (P.L. 91-596, 84 Stat. 1590, December 29, 1970).

#### § 62. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. Commission. "Commission" shall mean the Occupational Safety and Health Review Commission established under Title 5, section 601.

2. Commissioner. "Commissioner" shall mean the Commissioner of the Department of Manpower Affairs.

3. Department. "Department" shall mean the Department of Manpower Affairs.

4. Employee. "Employee" shall mean any person, including a minor whether lawfully or unlawfully employed, who engages to furnish his services for a remuneration, subject to the direction and control of an employer and includes salaried elected and appointed officials of the State, state agencies, counties, cities, school districts and other public corporations.

5. Employer. "Employer" shall mean any person, including partnerships, joint ventures, associations, corporations, receiver, administrator, executor or trustee, and the State, state agencies, counties, municipal corporations, school districts and other public corporations or political subdivisions, who contracts to pay a remuneration for and secures the right to direct and control the services of any person.

6. Imminent danger. "Imminent danger" shall mean a condition or practice in any workplace which is such that a danger exists which could reasonably be expected to cause death or serious physical injury immediately or before the imminence of such danger can be eliminated through the enforcement provisions otherwise provided in this chapter.

7. Trade secret. "Trade secret" shall mean a plan or process, tool, mechanism, compound or secret formula known only to its owner and those of his employees in whom it is necessary to confide.

8. Variance. "Variance" shall mean a special, limited, modification or change in a safety standard, which is applicable only to the particular establishment of the employer or person petitioning for such modification or change.

9. Workplace. "Workplace" shall mean any plant, yard, premises, room or other place where an employee or employees are employed for the performance of labor or service over which the employer has the right of access or control.

### § 63. General duty

Each employer subject to this chapter:

1. Free from hazards. Shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;

2. Compliance. Shall comply with the occupational safety standards promulgated under this chapter.

Each employee of an employer subject to this chapter shall comply with the occupational safety standards promulgated under this chapter and with

all rules, regulations and orders issued pursuant thereto which are applicable to his own actions and conduct.

#### § 64. Rules and regulations

The commissioner shall formulate and adopt reasonable rules and regulations for safe and healthful working conditions, including rules requiring the use of personal protective equipment. The rules and regulations so formulated shall be at least as effective as federally adopted standards of occupational safety. Such rules and regulations shall become effective 90 days after the date of their adoption and promulgation. Before any rules and regulations are adopted, a public hearing shall be held after suitable notice has been published in at least 3 daily newspapers in the State, provided that the commissioner may make any such rule or regulation effective on the date of its adoption in the event another state agency has adopted such rule or regulation in accordance with procedures consistent with due process and said agency is enforcing such rule or regulation at the time of its adoption by the commissioner.

The commissioner may at his discretion appoint ad hoc single industry's committees to advise and counsel him on rules and regulations needed for the protection of the workers engaged in the industry. Such committees shall be composed of an equal number of representatives of employers and from employees engaged in the single industry and not less than one member representing safety engineers engaged by insurance companies licensed to write workmen's compensation insurance in the State. Such committee members shall serve without salary and shall receive their actual expenses in the performance of their duties as members of such committees.

Standards promulgated pursuant to this section shall not be different from federal standards applying to products distributed or used in interstate commerce unless such standards are required by compelling local conditions and do not unduly burden interstate commerce. This provision does not apply to customized products or parts not normally available on the open market, or to optional parts or additions to products which are ordinarily available with such optional parts or additions.

Where appropriate, any standard promulgated by the commissioner shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are appraised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such standards shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such location and intervals and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such standard shall prescribe the type or frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure.

The commissioner shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured by standards issued pursuant to this chapter. 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 who is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable health standard promulgated pursuant to this chapter, and shall inform any employee who is being thus exposed of the corrective action being taken by such exposure.

Any person who may be adversely affected by a standard issued under this section may at any time prior to the 60th day after such standard is promulgated file a petition challenging the validity of such standard with the Superior Court in the county wherein such person resides or has his principal place of business, for a judicial review of such standard. A copy of the petition shall be forthwith transmitted by the clerk of the court to the commissioner. The filing of such petition shall not, unless otherwise ordered by the court, operate as a stay of the standard. The determinations of the commissioner shall be conclusive if supported by substantial evidence in the record considered as a whole.

#### §65. Right of access

The department shall be authorized and empowered to enter and inspect workplaces for the purpose of enforcing the occupational safety standards promulgated pursuant to this chapter and the rules and regulations adopted pursuant thereto.

The commissioner or his authorized agent, in carrying out his duties under this chapter, upon the presentation of appropriate credentials to the owner, manager, operator, or agent in charge, is authorized:

1. **Entry.** To enter without delay and at all reasonable times the factory, plant, establishment, construction site, or other area, workplace, or environment where work is performed by an employee of an employer. Upon petition of the commissioner, a Superior Court in the county in which any refusal was alleged to have occurred may order appropriate injunctive relief against an owner, proprietor or any person in charge of said industrial establishment or place of employment who refuses entry to the commissioner or his duly authorized agent.

2. **Inspection.** To inspect, survey 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, structures, machines, apparatus, devices, equipment and materials therein, and to question privately any such employer, owner, operator, agent or employee.

3. Witnesses and evidence. In making inspections and making investigations under this chapter the commissioner may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the Superior Court. In the case of contumacy, failure or refusal of any person to obey such an order, any Superior Court within the jurisdiction of which such person is found or resides, or transacts business, upon the application of the commissioner shall have jurisdiction to issue to such person an order requiring such person to appear to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

### § 66. Citations

If, upon inspection or investigation, the commissioner or his authorized agent believes that an employer has violated the requirements of section 63, or any standard, rule or rules promulgated pursuant to section 64 or any regulations or order issued pursuant to this chapter, 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 provision of the standard, rules, regulations or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The commissioner may prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimis violations which have no direct or immediate relationship to occupational safety.

Each citation issued under this section, or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the commissioner, at or near each place where a violation referred to in the citation occurred or existed.

No citation may be issued under this section after the expiration of 6 months following the occurrence of any violation.

#### 1. Penalties.

A. Willful violations. Any employer who willfully or repeatedly violates any requirement of section 63, or of any standard, rule or order issued pursuant to section 64, may be assessed a fine of not more than \$1,000 for each day during which such violation continues.

B. Serious violations. Any employer who has received a citation for a serious violation of the requirements of section 63, or of any standard, rule or order issued pursuant to section 64, may be assessed a fine of up to \$1,000 for each such violation.

C. Nonserious violations. Any employer who has received a citation for a violation of the requirements of section 63, or of any standard, rule or order issued pursuant to section 64, and such violation is specifically determined not to be of a serious nature, may be assessed a fine of up to \$500 for each such violation.

D. Failure to correct. Any employer who fails to correct a violation for which a citation has been issued under paragraph A within the period permitted for its correction, which period shall not begin to run until the date of the final order of the commission in the case of any review proceeding initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a fine of not more than \$1,000 for each day during which such failure or violation continues.

E. Willful violations. Any employer who willfully or repeatedly violates any requirement of section 63, or of any standard, rule, or order issued pursuant to section 64, may be assessed a fine of not more than \$1,000 for each day during which such violation continues.

F. Serious violations. Any employer who has received a citation for a serious violation of the requirements of section 63, or of any standard, rule, or order issued pursuant to section 64, shall be assessed a fine of up to \$1,000 for each such violation.

G. Nonserious violations. Any employer who has received a citation for a violation of the requirements of section 63, or of any standard, rule or order issued pursuant to section 64, and such violation is specifically determined not to be of a serious nature, may be assessed a fine of up to \$500 for each such violation.

H. Failure to correct. Any employer who fails to correct a violation for which a citation has been issued under this subsection within the period permitted for its correction, which period shall not begin to run until the date of the final order of the commission in the case of any review proceeding initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a fine of not more than \$1,000 for each day during which such failure or violation continues.

I. Willful violations causing death. Any employer who willfully violates any standard, rule or order promulgated pursuant to this chapter and that violation caused death to any employee shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than 6 months, or by both; except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than \$20,000 or by imprisonment of not more than one year or by both.

J. Filing false documents. Whoever knowingly makes any false statement, representation or certification in any application, record, report, plan or document filed or required to be maintained pursuant to this chapter shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment of not more than 6 months, or by both.

K. Prohibition against advance notice. Any person who gives advance notice of any inspection to be conducted pursuant to this chapter without authority from the commissioner shall, upon conviction, be punished by a fine of not less than \$500 nor more than \$1,000, or by imprisonment for not more than 3 months, or by both.

L. Posting violation. Any employer who violates any of the posting requirements, as prescribed under this chapter, shall be assessed a fine of not more than \$1,000 for each violation.

M. Refusal of entry. Any person who refuses entry to the commissioner or his duly authorized agent without just cause, as prescribed under this chapter, may be assessed a fine of not more than \$1,000 for each day during which such refusal continues, and shall be personally liable for the payment thereof.

N. Altering the scene of an accident. Any person who, before the completion of an investigation by the commissioner or his duly authorized agent, materially alters the condition of a workplace at which a death or serious physical injury has occurred may be assessed a fine of not more than \$1,000 unless such alteration is necessary to avert loss of life or serious physical injury.

O. Assessment of penalties. The commission shall have the authority to assess all fines provided in this section, 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 history of previous violations.

P. Collection of penalties. Fines owed under this chapter shall be paid to the commissioner for deposit with the Treasurer of State and shall accrue to the State and may be recovered in a civil action in the name of the State brought in the Superior Court of the county where the violation is alleged to have occurred or where the employer has its principal office.

Q. Definition of serious violation. For purposes of this section, 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 in such place of employment, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

#### § 67. Imminent danger orders

1. Restrain. A Superior Court in the county in which the imminent danger is alleged to exist 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 will 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 chapter. 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 individuals whose presence is necessary to avoid, correct or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of oper-

ations, or where a cessation or reduction of operations is necessary, to permit such to be accomplished in a safe and orderly manner.

2. Injunctive relief. Upon the filing of any such petition the Superior Court shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of an enforcement proceeding pursuant to this chapter. The proceeding shall be as provided by Rule 65 of the Maine Rules of Civil Procedure, except that no temporary restraining order shall be effective for a period longer than 5 days unless the court specifically finds the safety and health of the employees requires an extension of said period.

3. Information. Whenever and as soon as an inspector concludes that conditions or practices described in subsection 1 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.

4. Action against commissioner. 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 employees, might bring an action against the commissioner in the Superior Court in the county in which the imminent danger is alleged to exist or the employer has his principal place of business for a writ of mandamus to compel the commissioner to seek such an order and for such further relief as may be appropriate.

#### § 68. "Walkaround" inspection

Subject to regulations issued by the commissioner, a representative of the employer and an authorized employee representative shall be given an opportunity to accompany the commissioner or his authorized agent during the physical inspection of the workplace of any employer subject to this chapter for the purpose of aiding such inspection. Where there is no authorized employee representative, the commissioner or his authorized agent shall consult with a reasonable number of employees concerning matters of safety in the workplace.

Prior to or during any inspection, any employee or representative of employees may notify the commissioner or his authorized agent responsible for conducting the inspection in writing of any violation of section 63 or of any rule or regulation promulgated pursuant thereto which he has reason to believe exists in such workplace. The commissioner shall, by regulation, establish procedures for informal review of any refusal by an agent of the commissioner to issue an order with respect to any such alleged violation and shall furnish the employees requesting such review a written statement of the reasons for the commissioner's final disposition of the case.

#### § 69. Inspections in response to complaint

Any employee or a representative of an employee who believes that a violation of an occupational safety standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the commissioner or his authorized agent of such violation or danger. Except in cases of imminent danger, any such notice shall be in writing, shall



set forth with reasonable particularity the grounds for the notice, shall be signed by the employee or his representative and a copy shall be provided the employer or his agent no later than the time of the inspection except that, 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 or upon any record published, released or made available in any other respect. If upon the receipt of such notification, the commissioner or his authorized agent determines that there are reasonable grounds to believe that such violation or danger exists, he shall make a special inspection as soon as practicable to determine if such violation or danger exists. If the commissioner or his authorized agent determines that there are no reasonable grounds to believe that a violation or danger exists, he shall notify the employee or representative of the employee in writing of such determination.

#### § 70. Emergency temporary standards

1. The commissioner shall provide for an emergency temporary standard to take immediate effect if he determines that employees of employers subject to the provisions of this chapter are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or to new hazards and if he determines that such emergency temporary standard is necessary to protect the employees from such danger.

2. Such standard shall be effective until superseded by a standard promulgated in accordance with the procedures prescribed in subsection 3.

3. Upon publication of such standard in the state paper the commissioner shall commence a proceeding in accordance with section 64, and the standard notice of which has been published, shall also serve as a proposed rule for the proceeding. The commissioner shall promulgate a standard under this subsection no later than 6 months after publication of the emergency standard as provided in subsection 2.

#### § 71. Temporary variances

1. Application. Any employer may apply to the commissioner for a temporary order granting a variance from a standard or any provision thereof promulgated under this chapter. Such temporary order shall be granted only if the employer files an application which meets the requirements of subsection 2 and establishes that he is unable to comply with the standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standards or because necessary construction or operation of the facilities cannot be completed by the effective date, that he is taking all available steps to safeguard his employees against the hazards that are covered by the standard, and that he has an effective program for coming into compliance with this standard as quickly as practicable. Any temporary order issued under this subsection shall prescribe the practices, means, methods, operations and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing, provided that the commissioner may issue one

interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect longer than the period needed by the employer to achieve compliance with the standard, or one year, whichever is shorter, except that such an order may be renewed not more than twice so long as the requirements of this subsection are met and an application for renewal is filed at least 90 days prior to the expiration date of the order. No interim renewal of an order may remain in effect for longer than 180 days.

2. —contents. An application for a temporary order under this subsection shall contain:

A. A specification of the standard or portion thereof from which the employer seeks a variance;

B. A representation by the employer, supported by representations from qualified persons having firsthand knowledge of the fact represented, that he is unable to comply with the standard or portion thereof and a detailed statement of those reasons therefor;

C. A statement of the steps he has taken and will take, with specific dates, to protect employees against the hazard covered by the standard;

D. A statement of when he expects to be able to comply with the standard and what steps he has taken and what steps he will take, with dates specified, to come into compliance with the standard;

E. A certification that he has informed his employees of any application by giving a copy thereof to their authorized employee representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted and by other reasonably appropriate means as may be directed by the commissioner;

F. A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the commissioner for a hearing.

3. Permanent variance. Any affected employer may apply to the commissioner for a rule or order for a permanent variance from a standard promulgated under this chapter. 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. 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 that they differ from the standard in question. 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 6 months from its issuance.

#### § 72. Confidentiality of information

All information reported to or otherwise obtained by the commissioner or his authorized agent in connection with any inspection or proceeding authorized under this chapter, which contains or might reveal a trade secret as defined in this section, shall be considered confidential; except that such information may be disclosed to other officers or employees of the department when involved in any proceeding pursuant to this chapter. In any such proceeding, the commissioner or his designated agent shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

Notwithstanding any other provision of this Title, all information reported to or otherwise obtained by the commissioner or his authorized agent in connection with any inspection or proceeding authorized under this chapter which does not contain or reveal a trade secret as defined in this chapter shall not be considered confidential and shall be a matter of public record.

#### § 73. Prohibition against discrimination

No person shall discharge or in any manner discriminate against an employee because such person has filed any complaint or has given written notice to an inspector concerning alleged violations of occupational safety standards, or has instituted or caused to be instituted any proceeding relating to employee safety as authorized by this chapter, 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 granted him by this chapter.

Any employee who believes that he has been discharged or otherwise discriminated against in violation of this section may, within 30 days after he learns of such violation, 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 completion of such investigation, the commissioner determines that this section has been violated, he shall bring an action in an appropriate Superior Court in the county in which the violation was alleged to have occurred against the person deemed in violation of this section. In any such action the Superior Court shall have jurisdiction, for cause shown, to restrain violations of this section and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.

Within 60 days of the receipt of a complaint filed under this section, the commissioner shall notify the complainant of his determination under the 2nd paragraph of this section.

#### § 74. Training and employee and employer education

1. Programs. The commissioner shall conduct directly or by contract educational programs to provide an adequate supply of qualified personnel to administer the responsibilities assumed by the State in accordance with

section 18(b) of the Occupational Safety and Health Act ("the Act") and informational programs on the importance of and proper use of adequate safety and health equipment.

2. Training. The commissioner is authorized to conduct directly or by grants or contracts short-term training of personnel engaged in work related to his responsibilities under this section.

3. Education and training. The commissioner shall provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance and prevention of unsafe or unhealthful working conditions in any workplace and shall consult with and advise employers, employees and organizations representing employers and employees as to effective means preventing occupational injuries and illnesses.

#### § 75. Procedure for enforcement

1. Postinspection penalty notification. If, after an investigation, the commissioner or his authorized representative issues a citation pursuant to section 66, he shall within a reasonable time after the termination of such inspection or investigation notify the employer by certified mail of the penalty, if any, proposed to be assessed under said section and that the employer has 15 working days within which to notify the commissioner that he wishes to contest the citation or proposed assessment of penalties. If, within 15 working days from the receipt of the notification issued by the commissioner, the employer fails to notify the commissioner that he intends to contest the citation or proposed assessment of penalty, and no notice is filed by any employees or authorized employee representative under subsection 3 within such time, the citation and the assessment, as proposed, shall be deemed a final order of the commission and not subject to review by any court or agency.

2. Noncompliance notice. If the commissioner has reason to believe that an employer has failed to correct the 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 commission in the case of any review proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties, the commissioner shall notify the employer by certified mail of such failure and of the penalty proposed to be assessed under section 66 by reason of such failure, and that the employer has 15 working days within which to notify the commissioner that he wishes to contest the commissioner's notification of the proposed assessment of penalty. If, within 15 working days from the receipt of notification issued by the commissioner, the employer fails to notify the commissioner that he intends to contest the notification of proposed assessment of penalty, the notification and assessment, as proposed, shall be deemed the final order of the commission and not subject to review by any court or agency.

3. Contested notice. If an employer notifies the commissioner that he intends to contest a citation issued under section 66 or notification issued under subsection 1 or 2 or if, within 15 working days of the issuance of a

citation under said section, any employee or authorized employee representative files a notice with the commissioner alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the commissioner shall immediately advise the commission of such notification, and the commission shall afford an opportunity for a hearing. The commission shall thereafter issue an order, based on findings of fact, affirming, modifying or vacating the commissioner's citation or proposed penalty or directing other appropriate relief, and such order shall become final 30 days after its issuance. Upon a showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that abatement has not been completed because of factors beyond his reasonable control, the commission, after an opportunity for a hearing, shall issue an order affirming or modifying the abatement requirements in such citation. The rules of procedure prescribed by the commission shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this subsection, and shall conform to the Maine Rules of Civil Procedure adopted by the Federal Occupational Safety and Health Review Commission.

#### § 76. Records and reports

Employers subject to this chapter shall maintain records and make reports in the same manner and to the same extent as required by the Occupational Safety and Health Act of 1970.

Each employer shall make, keep and preserve, and make available to the commissioner or his authorized agent, such records regarding his activities relating to this chapter as the commissioner may prescribe by regulation as necessary or appropriate for the enforcement of this chapter or for developing information regarding the causes and prevention of occupational accidents, diseases, and illnesses. Any information obtained by the commissioner 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.

The commissioner shall also issue regulations requiring that employers through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this chapter, including the provisions of applicable standards.

#### § 77. Statistics

1. Statistics. In order to further the purpose of this chapter, the department shall be the sole state agency with responsibility for developing or maintaining, or both, an effective program of collection, compilation and analysis of occupational safety and health statistics. The department shall compile accurate statistics on work injuries and illnesses which shall include all disabling, serious or significant injuries and 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.

2. —duties. To carry out its duties under subsection 1, the department may:

A. Promote, encourage or directly engage in programs of studies, information and communication concerning occupational safety and health statistics;

B. Assist agencies or political subdivisions in developing and administering programs dealing with occupational safety and health statistics; and

C. Arrange, through assistance, for the conduct of research and investigation as give promise of furthering the objectives of this section.

3. Agreements. Agreements between the U.S. Department of Labor and the State of Maine pertaining to the collection of occupational safety and health statistics already in effect on the effective date of this Act shall remain in effect until superseded.

4. Filing. The department shall require all employers to file with the Secretary of Labor all reports required by Public Law 91-596 found at 29 CFR 1904 directly with the secretary as required.

5. Reports to U. S. Department of Labor. In order to further the purpose of this chapter, the commissioner shall make such reasonable reports to the United States Department of Labor in such form and containing such information as may from time to time be required.

#### § 78. Administration of safety program

The department shall be the sole and paramount administrative agency responsible for the administration of this chapter, and any other agency of the State or any municipal corporation or political subdivision of the State having administrative authority over the inspection, survey, investigation or any regulatory or enforcement authority of safety standards related to the safety of employees in any workplace subject to this chapter shall be required, notwithstanding any statute to the contrary, to exercise such authority as provided in this chapter.

The department may, with the consent of any state agency or political subdivision of the State, accept and use the services, facilities and employees of the state agencies or political subdivisions of the State, with or without reimbursement, in order to assist it in carrying out its functions under this chapter.

Sec. 6. R. S., T. 26, c. 5, sub-c. IV, repealed. Subchapter IV of chapter 5 of Title 26 of the Revised Statutes, as amended, is repealed.

Sec. 7. R. S., T. 26, §§ 561 - 569, repealed. Sections 561 to 569 of Title 26 of the Revised Statutes, as enacted by chapter 454 of the public laws of 1969 and as amended, are repealed.

#### STATEMENT OF FACT

The Occupational Safety and Health Act of 1970 mandates a rigorous governmental program for administering and enforcing occupational safety

and health standards. With modification, existing state programs can be continued and, where necessary, expanded in accordance with the federal act and with the support of federal matching funds.

The purpose of this bill is to grant authority to the Department of Manpower Affairs and to the Department of Health and Welfare to administer an occupational safety and health program that will meet the requirements of the federal act. In addition, an Occupational Safety and Health Review Commission is created to hear appeals from the decisions of the state personnel administering the program.